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REPORT N° 33/02 FRIENDLY SETTLEMENT

PETITION 12.046

MÓNICA CARABANTES GALLEGUILLOS

CHILE*

March 12, 2002

I. SUMMARY

1. On 18 August 1998, the Inter-American Commission on Human Rights ("the Inter-American Commission" or "the IACHR") received a communication from the Center for Justice and International Law ("CEJIL") imputing responsibility to the Republic of Chile ("the State" or "the Chilean State") for the decision of that country's courts not to punish abusive interference in the private life of Mónica Carabantes Galleguillos, who filed suit against the decision of a private school to expel her for having become pregnant. The petitioners maintain that the State is internationally responsible for violating the following rights guaranteed by the American Convention on Human Rights ("the American Convention"): the right to have one's honor respected and one's dignity recognized (Article 11) and the right to equal protection of the law (Article 24). They also alleged violation of the general obligation to respect and ensure the rights set forth in Article 1(1) and the duty to adopt the domestic legal measures referred to in Article 2 of the aforementioned international instrument.

2. The parties formalized their interest in reaching a friendly settlement of the matter at hand at meetings held at IACHR headquarters in March and November 2001. Based on the signed minutes of these meetings, the State proposed and carried out, with the victims' assent, a series of concrete measures. In the present report, approved in accordance with Article 49 of the American Convention, the IACHR summarizes the facts at issue, the agreement of the parties, and compliance with that agreement; and decides to publish it.

II. PROCEEDINGS BEFORE THE IACHR

3. The petition was transmitted to the Chilean State on 24 August 1998, with a deadline of 90 days for the presentation of its observations. The Inter-American Commission reiterated this request on 29 March 1999 and set a new deadline of 30 days. At the request of the State, the IACHR allowed an extension of 60 days from 16 April 1999. The State requested an additional extension of 60 days on 28 June 1999.

4. On 6 July 1999, the petitioners requested the IACHR to apply Article 42 of the Rules of Procedure then in force and to presume the veracity of the facts at issue, given the State's failure to respond. On 8 July 1999, the Chilean State presented its observations, which were transmitted to the petitioners on 2 August 1999. On 9 December 1999, the State transmitted additional documentation.[1]

5. On 14 January 2000 the petitioners presented their observations on the State's response. On 15 September 2000, the Chilean State presented its additional observations; the Inter-American Commission transmitted the document to the petitioners on 26 November 2000.

6. During its 110th Regular Session, on 1 March 2001, the IACHR conducted a meeting at its headquarters with representatives of the parties in the case at hand. The agreements reached at that time were recorded in minutes attached to the case file and signed by the participants. On 27 June 2001, the Inter-American Commission requested up-to-date information from the parties with respect to the points of agreement.

7. On 5 October 2001, the Chilean State remitted a proposal for a friendly settlement; the Inter-American Commission responded that a friendly settlement agreement could be formalized at a forthcoming meeting. The meeting was held on 15 November 2001 at the headquarters of the Inter-American Commission, at which time minutes reflecting the agreement reached by the parties were prepared. The document signed by the participants at that meeting was transmitted to the parties on 21 November 2001.

III. THE FACTS

8. In March 1992, Mónica Carabantes Galleguillos entered the fifth year of basic education at a subsidized private school "Andrés Bello"[2] in the city of Coquimbo, Chile. In February 1997, Mónica Carabantes's doctor informed her that she was pregnant; the following month she began her student activities for the third year of middle school at the aforementioned institution. Her parents personally brought the situation to the attention of the school's director, who promised support and "arrangements appropriate to the case". However, on 15 July 1997, the director informed them that Mónica Carabantes could complete the current school year at the "Andrés Bello" school but that "according to internal regulatory provisions, her enrollment could not be renewed for the 1998-1999 school year".

9. The Carabanteses contacted the Regional Office of the Ministry of Education, where they filed a complaint and requested that educational authorities take the appropriate administrative or judicial measures. On 24 July 1997, the Carabantes family attorney filed a recourse for protection before the La Serena Court of Appeals against the "Andrés Bello" school, asking the court to find that Miss Carabantes had been arbitrarily and illegally deprived of her constitutional rights", inasmuch as her pregnancy was the basis for not renewing her enrollment, in violation of the right to equality before the law enshrined in Article 19(2) of the Political Constitution of Chile. As the basis for illegality, the recourse cited Circular N° 247, issued by the Ministry of Education in February 1991, which refers to pregnant students.[3]

10. The petition alleges that while this judicial recourse was being processed, the attitude of the school's authorities "became considerably more hostile" toward Mónica Carabantes, to such an extent that she was expelled during an examination for having appeared seven months pregnant. The school director's report, which was submitted to the La Serena Court of Appeals, justifies this action as consistent with the institution's internal regulations and appropriate, in view of "the infraction against ethical and moral standards that students in the establishment, given their age, should follow as a general rule", and maintains that the constitutional provision cited by the Carabantes family was not violated.

11. On 24 December 1997, in a unanimous lower court ruling, the Second Chamber of the Court of Appeals of La Serena rejected the recourse for protection. In its decision, the court ruled that the actions of the school director were legal and that the internal regulations of the "Andrés Bello" school included a provision under which students who became mothers during a school year could not renew their enrollment the following year. On 31 December 1997, Mónica Carabantes's representative appealed this judgment before the Supreme Court of Justice, which upheld the ruling of the Court of Appeals of La Serena on 18 February 1998.

IV. THE FRIENDLY SETTLEMENT

12. During the meeting held on this matter on 1 March 2001, the Inter-American Commission duly noted the good will demonstrated by the parties with a view to reaching a friendly settlement. The minutes signed by the parties at that time explain the commitments undertaken:

The Government of Chile agrees to take steps for the purpose of obtaining the "President of the Republic Scholarship" to cover the costs of higher education for Mrs. Mónica Carabantes

Galleguillos and the secondary and higher education of her daughter.

The petitioners undertake to provide information as soon as possible concerning Mrs. Carabantes Galleguillos and her daughter in order to help Chilean authorities find her for the purposes indicated in the preceding paragraph.

The Government will take all steps necessary for an act of public redress for the discrimination suffered by Mrs. Mónica Carabantes Galleguillos to be performed by the highest regional authorities of La Serena. If possible, this act will be conducted during the IACHR's visit to Chile in April 2001.

The Government will communicate with the petitioners two weeks after the date of 5 March 2001 to discuss progress in completing the steps indicated in these minutes.

Both parties will make every concerted effort to sign a friendly settlement agreement during the first week of April 2001.

13. On 7 April 2001, during the 111th special session held in Chile, the Inter-American Commission met with Mónica Carabantes and her representatives in La Serena to discuss progress in implementing the friendly settlement.

14. On 5 October 2001, the Chilean State sent a communication with a proposal for a friendly settlement of the matter. It indicated that the proposal had been approved by the Ministries of the Interior and Education of Chile, and that the petitioner had approved it without any objection. The proposal is as follows:

1. Scholarship

Proposal: The Government undertakes to award a special scholarship of 1.24 Monthly Tax Units (UTM) to Mrs. Mónica Carabantes Galleguillos while she is enrolled in higher education.

The basic elements of the proposal are as follows:

- a. The scholarship consists of a monthly subsidy equivalent to 1.24 UTMs for higher education.
- b. Under current provisions, the President of the Republic Scholarship Board may, in special situations, awards special scholarships not to exceed 0.5 percent of new scholarships.
- c. It is still not possible to award a scholarship to the daughter of Mrs. Carabantes, now three years of age, inasmuch as basic public education is mandatory and free of charge in Chile.

2. Symbolic redress

Proposal: The Government would publicize the compensatory measures by means of an official communication on the matter, to be issued jointly with regional authorities, recognizing that rights of the petitioner enshrined in the American Convention on Human Rights—freedom from arbitrary or abusive interference with her private life and equal protection of the law—were violated when her enrollment was not renewed and she was obliged to leave the educational establishment where she was pursuing her studies, "Andrés Bello" school in Coquimbo, a private school subsidized with cofinancing, for the sole reason that she had become pregnant. In addition, steps would be taken to disseminate recent legislation (Law N° 19,688), amending the Education Act, which contains provisions on the rights of pregnant students or nursing mothers to have access to educational establishments.

15. On 15 November 2001, another meeting was held on the matter. The IACHR

again took note of the willingness of both parties to settle the matter amicably, and minutes containing the following points were signed:

The parties discussed the terms of the friendly settlement proposal presented by the Government of Chile in its communication of 5 October 2001. With respect to the starting date for the special scholarship mentioned in that proposal, Mónica Carabantes's representative initially expressed interest in making the scholarship retroactive to 1 March 2001, and if this should not prove possible, with effect from the date of signature of the friendly settlement agreement, i.e. 1 December 2001.

The representative of the Government of Chile indicated that he had received instructions to the effect that, if the agreement were signed, his Government would award the scholarship with effect as from March 2002. The petitioner indicated that she needed to consult with Mónica Carabantes in order to respond to the Government's proposal. The Government representative reiterated the favorable predisposition of Chile and would await the petitioner's communication during the week of 26 November 2001.

The IACHR pointed out that the minutes of the previous meeting in pursuit of a friendly settlement of this matter, signed by both parties on 1 March 2001, reflected the willingness of the State to take steps to obtain the President of the Republic Scholarship and the intention of both parties to sign a friendly settlement agreement during the first week of April 2001.

Based on the foregoing, the IACHR indicated that a concrete sign of the Government of Chile's good will could be the express commitment to complete all of the steps necessary to ensure that Mónica Carabantes would obtain the aforementioned scholarship with effect as from March 2002, irrespective of the signature of a friendly settlement agreement.

16. The petitioners remitted to the Inter-American Commission a copy of the communication of 13 December 2001 to the Director of Human Rights of the Ministry of Foreign Relations of Chile. This communication expresses, *inter alia*, the willingness of Mónica Carabantes and her family to settle the present matter amicably, and their acceptance of the initiation of the scholarship during the 2002 academic year.[4]

V. CONCLUSIONS

17. Based on the particular characteristics of the case at hand, the Inter-American Commission has actively pursued the friendly settlement procedure. This report summarizes the activity of the parties and reflects the agreement reached in concluding the matter.

18. The Inter-American Commission notes that the mechanism contemplated in Article 48(1) (f) of the American Convention permits the conclusion of individual petitions in a noncontentious matter, as demonstrated in cases from various countries in the region.

19. Based on the foregoing considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the friendly settlement agreement reached in the present case.
2. To set a deadline of three months, reckoned from the date of transmittal of this report, for the Chilean State to report on the symbolic redress measures agreed to by the parties in the present case.
3. To make this report public and include it in its Annual Report to the OAS General Assembly.

Given and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on March 12, 2002. (Signed): Juan E. Méndez, President; Marta Altolaguirre, First Vice-President; Robert K. Goldman, Julio Prado Vallejo and Clare K. Roberts, Commissioners.

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* Commissioner José Zalaquett Daher, a Chilean national, did not take part in the discussion or vote on the present case, in accordance with Article 17 (2) (a) of the IACHR's Rules of Procedure.

[1] The Chilean state presented "a report of the Committee on Education, Culture, Sports, and Recreation, in connection with a bill to amend the Education Act and other provisions, prohibiting discriminatory practices", and pointed out that Article 1(2) of the bill "explicitly provides for the prohibition of discrimination against pregnant students".

[2] The petitioners explain:

Private subsidized schools are educational establishments governed in Chile by the Education Act, Law N° 18,692 of 10 March 1990, and in particular Decree-Law N° 2 of 1996 of the Ministry of Education. By virtue of these provisions, certain private schools can obtain subsidies from the State if they comply with the requisites established in Article 6 of Decree-Law No. 2, for the purpose of fostering the creation, maintenance, and expansion of educational establishments whose structure, teaching staff, material resources, educational approach, and other elements are of a nature to provide an appropriate educational atmosphere and culture. In the case of the school "Andrés Bello" the subsidy or contribution made by the State through the Ministry of Education is in the amount of 17,000,500 Chilean pesos (approximately US\$41,000).

Petitioners' communication of 18 August 1998, p. 2.

[3] Title IV No.1 of the circular provides:

Students who change their marital status and/or become pregnant, will complete their school year in the same establishments as regular students. The general procedural criteria indicated in Section III of this circular shall apply. The following year, such students may continue their studies in their same establishments or in day schools, evening schools, or night schools.

[4] The communication indicates that the presumed victim and her family accepted that the scholarship would not cover the 2001 academic year, since they had not resorted to the IACHR for money, but rather because they considered that the human rights of Mónica Carabantes had been violated and they wanted this fact to be recognized. The petitioners confirmed that they accepted the State's proposal with the conviction that "the victim of the violation has final control over the case", although the amount of the scholarship, 30,000 Chilean pesos, appeared low to them compared with the monthly payments of 70,000 Chilean pesos