

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 119/01; Case 11.500
Session:	Hundred and Thirteenth Regular Session (9 – 17 October and 12 – 16 November 2001)
Title/Style of Cause:	Tomas Eduardo Cirio v. Uruguay
Doc. Type:	Decision
Decided by:	President: Claudio Grossman; First Vice-President: Juan Mendez; Second Vice-President: Marta Altolaguirre; Commissioners: Helio Bicudo, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated:	16 October 2001
Citation:	Eduardo Cirio v. Uruguay, Case 11.500, Inter-Am. C.H.R., Report No. 119/01, OEA/Ser./L/V/II.114, doc. 5 rev. (2001)
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On October 12, 1993, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a complaint from Mr. Tomás Eduardo Cirio (hereinafter “the petitioner”), an Uruguayan citizen, retired military officer, dated June 20, 1993, on the alleged violation of the following rights protected in the American Declaration on the Rights and Duties of Man (hereinafter “the American Declaration”) by the Republic of Uruguay (hereinafter “the State” or “Uruguay”): Article II (right to equality before the law), Article IV (right to freedom of investigation, opinion, expression, and dissemination), Article V (right to the protection of honor, personal reputation, and private and family life), Article XVI (right to social security), Article XXVI (right to due process of law). In addition, he alleges violations of the following rights of the American Convention on Human Rights (hereinafter “the American Convention”) by the State: Article 5(1) (right to humane treatment, in the moral aspect), Article 8(1), (2)(b), (2)(d), (2)(f) (right to a fair trial), Article 9 (principle of legality (freedom from ex post facto laws)), Article 10 (right to compensation in case of judicial error), Article 11(1) (right to privacy), Article 13(1) and 13(3) (right to freedom of thought and expression), Article 24 (right to equality before the law), and Article 25(1) (right to judicial protection).

2. The petition alleges that as of July 4, 1972, after an Assembly of the Centro Militar, the petitioner, a retired Army major, resigned from the Centro through a letter in which he set forth his views on the necessary respect for human rights in the context of the counter-insurgency struggle by the Armed Forces in Uruguay. Since then, petitioner alleges, he has continued to suffer sanctions in retaliation for having freely given his opinion.

3. The Centro Militar, a private organization, informed the General Command of the Army of his letter, and proceeded to remove him from its social registry; then, the General Command placed him under the jurisdiction of a military court known as a Tribunal de Honor. The petitioner alleges that he was judged by a court in which jurisdiction did not lie, as he was a retired military officer, and was tried in absentia, accordingly he was denied the right to defense. In November 1972, the Tribunal de Honor demoted him and assigned him the status known as situación de reforma. He alleges that as a result of that decision, his honor and reputation were negatively affected, along with his remunerative rights and his right to health care; that he was expelled from the Armed Forces cooperative, prohibited from holding any position in the Ministry of Defense, had no possibility of applying for credit, was cashiered and stripped of his military status, his rank, and the right to use his uniform, and humiliated, as he was publicly exposed as a person without honor.

4. In 1994, by resolution of the Ministry of Defense, his rights were partially restored, but not totally. In December 1997, by a new resolution of the Ministry, partially recognizing the responsibility of the State, the petitioner was once again accorded his status as a retiree, annulling his situación de reforma but without any right to retroactivity or compensation for the moral damages suffered during 25 years of his situación de reforma.

5. The Commission concludes in this report that the petition meets the admissibility requirements set forth at Articles 46 and 47 of the American Convention. Therefore, the Commission decides to declare the case admissible, to notify the parties of the decision, and to continue with the analysis of the merits as regards the alleged violations of the American Declaration and the American Convention. In addition, the Commission decides to publish this report.

II. PROCESSING BEFORE THE COMMISSION

6. On October 12, 1993, the petitioner submitted the complaint in this case; it was received at the IACHR on March 15, 1994. In March 1994, August 1994, January 1995, and March 1995, the IACHR requested information from the State, yet received no response. On June 13, 1995, the State transmitted its first response. On August 8, 1996, the Commission communicated to the State that if it did not have its observations in 30 days, the Commission could apply Article 42 of the its Rules of Procedure, which authorizes it to presume true the facts described in a petition that has been transmitted to the State when that State fails to provide the corresponding information within the time period required by the Commission. On August 26, 1996, the State requested an extension, which was granted. On September 2, 1996, the State submitted its response. The processing continued with the transmittal of the information and observations as between the parties.

III. THE POSITIONS OF THE PARTIES

A. Position of the petitioner

7. The petitioner is a Uruguayan career military officer who retired in 1966. Until 1972 he was a member of the Centro Militar of Uruguay, a private entity made up of retired and active-

duty members of the military. On July 4, 1972, the General Assembly of the Centro Militar issued a statement, approved unanimously, in consideration of what it called the “campaign to discredit the Armed Forces undertaken at all levels.”[FN1] The petitioner alleges that this communication was in response to a declaration issued by the House of Representatives of Uruguay, when the Minister of Defense was questioned about the death of Luis Carlos Batalla, a Uruguayan citizen who died while detained at military unit 33 (Treinta y Tres) by the Armed Forces.

[FN1] Declaration of the Assembly of the Centro Militar, July 4, 1972: “(1) That any corporative or individual action or expression aimed at discrediting or objecting maliciously to the procedures of the members of the Armed Forces in the struggle against subversion, or, in other words, treason of the Homeland, constitutes veiled complicity of the enemies of the Democratic Republican regime that the citizens have elected and reaffirmed, (2) that it repudiates any public indication of the penalties to be applied to any of its members, when they are to be sanctioned, and (3) that the unwavering moral principles that govern the members of the Armed Forces assure ultimate success in the struggle undertaken.” (Emphasis in original.)

8. According to the petitioner, the House had expressed its confidence that the Armed Forces “will impose compliance with the constitutional and statutory provisions that call for respect for human dignity in every circumstance. And in the face of the lamentable events that led a session to be called, which confirmed the death of a citizen due to mistreatment during detention, it calls for utmost celerity in the procedures and in the public identification of the guilty and the punishment to be applied to them.”

9. The members of the Assembly of the Centro Militar, for their part, adopted by acclamation the following defensive statement: “That any corporative or individual action or expression intended to frustrate or maliciously to object to the procedures of the members of the Armed Forces in the struggle against subversion, or, in other words, treason of the Homeland, constitutes veiled complicity with the enemies of the Democratic Republic regime who the citizens have elected and reaffirmed.”

10. In the wake of the unanimous declaration by the Assembly of the Centro Militar, which the petitioner found disturbing, he submitted his resignation to the Centro Militar, first by phone and then by letter dated July 19, 1972. In that letter, petitioner stated, inter alia:

I needn't point out that I take issue totally and radically with the motion presented and later approved in the assembly, and this--I should add in times in which, sometimes with aims that are not very clear, witches are sighted everywhere--it is not because I am an instrument of any plan contrived by the enemies of the homeland....

But in addition, from a strictly human point of view, it is also impossible for there to be unanimous agreement when faced with statements that at some moment could be characterized as monstrous, such as those that referred to the death that prompted the declaration by the House of Representatives, of a person whose status as a citizen was sought to be denied, ratified by generalized applause, who was then along with his wife the victim of an outrageous act, as

though even if said statements were true, they could justify what no doubt must have been horrible suffering. But, as though that were not enough, the argument was concluded by “attesting” incredibly that the death of the [individual] who no doubt was savagely tortured was due “to his falling on a stone.” And then, having considered the episode sufficiently clarified, and after invoking, as is customary, dignity and honor (which here, actually, were nowhere to be found), the page was turned.

But this, in addition, is but one case, of the few that have come to light, because there has been no alternative. For months, one after another, serious accusations have been accumulating against action taken by the armed forces; their number and their importance lead one to dismiss, upon brief reflection, any possibility of an “insidious campaign,” and even if a large percentage are attributed to slander, the rest are more than enough reason for alarm....

Therefore, exemplary punishment should be meted out for those--a small minority, I am sure--who have tarnished the uniform of the army by using it to cover up their excesses, their abuse of authority, and their sadism. And their names should be made known to the people, as the criminals they are, since this goes beyond a disciplinary matter, governed as it is by the confidentiality with which discipline and subordination must be protected....

11. On August 3, 1972, in response to the petitioner’s letter of resignation, the Centro Militar rejected “categorically the concepts set forth therein, considering them completely out of place, harmful to the other members, and detrimental to the prestige of the Armed Forces and the Institution.”[FN2] The board of directors of the Centro Militar decided not to accept petitioner’s resignation, it declared him to be in violation of the Center’s Statute, removed him from its social registries, and forwarded a copy of the letter to the General Command of the Army “for the purposes it deems advisable.” In addition, it circulated a “Communiqué” to all the press in Montevideo publicizing the matter: “We state for the record that Major (ret) Tomás E. Cirio was removed from the social registries of this Institution on July 26, 1972.” The Commander in Chief of the Army ordered that a Tribunal de Honor be constituted.

[FN2] Response of the Centro Militar, August 3, 1972.

12. On November 7, 1972, the petitioner received an official notice from the Tribunal General de Honor, informing him that he was being placed under its jurisdiction. The petitioner alleges that the State had come to consider the matter raised in the Centro Militar, a private institution not part of the State or the Armed Forces. The petitioner alleges that as a retired officer he was not subject to the jurisdiction of a military tribunal.[FN3]

[FN3] Organic Law on the Military, No. 10,050, Article 344: “Retirement produces the following effects: ... (c) It keeps the retiree under the military jurisdiction throughout the time in which he holds positions within the Army, and in all other cases, for four years from the date of retirement.” (Emphasis added.) The petitioner went into retirement on November 16, 1966.

13. The petitioner recused the members of the Tribunal de Honor based on their participation in the assembly at the Centro Militar. A new Tribunal de Honor was constituted, and the proceedings before it began on November 16, 1972. The petitioner alleges that the charges against him were that he had freely expressed his thoughts.[FN4] In summary, the State, through a Tribunal de Honor formed under the Ministry of National Defense, tried him for the ideas set forth in his letter of resignation to the Centro Militar, and punished him for having defended human rights in the context of the counter-insurgency struggle.

[FN4] On November 17, 1972, the Tribunal General de Honor informed him of the alleged violations of the General Regulation of the Tribunales de Honor of the Armed Forces. He was accused, for example, of having violated Article 4, subsection IV: “Considering as true certain alleged acts of torture denounced, and denying that such torture is part of an insidious campaign against the Armed Forces, a campaign that was clearly and convincingly proved, the respective evidence having been officially published”; “Characterizing as ‘collective assassination of defenseless persons’ the death of citizens caused as a result of a confrontation at El Paso de Molina, though the deponent must know that previously an Army Officer had been seriously wounded”; “Insinuating that the Armed Forces do not play clean, and act out of vengeance and in an ‘undignified’ manner, and that their power is used for the ‘unhappiness of the people’”; “Asserting that punishment should be meted out ‘for those who have tarnished the Army uniform to cover up their excesses, outrages and sadism,’ taking it as given without providing any evidence that such deeds have been committed, and recommending the public vilification of the alleged perpetrators.”

14. He also alleges that because he was in retirement, the Tribunal de Honor did not have jurisdiction over him, accordingly, the petitioner, on November 20, 1972, withdrew from the courtroom and the Tribunal judged him in absentia (“en rebeldía”), under Article 165 of the Rules of Procedure of the Tribunales de Honor of the Armed Forces. The petitioner alleges that he consequently had no possibility of mounting a defense. On November 22, 1972 the Tribunal de Honor cashiered the petitioner “for a very grave violation” (“por falta gravísima”) stating for the record that he had been tried in absentia, and that he was discharged from the officer corps.[FN5] The petitioner requested, in writing, the grounds for the judgment, which the Tribunal did not grant. Instead, it informed him: “Does not accept the request, considering that as he refused to continue appearing before this Tribunal for the causes adduced, he has ceased to be entitled to the rights established in this respect by said Rules of Procedure.” On January 2, 1973, the Executive branch approved the Tribunal’s ruling, and the petitioner was reclassified as being in situación de reforma.[FN6] In December 1973, the Ministry of Defense set the benefits under the “reformed” regime at one-third for the petitioner, and two-thirds “for those who justify the right to pension.”[FN7]

[FN5] According to the petitioner, the Tribunal de Honor processed his case “with illegality, error of motive, lack of cause, and abuse of authority.”

[FN6] Resolution No. 46,202, January 2, 1973, of the Executive branch, approving the ruling of the Tribunal General de Honor. Resolution No. 46,204 of January 2, 1973, on being given the status of situación de reforma. Both resolutions were published in the Boletín of the Ministry of Defense corresponding to January 4, 1973, which is No. 1594.

Implications of the situación de reforma, as stated by the petitioner: (1) Division of retirement benefits among the next-of-kin (as a matter of inheritance), and the petitioner, in the proportion of 2/3 for the first, and 1/3 for the latter; (2) end of collection of the annual bonus, received by all retired officers, (3) loss of the right to military health care services, (4) expulsion from the Armed Forces Cooperative, (5) prohibition on occupying jobs dependent on the Ministry of Defense, (6) impossibility of obtaining bank loans, and (7) de-authorization and loss of military status, title, and use of the uniform.

[FN7] Resolution No. 6,540 of the Ministry of Defense, December 20, 1973, set the benefits under the “reformed” regime. Petitioner was never given notice of this Resolution.

15. The petitioner states that he exhausted administrative remedies in 1973, by appealing the decisions of the Executive, and that on May 2, 1974, he filed a motion for revocation of Resolution No. 42,204 of the Executive before the Ministry of Defense, to restore him to the status of retired Army Major. Due to the dictatorship in Uruguay at that time, and fearful of his and his family’s security due to the lack of minimal guarantees, the petitioner opted to silence his claim.

16. After the return of democracy to Uruguay in March 1985, and with the return of the rule of law, the petitioner argues that the Uruguayan legislation did not provide for claims such as his. Later, after the publication in March 1991 of a newspaper article of Lt. Gen. (ret) Hugo Medina in the magazine Búsqueda, in which he explained the scope of what he defined as “loss of points of reference” in the actions of the military, acknowledging deaths in prison, the “disappearance” of persons, and torture by the Armed Forces, the petitioner took up his claim anew. For the petitioner, it was “honor” “that had been put in jeopardy ... and it was essential [for him] to prove through the statements and deeds of the very military protagonists what the ‘Ley de Caducidad’ (‘Law on Expiry’) had actually made impossible to discuss, i.e. through those who, in one way or another, participated, albeit indirectly, in the proceeding of the Tribunal de Honor and in [his] reclassification as ‘reformed’ as a result of it.”

17. On April 30, 1991, the petitioner once again filed a motion for the revocation of Resolutions N° 46,204 of the Executive and N° 6,540 of the Ministry, which had affected his rights. In that motion, the petitioner alleged the Resolutions were void for (a) lack of competence of the Tribunal de Honor, as the petitioner was not subject to its jurisdiction, (b) lack of a right to defense, and (c) violation of Article 66 of the Constitution of Uruguay,[FN8] and of other statutory and regulatory provisions. The Ministry of Defense did not state its position with respect to the motion filed by the petitioner.

[FN8] Article 66 of the Constitution of Uruguay establishes: “No parliamentary or administrative investigation into irregularities, omissions, or offenses shall be considered

concluded so long as the public employee accused cannot present his or her own arguments, and mount his or her defense.”

18. On October 23, 1991, the petitioner brought an action in the Tribunal of Contentious-Administrative Matters against the State to void these resolutions. On March 10, 1993, the Tribunal ruled, that the action could not be validly initiated, as the petitioner’s right to bring it had lapsed. The ruling did not make reference to Article 66 of the Constitution. The petitioner received notification of the ruling on April 26, 1993.

19. At the same time, on May 27, 1991, the petitioner submitted a note to the Centro Militar, informing it that “although the word ‘honor,’ has been commonly used to cover up dishonors and appears to have been overused and hollow for some time now, it is still essential that honor be paid with honor.” The petitioner emphasized the Centro’s responsibility as the direct causal agent of the unjust and illegal situation that he was experiencing for more than 20 years, and he requested that reparations be made to him as follows:

1. To publish, in the same daily papers in which the communiqué of October 5, 1972 was disseminated--in the identical place and manner--a new communiqué, clearly acknowledging the error suffered on not accepting my resignation, and instead eliminating any reference to me from the social registries.
2. To go before the Commander-in-Chief of the Army, retracing the steps of a mistaken course taken, to annul the ruling of the Tribunal General de Honor from which I suffered prejudice, due to the lack of motive on issuing its judgment as it did, and in view of Article 66 of the Constitution.
3. To accept my resignation from the Centro Militar, effective July 6, 1972, when I presented it by phone to the then-President of the Center.

20. On June 5, 1991, the Centro Militar returned the note “for not being admissible” (“por no ser de recibo”). Accordingly, the petitioner filed an action for damages against the Centro Militar, based on abuse of right. The ruling in the case brought against the Centro Militar was adverse to petitioner, as the court found the action time-barred.

21. For the petitioner, being “passed into reform” effectively signified one's death,” as well as grievous moral damages for the officer subjected to sanctions, as at the time of his demotion, such a reclassification was reserved for pederasts and thieves--that was the concept that prevailed at the time in the Army. According to petitioner, the core issue is military honor:

The honor that the Centro Militar, the Tribunal General de Honor, the Ministry of National Defense, and the Executive “stripped” me of, dignity that they refuse to return to me because it means acknowledging that I was right and not them, as well as admitting that the Armed Forces committed tremendous human rights violations, is something they only acknowledge under coercion and indirectly.

22. The petitioner alleges in his petition that the compensation for damages suffered for more than 20 years comes to US\$ 300,000 (2/3 of the retirement: US\$ 116,000; private mutual health

service: US\$ 10,000; unpaid bonuses; and pain and suffering, including the impossibility of getting loans: US\$ 160,000), not counting interest.

23. On June 14, 1994, within the framework of the “National Pacification,” the amnesty laws and the call to Ministry of Defense personnel who thought they were removed for political or ideological reasons, the Ministry of Defense issued a new resolution, which mentions the resolutions referred to by the petitioner, and modifies the petitioner’s reform pension without including the right to collect any money retroactively, and without lifting his situación de reforma.[FN9] That resolution states:

[FN9] The petitioner alleges that Resolution No. 72-732 recognizes that he was removed for political and ideological reasons, but does not return to him: (1) his military status; (2) his rank; (3) the right to use the uniform; (4) the possibility of holding positions in offices of the Ministry of Defense or in the Reserve; (5) the right to assistance in the military health services; (6) the rights as a member of the Armed Forces Cooperative; (7) sole claim to his retirement benefits; (8) the right to collect a bonus like all other retirees from the Public Administration; and (9) credit vis-à-vis third persons.

Finding of Fact ... III. That [the situaciones de reforma] were established in a context of generalized social conflict; Considering ... III. That at the same time, the previous Administration ... determined that ... a series of reparations guidelines be established that are applicable in pursuing administrative relief for military personnel separated from the Armed Forces for political or ideological reasons or on merely arbitrary grounds, ... it is deemed pertinent to accord [him] the status of retiree annulling the situación de reforma.... The President of the Republic resolves: 1. Legal standing shall be granted to the Distinguished Officers cited in the Having Seen clause of this resolution, without that meaning the right to any retroactivity, annulling the situación de reforma....[FN10] [Emphasis added.]

[FN10] Resolution No. 76,161, Ministry of National Defense, December 24, 1997.

24. The petitioner states that by this resolution he regained his status as a military officer, prior to January 1, 1973, and adds that:

nonetheless, I have not committed any offense, nor have I violated any rule of honor; to the contrary, I spoke out as an opponent of those who did. Accordingly, I can only accept that I be granted “through executive pardon” (“por gracia”) (or under the “inspiration of a magnanimous attitude”) what is rightfully mine....[FN11]

[FN11] Letter from the petitioner to the Commission, April 14, 1998.

25. Finally, the petitioner observes that:

It is wrong to say that my long-standing claim has been satisfied upon nullification of the situation of reform.... While the end of that situation is accompanied by an interruption of the material damages that I bore for a quarter of a century (with my family), the de-authorization and loss of military status, of my rank and right to use the uniform, the humiliation this entailed, exposing me publicly as a person without honor: these are not satisfied by simply returning what, after all, was always mine, adding some material concessions and turning the page, as if nothing had happened.... Therefore, the obligation to make reparation for the unjust harm caused, and to compensate for the moral and spiritual damages, for which money is not enough, persists.... It is a vindication of values of (authentic) honor....[FN12]

[FN12] Letter from the petitioner to the Commission, May 29, 2001.

B. The State's position

26. The State, in its response of June 13, 1995, requested: "That the petition presented in these proceedings be declared inadmissible, as it was time-barred, as the domestic remedies available in the Uruguayan State have neither been pursued or exhausted, for failure to set forth facts that tend to establish a violation of rights guaranteed, and for being groundless and out of order, in keeping with Article 47 of the American Convention...."

27. The State indicates that the arguments of no defense and lack of guarantees in the 1972 internal disciplinary action against the petitioner before the Tribunal de Honor, comprised of the General Command of the Army, do not lie, as the petitioner "withdrew from them unilaterally and voluntarily, in both the administrative and judicial proceedings." In addition, the State does not recognize that the petitioner has exhausted domestic administrative and judicial remedies, and affirms that the petitioner did not exhaust domestic remedies in due time and manner, "which totally undercuts his petition." It alleges that the petitioner learned of the 1973 and 1974 resolutions and that the petitioner did not exhaust domestic remedies at that time, as he could have before the Tribunal for Contentious-Administrative Matters by filing a motion for nullification. Later, on October 23, 1990, some 20 years after being "passed into reform" and five years after the restoration of democracy in Uruguay, the petitioner filed a motion for nullification, which was found to be time-barred, his right to file it having lapsed.

28. The State alleges that the petitioner failed to clearly define the provisions of the American Convention which in his view have been violated, or the facts on which his complaint is based.[FN13] It also notes that the Convention entered into force for Uruguay on April 19, 1985, the date of its accession, and accordingly can be judged only for events occurring after that date.

[FN13] The State makes no reference to the alleged violations of the American Declaration.

29. The State alleges that the situación de reforma does not imply all that the petitioner describes, but that said situation is defined in the Organic Law on the Military, N° 10,050.[FN14] It also alleges that retired officers shall be “reformed” in the same manner as active-duty officers.[FN15] Accordingly, the State alleges that the Tribunal de Honor was competent to sit in judgment of the petitioner. As a result, the State alleges that the pase a reforma was entirely lawful, and was for a well-established “serious violation” (“falta grave”) described in the Tribunal’s ruling.

[FN14] Article 362: “Reforma shall be understood to be constituted by the special situation of an Officer who definitively loses the right to hold a job under the Ministry of National Defense, not even in the Reserves, and who may no longer use the title or military uniform corresponding to the rank held when accorded this status.”

Note from the Commission: The State cites Article 371, but in the text of Law 10,050, in force from 1972 to 1974, in the hands of the Commission, the definition is in Article 362. In later correspondence with the Commission, the State acknowledged and amended this error.

[FN15] Article 364, Law 10,050 (the State cites Article 373).

30. The State alleges that even though the petitioner’s situation does not fit in the criteria used for reparations agreed upon between the Executive branch and the Committee on National Defense of the Uruguayan Senate, the petitioner’s case was reviewed in 1994, and the pension benefits corresponding to the situación de reforma were standardized, as dictated by the June 1994 Ministry of Defense resolution. The State affirms that the resolution was issued to “temper the possible severity with which the former Officer may have been judged, within the discretion for so doing, at a critical moment in the Nation’s history, but without this signifying at all recognition of an illegitimate or unlawful situation that needs to be reverted.” The State also maintains that if the petitioner were accorded unequal treatment, it has been to his benefit, as his separation from the Armed Forces took place outside the time frame established in the reparations guidelines.

31. The State alleges that the petitioner was “passed into reform” in total conformity with the laws in force at the time, without him taking the pertinent actions to challenge the procedure that led to the “reform.” It adds that it was the petitioner who, on his own, waived his defense before the Tribunal de Honor, as a result of which the procedure continued in absentia, without his personal appearance. This legal concept makes possible a normal prosecution of cases in which the respondent refuses to appear before the court.

32. Finally, the State indicates that the benefit of the bonus, which petitioner claims, is received by Armed Forces officers in retirement, and accordingly it is not received by those who have been designated as being in situación de reforma. Similarly, the State adds, the right to receive care from the Armed Forces Health Service is extinguished. The State asserts that the loss of benefits is a lawful consequence of being reclassified as “reformed.”

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

1. *Ratione personae*

33. The petitioner is authorized by Article 44 of the American Convention to present complaints to the Commission. The petition presents as the alleged victim an individual person with respect to whom Uruguay has undertaken to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission observes that Uruguay is a state party to the American Convention, having ratified it on April 19, 1985. Accordingly, the Commission is competent *ratione personae* to examine the petition.

2. *Ratione loci*

34. The Commission is competent *ratione loci* to take cognizance of the petition, as it alleges violations of rights protected in the American Convention within the territory of a state party to that treaty.

3. *Ratione temporis*

35. The Commission is competent *ratione temporis*, insofar as the obligation to respect and ensure the internationally protected rights was already in force for the State as of the date of the facts alleged in the petition, either under the American Declaration or under the American Convention. The Commission clarifies that some of the facts allegedly violative of Mr. Cirio's human rights were initiated prior to April 19, 1985, the date of Uruguay's ratification of the American Convention, accordingly, one of the sources of applicable law is the American Declaration. Both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have ruled that the American Declaration is a source of international obligations for the member states of the OAS.[FN16]

[FN16] See I/A Court H.R., Interpretation of the American Declaration on the Rights and Duties of Man in the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989, Series A and B No. 10, paras. 35-45; IACHR, James Terry Roach and Jay Pinkerton v. United States, Res. 3/87, Case 9647, September 22, 1987, Annual Report 1986-87, paras. 46-49, Rafael Ferrer-Mazorra et al. v. United States, Report N° 51/01, Case 9903, April 4, 2001. See Statute of the IACHR, Article 20.

36. As regards events after April 19, 1985, the date Uruguay ratified the American Convention, or events that occurred prior to that date but which had continuing effects, those arguments should be analyzed in relation to the American Convention. The IACHR has recently affirmed "its practice of extending the scope of application of the American Convention to facts of a continuing nature that violate human rights prior to its ratification, but whose effects remain after its entry into force." [FN17] The Commission has established in this regard that "once the

American Convention entered into force ... the Convention and not the Declaration became the source of legal norms for application by the Commission insofar as the petition alleges violations of substantially identical rights set forth in both instruments and those claimed violations do not involve a continuing situation.”[FN18] In addition, the Commission notes that Article 29 of the American Convention upholds the case-law of the Commission to the effect that the Commission is competent to apply both the American Declaration and the American Convention in the same case.[FN19]

[FN17] IACHR, Report No. 95/98 (Chile), December 19, 1998, Annual Report 1998, para. 27.

[FN18] IACHR, Report No. 38/99 (Argentina), March 11, 1999, Annual Report 1998, para 13.

[FN19] Article 29 of the American Convention provides: “No provision of this Convention shall be interpreted as: ... (d) excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have.”

4. Ratione Materiae

37. Finally, the Commission is competent *ratione materiae*, because the petition alleges violations of human rights protected by the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.

B. Other admissibility requirements of a petition

1. Exhaustion of domestic remedies

38. On March 10, 1993, the Tribunal for Contentious-Administrative Matters ruled that the action filed by the petitioner could not be initiated for having lapsed. This marked the end of the petitioner’s attempts at seeking domestic remedies for reparation of the violations alleged. The State recognizes that the petitioner has no further domestic remedies to exhaust.[FN20]

[FN20] The Government of Uruguay suggested in its response that the petitioner did not act in a timely fashion. In its response the Government noted that the ruling by the Tribunal de Honor is appealable by the administrative remedies of revocation (*recurso de revocación*) and *recurso jerárquico en subsidio*, which can be pursued before the Ministry of National Defense and the Executive, respectively. The petitioner indicated in his brief of May 2, 1974, that he “pursued the revocation remedy vis-à-vis the Ministry of National Defense against Resolution N° 42,204 of the Executive branch, requesting that, definitively, and upon annulment of the ruling by the Tribunal de Honor, he be restored to the condition of retired Army Major.” He indicates that his family made him see the danger he was placing himself in by raising such issues, since the dictatorship was in power in Uruguay. He stopped pursuing the claim. The Government added that after his administrative remedies were exhausted, that ruling was appealable before the Tribunal for Contentious-Administrative Matters, by an action for annulment, for being contrary to a rule of law or for having been issued by abuse of authority. The Government holds that the petitioner waited too long to file his claim before the Tribunal for Contentious-Administrative

Matters. The petitioner indicated that Uruguay returned to democracy in March 1985, and that he waited until 1991 to present his claim to the Ministry of Defense, since he had just recently regained the confidence to do so after the declarations made by Lt. Gen. (ret) Hugo Medina (supra para. 16), nonetheless the Ministry never answered its claim. Therefore he filed a motion before the Tribunal for Contentious-Administrative Matters, which ruled in five lines that the action was time-barred. In view of the fact that petitioner was judged and convicted by the military in 1972, prior to the military taking power in 1973, the Commission considers that the petitioner's refraining from pursuing remedies until observing some sign of change in attitude on the part of the military, such as General Medina's declarations, were necessary prior to seeking to exhaust domestic remedies. It should be recalled that the Uruguayan military was not driven out of power, but that they handed it over to the civilian government in 1985. The petitioner, by letter dated in 1995, notes that "ten years after the restoration of democracy, some have died without the satisfaction of seeing justice done in their cases. It is regrettable that the present-day Government of Uruguay continues to defend the abuses of a disreputable dictatorship, when a mere decree would suffice to void--in the case of the officers--the decrees of dictator Bordaberry that confirmed the rulings of the pseudo-Tribunales de Honor." In this case, the Commission concludes that the formal return to democratic government is not a sufficient guarantee for ensuring the existence of an effective domestic remedy.

2. Time period for submission

39. Article 46(1)(b) of the Convention indicates that the petition must be presented within six months from the time the petitioner is notified of the final decision that has exhausted domestic remedies. The petitioner sent his complaint to the Commission on October 12, 1993, i.e. five months and 17 days after receiving notice of the ruling from the Tribunal for Contentious-Administrative Matters on April 26, 1993. Since this petition was submitted within the six-month period, the Commission considers it in keeping with Article 46(1)(b) of the American Convention.

3. Duplication of procedure and res judicata

40. The Commission is of the view that the subject matter of the petition is not pending settlement before any other international organization, nor does it reproduce a petition already examined by this or any other international organization. Therefore, the requirements established at Articles 46(1)(c) and 47(d) are also satisfied.

4. Characteristics of the facts alleged

41. The Commission considers that the petitioner's presentation refers to facts which, if true, tend to establish a violation of the rights guaranteed by Articles II, IV, V, XVI, and XXVI of the American Declaration, and Articles 5, 8, 9, 10, 11, 13, 24, and 25 of the American Convention, thus the requirements of Article 47(b) of the Convention have been met.

V. CONCLUSION

42. Based on the foregoing considerations of fact and law, the Commission concludes that this case meets the admissibility requirements set forth at Articles 46 and 47 of the American Convention, and, without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to Articles II, IV, V, XVI, and XXVI of the American Declaration, and Articles 5, 8, 9, 10, 11, 13, 24, and 25 of the American Convention.
2. To transmit this report to the petitioner and to the State.
3. To place itself at the disposal of the parties in order to reach a settlement based on respect for the rights protected in the American Convention, and to invite the parties to state their positions, within 30 days, on the possibility of reaching a friendly settlement in this case.
4. To continue with the analysis of the merits.
5. To make this report public and to include it in the Annual Report of the Commission to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., October 16, 2001. (Signed): Claudio Grossman, President; Juan Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners Hélio Bicudo, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.