

REPORT No. 86/11
CASE 12.232
FRIENDLY SETTLEMENT
MARÍA SOLEDAD CISTERNAS REYES
CHILE¹
July 21, 2011

I. SUMMARY

1. On November 16, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a complaint filed by the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”) against the Republic of Chile (hereinafter “the State” or “the Chilean State”), to the detriment of Ms. María Soledad Cisternas Reyes (hereinafter “the alleged victim”). The petition alleged that Ms. Cisternas was the victim of a violation of her rights not to be subject to discrimination, to equal protection of the law, to have her mental and moral integrity respected, not to be subject to arbitrary interference in her private life, and to leave her country freely and without restrictions. Accordingly, the petitioners alleged that the State had violated the provisions of Articles 5, 11, 22, 24, and 25 of the American Convention on Human Rights (hereinafter “the Convention”), in conjunction with its Articles 1(1) and 2.

2. The petitioners indicated that the alleged victim, attorney by profession, is totally blind and that on October 19, 1998, she asked her travel agent for a reservation for air travel to go to the city of Montevideo, Uruguay. The airline “Línea Nacional –Chile S.A” (LAN Chile S.A.) made the reservation on condition that she not travel alone, that she be accompanied by another passenger or by a guide dog. On November 5, 1998, the alleged victim filed a motion for constitutional protection (*recurso de protección*) before the Court of Appeals of Santiago against LAN Chile S.A. alleging that the facts constituted a violation of the right to equality. The motion was rejected, as was the appeal of that ruling.

3. This friendly settlement report, as established in Article 49 of the Convention and Article 40(5) of the Commission’s Rules of Procedure, sets forth the facts alleged by the petitioners and transcribes the friendly settlement agreement signed on December 11, 2003, by the petitioners and by representatives of the Chilean State. It also approves the agreement signed by the parties, and agrees on the publication of this report in the Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE COMMISSION

4. On December 16, 1999, the IACHR received the petition in question, and on December 24, 1999, it was forwarded to the Chilean State, requesting that in 90 days it provide the information which it considered relevant. By communication of February 9, 2000, the State requested a 90-day extension, which was granted on February 22, 2000. The State submitted its observations on admissibility by a note of June 19, 2000; these were forwarded to the petitioners on July 18, 2000, and they were given 30 days to submit their observations.

5. On October 10, 2000, a hearing was held in the context of the 108th regular period of sessions of the IACHR. The petitioners forwarded additional observations on October 18, 2000, and May 9, 2001. The State presented additional information on January 29, 2001, and by communication received January 29, 2004 it informed the Commission that it had reached a satisfactory agreement with the alleged victim. That information was forwarded to the petitioners by communication of August 12, 2004, requesting that they send in the observations they considered pertinent with respect to the friendly settlement procedure. That request was reiterated to the petitioners in a communication of March 30, 2011.

¹ Commissioner Felipe González, of Chilean nationality, did not participate in the deliberations or decision on this petition, in keeping with Article 17(2)(a) of the Commission’s Rules of Procedure.

6. By communication of May 9, 2011, the petitioners reported that the alleged victim and the Chilean State declared that the dispute that gave rise to the petition had been settled. In that same communication they reported on the publication of the aviation regulation that regulates air transport of persons with disabilities, illness, or special needs, and of its dissemination.

III. THE FACTS

7. The petitioners alleged that on October 19, 1998 Ms. María Soledad Cisternas Reyes, who is totally blind, asked her travel agent to book a reservation for air travel to Montevideo on November 14, 1998, to participate in an International Congress on Human Rights for persons with visual disparity, blindness, and poor eyesight. They added that the agent made the reservation with the airline "Línea Aérea Nacional - Chile SA," indicating that Ms. Cisternas is blind. The airline made the reservation on the condition that she travel accompanied or with a guide dog, and clarified that she would not be allowed to board if she traveled alone. They alleged that Ms. Cisternas Reyes was under an obligation to make the expenditure of buying another ticket for a person to accompany her.

8. On November 5, 1998, Ms. Cisternas Reyes filed a constitutional motion (*recurso de protección*) before the Court of Appeals of Santiago against the airline LAN Chile S.A. In that motion, Ms. Cisternas Reyes alleged that the facts constituted a violation of the right to equality before the law, the right to free entry to and exit from the territory of the Republic of Chile, and to her mental integrity, and that they violated domestic laws on the integration of disabled persons, as well as the United Nations "Standard Rules on the Equalization of Opportunities for Persons with Disabilities."

9. The petitioners reported that on April 23, 1999, the Court of Appeals of Santiago handed down a judgment in which it rejected the motion filed by Ms. Cisternas. They indicated that the Court held that Ms. Cisternas was an outstanding attorney and that, as demonstrated at trial and due to her special condition of intellectual and physical self-sufficiency, she could have been exempted from the conditions imposed by the airline, had this been demonstrated. In addition, the Court held that Ms. Cisternas had not suffered a violation of the rights to equality before the law or of her mental integrity, adding that the other rights alleged were not matters analyzed by the Court. Ms. Cisternas filed an appeal against that resolution before the Supreme Court of Chile on April 28, 1999. On May 17, 1999 the Supreme Court rejected the appeal and affirmed the judgment of first instance.

10. The petitioners held that the alleged victims suffered a violation of the rights protected by the American Convention at Articles 5, 11, 22, 24, and 25, in relation to the obligations established in Articles 1(1) and 2 thereof.

IV.

FRIENDLY SETTLEMENT

11. On December 11, 2003, Ms. María Soledad Cisterna Reyes and representatives of the Chilean State signed an agreement whose text reads as follows:

Bases of Agreement

“Friendly Settlement Agreement”

In Santiago, December 11, 2003, THE FOLLOWING PERSONS APPEARING: Ms. María Soledad Cisternas Reyes, Chilean, married, attorney,...², complainant before the Inter-American Commission on Human Rights, in Case 12,232, and, for the Chilean State, the Minister of Foreign Affairs, Ms. María Soledad Alvear Valenzuela, the Minister of National Defense, Ms. Michelle Bachelet Jeria, and the Minister Secretary-General of Interior, Mr. Francisco Vidal Salinas, domiciled for these purposes at Catedral 1158, Santiago, hereinafter “the Parties,” who, having undertaken a study of the antecedents of the above-mentioned case regarding limitations that affect the air travel of persons with disabilities, have reached the following settlement, which is presented as “Bases of Agreement” between the parties to settle this dispute.

FIRST: On occasion of the situation that affected Ms. María Soledad Cisternas Reyes by virtue of the demands posed for her air travel from the city of Santiago, Chile, to the city of Montevideo, Uruguay, in October 1998, put forth by the airline referred to in the judicial actions brought by Ms. Cisternas in relation to the visual disability that affects her, she had recourse to the Inter-American Commission on Human Rights of the OAS in order to make her case known to this collegial body.

SECOND: It being the intent of the Parties to contribute to the progressive social integration of persons with disabilities, especially bearing in mind Law 19,284 of 1994 and the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities of the OAS, ratified by the State of Chile in February 2002, agree as follows:

- a) Ms. María Soledad Cisternas has been invited to and is participating in the work of the Committee of Studies established at the General Directorate of Civil Aviation in charge of reviewing, updating, and enhancing the laws and regulations regarding the air travel of persons with various disabilities, for the purpose of Ms. Cisternas being able to collaborate as an expert with her knowledge and academic experience in the area of “vulnerable communities,”
- b) The Parties shall undertake broad dissemination of the laws and regulations that make possible adequate air travel of persons with disabilities, among the different carriers, public and private agencies, as well as the general public, with the collaboration, for carrying out said campaign, of the Division of Social Organizations of the Ministry General Secretariat of Interior, by means of its Tolerance and No Discrimination Program.

THIRD: In view of these “Bases of Agreement,” which constitute a settlement, the Parties grant the broadest and most complete release of their claims, declaring the dispute in question to be fully settled, and request that the Honorable Inter-American Commission on Human Rights take due note of what is stated herein, setting forth the relevant part in the respective Report on Friendly Settlement.

² The personal data on Ms. Cisternas Reyes, i.e. her national ID number and mailing address, have been omitted.

V. DETERMINATION OF COMPATIBILITY AND IMPLEMENTATION

12. The IACHR reiterates that pursuant to Articles 48(f) and 49 of the Convention, this procedure is aimed at “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The agreement to engage in this procedure expresses the good faith of the State when it comes to carrying out the purposes and objectives of the Convention, in keeping with the principle of *pacta sunt servanda*. In addition, it wishes to reiterate that the friendly settlement procedure provided for in the Convention makes it possible to end individual cases in a non-contentious manner and has proven, in cases regarding several countries, to offer an important and effective vehicle for settlement that can be used by both parties.

13. In the instant case, the Commission notes that in a communication of May 9, 2011, the petitioners indicated that according to the information provided by Ms. Cisternas, in April 2008 the General Director of Civil Aviation of Chile (DGAC) published the aviation regulation that regulates the air transport of passengers with disability, illness, or special needs³, which is included in the National program for the Facilitation of Air Transport that the Bureau of Airports of the Ministry of Public Works of Chile plans to implement in 2011.⁴ In that regard, the petitioners indicated that they consider that the Chilean State has implemented the commitments assumed in the friendly settlement agreement.

14. The Commission highly values the parties’ efforts to reach this agreement, and declares that it is compatible with the object and purpose of the Convention. The Commission takes note of and values in particular the intent of the parties “to contribute to the progressive social integration of persons with disabilities,” mindful of the Inter-American Convention for the Elimination of All Forms of Discrimination against Persons with Disabilities.

VI. CONCLUSIONS

15. Based on the foregoing considerations, and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate its profound gratitude for the efforts made by the parties, and its satisfaction that the friendly settlement agreement reached in this case is consistent with the object and purpose of the American Convention.

16. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties on December 11, 2003.
2. To consider that the friendly settlement agreement has been carried out.
3. To publish this report and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 21st day of July 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.

³ <http://www.dgac.cl/transparencia/pdf5/dan-382-20110505.pdf>.

⁴ <http://www.aeropuertos.gov.cl/Noticias/Paginas/DetalledeNoticias.aspx?item=34>.

