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**REPORT No. 37/19**  
**CASE 12.190**  
FRIENDLY SETTLEMENT REPORT

**JOSÉ LUIS TAPIA AND OTHER MEMBERS OF THE CARABINEROS  
CHILE**

Approved electronically by the Commission on April 16, 2019.

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José Luis Tapia and other members of the Carabineros. Chile. April 16, 2019

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**REPORT No. 37/19**  
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**JOSÉ LUIS TAPIA AND OTHER MEMBERS OF THE CARABINEROS**  
**CHILE**  
**APRIL 16, 2019<sup>1</sup>**

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

1. On June 18, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition submitted by attorney Luis Antonio Acevedo Villavicencio and Leopoldo Sánchez Grunert (hereinafter “the petitioners”) against the Republic of Chile (hereinafter “the State” or “the Chilean State”) alleging that José Luis Tapia Gonzáles, José Alejandro Villagrán Guzmán, Luis Eduardo Hernández Mieville, Nelson Enrique Garrido Reyes, Manuel Augusto Zamora Irarrázabal, David Matías Álvarez Álvarez, and Víctor Alejandro Lago Maldonado, all of them members of Carabineros de Chile (hereinafter “the Carabineros”) and their respective wives Giny Escobar Lara, Rosa Paz Valdés, Sonia Valencia Torres, Claudia Bustamante Torres, Sandra Duran Villegas, Olga del Carmen Becerra Pérez, and Ana María Aguilera Saldivia (hereinafter “the wives of the Carabineros”) were subjected to an arbitrary evaluation process and then dismissed. They allege that there was a denial of justice by the highest-level judicial bodies of the Chilean State on being victims of a judicial proceeding that violated their basic rights and without any judicial guarantees.

2. On February 24, 2004, the Commission issued the Admissibility Report No. 21/04, concluding that the facts described could constitute violations of the rights to judicial guarantees and judicial protection, protected by Articles 8 and 25 of the American Convention, as well as the obligations set out at Articles 1(1) and 2 of the American Convention. In that same Report the Commission decided that it was competent to examine the petition and found it admissible in relation to the above-indicated articles to the detriment of the former members of Carabineros.

3. On March 8, 2018, the parties signed the Friendly Settlement Agreement, which includes as measures of reparation, recognition of the facts set forth in the initial petition and economic reparation for material and non-material damages.

4. Finally, on March 15, 2019, the State presented a report on compliance with the measures of reparation agreed upon by the parties in this case and asked the Honorable Commission to declare total compliance with the Friendly Settlement Agreement and that it proceed to issue the corresponding report of ratification, as provided for in Article 40(5) of the Commission’s Rules of Procedure. That information was forwarded to the petitioner, who confirmed their interest in moving forward with the approval of the agreement on April 1<sup>st</sup>, 2019.

5. This friendly settlement report, in keeping with 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 March 8, 2018 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.

**II. ALLEGED FACTS**

6. The petitioners alleged that in the wake of the distribution of an additional economic benefit, which they characterized as unequal, on April 27, 1998, the date on which the day of the Carabiniro is celebrated in Chile, the wives of several members of the Carabineros who were negatively impacted by that

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<sup>1</sup> Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate in the deliberations or decision in the instant case, in keeping with Article 17(2)(a) of the IACHR’s Rules of Procedure.

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distribution staged a protest. They added that none of the wives of the alleged victims was present at that demonstration. They also indicated that after the protest the General Director of Carabineros, in various statements, stated that the husbands of the women implicated in the protest would be accused of sedition [*sedición impropia*]. The petitioners said that the idea was to discharge these officials for alleged offenses committed by their wives. They alleged that the petitioners were evaluated in List 4 of elimination, and subsequently dismissed, even though they had been evaluated in List 1, for merit, a short time earlier.

7. On referring to admissibility the petitioners argued that they exhausted the remedies available in the Chilean judicial system. They indicated that on July 18, 1998 they filed motions for protection [*recursos de protección*] with the Court of Appeals of Santiago, against the dismissals. They indicated that on January 28, 1999 the Court of Appeals rejected the motion, arguing that it was not its role to get into an examination of the considerations taken into account by the Evaluation Boards to determine the evaluation that produced as a result the dismissal from the Carabineros, and added that, if it were to do so, it would be sitting as a review body. The petitioners argued that this ruling was affirmed by the Supreme Court of Chile on April 28, 1999, when it upheld the judgment of the Court of Appeals, stating that “it appears from the record that the evaluation process in respect of the appellants unfolded with full observance of the rules of procedure and time frames established in the regulation.”

8. The petitioners argued that the alleged victims did not have access to the record, nor did they participate in it in any way; as a result of the impossibility of producing or impugning evidence they were unable to make use of the right to defense. They added that there was not a meticulous investigation since had it been otherwise it would have been shown, for example, that Rosa Páez Valdés, the wife of second corporal José Alejandro Villagrán Guzmán, was at the “Hospital of Carabineros” receiving medical care on the day and at the time that the demonstration was held. In addition, they indicated that it had been shown that official Víctor Alejandro Lago Maldonado’s signature was falsified in the document in which he was purportedly notified of his evaluation. They said that at that time he was on medical leave from Carabineros with one hand in a cast.

9. The petitioners considered that “civil liability is eminently personal,” and therefore it was not in order for the members of the Carabineros to be sanctioned for the acts of other persons, in this case their wives. According to the petitioners, in any event the matter should have been decided “by the appropriate courts, i.e. the regular courts of justice, and not by organs or procedures of Carabineros or any other institution.”

10. Finally, the petitioners noted that the evaluation process was done “with an interest in persecuting, silencing, and repressing legitimate demands and aspirations pursued by third persons not associated with the appellants, thus that evaluation process has turned out to be irrational, unfair, disproportionate, inequitable, it did not proceed in good faith, and there has been abuse of authority.” They indicated that even though it is in the record that the officials of Carabineros did not participate at all in the activities related to the demonstration of April 27, 1998, they were subjected to illegal and arbitrary action since their evaluation that put them on the Exclusion List was done without any basis, without due process, and without any written statement of the reason for the lower evaluation.

### **III. FRIENDLY SETTLEMENT**

11. On March 8, 2018, in Santiago, Chile, the State, represented by Heraldo Muñoz Valenzuela, and the petitioners, represented by attorney Fabián Pacheco Ilabaca, signed a Friendly Settlement Agreement whose text reads as follows:

**FRIENDLY SETTLEMENT AGREEMENT  
CASE No. 12.190  
“JOSÉ LUIS TAPIA AND OTHER MEMBERS OF THE CARABINEROS”**

#### **I. DESCRIPTION OF THE PARTIES**

1. The parties to this agreement are:

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**For the first party**, the State of Chile, represented by the Minister of Foreign Affairs, Heraldo Muñoz Valenzuela, and the General Subdirector of Carabineros of Chile, Julio Pineda Peña.

**For the second party**, Fabián Pacheco Ilabaca, attorney representing José Luis Tapia Gonzáles, José Alejandro Villagrán Guzmán, Luis Eduardo Hernández Mieville, Nelson Enrique Garrido Reyes, Manuel Augusto Zamora Irrarázaval, David Matías Álvarez Álvarez, and Víctor Alejandro Lago Maldonado, in their capacity as petitioners.

## II. FACTS

2. On June 18, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition against the State of Chile (hereinafter “the State”), filed by Luis Antonio Acevedo Villavicencio and Leopoldo Sánchez Grunert, alleging that the State violated the rights of José Luis Tapia Gonzáles, José Alejandro Villagrán Guzmán, Luis Eduardo Hernández Mieville, Nelson Enrique Garrido Reyes, Manuel Augusto Zamora Irrarázabal, David Matías Álvarez Álvarez, and Víctor Alejandro Lago Maldonado, all former members of Carabineros de Chile and their respective wives Giny Escobar Lara, Rosa Paz Valdés, Sonia Valencia Torres, Claudia Bustamante Torres, Sandra Duran Villegas, Olga del Carmen Becerra Pérez, and Ana María Aguilera Saldivia.

3. In the complaint the former Carabineros alleged that they had been subjected to an evaluation process that led to unwarranted dismissals and that in addition the judicial proceeding that was carried out resulted in a denial of justice, with a negative impact on basic rights and without any judicial guarantees. The State, for its part, noted on that occasion that there was no violation of any provision whatsoever of the American Convention on Human Rights (hereinafter “the American Convention” or “ACHR”) and asked the Commission to dismiss the victims’ claims and find the petition inadmissible. In particular, it was noted that the separation occurred as a consequence of an evaluation process carried out by the competent bodies, in which the victims had an opportunity to appeal the resolution administratively and judicially, including to the Supreme Court of Justice.

4. On February 24, 2004, the Commission issued Admissibility Report No. 21/04, and after analyzing the parties’ positions concluded that, in application of the principle of *iura novit curia*, the facts described could constitute violations of the rights to judicial guarantees and judicial protection protected at Articles 8 and 25 of the American Convention, and of the obligations to ensure and respect the rights, and the duty to bring domestic legislation into line with the international commitments of the State, as set out in Articles 1(1) and 2 of the American Convention. In that same report the Commission found the petition inadmissible with respect to the wives of the former Carabineros, based on Article 47(b) of the Convention, i.e. not having stated facts which, if true, tend to establish a violation of the rights guaranteed by that international instrument.

5. During the processing of the complaint the alleged victims and the State expressed their will, disposition, and interest in pursuing the friendly settlement procedure set forth at Article 48(1)(f) of the Convention and Article 41 of the IACHR’s Rules of Procedure of the IACHR (hereinafter “the Rules of Procedure”), thereby initiating a process of dialogue and understanding aimed at developing the bases and elements of that agreement, based on respect for the human rights established in the American Convention.

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6. On January 20, 2010, in two cases similar to the instant one (No. 12,195. Mario Jara Oñate<sup>2</sup> *et al.*, and No. 12,281, Gilda Pizarro Jiménez *et al.*<sup>3</sup>, both found admissible by the IACHR) the State signed a friendly settlement agreement, while the negotiation of the instant one was still pending; the instant case is understood to constitute, for all practical purposes, the continuation of the same friendly settlement process initiated with the above-noted cases and, therefore, will not include measures that have already been carried out, such as reviewing the statutory and regulatory provisions applicable in Carabineros in respect of evaluations, public recognition of responsibility, the publication of the agreement, and the letter of apology.

7. The measures of reparation that are the subject of this agreement are as follows:

**I. RECOGNITION OF THE FACTS**

8. By means of this friendly settlement agreement, the State recognizes the facts set forth in the petition submitted to the Commission.

**II. ECONOMIC REPARATION**

9. The State undertakes to pay the petitioners, as reparation for any possible damage caused, be it material or non-material, an amount equivalent, in pesos, to US\$ 17,000 for each of the former Carabineros who are the petitioners, namely: José Luis Tapia Gonzáles, José Alejandro Villagrán Guzmán, Luis Eduardo Hernández Mieville, Nelson Enrique Garrido Reyes, Manuel Augusto Zamora Irrarázabal, David Matías Álvarez Álvarez, and Víctor Alejandro Lago Maldonado.

The payment of the above-indicated amounts shall be made in the equivalent in Chilean pesos at the moment of the payment.

The payment shall be made by personal check to the order of Mr. Fabián Pacheco Ilabaca, attorney representing the former Carabineros who are the petitioners, within three months of the date of the signing of this agreement. That document shall be delivered to him by Carabineros de Chile, after showing a national ID card and power of attorney for receiving the payment; and he will be obligated to subsequently make electronic transfers or deposits to the bank accounts of each of them.

Mr. Fabián Pacheco Ilabaca should deliver to Carabineros de Chile the vouchers for the electronic bank transfers or deposits he makes, along with a document certifying its receipt by the petitioners, stating their agreement.

**III. MONITORING COMMISSION**

10. For the purposes of monitoring the performance of the commitments assumed in this agreement, the parties agree to constitute a "Monitoring Commission" coordinated by the Human Rights Bureau of the Ministry of Foreign Affairs and the Office of the Undersecretary for Human Rights of the Ministry of Justice and Human Rights, through their respective representatives. This Commission will also be made up of a representative of Carabineros de Chile and the attorney representing the victims. The methodology and frequency of the meetings of this Commission shall be determined by consensus by its members. The Commission shall deliver a progress report on the obligations assumed in this report to the

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<sup>2</sup> The friendly settlement agreement reached in Case 12,195. Mario Jara Oñate *et al.*, Chile, was ratified by the IACHR in Report No. 163/10, of November 1, 2010. Supervision of that report ended because it was found to have been fully implemented in the 2011 Annual Report, paras. 346-354.

<sup>3</sup> The friendly settlement agreement reached in Case 12,281, Gilda Pizarro Jiménez *et al.*, Chile, was ratified by the IACHR in Report No. 162/10 of November 1, 2010. Supervision of that reported ended because it was found to have been fully implemented in the 2011 Annual Report, paras. 337-345.

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Executive Secretariat of the IACHR when it considers it appropriate or when asked to do so by said inter-American organ.

**IV. FAILURE TO PERFORM ON COMMITMENTS ASSUMED**

11. The failure to perform on the commitments assumed will give either party the right to put an end to this friendly settlement agreement, so informing the IACHR, and authorizing it to continue processing the petition as provided for in its Rules of Procedure.

**V. WAIVER OF CLAIMS FOR COSTS AND FEES**

12. It is clearly established that, in order to facilitate reaching a friendly settlement in this case, the victims state that they waive their right to claim that the State should cover their costs and fees.

**VI. INTERPRETATION**

13. The parties agree that the meaning and scope of this agreement shall be interpreted in keeping with Articles 29 and 30 of the ACHR, where relevant, and the principle of good faith. In cases of doubt or discrepancy between the parties regarding the content of this Agreement the IACHR shall decide on its interpretation. It shall also be up to the IACHR to verify its implementation.

**VII. HOMOLOGATION**

14. The State of Chile and the petitioners, once the commitments assumed in this agreement are carried out in their entirety, shall present this friendly settlement agreement to the IACHR for its ratification and publication in keeping with the provisions of Article 49 of the ACHR and Article 40(5) of the Rules of Procedure.

**IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE**

12. The IACHR reiterates that according to Articles 48(1)(f) and 49 of the American Convention, this procedure has the aim “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” Agreeing to pursue this procedure expresses the good faith of the State as regards carrying out the purposes and objectives of the Convention in keeping with the principle of *pacta sunt servanda*, by which states should carry out their treaty obligations in good faith.<sup>4</sup> It also reiterates that the friendly settlement procedure provided for in the Convention makes it possible to conclude individual cases in a non-contentious manner, and in cases relating to several countries, has proven to offer an important vehicle for settlement that can be used by both parties.

13. The Inter-American Commission has closely followed the development of the friendly settlement achieved in the instant case and highly values the efforts made by both parties during the negotiation of the agreement to achieve this friendly settlement, which is compatible with the object and purpose of the Convention.

14. The IACHR observes that in light of the information provided by the parties until now, the Commission must analyze the implementation of the commitments set forth in the friendly settlement agreement in relation to the measures of reparation.

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<sup>4</sup> Vienna Convention on the Law of Treaties, U.N. 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.”

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15. The Commission values the recognition made by the State of the facts set forth in the petition, as established in point I of the agreement. According to what was indicated by the State in a report of March 27, 2019, at the same meeting where the friendly settlement agreement was signed, the State recognized the facts alleged and offered apologies on behalf of the State. In this respect, the Commission considers that this provision of the agreement has been complied with in full, and so declares.

16. As regards point II of the agreement, related to economic reparation for material and non-material harm to each of the victims for the facts alleged, on May 2, 2018, Carabineros de Chile reported that payment was delivered to the attorney by means of Check No. 499084 of March 21, 2018, in the amount of \$72,540,020 Chilean pesos. On April 1, 2019, the State sent the Commission the certificates of agreement from each of the beneficiaries and the checks disbursed by the representative to each of them. Taking into consideration the information provided by the State and the confirmation by the petitioner, the Commission considers that this point of the agreement has been fully complied with, and it so finds.

17. With respect to the creation of the “Monitoring Commission” established at point III of the agreement, the Commission did not receive information on its workings, but as the commitments assumed in the friendly settlement agreement have been carried out, it considers that this point of the agreement has also met with full compliance, and it so finds.

18. For the foregoing reasons, the IACHR considers that points I, II, and III of the friendly settlement agreement have met with full compliance, and it so finds. In addition, the Commission considers that points IV to VII are declaratory in nature and related to the methodology agreed upon by the parties, thus it is not up to the Commission to issue any pronouncement about them. In view of the foregoing, the IACHR finds that the friendly settlement agreement has been implemented in its entirety.

#### **IV. CONCLUSIONS**

1. Based on the foregoing considerations, and pursuant to the procedure set out in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate its profound appreciation for the efforts made by the parties and its satisfaction that a friendly settlement was reached in the instant case, based on respect for human rights and compatible with the object and purpose of the American Convention.

2. In light of 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 March 8, 2018.
2. To find that there has been compliance with points I, II and III, according to the analysis in this report.
3. To find that the friendly settlement agreement has been complied in full.
4. To make this report public and to include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on the 16<sup>th</sup> day of April, 2019. (Signed) Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice-President; Francisco José Eguiguren, Margarete May Macaulay, Luis Ernesto Vargas and Flávia Piovesan, Members of the Commission.