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CASE 12.233

FRIENDLY SETTLEMENT

VICTOR AMESTICA MORENO AND OTHERS
CHILE

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REPORT No.137/19
CASE 12.233
FRIENDLY SETTLEMENT
VÍCTOR AMÉSTICA MORENO ET AL.
CHILE
SEPTEMBER 6, 2019¹

I. SUMMARY AND PROCEDURAL ASPECTS RELATED TO THE FRIENDLY SETTLEMENT PROCESS

1. On November 1, 1999, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition from the *Corporación de Promoción de la Defensa de los Derechos del Pueblo* [Corporation for the Promotion and Defense of Human Rights], or CODEPU (hereinafter “the petitioners”), against the Republic of Chile (hereinafter “the State” or “the Chilean State”), alleging that Víctor Améstica Moreno, Alberto Araneda Muñoz, Héctor Martínez Vasquez, Oscar Sepulveda Alarcon, and Alejandro César Sánchez Canales—all members of *Carabineros de Chile*² (hereinafter “the Carabineros”)—had been victims of an arbitrary evaluation process carried out by officials of the Carabineros, in which their basic rights were violated, and that they had then been expelled from the institution with no substantive judicial decision having been issued regarding the violation of their rights. They further alleged that their respective spouses, Jenny Burgos Orrego, Marisol Valencia Poblete, Johanna Valdebenito Pinto, Carmen Araya Cordero, and María Angélica Olgúin (hereinafter “the spouses of the Carabineros”), were discriminated against for being their wives.

2. The petitioners alleged that the State was responsible for violating the right to privacy, the right of assembly, the right to private property, the right to equal protection, and the right to judicial protection, protected in Articles 11(2), 15, 21, 24, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”).

3. On October 10, 2003, the IACHR issued Admissibility Report No. 58/03. In its report, the IACHR concluded that it was competent to declare the petition under review admissible with respect to Articles 1(1) (Obligation to Respect Rights), 2 (Domestic Legal Effects), 8 (Right to a Fair Trial), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 15 (Right of Assembly), 17 (Rights of the Family), 21 (Right to Property), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection) of the American Convention.

4. On December 30, 2003, the petitioners expressed their interest in pursuing a friendly settlement, an offer that was accepted by the Chilean State on February 3, 2006, thus initiating the friendly settlement negotiations. On September 20, 2010, at offices of the Under-Secretariat of Carabineros de Chile, the parties signed a friendly settlement agreement (hereinafter the “FSA” or “agreement”), to bring a non-contentious resolution to the complaint brought before the IACHR.

5. On August 2, 2019, the Chilean State sent the Commission information regarding compliance with the FSA and requested that it be officially approved. This communication was sent to the petitioners, who on August 20th and 27th, 2019, confirmed that there had been full compliance with the commitments established in the FSA and gave their consent for the approval and publication of the friendly settlement agreement that had been signed.

6. This friendly settlement report, pursuant to Article 49 of the Convention and Article 40(5) of the Commission’s Rules of Procedure, outlines the facts alleged by the petitioners and transcribes the friendly settlement agreement, which was signed on January 20, 2010, by the petitioners and representatives of the Chilean State. In addition, the agreement signed by the parties is approved, and it is agreed to publish this report in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

¹ Commissioner Antonia Urrejola, a Chilean national, did not participate in the consideration of or voting on this case, pursuant to Article 17(2)(a) of the IACHR Rules of Procedure.

² *Carabineros de Chile* is a Chilean police force and a technical and military institution, established in 1927. It is part of Chile’s Forces of Order and Public Security.

II. FACTS ALLEGED

7. The petitioners alleged that, in the wake of an additional economic benefit that they believe was unequally distributed, the wives of several Carabineros who had been negatively affected by that unequal distribution held a demonstration in a downtown area of Santiago on April 27, 1998, Carabineros' Day. The petitioners pointed out that the institution Carabineros de Chile obligated all Carabineros to sign a document in which they pledged that neither their spouses nor their family members would participate in a demonstration. They maintained that signing that document was compulsory.

8. The petitioners indicated that Carabineros de Chile had started to harass Carabineros employees by illegally spying on many of their homes, including the homes of the alleged victims. They said that the institution had even tapped telephone lines and photographed many of the spouses while they were engaged in private and social activities. They said that after the demonstration, many Carabineros were placed on List 4, the dismissal list, and were subsequently discharged.

9. According to the petitioners, the ranking that resulted in the Carabineros' dismissal was a direct consequence of the demonstration held on April 27 by a group of wives of Carabineros.

10. The petitioners said that on July 18, 1998, they filed an appeal for protection with the Santiago Court of Appeals, challenging their dismissal, and that all the appeals were subsequently joined. According to the petitioners, on January 28, 1999, the Court of Appeals rejected the appeals. The Court found that it was not within its purview to examine the evaluation board's basis for determining the rank that resulted in the Carabineros' dismissal, since the boards were sovereign. The Court added that undertaking an examination of the grounds for the ranking would amount to acting as another instance.

11. The petitioners said that this resolution was upheld on April 28, 1999, by the Supreme Court of Chile, which found, with regard to the ranking process, that "it has not been proven or demonstrated in documents that it was the result of arbitrary or abusive behavior or that it was contrary to the constitutional legal order, which is sufficient to bar acceptance of the appeals filed, without it being necessary to examine the guarantees that have allegedly been violated."

12. The petitioners said that Carabineros officials had arbitrarily interfered with the private lives of the alleged victims by means of ongoing monitoring and surveillance of part of the institution's personnel on active duty. They considered that to be a violation of privacy as protected under Article 11(2) of the Convention.

13. Likewise, they indicated that the State had violated the right to the personal property of the Carabineros mentioned in the petition by depriving them of their right to an intangible asset, namely their posts as Carabineros. They further argued that this was the result of an irrational procedure which took into account factors other than their skills as professionals and civil servants.

14. As to the wives of the Carabineros who are also alleged victims in this petition, they said that their right to assembly, protected under Article 15 of the American Convention, had been violated since they had been prevented from meeting and from expressing themselves concerning an administrative matter within the Carabineros institution. They also considered that "it constitutes a violation of the law to punish civil servants for their spouses' legitimate exercise of that right." Further, the petitioners considered that the right to equal protection under the law without discrimination was violated since the Carabineros' wives had been "indirectly discriminated against, inasmuch as they are civilian citizens, depriving them of their right to express themselves freely, to assemble, and to have a private life."

15. Lastly, the petitioners pointed out that Article 25 of the American Convention had been violated because, in the only effective appeal, the Santiago Court of Appeals had refrained from determining the merits and simply indicated that the matter was within the jurisdiction of the administrative authority.

III. FRIENDLY SETTLEMENT

16. On January 20, 2010, at offices of the Under-Secretariat of Carabineros de Chile, the State, represented by Javiera Blanco Suárez, Under-Secretary of Carabineros; Samuel Cabezas Fonseca, Acting Deputy Director General and Inspector General of Carabineros; and Ambassador Carmen Hertz Cádiz, Human Rights Director of the Chilean Foreign Ministry; and for the other side, the petitioners, represented by the *Corporación de Promoción y Defensa de los Derechos del Pueblo*, CODEPU, signed a friendly settlement agreement on the following terms:

**FRIENDLY SETTLEMENT AGREEMENT
CASE 12.233
VICTOR AMÉSTICA MORENO ET AL.**

I. Case N° 12.233 Victor Améstica Moreno et al.

II. DESCRIPTION OF THE PARTIES

The following are parties to this agreement:

On one side, the State of Chile, represented by the Under-Secretary of Carabineros, Ms. Javiera Blanco Suárez; the Acting Deputy Director General, Inspector General of Carabineros, Mr. Samuel Cabezas Fonseca; and the Human Rights Director of the Chilean Foreign Ministry, Ambassador Carmen Hertz Cádiz.

On the other side, the *Corporación de Promoción y Defensa de los Derechos del Pueblo*, CODEPU, as petitioners in the case and representatives of the victims, represented by Federico Aguirre Madrid; and Víctor Manuel Amestica Moreno, Oscar Armando Sepulveda Alarcon, Héctor Santo Martínez Vasquez, Alejandro César Sánchez Canales, Alberto Celso Araneda Muñoz, Jenny del Carmen Burgos Orrego, Ernestina del Carmen Araya Cordero, Johana Solange Valdebenito Pino, María Angelica Olguin, and Marisol Valencia Poblete, in their capacity as victims.

III. FACTS

1. On November 1, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or the “IACHR”) received a petition against the Republic of Chile (hereinafter “the State” or “the Chilean State”) filed by the *Corporación de Promoción de la Defensa de los Derechos del Pueblo* [Corporation for the Promotion and Defense of Human Rights], CODEPU, in which Víctor Manuel Améstica Moreno, Oscar Armando Sepulveda Alarcon, Héctor Santo Martínez Vasquez, Alejandro César Sánchez Canales, and Alberto Celso Araneda Muñoz—all members of Carabineros de Chile at the time of the events that form the basis of their complaint—allege that they had been victims of an evaluation process carried out by officials of Carabineros de Chile, which resulted in their expulsion from the institution and the violation of their rights. The petitioners further alleged that their respective spouses, Jenny del Carmen Burgos Orrego, Ernestina del Carmen Araya Cordero, Johana Solange Valdebenito Pino, María Angelica Olguin, and Marisol Valencia Poblete, were discriminated against for being their wives.

2. Specifically, the petitioners alleged that the State was responsible for violating the right to a fair trial, freedom of expression, right to privacy, rights of the family, right of assembly, right to property, right to equal protection, and right to judicial protection, in conjunction with the State’s obligation to respect and ensure human rights and the duty to adopt domestic legislation, established in Articles 1(1), 2, 8, 11, 17, 24, and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”).

3. The State, for its part, denied at that time that it had violated any provision of the American Convention and requested that the petition be declared inadmissible, since it did not meet the requirements established in Articles 46(1)(a)(b) and 47(b) and (c). In particular, the State indicated that the evaluation processes were in keeping with legislation in force at the time of the events in question, under which the work performance of the petitioners was rated as deficient by the rating bodies of Carabineros de Chile. It further noted that the petitioners had availed themselves of both administrative and judicial complaint mechanisms, which had failed to revoke the institution's decision.

4. The State also argued that there had been no violation of the rights recognized in the American Convention, since the demonstration in a public thoroughfare had exceeded the limits authorized by the laws in force, thereby disrupting public order and causing some demonstrators to be arrested.

5. On October 10, 2003, after examining the positions of the parties, the Inter-American Commission on Human Rights concluded that it was competent to hear the petition presented by the petitioners and that the petition was admissible, in light of Articles 46 and 47 of the American Convention.

6. During the processing of the complaint, the petitioners and the State expressed their desire, willingness, and interest in pursuing the friendly settlement procedure set forth in Article 48(1)(f) of the Convention and Article 41 of the IACHR Rules of Procedures (hereinafter "the Rules of Procedure"), thereby initiating a process of dialogue and understanding designed to develop the foundations and elements of such an agreement, based on respect for the human rights established in the Convention and other inter-American instruments.

7. On the basis of the foregoing, the signatory parties have agreed to the following friendly settlement proposal, according to the following terms:

III. PUBLIC ACKNOWLEDGEMENT OF RESPONSIBILITY

8. Through this friendly settlement agreement, the Chilean State acknowledges that according to international standards, there was a violation of the petitioners' rights.

IV. MEASURES OF NON-REPETITION

9. The Chilean State undertakes to conduct a review of the legal and regulatory provisions applicable to performance evaluations of the Carabineros. The purpose is to verify whether rules governing staff performance evaluations respect the principle of objectivity, allow both sides to be heard, allow for rebuttal, and generally afford proper protections of the rights of Carabinero employees, in accordance with international human rights standards.

The Chilean State also undertakes to inform the IACHR, within one year's time, of the result of that analysis, and to report on progress made regarding any measures it may have adopted as a result of that review.

V. SPECIFIC REPARATIONS

10. Within three months of the signing of this agreement, the Chilean State undertakes to remove or clean up the administrative files of the victims in this case, eliminating all records of the events that gave rise to these complaints.

11. The Chilean State undertakes to publish a summary of this friendly settlement agreement, one time only, in the Official Gazette of the Republic of Chile, and to post it for six

months on the websites of the Foreign Ministry, the Ministry of Defense, and the Carabineros de Chile.

12. Through a letter sent by the Under-Secretary of Carabineros de Chile, Ms. Javiera Blanco Suárez, to each of the victims in both cases, the Chilean State shall give a formal apology for the reported violations and the repercussions these had on their lives and personal and family relationships. The letter will also indicate the measures proposed to remediate the consequences and inconveniences the victims suffered.

13. The petitioners may have direct access to the health services offered by both the Carabineros' Hospital, "HOSPITAL DEL GENERAL HUMBERTO ARRIAGADA VALDIVESO," and the Hospital of the Carabineros Social Security Department [*Dirección de Previsión de Carabineros*], "HOSPITAL TENIENTE HERNÁN MERINO CORREO," interchangeably, in accordance with the rates set by each hospital and the rates in effect for the Social Security Department health system at the time health services are provided, and in accordance with whether the beneficiaries are enrolled in the FONASA or ISAPRE health insurance systems. To this end, the petitioners are understood to be authorized by the authorities of these two hospitals to receive services without the sponsorship of an active or passive contributor into the Carabineros Social Security system, which is taking financial responsibility for the medical benefits provided.

To accomplish this, the corresponding offices within the hospitals mentioned above will incorporate the petitioners into their databases, allowing them to use the hospitals by simply showing a current identity card. This will be implemented within one month of the date of this agreement.

VI. REPARATIONS

14. The following sums shall be paid to compensate for material and non-material damages: US\$17,000 each to the former employees of the Carabineros individually named in this document and US\$3,000 for each of the petitioners individually mentioned herein who were not employees of the Carabineros. These payments will be made in their equivalent in Chilean pesos at the time of payment.

Payment will be made in the form of a check payable to the order of each of the victims, within three months of the date of this agreement. These checks shall be picked up by the petitioners at the Human Rights Department of the Foreign Ministry of Chile, upon presentation of their national identity card.

VII. FOLLOW-UP COMMITTEE

15. In order to monitor compliance with the commitments made in this agreement, the parties agree to form a Follow-Up Committee coordinated by the Human Rights Department of the Ministry of Foreign Affairs of Chile. This Committee will be comprised of one representative of the Human Rights Department of the Chilean Foreign Ministry, one representative of Carabineros de Chile, one representative of the Ministry of Defense, and one representative of the petitioners. The methodology and frequency of the Committee's meetings will be decided by its members. The Committee will periodically report to the Executive Secretariat of the IACHR on progress being made to fulfill the commitments undertaken in this agreement.

VIII. FAILURE TO COMPLY WITH THESE COMMITMENTS

16. The commitments made in this friendly settlement agreement must be fulfilled. Failure to comply with one or more points shall terminate the friendly settlement procedure

before the Inter-American Commission on Human Rights, and both the State and the petitioners shall immediately inform the Commission that they rescind the friendly settlement, thus empowering the Commission to continue processing the cases according to procedure.

IX. WAIVER OF REIMBURSEMENT FOR COSTS AND EXPENSES

17. It is clearly established that in order to facilitate a friendly settlement in both cases and help bring Chilean domestic law in line with international standards for the protection of human rights, the petitioners relinquish their right to claim reimbursement from the State for costs and expenses.

X. INTERPRETATION

18. The parties agree that the meaning and scope of this agreement should be interpreted in accordance with Articles 29 and 30 of the American Convention on Human Rights, as relevant and under the principle of good faith. In the event of any concerns or disagreement among the parties regarding the content of this agreement, the Inter-American Commission on Human Rights shall decide on matters of interpretation. The Commission will also verify compliance.

XI. APPROVAL

19. Once the commitments undertaken in this agreement are fully implemented, the Chilean State and the petitioners shall present this friendly settlement agreement to the Inter-American Commission on Human Rights for approval and publication, pursuant to the provisions of Article 49 of the American Convention on Human Rights and Article 40(5) of the Rules of Procedure of the Inter-American Commission on Human Rights.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

17. The IACHR reiterates that, pursuant to Articles 48(1)(f) and 49 of the American Convention, this procedure has the aim of “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The State’s willingness to participate in this process indicates a good faith effort to carry out the purposes and objectives of the Convention by virtue of the principle of *pacta sunt servanda*, under which States must, in good faith, meet the obligations they assume under treaties.³ The Commission also wishes to reiterate that the friendly settlement procedure established in the Convention allows individual cases to be settled in a non-contentious manner, and in cases involving several countries it has proved to be an important and effective solution which can be used by either party.

18. The Inter-American Commission has been closely following the friendly settlement reached in this case and greatly appreciates the efforts made by both parties during the negotiation of the agreement to arrive at this friendly settlement, which is compatible with the object and purpose of the Convention.

19. The IACHR notes that, given the information submitted thus far by the parties and the request for approval of the FSA that the Chilean State submitted to the Commission, it is incumbent on the Commission to evaluate whether the commitments established in the friendly settlement agreement have been fulfilled.

20. The Inter-American Commission appreciates Declarative Clause III, in which the Chilean State acknowledges its responsibility, under international standards, for violating the rights of the petitioners.

³ Vienna Convention on the Law of Treaties, UN Doc A/CONF.39/27 (1969), Article 26: “**Pacta sunt servanda**”: *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

21. With respect to Clause IV, regarding measures of non-repetition, the State informed the Commission that it had enacted Law No. 20.784, amending the employment statutes of Carabineros de Chile to create a new entity for evaluating and ranking enlisted personnel. The State also provided a compilation of legislative materials summarizing the background of Law No. 20.784. At the same time, the petitioners confirmed that there has been full compliance with the FSA. Therefore, taking into account the elements of information provided by the parties, the Commission considers, and so declares, that this part of the agreement has been fulfilled.

22. With respect to the commitment established in Clause V, Paragraph 10, regarding the removal of the victims' administrative records, the State indicated, without providing supporting documents, that this part of the agreement was fulfilled in due course. In this regard, the petitioners confirmed that there has been full compliance with the FSA. Taking into account the elements of information provided by the parties, the Commission considers, and so declares, that this part of the agreement has been fulfilled.

23. With respect to the commitment established in Clause V, Paragraph 11, regarding the publication of the FSA in the Official Gazette of the Republic of Chile, the Commission notes that although the State indicated that the agreement had been published in due course for a six-month period, as committed to in the friendly settlement agreement, given the time that has elapsed the information is no longer available online for the Commission's verification. In this regard, the petitioners confirmed that there has been full compliance with the friendly settlement agreement. Therefore, the Commission considers, and so declares, that this part of the agreement has been fulfilled.

24. With respect to the commitment established in Clause V, Paragraph 12, regarding the letter of redress to be provided to the victims, the State indicated that it had designated the Under-Secretary of Carabineros, Ms. Javiera Blanco Suárez, to sign a letter apologizing to the beneficiaries of the FSA, by means of Confidential Official Letter No. 1 of January 6, 2010, of the Minister of National Defense. At the same time, the petitioners confirmed that there has been full compliance with the friendly settlement agreement. Taking into account the elements of information provided by the parties, the Commission considers, and so declares, that this part of the agreement has been fulfilled.

25. With respect to the commitment in Clause V, Paragraph 13, regarding the victims' access to health care benefits, the State provided a copy of Official Letter No. 49 of the Carabineros' Social Security Department, dated January 22, 2010, which informed that the petitioners and their spouses had direct access to health care benefits. In that regard, the petitioners confirmed compliance with the measure. Taking into account the elements of information provided by the parties, the Commission considers, and so declares, that this part of the agreement has been fulfilled.

26. As pertains to Clause VI, on financial compensation, the State forwarded a copy of the records of payment verifying the amounts paid to the victims, as established, in compensation for material and non-material damages. Therefore, taking into account the elements of information described above, the Commission considers, and so declares, that this part of the agreement has been fulfilled.

27. With respect to the creation of the "Follow-Up Committee" established in Point VII of the agreement, the Commission did not receive any information about its operation. However, given that there has been compliance with the commitments undertaken in the friendly settlement agreement, the Commission considers, and so declares, that this part of the agreement has been fulfilled.

28. In other respects, the Commission considers, and so declares, that the remaining content of the agreement is declarative in nature.

29. For the reasons stated above, the IACHR considers, and so declares, that Points IV, V, VI, and VII of the friendly settlement agreement have been met in their entirety. The Commission further considers that the remaining content of the agreement is declarative in nature and has to do with the methodology agreed to by the parties, and thus it is not incumbent on the Commission to express an opinion. The IACHR therefore declares that the friendly settlement agreement has been implemented in its entirety.

IV. CONCLUSIONS

1. Based on the foregoing considerations and in accordance with the procedure set forth in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its profound gratitude for the efforts made by the parties and its satisfaction that this case produced a friendly settlement agreement grounded in respect for human rights and compatible with the object and purpose of the American Convention.
2. Based on the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on January 20, 2010.
2. To find that there has been full compliance with Clauses IV, V, VI, and VII of the friendly settlement agreement, related to measures of non-repetition, individual reparation measures, compensation, and follow-up to the FSA, pursuant to the analysis contained in this report.
3. To publish this report and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on the 6th day of September 2019.
(Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice-President; Margarette May Maculay, Francisco José Eguiguren, Luis Ernesto Vargas Silva and Flavia Piovesan, Members of the Commission.