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Title/Style of Cause: Tomas Eduardo Cirio v. Uruguay
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Decided by: President: Evelio Fernandez Arevalos;
First Vice-President: Paulo Sergio Pinheiro;
Second Vice-President: Florentin Melendez;
Commissioners: Freddy Gutierrez, Paolo G. Carozza, Victor E. Abramovich.
Dated: 27 October 2006
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I. SUMMARY

1. On October 12, 1993, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition presented by Tomás Eduardo Cirio (hereinafter “the petitioner”), a Uruguayan citizen, a retired military officer, against the Oriental Republic of Uruguay (hereinafter “the State”) in which the violation was alleged of the following rights protected in the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”): Article II (right to equality before the law), Article IV (right to freedom of investigation, opinion, expression and dissemination), Article V (right to protection of honor, personal reputation and private family life), Article XVI (right to social security), Article XXVI (right to due process of law). Moreover, the complaint alleged the violation of the following rights of the American Convention on Human Rights (hereinafter “the American Convention”) on the part of the State: Article 5 (right to humane treatment), Article 8 (right to a fair trial), Article 9 (right to due process of law), Article 10 (right to compensation), Article 11 (right to privacy), Article 13 (freedom of thought and expression), Article 24 right to equal protection) and Article 25 (right to judicial protection)

2. The petition denounces that since July 4, 1972, following a meeting of the Assembly of the Military Center (Centro Militar), the petitioner, a retired army major, resigned from the Center by means of a letter in which he made general accusations about the violation of human rights in the context of the struggle against subversion by the Uruguayan Armed Forces. Since then, the petitioner alleges that he has persistently suffered punishment in reprisal for having expressed his opinion freely. The Military Center informed the General Command of the Army and proceeded to remove him from its register of members. Subsequently, the General Command submitted him to the jurisdiction of the Tribunal de Honor [non-judicial court]. He alleges that he was judged by a tribunal that lacked jurisdiction, given his status as a retired officer and in

rebeldía (absence), denying him the right to defense. In November 1972, the Tribunal de Honor cashiered him and assigned him the status known as situación de reforma. He alleges that as a result of this decision not only was his honor and reputation impaired, but also his rights to remuneration, to medical care, to occupy posts in the Ministry of Defense, in addition to the loss of any possibility of obtaining credit, disqualification and loss of military status. The position of the Uruguayan State is that the petition of Mr. Tomás Cirio is baseless, and lacks any judicial foundation either in domestic or international law. Notwithstanding this, it points out that “the Government of the Republic over the last 17 years and in its various administrations, all democratically elected, has made its best efforts to consider the situation of Major Tomás E. Cirio.” It points out that his rights were partially restored, though not entirely, through a Ministry of Defense resolution. In December 1997, in recognition of the State’s partial responsibility, the petitioner was once again accorded the status of a retired officer, rescinding his situación de reforma, but without total reparation (restitutio in integrum).

3. Following the analysis of the respective merits of the supposed violations of Articles II, IV, XVI, XXVI of the American Declaration and Articles 5, 8, 9, 10, 11, 13, 24 and 25 of the American Convention, that through the penalty imposed by the Tribunal de Honor as a disciplinary measure, the Uruguayan State has subjected Mr. Tomás Eduardo Cirio to a military trial as a reprisal for his complaints about human rights violations perpetrated by members of the Uruguayan Armed Forces. The Uruguayan State has failed to comply with its obligation to respect and uphold the right to be heard by a competent, independent and impartial tribunal, previously established by law (Article XXVI of the American Declaration) and judicial protection (Article 25 of the American Convention), freedom of expression (Article IV of the American Declaration) and his right to honor and reputation (Article V of the Declaration and 11 of the Convention). Equally, the Commission concludes that by virtue of the foregoing violations, the Uruguayan State has not complied with its obligation to respect and uphold the human rights and guarantees imposed by Article 1(1) of the American Convention and to adopt the dispositions of domestic law imposed by Article 2. Having concluded that these dispositions of the American Convention have been violated, the Commission considers that the petitioner in this case has failed to sustain his allegations with respect to the violation of Article 9 of the American Convention.

II. PROCEEDINGS SUBSEQUENT TO ADMISSIBILITY REPORT

4. On October 12, 1993, the complaint was received by the Commission. On October 16, 2001, the Commission approved Report 119/01 on admissibility[FN1]. On October 22, 2001, the report on admissibility was transmitted to the State and the petitioners, and the parties were notified that the Commission was disposed to assist them in reaching a friendly settlement, in accordance with Article 48 (1)(f) of the Convention, were they interested in this. The Commission requested the parties to respond to this offer with all due speed. By letter dated November 20 2001, the petitioner expressed interest in the possibility of negotiating a friendly settlement. For its part, in a noted dated February 13 2002, the State rejected the possibility of a friendly settlement, and consequently, the Commission decided to proceed with the preparation of a report on the merits of the case.

[FN1] Report N° 119/01, Case No. 11.500, Tomás Eduardo Cirio, (Uruguay), IACHR, ANUAL REPORT (2001), vol. I, page. 323 passim.

5. On February 22, 2002, the Commission transmitted additional observations from the Government of Uruguay to the petitioner, requesting his additional observations within 30 days. On March 18 2002, the petitioner gave his response to the observations of the State. The petitioner's observations were transmitted to the State on May 6, 2002, with a request to provide any additional information on the merits within a period of two months. On July 8, 2002, the Commission received from the State a written statement, dated July 5, 2002, which was transmitted to the petitioner on July 15, 2002. On September 9 and 27, in two written statements, the petitioner defended himself against the "falsehoods" presented by the State, reiterated his previous positions, and requested the preparation of the report envisaged in Article 50 of the American Convention. On January 29, 2003, the petitioner informed the Commission of his change of postal address, e-mail address and telephone number. Since this date, the Commission has received no further information from either party.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

6. Tomas Eduardo Cirio is a retired military officer (ret. 1966) and Uruguayan citizen. In 1972 he resigned from the Military Center (Centro Militar del Uruguay) a private club comprised of retired and active duty members of the military, in protest against a position taken by the Center. On July 4, 1972, the General Assembly of the Military Center issued a statement, approved unanimously about what it called the "campaign carried out to discredit the Armed Forces at every level"[FN2] The petitioner alleges that this was a response to a declaration by the Uruguayan Chamber of Representatives in respect to the questioning of the Defense Minister over the death of Luis Carlos Batalla, a Uruguayan citizen who died from maltreatment in detention by the armed forces at military unit number 33.

[FN2] Declaration by the Assembly of the Military Center, July 4, 1972. "(1) That all actions or manifestations, whether corporate or individual, that tend to discredit or maliciously to obstruct the progress of members of the Armed Forces in the struggle against subversion, or what is the same, treason against the fatherland, constitutes disguised complicity with the enemies of the Republican and Democratic government that the citizenry have elected and reaffirmed, (2) that repudiates any publicity given to penalties to be applied to any of its members, when they are to be punished, and (3) that the unwavering moral principles that the members of the Armed Forces uphold, assure the final victory in the struggle on which we are embarked." (Emphasis added).

7. In response to the unanimous declaration by the Assembly of the Military Center, which the petitioner found deeply disturbing, he submitted his resignation to the said Center, first by telephone and than by letter dated July 19, 1972. In this letter, the petitioner stated:

Suffice it to say that I disagree completely and radically with the motion presented and then approved in the assembly, and this – I should add in times in which, sometimes for reasons that remain unclear, witches are seen everywhere – it is not because I am the instrument of any scheme contrived by those who are the enemies of the fatherland. I am a free man, and speak as such, in my own words and under my exclusive responsibility. As such, may I may it clear that although I have political views, these are not such as to associate me with colorados, blancos, communists, tupamaros, nor indeed with fascists.

Unanimity among more than 500 people is little less than a statistical impossibility when dealing with problems of such seriousness, even when the influence of the hierarchy is overwhelming.

From a strictly human angle, it is also impossible for there to be unanimous agreement when faced with statements that should be described as monstrous, such as those relating to the death that prompted the declaration by the Chamber of Representatives of [a person] whose status as a citizen was sought to be denied, amid general applause, and who along with his wife was then the victim of an outrage. Even if these statements were true, how could they justify what doubtless must have been horrible suffering. However, if this were not enough, the argument was concluded – incredibly -- by attesting that the death of [the individual], doubtless after brutal torture, was due to his “falling on a stone”. And then, claiming that the issue had been properly clarified, and after making the customary invocations to dignity and honor (which were wholly absent in this instance), the matter was closed.

But this was but one of the few cases that have come to light, because of the lack of any alternative. For months, one after another, serious accusations are accumulating about the behavior of the armed forces; the number and importance of these make any thinking person reject all possibility of an “insidious campaign”, and even if a large proportion can be attributed to lies, the rest are more than enough cause for alarm.

Public opinion can only glean such accusations from the words of parliamentarians, transcribed in the official daily records of the sessions in the Chambers, since military secrecy surrounds everything. These show with proof and testimony in many cases, cases ranging from robbery to the collective assassination of completely defenseless people with no conceivable links to subversion (the case of Paso del Molino), and including illegal detention, assault, unlawful arrest and torture. At no point have these been properly refuted [by the armed forces], except if this is what is to be understood by repeated protestations about dignity and honor that convince no-one. For the people to accept that they have dignity and honor, it is not enough just for them say so; rather they have to prove it when the circumstances demand. To this end, it would be useful to know the result of at least some of the enquiries that are so often invoked.

Moreover, people ask themselves how it can be that so many doctors, engineers, architects, lawyers, teachers, students, men and women of the people, who until not long ago were respected and appreciated for their intellectual and human qualities, have suddenly become criminals of the worst order and treated in ways that no delinquent has ever been treated in this country. Apart from the assaults on their homes at dead of night, instilling terror into their children, do they deserve to be held incommunicado, separated from their families who for long periods often do not know where they are being held, manacled, hooded with their eyes and ears

blocked so as to drive them mad, to be the victims of endless picanas, submarinos, plantones, as well as ferocious and cowardly beatings?

Are any of these things anything but torture? And if our parents, wives, brothers or sons are to suffer these, is this not torture? Who is safe? Who has the right to make sure that their human condition is respected? Who is free of fear?

Let us recall Artigas: “Go and tell your master that General Artigas is not an executioner”. That is not the way. He who cultivates the wind faces the tempest. Such practices will not bring the peace that they suppose [is] the objective, the “final success of the struggle under way,” as the resolution adopted implores.

I do not forget those who have lost their lives from subversion, and I deplore their killings, especially of humble people caught up in the cogs of the machine that others have set in motion. But it is said that the victims were torturers. And in this case, it has been said endlessly that violence begets more violence. Are we to continue in this way? And what sort of future will we hand on to our children?

If you do not play by the rules, in the long run you lose more than you gain. The undignified actions of our enemy do not justify us doing the same. And we should never forget that the armed forces are armed by mandate of law, and the law does not permit – even when invoking its own defense – that its power is used to inflict unhappiness on the people to which it belongs, to whom in the last instance it owes its very existence..

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

Only thus can the moral principles be that we like to cite so as our exclusive claims to patriotism be safeguarded. And in this regard, we should welcome “every action or manifestation, corporate or individual” that helps us to clean out our own house, even though it may be disagreeable for us to do it. Let us not ignore it, since this tends to diminish us or discredit us. To do nothing is but an act of complicity with the adversary.

As members of the military we do not possess, any more than any other citizen of this country, the divine essence: we are not demi-gods, nor infallible nor pure. On the contrary, we are subject to the errors and vices to which any human being is exposed. Indeed, these tend to be more serious in us, because the power we wield is in a variety of ways greater than that of civilians.

And let us not be disrespectful towards the decisions of the legislature. Its members have arrived at their seats through elections, which – the armed forces say – have been free and which they have acted as guarantors. It is not a matter that when the democratic representatives of the people, in a decision taken democratically and in considered language – what reasons could there be for this not to be the case – refer to the conduct of the armed forces, which they are free to

judge, that we should consider them to be “covert accomplices of the enemies of the democratic republican regime” (Emphasis added).

8. On August 3, 1972, in response to the petitioner’s resignation letter, the Military Center rejected “categorically the concepts set forth therein, considering them totally out of place, damaging to the other members, and detrimental to the prestige of the Armed Forces and the Institution.”[FN3] The Military Center resolved not to accept the petitioner’s resignation, declaring him to be in violation of the Center’s statutes, to eliminate it from the public records of the institution, and to forward a copy of the letter to the General Command of the Army “for the purposes it may deem appropriate”. The Commander in Chief of the Army ordered that a Tribunal de Honor be established.

[FN3] Response of the Military Center, August 3, 1972.

9. On November 7, 1972, the petitioner received a notice from the Tribunal General de Honor, advising him that he was being placed under its jurisdiction. The petitioner complains that the State had become involved in the matter raised in the Military Center, a private institution independent of the State and the armed forces. The petitioner alleges that as a retired officer he was not subject to the jurisdiction of a military tribunal.[FN4]

[FN4] The Military Framework Law No. 10,050, Article 344: “Retirement produces the following effects: [...] c) It subjects the retired person to military jurisdiction for the duration of the time in which he carries out duties in the Army, otherwise, for four years calculated from the date of retirement.” (underlining added). The petitioner retired on November 16, 1966.

10. The proceedings before the tribunal began on November 16, 1972. The petitioner alleges that the charges against him were those of having expressed his thinking in a free manner[FN5]. In sum, the State, through a Tribunal de Honor, formed under the aegis of the Ministry of National Defense, judged him for the ideas contained in his letter of resignation as a member of the Military Center – punishing him for having defended human rights in the context of the struggle against subversion.

[FN5] On November 17, 1972, the Tribunal General de Honor informed him of the alleged violations committed to the Rules of Procedure of the Tribunals of Honor of the Armed Forces. Among other things, he was accused, for example, of having violated Article 4, Clause IV: "Giving as certain alleged claims of torture and denying that these were part of an insidious campaign against the Armed Forces, a campaign reliably verified, the proof to that effect having been published"; “Describing as 'collective assassination of defenseless persons' the death of citizens that occurred as a result of a clash in the Paso del Molina, when the person making the statement should have made it clear that an army officer was gravely injured"; "Insinuating that the Armed Forces do not play fair and act out of vengeance and in ways that are ‘unbecoming’”,

that moreover the way they use their power contributes to the ‘unhappiness of the people’”; "asserting that they should be punished 'those who have tarnished the uniform of the Army in order to cover up their excesses, their outrages, and their sadism', assuming that these deeds had been committed without producing any proof, and bringing into public contempt those presumed responsible."

11. The petitioner also denounces the fact that, because there were no guarantees of due process before the Tribunal, he decided not to attend the hearing, and the tribunal judged him in absentia, in rebeldía according to Article 165 of the Rules of Procedure of the Tribunal de Honor of the Armed Forces. The petitioner alleges that he was thus deprived of the right of defense. On November 22, 1972, the Tribunal cashiered the petitioner “for a very serious offense”, stating for the record that he had been judged en rebeldía and that he was discharged from the officer corps. The petitioner requested in writing the grounds for the ruling, which the Tribunal rejected, informing him that “his request was turned down because he had refused to appear before the Tribunal for the causes adduced, he has ceased to be entitled to the rights established in this respect by the said Rules of Procedure”. In January 1973, the Executive approved the ruling of the Tribunal and the petitioner was transferred to a situación de reforma.[FN6] In December 1973, the Ministry of Defense set the remuneration under the reform regime at a third for the petitioner, and two thirds “for those who justify rights to pension”.[FN7]

[FN6] Executive Resolution No. 46,202 of January 2, 1973, approving the ruling of the Tribunal General de Honor. Resolution No. 46,204 of January 2, 1973, transferring the petitioner to the situación de reforma. The implications of the situación de reforma, according to the petitioner: (1) Division of the retirement remuneration between the family (for inheritance) and the petitioner, in a proportion of 2/3 to the former, and 1/3 to the latter. (2) non-receipt of the annual bonus (aguinaldo) paid to all retired officers, (3) loss of the right to care from Military Health service. (4) expulsion from the armed forces cooperative, (5) a ban on taking posts in the Ministry of Defense, (6) inability to obtain bank credit, and (7) disqualification and loss of military status, rank and the right to use uniform.

[FN7] Resolution No. 6,540 of the Ministry of Defense, November 20, 1973, set remuneration for the situación de reforma.

12. The petitioner states that on May 2, 1974, he lodged an appeal before the Ministry of Defense to revoke the Executive Branch’s resolution and to have his status restored as a retired army major. Due to the dictatorship in Uruguay at the time and fearful for his own and his family’s safety owing to the lack of minimal guarantees, the petitioner opted to shelve his claim.

13. After the return to democracy in Uruguay in March 1985, and following the publication in March 1991 of an journalistic article by Lt. Gen. Hugo Medina in the magazine Búsqueda, in which he explained the extent of what he termed “the loss of points of reference” in the actions of the military, acknowledging deaths in prison, the “disappearance” of people, and torture perpetrated by the armed forces, the petitioner resumed his claim. For the petitioner, it was “honor” that “had been put at jeopardy (...) and it was essential [for him] to prove through the

statements and deeds of those military officers involved what the Law of Legal Expiry (Ley de Caducidad) had made it impossible to discuss, namely through those who in one way or another took part, even indirectly, in the Tribunal de Honor and his transfer to a situación de reforma"

14. On April 30, 1991, the petitioner again brought an action before the Ministry of Defense to revoke Resolutions No. 46,204 issued by the Executive and 6,540 by the Ministry itself which had impaired his rights. In his action, the petitioner argued for the annulment of the resolutions because of the lack of competence of the Tribunal de Honor owing to the fact that (a) the petitioner no longer came under its jurisdiction, (b) the lack of the right of defense, and (c) the violation of Article 66 of the Uruguayan Constitution[FN8] and other statutory and regulatory provisions. The Ministry of Defense failed to pronounce on the action brought by the petitioner.

[FN8] Article 66 of the Constitution of Uruguay provides: "No parliamentary or administrative investigation into irregularities, oversights or crimes will be considered concluded whilst the official blamed cannot present his evidence and make his defense." -----

15. On October 23, 1991, the petitioner initiated an action against the State in the Tribunal on Matters of Contentious Administration to nullify these resolutions. On March 10, 1993, the Tribunal ruled that the action could not validly proceed because the expiry of the right of the petitioner to initiate it. The petitioner received notification of the Tribunal's ruling on April 26, 1993.

16. Parallel with this, on May 27, 1991, the petitioner submitted a note to the Military Center, informing it that "even though the word 'honor' is often used to cover up 'dishonor' and appears to have been overused and hollow for some time now, it is still vital that honor be paid by honor." The petitioner pointed out to the Center its direct responsibility for the unjust and illegal situation in which he had been living for more than twenty years, and requested the following reparations:

1. To publish in the same daily papers in which the communiqué of October 5, 1972 was published, in the same position and in the same manner, a new communiqué in which it is clearly recognized the error of not accepting my resignation and eliminating my name from the social registers.
2. To intercede with the Commander-in-Chief of the Army, reversing the erroneous steps taken previously and to nullify the ruling of the Tribunal de Honor which was to my prejudice when it was announced in the way it was, and taking into account Article 66 of the Constitution.
3. To accept my resignation from this Military Center dated July 6, 1972, when I submitted it by telephone to the president of the Center.

17. On June 5, 1991, the Military Center returned the note "for not being admissible". Consequently, the petitioner initiated an action for damages against the Military Center, basing this on an abuse of the law. The ruling in the case against the Military Center went against the petitioner because the tribunal found the action to be inadmissible because of the expiry of time limits.

18. For the petitioner, the classification as being in a situación de reforma meant practically his becoming a 'non-person' as well as being a serious blow to his moral standing as a military officer to be punished in this way. This was because at the time when his status was removed, transfer to a situación de reforma was something reserved for pederasts and thieves. This was the notion that prevailed at the time in the army. According to the petitioner, the nub of the issue was a matter of military honor:

The honor that the Military Center, the Tribunal General de Honor, the Ministry of National Defense and the Executive Branch "removed" from me, dignity which they refused to restore to me because it implied recognizing that I was right and they were wrong, as well as admitting that the armed forces committed tremendous violations of human rights, so much so that they were only prepared to admit these indirectly and under duress.

19. The petitioner alleges that his demand for compensation for indemnity for damages suffered over more than 20 years came to a total of US\$300,000 (2/3 of the pension: US\$116,000; private health insurance: US\$10,000, unpaid annual bonuses and moral damages including the impossibility of obtaining credit: US\$160,000.

20. On June 14, 1994, in view of the policy of "National Pacification", the laws of amnesty, and the call to Ministry of Defense personnel who thought they had been dismissed for political or ideological reasons, the Ministry issued a new resolution, which made mention of the resolutions referred to by the petitioner and modified the petitioner's reforma pension, but without conceding any retrospective rights for pension payment and without lifting his reforma status.[FN9]

[FN9] The petitioner alleges that Resolution No. 72-732 recognizes that he was cashiered for political and ideological motives, but did not restore to him his: 1) military status; 2) rank; 3) the right to wear uniform, 4) the possibility to occupy posts in the dependencies of the Ministry of National Defense, nor in the Reserves; 5) the right to care from Military Health; 6) rights associated with the Armed Forces cooperative; 7) sole rights to receive to his retirement pension; 8) the right to receive the aguinaldo as any other pensioner in the public administration; and 9) credit from third parties.

21. The petitioner alleges that it was because he had made his opinions clear in his resignation letter that he was subjected to the Tribunal de Honor, violating various Articles of the American Declaration: Article II (right to equality before the law), Article IV (right to freedom of investigation, opinion, expression and dissemination), Article V (right to protection of honor, personal reputation and private family life), Article XVI (right to social security), Article XXVI (right to due process of law), as well as the following provisions of the American Convention: Articles 8, right to a fair trial, 13, for having been penalized for free expression, and 25, for being deprived the right to simple and speedy recourse to challenge penalizing resolutions. The petitioner alleges that, after the return to democracy and in spite of the lapse of time, the State continued to ignore his claim, perpetuating the violations against him. For this reason, he alleges,

his rights to honor and dignity were violated (Article 11) and equality before the law (Article 24).

22. The petitioner declares that on December 24, 1997, by virtue of Resolution 76,161 from the Ministry of Defense, he recovered his status as a retired officer, rescinding his reforma status, “without this signifying any retroactive rights whatsoever”. This resolution declares:

Resulting from [...] III. That the [situaciones de reforma] were determined in a context of generalized social conflict; considering [...] III. That at the same time the previous administration [...] determined that [...] there should be established a series of guidelines for reparation applicable through administrative channels to military personnel dismissed from the Armed Forces for political or ideological reasons or for mere exercise of arbitrary power [...] it is believed pertinent to grant [you] the status of retired officer, rescinding the situación de reforma [...]. The President of the Republic resolves (1) – Legal standing shall be granted to the Distinguished Officers cited in the ‘Seeing that’ clause of the present resolution, without this meaning any retroactive rights whatsoever, rescinding the situación de reforma [...].[FN10] Emphasis added.

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

23. The petitioner alleges that this resolution, in view of the disposition “without (...) any retroactive rights whatsoever”, instead of “rescinding” the situación de reforma, leaves him in the same situation, even though the State recognizes that his dismissal from the Armed Forces was owing to political or ideological motives, or to the mere exercise of arbitrary power, and thereby tacitly ratifies its responsibility for the violation by reversing the situación de reforma.

24. The petitioner declared that this resolution restored his status as a military officer prior to January 1, 1973, and adds that:

Nonetheless, I have not committed any offense whatsoever, nor transgressed any rule of honor; on the contrary, I showed myself to be an opponent of those that did. Consequently, I can only accept that I be granted through executive pardon (or under the “inspiration of magnanimity” what I am legally entitled to. [...].[FN11]

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

25. Finally the petitioner observes that:

It is wrong to state that (my) former claim has been remedied by rescinding the situación de reforma [...] Even though , when this situación came to an end, the material damages which I bore for a quarter of a century (along with my family) because of being cashiered and loss of my military status, title, rank and right to wear uniform, the humiliation that this involved, exposing

me publicly as a person without honor, is not satisfied by just restoring what was ultimately mine, adding some material concessions, and turning the page as if nothing had happened. As a result, there is a continuing obligation for reparations for the wrong unjustly caused, for those for whom money is not enough [...]. It is a matter of vindicating the values of (true) honor [...].^[FN12]

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

B. The position of the State

26. In its response of June 13, 1995, the State argued that the allegations are inadmissible of non-defense and lack of guarantees in the internal disciplinary action of the Tribunal de Honor, established by the General Command of the Army in 1972. This was because the petitioner had “resigned from them unilaterally and voluntarily at their administrative and jurisdictional headquarters”. According to the State, the petitioner has admitted his voluntary absence at the proceedings, so cannot allege non-defense or lack of guarantees in these.

27. The State recognizes that the petitioner exhausted domestic remedies. The State points out that the petitioner appealed against the decision of the Tribunal de Honor through the corresponding administrative and jurisdictional channels, “having exhausted both”. His action for nullification was rejected by the Tribunal of Administrative Contention, the maximum judicial organ for administrative matters which ruled rejecting the petition, arguing that “...the action of Mr. Tomás E. Cirio could not validly be initiated since the right of the petitioner to do so had expired.”

28. The State alleges that the petitioner was aware of the 1973 and 1974 resolutions and that the petitioner failed to exhaust domestic remedies at that time, as he could have done before the Tribunal of Administrative Contention by filing an action for nullification. Thereafter, on October 23, 1990, nearly twenty years after his transfer to the situación de reforma and five years after the restitution of democracy in Uruguay, the petitioner filed an action for nullification against the 1974 resolution. This was found to be time-barred, his right to file it having expired.

29. The State sustains that throughout this process and in all its various stages, constitutional principles were upheld. Moreover, it emphasizes, the action was filed in 1991, when democratic conditions in Uruguay prevailed.

30. The State also submits that the petitioner pursued an action for damages against the Military Center in the First Level Civil Court of the Eighth District whose admissibility was rejected on account of time limits.

31. The State alleges that even though the petitioner’s situation does not accord with the criteria used for reparations agreed between the Executive and the National Defense Commission of the Uruguayan Senate, the petitioner’s case was reviewed in 1994 and the pension benefits relating to the situación de reforma were restored, as set out in a Ministry of Defense resolution

in June 1994. This review was based, the State maintains, not on the legitimacy or opportune nature of the petition, rather on a superior consideration of seeking to consolidate once and for all the process of national peacemaking. The State alleges that this resolution was emitted in order to “temper the one-time severity with which the former officer may have been judged, within its discretion for doing so at a critical moment for the nation, but without this signifying at all that it involved recognition of an illegitimate or unlawful situation that needed to be reverted (sic).” At that moment, with the consent of the petitioner, the pension payments were unified from those paid during the situación de reforma. The reparation made effective by the Executive on June 14, 1994, was fully backed up by the Tribunal of Administrative Contention in its ruling No 35 of February 21, 1994. The State also maintains that if it was the case that the petitioner had suffered unequal treatment, this ended up working to his benefit, since his separation from the armed forces took place outside the time frame established in the guidelines for reparations.

32. In its additional observations of February 14, 2002, the State, through the Ministry of Defense, disagrees with some of the facts presented by the petitioner. It maintains that on July 19, 1972, the petitioner sent a note to the president of the Military Center, in which he submitted his resignation as a member of it, setting out his discrepancies with the resolution of the extraordinary assembly on June 4, 1972, at which he was present. He also requested that he be given the necessary surety to request from the municipal authorities the removal of his father’s remains from the Social Pantheon (Panteón Social). In this letter, he made a series of affirmations questioning the activities of the armed forces in the struggle against subversion. This letter, according to the Ministry of Defense, was made public, since it was read out by the then legislator Zelmar Michelini on July 27 and 28 before the national parliament and this was picked up by the press. On October 6, 1972, the Minister of Defense resolved to place the officer in question before the Tribunal de Honor, without prejudice to putting this matter before the Criminal Prosecutor for having published the letter in the written press.

33. On November 7, 1972, the Tribunal General de Honor (hereinafter the “Honor Tribunal”) notified the petitioner that it had been decided to submit him to the jurisdiction of the same. On November 8, the petitioner attended and was informed of the reasons for his submission to the Tribunal. He questioned the fact that the notification had been made to his wife, and not directly to himself. Verbally, he challenged the members of the Tribunal as having been present at the extraordinary assembly of the Military Center. The challenge was considered and the president and one of the two members of the Tribunal were changed, as well as a secretary to the Tribunal and an assistant secretary. In other words, only one of the original Tribunal members remained. He asked the reasons of his being submitted to the Tribunal be put in writing, but this was denied by the president of the Tribunal

34. On November 16, 1972, Major Cirio appeared before the TGH. The president of the Tribunal asked him whether he was going to make use of the three days contemplated in Article 178 of the Rules of Procedure. To this question, Major Cirio requested that the Tribunal provide him with a certified copy of the typewritten version of the minutes of the extraordinary assembly of the Military Center on July 4, 1972, an authentic copy of the legal advice received by the Minister of Defense prior to the calling of the tribunal, and finally a written version of the presumed facts imputed to his person, linked to the respective Articles of the Rules of Procedure of the Tribunales de Honor. The Tribunal let it be known to him that it did not possess a copy of

the minutes referred to, since these had not been the object of analysis by the Tribunal. Similarly, the petitioner was informed that its own competence was also not the object of analysis. The Tribunal agreed to provide the petitioner with the detail of the imputations. This was done on November 17, within the three-day period

35. The State also alleges not to have found the register of any claim presented by the petitioner to the Minister of Defense about to the supposed incompetence of the TGH to judge him, owing to his status as a retired officer. Furthermore, in his first appearance he had stated "...I want to have in my possession the legal status of the Tribunal, but this does not mean that I oppose, I recognize its competence, logically I am subject to it..." Nevertheless, Major Cirio made it known to the Tribunal that he wished to withdraw from it. In view of this, the TGH proceeded to invoke Article 165 of the Rules of Procedure which state "if the accused, without proper motive in the view of the Tribunal, fails to concur or does not wish to give evidence, he will be judged to be in rebellion (en rebeldía)."

36. On November 22, the TGH made its ruling, establishing that the petitioner came under Section D of Article 108 of the Rules of Procedure "dismissed for very grave violation". On November 25, the petitioner issued a note to the Tribunal in which he reiterated that in his opinion it was not competent, and that as far as he was concerned there existed absolutely no guarantees, and for this reason he requested that he be given the grounds on which the Tribunal reached its ruling and for this to be reconsidered. According to the Rules of Procedure, any reconsideration should take place in a hearing, in other words "listening to the accused", but this was not possible because of the stubborn refusal of Major Cirio to appear, and it was this which ultimately led to his being judged en rebeldía. The ruling of the TGH was ratified by the Executive in Resolution 46,202 of January 2, 1973. At the same time, Resolution 46,204 of the same date ruled that Major Cirio be transferred to the situación de reforma. On May 2, 1974, Major Cirio lodged an appeal against Resolution 46,204. The State points out that the time limit for lodging an appeal is ten days from that the date the impugned act was notified or published. According to the State, it does not appear in the records whether the petitioner presented himself in time, nor whether the appeal was resolved or not since it was not possible to find all the administrative antecedents owing to the passage of time. Nevertheless, the State emphasizes that it has to be pointed out that there was no appeal against the Executive's resolution which confirmed the TGH ruling that provided the grounds for transfer to a situación de reforma. The State stresses that it should be recalled that there was an institutional rupture that took place on June 27, 1973, and which lasted until March 1, 1985. It is therefore of note that Major Cirio did not appeal at a time when democratic institutions fully prevailed, but did so under a de facto government.

37. The State points out that between 1985 and 1991, a number of norms were passed to review situations within a State policy to promote national pacification. Major Cirio's situation was not included in those that were subject to reparation by the legislative and executive branches. However, according to the State, the Executive included his case in the guidelines for reparation agreed with the Senate National Defense Commission, basing this on precepts of equity and the superior consideration of achieving national pacification. As a consequence, he benefited with the inclusion of his services for the period of his dismissal – namely from January 2, 1973, when the administrative resolution was passed that transferred him to the situación de

reforma and June 14, 1994, the date of the resolution. Furthermore, he benefited from the payment for the situación de reforma being increased to that which he would have earned had he been promoted in line with section b) of Article 145 of Decree Law 15,688 of November 30, 1984, to the rank of lieutenant colonel, notwithstanding the situación de reforma. As a result of this, the calculation of for the petitioner's period of service went from 22 years, two months and 18 days, to 44 years.

38. Finally, through Resolution No. 76,161, dated December 24, 1997, the Executive gave the petitioner, along with another 41 former officers, the legal status of retired officers, ending their period of transfer to the situación de reforma, although without retroactive rights. From that moment onwards, Mr. Cirio regained his right to wear military uniform, to his title, rank and other prerogatives that might be conceded to him, and if the opportunity arose to occupy posts in the Ministry of Defense, to collect the annual bonus, and to have the right to make contributions to the Armed Forces Health Service and to benefit from the medical care that goes with it.

39. The State points out that this reparation "is based on the magnanimity which in the years prior to the coup d'état constituted the very essence of national tradition". According to the State, Mr. Cirio's case was dealt with on two opportunities, dealing with both economic questions as well as moral ones, and restoring fully his right to wear the uniform of a retired military officer, in spite of the facts that led to him being cashiered on June 27, 1973.

40. In relation to the competence of the TGH over the petitioner, the State upholds that as a retired officer he remained subject to the jurisdiction of the Tribunales de Honor due to a number of legal dispositions. For instance, Article 341 Section c) of Law 10050 (Military Framework Law) as included in Law 10757 dated July 27, 1946, establishes that "retirement has a number of specific effects among which it points out that the retiring person remains subject to military jurisdiction during the whole time in which he occupies posts in the Army and other instances, for four years from the date on which he passed into retirement.". The State argues, in its response on July 5, 2002, to the observations of the petitioner that "the concept of military jurisdiction does not include the Tribunals of Honor whose actions are of an administrative nature". Without prejudice to this interpretation of the jurisdiction of the Tribunals of Honor, the Military Framework Law establishes that the position of a member of the military ceases: for officers in (..) retirement: ...c) when they are transferred to situación de reforma in cases under review... Tribunal de Honor consequence of the judgment given by civilian tribunals, for crimes that affect the decorum or dignity of the officer or by resolution of the Executive, following judgment by the Tribunal General de Honor of the Army." According to the State, Mr. Cirio's affirmation was entirely groundless that because he was a retired officer for more than four years he could not be subjected to military jurisdiction, including that of the Tribunal de Honor. This is because 1) The Tribunales de Honor do not involve the exercise of military jurisdiction, since their function is administrative; 2) a retired officer may be subjected to the Tribunal de Honor by express mandate of the Military Framework Law, without there having been or being a time limit; and c) it was incumbent to apply the legal framework in Uruguay which involves objective guarantees in administrative rulings, without prejudice to subsequent oversight by jurisdictions independent of the Executive.

41. The State alleges that the situación de reforma does not have the scope mentioned by the petitioner, and that this is defined by the Military Framework Law No 10,050.[FN13] It also alleges that retired military officers will be reformed in the same conditions as apply to officers on active service.[FN14] For this reason, the State alleges that the Tribunal de Honor was competent to judge the petitioner. Consequently, the State alleges that the transfer to the situación de reforma was wholly legitimate, based as it was on the “grave violation” found in the Tribunal’s ruling. The State maintains that:

Logically, it is clear to all that among its competences the Tribunal de Honor of the Armed Forces has the power to judge the honor, the private and public conduct of its equals, taking into account the moral, professional and social values at any particular point in time, in accordance with its own precepts but attempting to reflect those of the entire military institution that they represent.

The accused cannot escape from this reality which has universal application for the armed forces. Due to his military standing, he was subject to his superior officers, and the parameter of their rulings is bounded by their military nature, and is not comparable to those of civilian life...

Military life in all States, among others, imposes rigorous and severe duties of obedience, respect and subordination to superior authority at all times and in all places, according to the laws and regulations in force. He who tries to evade these, for whatever motive, has to be prepared to accept the consequences. This is something that every member of the military knows and accepts when he enters the armed forces.[FN15]

[FN13] Article 362: “Reforma is understood as a special situation in which an officer finds himself who loses definitively the right to occupy a post in the Ministry of National Defense, or even in the military reserve, and may not also use any more neither title nor military uniform corresponding to the rank at the moment of being transferred to this situation”. Note of the Commission: the State cites Article 371, but the text of Law 10,050 in force in 1972/74 in the possession of the Commission, the definition relates to Article 362. In subsequent correspondence with the Commission, the State recognized and amended this error.

[FN14] Article 364, Law 10,050 (the State cites Article 373).

[FN15] Response by the State to the observations of the petitioner, September 2, 1996.

42. The State alleges that the petitioner passed to his situación de reforma in total conformity with the laws in force at the time, without him taking those actions pertinent to challenging the procedure that led him into the situación de reforma. Finally, the State makes it known that the bonus benefit (aguinaldo), which the petitioner claims, is received by retired officers in the armed forces, and consequently is not received by those who are in situación de reforma. The State adds that, in the same way, the right to care from the Armed Forces Health Service is also lost. The State argues that the loss of benefits is a legitimate consequence of transfer to a situación de reforma.

43. The State concludes that the petitioner omitted to define clearly the dispositions of the American Convention which, in his opinion, have been violated, as well as the facts that provide the grounds for his complaint. It similarly points out that the Convention entered into force for Uruguay on April 19, 1985, the date of its adhesion. Consequently, it can only be judged for acts that took place after that date.

IV. THE FACTS

A. GENERAL CONSIDERATIONS

1. The scope of review

44. In line with what was already been resolved in its report on admissibility, the Commission is competent, in accordance with Articles 26 and 51 of its Rules of Procedure, to examine and pronounce on the petition about the presumed violation of rights of equality before the law, the right to freedom of investigation, opinion, expression and dissemination, the right to protection of honor, personal reputation and private family life, the right to social security and the right to due process of law established in Articles II, IV, V, XVI and XXI of the American Declaration.

45. It also falls within its competence to examine the complaints against the Uruguayan State for violations of human rights based on the provisions of the American Convention on Human Rights, and in Article 26 of its regulations.

46. Consequently, the Commission is competent *ratione temporis* to examine and decide upon the case *sub judice* in accordance with the American Declaration regarding violations that took place before April 19, 1985, and also in accordance with the American Convention with respect to violations after April 19, 1985[FN16].

[FN16] IACHR., Report N° 24/98, Case 11,287, João Canuto de Oliveira (Brazil), April 7, 1998; Report N° 9/00, Case 11.598, Alonso Eugénio Da Silva (Brazil), February 24, 2000; Report N° 33/01, Case 11,552, Guerrilla del Araguaia - Julia Gomes Lund and Others (Brazil), March 6, 2001; Report N° 40/03, Case 10,301, 42° Distrito Policial- Parque São Lucas, São Paulo (Brazil), October 8, 2003.

47. Subject to these considerations, the Commission finds that the alleged facts and their effects over time may constitute violations of rights established both in the American Declaration and the American Convention. Hereinafter the Commission will deal on the one hand with the facts that constitute violations to the American Declaration because they took place prior to April 19, 1985. On the other hand, the Commission will deal with those facts that constitute violations and which took place after the date of ratification of the Convention.

2. The alleged reparation made under Resolution 76.161

48. The State points out that by virtue of Resolution No. 76.161, dated December 24, 1997, Mr. Cirio was granted the juridical status of a retired officer, bringing to an end his transfer to a situación de reforma, without this signifying any right to retroactivity. From that moment on, Mr. Cirio recovered his right to the use of uniform, title, rank, and other prerogatives, being able (were the situation to arise) to occupy posts in the Ministry of Defense, receive payment of the bonus (aguinaldo) and contribute to the Armed Forces Health Service for medical care. Consequently, the State considers that Mr. Cirio's case was adequately attended to, covering both the economic and moral questions, restoring fully his right to dress as a retired military officer, in spite of the facts that gave rise to his being cashiered well before the military coup d'état of June 27, 1973.

49. The petitioner claims that the Government of Uruguay never considered reparations to the moral damages inflicted on him owing to the ignominious way he was degraded. Furthermore, the petitioner upholds that Resolution 76,161 did not revoke resolutions 46,202 or 46,204 of January 2, 1973, which altered his status from that of a retired officer to the situación de reforma. Consequently, in the petitioner's opinion, there has only been partial reparation of the violations committed against him.

50. On this point, the Commission makes the observation that, as the Court has recently ruled, notwithstanding the partial restitution to which the State refers, the Commission has the competence to examine the merits of the case in hand. According to the Inter-American Court:

When the Inter-American system examined the case the facts leading to the alleged violation had already been committed. This Tribunal should remember that the international responsibility of the State arises immediately with the internationally illicit deed attributed to it, although it can only be demanded after the State has had the opportunity to provide reparation by its own means. Possible subsequent reparation made under domestic law, prevents neither the Commission nor the Court examining a case already initiated under the American Convention. It is for this reason that the position of the State of having duly investigated cannot be accepted by the Court in declaring that the State has not violated the Convention[FN17].

[FN17] I/A Court H.R., Case the brothers Gómez Paquiyauri v. Peru. Judgment of July 8, 2004, para. 75.

51. Consequently, the Commission reiterates its competence to undertake a detailed examination of the matter with respect to the presumed violating effects of the measures that were not subject to reparation and those to which Resolution 76.161 of December 1997 refers.

V. ANALYSIS OF THE MERITS

A. The alleged violation of Article IV of the American Declaration and Article 13 of the American Convention

52. According to the petitioner, the entire situation has been a reprisal for his having given his opinion freely, beginning with his resignation as a member of the Military Center, conveyed by telephone and then by letter dated July 19, 1972. In this, he pointed out his disagreements with the resolution of the extraordinary assembly of July 4, 1972, variously questioning the activities of the armed forces in the struggle against subversion. The views he expressed gave rise to: 1) the reply of the Military Center with the forwarding of a copy of the letter to the General Command of the Army; 2) the decision by the Minister of Defense to subject him to the TGH; 3) the steps taken by the TGH (in spite of its lack of competence); 4) its ruling, ordering his "disqualification for a very grave violation"; 5) the ratification of this by the Executive Branch; 6) its subsequent resolution transferring him to a situación de reforma. The petitioner alleges that his being cashiered had as its sole cause the expression of his views within the Military Center, a private institution. According to the petitioner, the expression of his views in a private letter constitutes an essential human and constitutional right. He upholds that he has been a defender of human rights and maintains that a person who points to illicit acts and brutal excesses is not a transgressor; rather those who have committed such acts. With respect to his letter being read out in the Uruguayan Congress and its subsequent publication, the petitioner maintains that he was not in a position to control the content of what is read out in the Congress or published in Uruguay.

53. The State argues that the petitioner did not ask permission to express his opinion in the assembly of members belonging to the Military Center. The State maintains that the petitioner lacked the arguments to convince the rest of the membership on the point under discussion. Days after the assembly, the petitioner sent his letter of resignation to the Military Center. The State maintains that Major Cirio questioned the actions of the armed forces in the pursuit of the struggle against subversion, and that the letter was not a private letter since it was read out aloud in Congress by a congressman belonging to the Frente Amplio party, Zelmer Michelini, and afterwards the content of the letter was published in the *Ahora* daily newspaper on September 29, 1972. Publication of this letter constituted a crime, according to the State.

54. The petitioner made it clear that because of the opinions he had made in a personal letter addressed to the Military Center, a private organization, the Commander-in-Chief of the Army ordered that he be tried by a Tribunal of Honor, in violation of the law then in force because the petitioner was not subject to the jurisdiction of the military tribunal, and his status en situación de retiro was transferred into one of situación de reforma, denying him the status and benefits to which he was entitled as a retired officer

55. In this case, the petitioner sent a letter to the Military Center, which was considered by the Center as an act of insubordination to the Armed Forces. The letter was sent on to the General Commander of the Army, who decided to take the matter seriously and institute proceedings against the petitioner by ordering the constitution of a Tribunal de Honor.

56. Article IV of the American Declaration of the Rights and Duties of Man enshrines the right to freedom of opinion and expression and the right to disseminate information and ideas by whatever means:

Every person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever.

57. The Inter-American Court has established that “The freedom should not only be guaranteed with regard to the dissemination of information and ideas that are perceived favorably or considered inoffensive or indifferent, but also with regard to those that offend, are unwelcome or shock the State or any sector of the population” [FN18].

[FN18] I/A Court HR., Case Ivcher Bronstein, Judgment of February 6, 2001, para. 152.

58. Freedom of expression constitutes one of the essential pillars of democratic society and one of the essential conditions for the progress and self esteem of any individual. It is applicable not only to “information” and “ideas” that are perceived favorably or seen as inoffensive or as something indifferent, but also those that offend, surprise or annoy. These are the requisites for pluralism, tolerance and the broad mindedness, and without them there is no democracy.

59. As established under Article 13, this freedom is subject to restrictions which, however, must be interpreted strictly, and the need for any such restrictions must be convincingly established. The text of Article 13 of the Convention sets out in its relevant provisions:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. Respect for the rights and reputation of others; or
 - b. The protection of national security, public order, or public health or morals. (Emphasis added)

60. The facts show that the petitioner, by means of a letter of resignation addressed to the Military Center, sought to resign from the said Center, a private organization, on account of a declaration that the Center had made defending actions by the military which the Center called in response a “campaign to discredit the Armed Forces carried out at every level”. This personal letter was then relayed to the commander-in-chief of the Army, who convened a Tribunal de Honor that essentially judged the petitioner for the crime of insulting military honor. According to the petitioner, the Tribunal adduced as “detailed causes” each and every one of the views expressed in his letter to the Center. According to the petitioner, he exercised his right to communicate his views freely and the Center, a private entity, had no reason to pass on the content of the letter to the commander-in-chief of the Army. Furthermore, the commander-in-chief, the petitioner alleges, had no reason to order the convening of a Tribunal de Honor on the basis of a private note that did not concern internal discipline within the Army.

61. The petitioner's "disqualification for a very grave violation" and his transfer to a situación de reforma undoubtedly corresponded to "ulterior responsibilities" with respect to the exercise of his freedom of expression. The Commission ought now to consider if the "ulterior responsibilities" violated Article IV of the Declaration.

62. The petitioner alleges that it was not foreseeable how the Military Center would react to his letter of resignation, at least that it was not foreseeable that his resignation would be rejected and that a Tribunal de Honor would be established to try him and to impose a life-time punishment involving the deprivation of his status and benefits. Although the Commission agrees that the precise reaction of the State was not foreseeable, it warrants mentioning that the environment in Uruguay in mid 1972 was tense and civil liberties were rapidly being infringed upon. The Government of Uruguay, on April 15, 1972, declared a "State of Internal War" in its efforts to destroy the "Tupamaro" guerrilla movement and enacted, at the request of the Executive, various measures that temporarily suspended a number of constitutionally guaranteed rights.

63. The Inter-American Commission on Human Rights, in its "Report on the Situation of Human Rights in Uruguay" described the deteriorating legal situation prevalent in mid 1972.[FN19] Law 14,068 of July 10, 1972 entitled "De lesa Nación" added new crimes to the Military Penal Code, some of which replaced similar provisions of the regular Penal Code. Using this procedure, prosecution of these crimes was transferred to the military courts, even though the accused might be civilians charged with "subversive activities". In addition to the crimes of "lese majesté", the military judges were to apply the preexisting provisions of the Military Penal Code when prosecuting civilians, including Article 58 thereof, which defined the crimes that affected the moral fiber of the Army and the Navy:

For public mockery of constitutional institutions and lack of proper respect for the flag, the shield or any other emblem of the nation in verbal, written or by acts, or adherence to any system other than the democratic republican system with which the country has been sovereignty endowed.

For similar contempt of the Army and the Navy (Air Force) and even for mere criticism thereof, when such criticism is aimed at attacking the institution itself and not at correcting its defects.

[FN19] OEA/Ser.L/V/II.43, doc. 19, corr. 1, January 31, 1978.

64. Consequently, in the political environment prevalent in Uruguay in 1972, which anticipated the irretrievable interruption of the democratic order, it was to some extent foreseeable that criticism of the military would lead to some form of reprisal.

65. The adjective "necessary", in the way it is interpreted in the Inter-American system implies the existence of "pressing social need".[FN20] In exercising its supervisory jurisdiction, the Commission should examine the impugned action of the State in the light of the case as a whole, including the comments made against the petitioner and the context in which these were

made. In particular, it should be determined whether the actions taken by the State were “necessary to ensure the protection of national security, public order or public health or morals.”

[FN20] I/A Court H.R., Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85 of November 13, 1985 at para. 46.

66. The Commission has upheld that protection of human rights does not end at the gates of military barracks[FN21]. National authorities are not entitled to restrict freedom of expression unduly. In the Robles case the Commission found that the attacks on General Robles were aimed at limiting his freedom of expression and opinion in violation of Article 13 of the Convention, to prevent him stating his position with the respect to the violation of human rights perpetrated by the Armed Forces[FN22].

[FN21] See Report N° 43/99, Case 11.430, Francisco Gallardo Rodriguez (Mexico) October 15, 1996; Report N° 20/99, Case 11.317, Rodolfo Robles Espinoza and sons (Peru), February 23, 1999.

[FN22] See Robles, *id.* para. 145.

67. To evaluate whether the measures taken by the commander-in-chief of the Army corresponded to a “pressing social need” and were “proportionate to the legitimate objective sought”, the Commission will consider the declaration impugned in the light of the case as a whole.

68. The contents of the letter included some hard-hitting declarations about the Uruguayan Armed Forces. The Uruguayan Chamber of Representatives had questioned the defense minister about the death by torture of a civilian named Luis Carlos Batalla while in military detention. Responding to the questioning, the assembly of the Military Center reacted with a declaration that denounced the “campaign to discredit the Armed Forces”. The petitioner’s letter of resignation was a reaction to this last declaration. The petitioner was ironical about the allegation of the Military Center with respect to the death of Batalla, attributing this not to the torture he had suffered but to “falling on a stone”. The petitioner said in his letter that some of his colleagues stood accused of [crimes] ranging from robbery to the collective assassination of defenseless persons with no conceivable links to subversion” and that these soldiers should be “punished in exemplary form” for having “tarnished the uniform of the army using it to cover up their excesses, their outrages and their sadism”. [FN23]

[FN23] See E.C.H.R., Grigoriades v. Greece, Judgment of November 25, 1997, para. 47.

69. In the European Court case, *Grigoriades v. Greece*, an army officer was convicted of the crime of insulting the army. The officer had discovered abuses committed against conscripts and denounced them.[FN24] In turn, criminal and disciplinary proceedings were initiated against him. Although he was acquitted of the criminal charges, as a disciplinary penalty, additional time was added to his military service. He requested and was granted leave and deserted, incurring new criminal charges. In response, he sent a letter to his commanding officer incurring more criminal charges for insulting the army. The European Court noted that “The letter did not contain any insults directed at any individual. More importantly, the letter was not a public document, having been sent only to the applicant’s commanding officer; to the extent that it had later come public that had been due solely to the latter’s actions in bringing about the applicant’s prosecution.”[FN25] The European Court found a violation of the officer’s right to freedom of expression (Article 10 of the European Convention). Major Cirio also maintains that he did not make his letter public and he does not know how it came to be read in Congress.

[FN24] *Id.*

[FN25] *Id.* at para. 42.

70. Prior to subjecting Major Cirio to proceedings before the Tribunal de Honor, the State should have carried out an “exhaustive investigation of the truthfulness or falsehood of his allegations”, as the Commission noted in its decision on the Robles case.[FN26] In this context, the Commission admonished Peru for prosecuting General Robles in his attempt to defend human rights:

. . . in a democratic society, revealing criminal acts—particularly when they involve human rights violations committed by state officials—cannot lead to criminal prosecution. Criminalizing allegations about human rights violations is a means of repressing the victims and those individuals who defend human rights and strive to keep checks on abuses committed by the State’s security forces. When a state refuses to conduct an investigation into such allegations and makes no effort to establish the truth of the matter, preferring instead to prosecute those who made the allegations, it is violating its duty to investigate the reported crimes and, in general, to protect human rights.[FN27]

[FN26] Robles case, *supra* note 21 at para. 101.

[FN27] *Id.* at para. 102.

71. In lieu of prosecuting the whistle-blower, the Commission states that there is an “obligation”, “incumbent on each and every public official, to use all the means available to him to denounce the criminal acts of which he becomes aware.” And following the denunciation, the State has a concomitant responsibility to investigate serious crimes as soon as such allegations are made.[FN28]

[FN28] Id. at para. 104

72. The Commission in the Robles case noted further, that often the military initiates proceedings for “insulting” the armed forces in order to cover up crimes committed by the military:

. . . the Military Justice system has been used to repress criticism, opinions and denunciations about the actions of its officers and the crimes they have committed. In this, the Military Justice system has made particular use of the crimes of undermining the Armed Forces and of insulting a superior, holding that allegations of criminal acts constitute “slandorous phrases” or “insults”. The Commission believes that undermining the Armed Forces or insulting a superior are not appropriate terms when applied to the crimes for which they were created. In order to maintain a level of discipline suitable to the vertical command structure needed in a military environment, but that they are totally inappropriate when used to cover up allegations of crimes within the Armed Forces.[FN29]

On this point, the Commission concluded that:

This situation is incompatible with the principles of a democratic society, where the information available about the activities of public officials should be as transparent as possible and accessible to all social groups. Allowing criminal definitions that can be used to curtail freedom of information and the free dissemination of ideas and opinions, particularly in cases involving human rights violations and, consequently punishable acts, is unquestionably a serious violation of freedom of thought and expression and, above all, of society’s right to receive information and to control the exercise of public power.

[FN29] Id. at para. 151.

73. The Commission concluded that General Robles was arbitrarily made to face criminal proceedings before the military courts in retaliation for revealing the involvement of officers of the Peruvian Armed Forces in criminal acts, which constitutes an “abuse of power” harmful to General Robles’ rights. The Commission concluded that although the exact motive for the criminal charges could not be determined, it was obvious that the campaign of harassment against General Robles was real.[FN30]

[FN30] Id. at para. 108.

74. The Commission considers that the facts of this case with respect to the right to freedom of expression bear a relation to the preceding ruling of the Commission in the Robles case. Consequently, the Commission concludes that the trial of Major Cirio for criticizing the actions of members of the armed forces cannot be justified as a necessary limitation in a democratic

society. Nor can it be justified as a licit means of protecting national security, public order, public health or public morality.

75. Clearly it is open to the State to impose restrictions on freedom of expression where there is a real threat to military discipline. It is not, however, open to the State to rely on such rules for the purpose of stifling the expression of opinions, even if they are directed against the army as an institution. In the present case, the petitioner sent a letter of resignation to the Military Center, which the latter considered insulting to the armed forces and led to the convening of a Tribunal de Honor, in the same way that General Robles' criticism of the armed forces resulted in criminal charges and harassment against him. While it is true that the contents of Major Cirio's resignation letter included certain strong remarks concerning the armed forces, the letter was not published by him or disseminated by him to a wider audience. It did not contain insults directed at the recipient or any other person. Consequently, the Commission considers the objective impact on military discipline to have been minimal and considers that the prosecution of the petitioner in a Tribunal de Honor not to be justified as "necessary" to ensure "the protection of national security."

76. For the reasons laid out, the Commission concludes that the Uruguayan State violated to Major Cirio's detriment the right of freedom of expression enshrined in Article IV of the American Declaration. In view of the fact that the violation of the freedom of expression was not fully remedied following the entry into force of the American Convention, the Commission concludes that a violation has occurred to Article 13(2)(b) of the American Convention read jointly with Article 1(1) of the same. In particular, the Commission notes that although Resolution 76.161 of December 24, 1997 by the Ministry of Defense restored the status of retired officer to the victim, it did not revoke Resolution 46.202 of 1972 by which the Executive endorsed the decision of the Tribunal de Honor. This constituted in the opinion of the Commission a violation of Major Cirio's victim's freedom of expression.

B. The alleged violation of Article 11 of the American Convention and Article V of the American Declaration

77. The petitioner alleges that the situación de reforma to which he was transferred on account of his resignation from the Military Center constituted a violation of his rights to protect his honor, personal reputation and private family life. With regard to his honor and personal reputation, the petitioner made clear that the situación de reforma to which he was transferred was morally degrading on account of his being unable to use his uniform, losing his right to use his title and rank, and inability to take up posts in the Ministry of National Defense.

78. According to the State, an officer's transfer to the situación de reforma brings with it the loss of certain military honors, like the right to use uniform, title and rank and a prohibition on occupying posts in the Ministry of National Defense. The State points out that the income of a retired officer turns into that of the reforma, not falling overall but the right to remuneration is distributed in the following form: 1/3 is received by the reformed official and the remaining 2/3 by his immediate family with the pension rights. In this case, the 2/3 which is subject to Major Cirio's claim, estimated at US\$116,000, was collected by his wife and children. Furthermore, when the children come of age, what they no longer receive increases what the other

beneficiaries receive, which means that no economic loss is incurred. With respect to moral injury, the State points out that “the real moral injury has been fully remedied to the extent that the Executive, in a public and well-publicized act, restored his status as a retired officer.”

79. The petitioner recognizes that 2/3 of his remuneration in his situación de reforma was paid to his wife and children, but “this method of payment, as well as having been a stigma and humiliation for the accused, arose out of his transferal to the situación de reforma. The petitioner maintains that he “should have been paid the total of his remuneration directly”. The petitioner points out that transferal to the situación de reforma meant 1) non-payment of the annual bonus received by all officers in retirement and their assignees; 2) loss of the right to medical care from Military Health and expulsion from the armed forces’ cooperative; 3) no possibility of credit, along with humiliation as a person publicly exposed for dishonor. Transfer to situación de reforma implies becoming a non-person, as well as very serious moral injury to the officer punished, at a time when, in the opinion of his colleagues in the army, being degraded to situación de reforma was reserved for pederasts and thieves.

80. On December 24, 1997, by virtue of Resolution 76,161 of Ministry of Defense, the petitioner recovered his status as an officer, having his situación de reforma rescinded, but with no retroactive rights. The petitioner notes that Resolution 76,161 did not revoke Resolutions 46,202 or 46,204 of January 2, 1973, which changed his status from that of retirado to reforma; consequently this resolution, in the opinion of the petitioner, is only partial reparation for the violation he has suffered.

81. The Commission observes that the effects of these measures on the private and family life of the petitioner began in 1972, a date at which the American Declaration was fully in force for the Uruguayan State. These effects extended over a period of time, producing judicial implications for the State once American Convention came into force. As already established, in this case the Commission has full competence to examine both possible violations of the Declaration as well as of the Convention, and to interpret obligations under the American Declaration based on other similar legal instruments that enable the objective and finality of the instrument to be understood.

82. Article V of the American Declaration provides that:

Every person has the right to the protection of the law against abusive attacks, upon his honor, his reputation and his private family life.

83. At the same time, Article 11 of the American Convention provides that:

1. Everyone has the right to have his honor respected and his dignity recognized
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

84. The petitioner has pointed out that the case against him before the Tribunal de Honor, following his statements in his resignation letter about human rights violations by the armed

forces being made public, was designed to punish him and degrade him nationally among all members of the army and in the eyes of public opinion, by means of a ruling that devalued the importance of his declarations and punished him for having besmirched the “honor” of the armed forces and its members.

85. For its part, the State, recognized that the petitioner’s dismissal from the armed forces was due to political, ideological motives or mere arbitrariness, and that this was the reason for which the petitioner had his status as a retired officer restored to him in 1997, nullifying the situación de reforma, the disciplinary measure imposed by the Tribunal de Honor.

86. Appearance before the Tribunal de Honor is based on the violation of moral norms affecting the dignity and honor of the armed forces. Article 369 of the Military Framework Law No 10,050 points out:

The Tribunales de Honor of the Army have as their duty to judge officers [...] when such officers commit acts that affect the honor and prestige of the Military Institution.

87. Article 372 provides:

The Tribunales de Honor are limited to judging the moral aspects of those matters presented to them.

88. Ironically, a tribunal which ought to judge the honor and morals of soldiers punished the petitioner for having denounced violations of human rights committed by the armed forces. According to the petitioner, the Tribunal de Honor “functioned as a tribunal of conscience: it worked as the “legal” instrument to remove someone who, knowing something and guessing at the rest, openly dared to express his innermost convictions on a matter that did not concern him except as a man and as a citizen.”

89. The State has also pointed out that:

Military life [...] imposes rigorous and severe duties of obedience, respect and subordination to a superior at all times and in all places, according to the laws and regulations in force. He who tries to evade these, for whatever motive, has to be prepared to accept the consequences. This is something that every member of the military knows and accepts when he enters the armed forces.

90. In this sense and in the context of the case under review, the State appears to support the notion that “military life” imposes, among other things, subordination to superior authority that does not allow a member of the military who is witness to a violation to make this known and seek remedy. The Commission does not consider that denouncing violations of human rights as being incompatible with “the rigorous and severe duties of obedience, respect and subordination to a superior”, rather, on the contrary, it complements it and for this reason no member of the military should suffer the “logical consequences” in denouncing the aforementioned violation.

91. In the present case, the petitioner has pointed out that he has had his honor and reputation damaged by the imposition of a penalty that subsequently the State recognized as “arbitrary”, and furthermore the facts that gave rise to the denunciation and the subsequent penalty, were proved and verified as such at the end of the dictatorship in Uruguay. In spite of having his status as a retired officer restored, the petitioner feels and upholds that his honor has not been vindicated by the State.

92. Since the petitioner maintained that the Tribunal de Honor had no jurisdiction over him because he was a civilian, he did not take part in the trial and was judged in absentia. On November 22, 1972, the Tribunal ruled disqualifying the petitioner for "a very grave violation" declaring him unfit to form part of the officer corps. In January 1973, the Executive approved the ruling of the Tribunal and the petitioner was transferred to the situación de reforma. The Ministry of Defense established his remuneration whilst he was in reforma.

93. Article 362 of Law No 10,050 defines reforma as "the special situation in which an officer finds himself who definitively loses the right to employment in the Ministry of National Defense not even as a reservist. He cannot use either the title or the military uniform that corresponds to his rank at the moment of being transferred to this situation". According to the State, la reforma can come about “as a consequence of a ruling by the competent judges or tribunals and by the Tribunal General de Honor of the Army, that places an officer in a situation of physical or moral degradation” (Article 372 of the Law 10,050). The Tribunales de Honor of the Army “are duty bound to judge the conduct of officers (...) when such officers commit acts that affect the honor and prestige of the Military Institution” (Article 378). According to the petitioner, transfer to la reforma is “to become a non-person,” since it implies: 1) disqualification and loss of military status; 2) loss of the right to use uniform; 3) humiliation and public exposure as a person without honor; 4) division of his pension between his relatives in the proportion of 2/3 to them and 1/3 to him; 5) non-payment of the annual bonus (aguinaldo); 6) loss of the right to care from Military Health; 7) expulsion from the armed forces’ cooperative; 8) serious impairment in the ability to raise credit; and 9) a bar on employment in the Ministry of National Defense.

94. In the Robles case, the Commission noted that authorities of the State considered General Robles “as guilty of betraying the Peruvian army and discrediting the Armed Forces by reporting the involvement of several ranking military officers in crimes and human rights violations. The way in which General Robles has been denigrated (. . .) are an affront to General Robles’s dignity and honor in that they have directly harmed his name and reputation, particularly so when the (. . .) allegations made by General Robles have been duly proven by the competent judicial authorities. The campaign to discredit General Robles also shows that power has been abused in the campaign of public harassment waged against him to sully his name among the general public and within the Armed Forces”. [FN31] Similarly, the Uruguayan authorities stripped Major Cirio of his status and benefits as punishment for criticizing the activities of the Armed Forces in violating human rights, and even when they recognized the political and ideological nature of this punishment, they did not repeal the offending resolutions and provide complete reparations (restitutio in integrum). Major Cirio seeks complete restitution of his honor and dignity by means of this case, which has been denied to him by the Uruguayan authorities,

despite the recognition of the State of the interruption of the democratic process and the excesses committed by the armed forces during this period in Uruguayan history.

[FN31] IACHR, Case Robles, supra note 21 at para. 143.

95. The Commission observes that the State violated the right to honor, to the detriment of Major Cirio, presenting him as lacking in moral and military honor, by stripping him of his status and benefits as punishment for criticizing the activities of the armed forces, and by degrading him both in rank and status for having “affected the prestige” of the armed forces by stating that its members had committed violations of human rights. From the foregoing, it is concluded that the Uruguayan State violated, to the detriment of the petitioner, his right to dignity and honor enshrined in Article V of the American Declaration with regard to facts and their consequences prior to April 19, 1985. Equally, the Commission concludes that the facts described, whose consequences continue to date, and by virtue of the ratification by the Uruguayan State of the American Convention, the State is responsible internationally for the violation of this right, enshrined in Article 11 of the American Convention, for the deeds and their implications after April 19, 1985.

C. The alleged violation of Articles 8 and 25 of the American Convention and Article XXVI (right to due process of law)

96. According to the State, Article 341 section C) of Law 10,050 (Military Framework Law) provides “that retirement has specific consequences among which it points out that the retired officer remains under military jurisdiction during the whole period in which he holds posts in the Army and other instances, for four years from the date of his passing into retirement”. The State draws a distinction between military jurisdiction, which includes judgment for military misdeeds and the Honor Tribunals the sphere of competence of which is administrative. Article 234 of Law 10,050 of September 18, 1941 envisages “military status is lost for officers on active service or retirement . . . (C) when transferred to the situación de reforma in cases ruled upon by a Military Tribunal or by an Honor Tribunal, as a result of sentencing (...) or by substantiated resolution of the Executive, following sentencing by the Tribunal General de Honor of the Army. Article 373 of the aforementioned law provides that “retired officers whose health or conduct is subject to A), B), C) of the preceding article will be reformed under the same conditions as officers on active service.

97. The petitioner, whose response was communicated to the State on October 22, 1996, pointed out that the Framework Law No. 10,050 of 1941 was replaced by the Framework Law No 10,050 of 1946, which was the law in force at the moment the facts of the present case took place. In the 1946 Framework Law, the old Article 342 was eliminated and substituted by Article 344(c) which provides that “retirement has the following consequences: C) A retired officer remains under military jurisdiction for all the time in which he performs duties within the Army, and in other instances, for four years calculated from the date of his retirement” (emphasis added).

98. In its response on January 3, 1997, the State acknowledges that the Framework Law No. 10,050 of 1946 was the law in force at the time, although it sustains that it was modified by Law 10,057 and that Law 10,050 was never repealed. The State declares that “The norms cited in the prior version of Law 10,050 were not modified by Law 10,757, the only change being the enumeration of some articles of the aforesaid, those pertinent to the case, without modification to their content”.[FN32]

[FN32] Response of the State, January 3, 1997, in the files of the Commission.

99. Having examined the Framework Law, No. 10,050, of 1946, the Commission notes that the declaration of the State is not wholly correct. As mentioned above, the crucial aspect, former Article 342 was eliminated, and this article is all the more significant because it invested the Tribunal de Honor with jurisdiction over retired members of the armed forces. Article 344(c) of the reformed law provides that a retired military officer will be subject to military jurisdiction “for the whole period that he performs duties within the Army” which the State has not alleged, or “during four years calculated from the date of his retirement”, and the petitioner makes clear that he had been retired for six years when the order was made to establish the Tribunal de Honor.

100. In its response on January 3, 1997, the State deals with this point, acknowledges that it had cited the Framework Law of 1941, but then alleges that there were no relevant changes in the law, making no reference to the fact that Article 342 was eliminated and not dealing with the contradiction that Article 344(c) represents to the State’s position. Since the Tribunal had no jurisdiction over him, the petitioner refused to legitimize it with his presence, and on November 20, 1972, he withdrew from the hearing. The Tribunal took the decision to judge him in absentia. For that reason, the petitioner did not have the chance of voicing his defense.

101. According to the State, the proceedings of the Tribunal General de Honor were in full compliance with this right. After citing the relevant dispositions and their due fulfillment, the State argues that even if Major Cirio questioned the competence of the Tribunal, he did not lodge an appeal to this end with the competent authority, the Ministry of National Defense, and had recognized, at one point, the competence of the Tribunal.

102. The Commission notes that by the date on which the Tribunal Militar de Honor was convened, the proceedings carried out, and Major Cirio found guilty, the American Declaration had full force of law for the Uruguayan State. Similarly, the Commission notes that the lack of an available appeals procedure to obtain judicial remedy for the violations described previously is clear, both at the time of the military dictatorship as well as after the restoration of democracy and the ratification of the American Convention by the State. Consequently, the Commission will focus on the alleged violations to the right to due process of law provided for in Article XXVI of the American Declaration, and the right to judicial protection provided for in Article 25 of the American Convention for those violations that took place after April 19, 1985.

103. Article XXVI of the American Declaration provides that

Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

104. As in the Inter-American Court's judgment in *Cesti*[FN33] , Major Cirio is a retired member of the armed forces; he retired in 1966, and retained no military functions. Under Uruguayan law Major Cirio was considered a civilian, a private citizen. In *Cesti*, the military court observed that *Cesti*'s status "was that of a retired member of the armed forces and, therefore, he could not be judged by the military courts".[FN34] Consequently, the Inter-American Court found that the proceedings to which Mr. *Cesti* had been submitted "violated the right to be heard by a competent tribunal, according to Article 8(1) of the Convention".[FN35] The State in its response dated July 5, 2002, maintained that the Tribunals de Honor were not part of the military justice system but were "of an administrative nature", although they were comprised of military officials. The State does not argue that the Tribunals of Honor were ordinary civilian courts or that a third justice system, parallel to the civilian and military court systems, exists in Uruguay.

[FN33] I./A Court H.R., *Cesti Hurtado Case*, Judgment of September 29, 1999.

[FN34] *Id.* at para. 151.

[FN35] *Id.*

105. As the Inter-American Commission and Court have established, one of the fundamental attributes of the right to due process of law is the right for the person accused to be heard by a competent judge or tribunal, independent and impartial and established in accordance with pre-existing laws. Since the law (Framework Law No. 10,050 of 1946) excluded the petitioner from its jurisdiction, the Commission finds that the petitioner was judged illegally by the Tribunal de Honor, in violation of Article XXVI of the American Declaration.

106. Article 25(1) of the American Convention provides that:

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate their fundamental rights recognized by the Constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

107. The American Convention requires that States provide effective recourse to victims of human rights violations. In this case, Major Cirio has not had recourse of this sort to protect himself against the acts of harassment to which he has been and continues to be victim.

108. Indeed, Major Cirio has lodged a series of appeals to protect himself from arbitrary acts committed by the military authorities and their tribunals. The petitioner states that in 1973, he exhausted administrative remedies arising from the decisions of the Executive and that on May 2, 1974, he lodged an appeal before the Ministry of Defense for the nullification of Executive

Resolution No. 42,204, in order to have his status as retired army major restored to him. Owing to the military dictatorship that Uruguay was experiencing at the time and fearful for his own safety and that of his family, the petitioner chose not to pursue his claim.

109. On April 30, 1991, the petitioner once again lodged an appeal for the nullification of Executive Resolution No. 46,204 and Resolution 6,540 issued by the Ministry itself which had violated his rights. In this appeal, the petitioner alleged the nullity of the resolutions by virtue of a) the lack of competence on the part of the Tribunal de Honor since the petitioner did not come under its jurisdiction, b) the lack of any right of defense, and c) violation of Article 66 of the Uruguayan Constitution and other legal norms and regulations. The Ministry of Defense made no pronouncement with respect to the appeal lodged by the petitioner.

110. On October 23, 1991, the petitioner initiated an action in the Tribunal of Administrative Contention against the state for the annulment of the aforementioned resolutions. On March 10, 1993, The Tribunal ruled declaring the action could not be validly initiated because the right of the party seeking to initiate it had expired. The petitioner received notification of the ruling on April 26, 1993.

111. The State points out a series of guidelines for reparations applicable to administrative procedures for military personnel dismissed from the armed forces for political, ideological reasons or because of mere arbitrariness in the period between February 9, 1973 and February 28, 1985. Major Cirio does not take legal action in this period, doing so only on April 30, 1991, with an appeal for the nullification of the Resolution No. 46,204 by the Executive of January 2, 1973, and the MDN Resolution No. 6,540 dated November 20, 1973 which set his remuneration while in the situación de reforma.

112. In accordance with Uruguayan law, pecuniary claims against the State expire after four years (Law 11,925 of March 25, 1953 and Decree-Law 14,129 of June 26, 1974). This did not apply to the period between June 27, 1973 and February 28, 1985.

113. The petitioner states that he did not present a complaint during the time period set forth by the State (i.e. 1984-1988) because he did not trust that the political environment had sufficiently changed, even though the Government had been handed over to civilians by the military in 1984. It was not until 1991 that members of the military began to criticize the actions taken by the military dictatorship, and in 1991, Major Cirio presents his recourse for nullification to the Tribunal of Administrative Contention.

114. The Commission reiterates what was laid down by the Court that the right of everyone to simple and prompt recourse or any other effective recourse before competent judges or tribunals that protect them against acts that violate their fundamental rights.

Constitutes one of the basic pillars, not only of the American Convention, but also of the rule of law in a democratic society as per the Convention (...). Article 25 is closely linked to the general obligation set forth in Article 1(1) of the American Convention, by attributing the function of protection to the internal laws of the States Parties.[FN36]

[FN36] I/A Court H.R., Cantoral Benavides Case, Judgment of August 18, 2000, para. 163.

115. In the present case, the Commission must determine whether the petitioner acted reasonably in waiting until 1991 in order to exhaust his domestic remedies, when the domestic remedies already expired in 1988.

116. The Commission considers that to say that democracy returned to Uruguay in 1984 and that the petitioner should have filed immediately ignores the political situation in the country at the time. As pointed out, the military did not seize power until 1973, but already in 1972 a number of draconian laws were adopted (supra paras. 62-3). The negotiated transaction which returned political power to civilians in Uruguay in 1984 did not guarantee that the political environment was ripe for a challenge to the military's power. Seeking in 1984 the nullification of the resolutions which rendered Major Cirio virtually a non-person, in the opinion of the Commission, would have provided no possibility of an effective remedy. Furthermore, the State failed to substantiate its position that this four year window provided a simple and effective recourse by demonstrating that other individuals had succeeded in nullifying similar resolutions. It was not until December 24, 1997, fourteen years later, that the Executive, by means of Resolution No. 76.161 restored to Mr. Cirio and 41 other senior officers the status of "retirado".

117. The Commission reaches the conclusion that on different occasions Major Cirio has tried to make use of actions and recourse under the constitution to protect his rights. Such recourse was shown to be wholly ineffective in protecting the fundamental rights of the victim. For this reason, the Commission declares that the Uruguayan State has violated the right to judicial protection enshrined in Article 25 of the American Convention.

D. The alleged violation of Article 24 of the Convention (the right to equal protection)

118. Article 24 of the American Convention establishes that: "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law." Along the same lines, Article 1(1) of the Convention provides that the States must respect the rights recognized in that international treaty "without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition."

119. In the instant case, the State penalized Mr. Cirio for expressing political views, which had various consequences for the enjoyment of his military entitlements and honors, such as the right to use his uniform, title, and rank, and the prohibition to hold a position in the Ministry of National Defense.

120. The Commission considers that any distinction based on one of the elements indicated in Article 1 of the American Convention entails a strong presumption of incompatibility with the treaty. In that connection, the Inter-American Court has affirmed that:

The principle of equality before the law and non-discrimination permeates every act of the powers of the State, in all their manifestations, related to respecting and ensuring human rights. Indeed, this principle may be considered peremptory under general international law, inasmuch as it applies to all States, whether or not they are party to a specific international treaty, and gives rise to effects with regard to third parties, including individuals.[FN37]

[FN37] Inter-American Court of Human Rights, Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03, September 17, 2003, para. 100.

121. As discussed in the preceding sections of this report, the sanctions imposed on Mr. Cirio were based exclusively on the State's interest in punishing his political opinions. In the view of the Commission, the basis for said acts is neither objective nor reasonable. Accordingly, the Commission concludes that the State has violated Mr. Cirio's right to equal protection by taking punitive measures based exclusively on one of the internationally prohibited grounds for discrimination.

E. The alleged violation of Article 10 of the Convention (right to compensation)

122. Article 10 of the American Convention establishes that: "Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice."

123. In the instant case, the State recognized that the petitioner was discharged from the Armed Forces for political, ideological, or merely arbitrary reasons. His status as a retiree was therefore restored in 1997, with the discharge considered null and void, as the result of a decision by the Military Court of Honor (Tribunal de Honor Militar).

124. The Commission considers that the Uruguayan authorities violated Major Cirio's human rights by depriving him of his status and benefits, as a punishment for his criticism of the actions of the armed forces and, even though they recognized the political and ideological nature of the punishment, they did not rescind the resolutions punishing him or offer full reparations (restitutio in integrum). In light of the above, the Commission concludes that the State violated Mr. Tomás Eduardo Cirio's right under Article 10 of the Convention.

F. The alleged violations of Article 9 of the American Convention and Article XVI of the American Declaration (freedom from ex post facto laws and right to social security)

125. The Commission considers that the petitioner did not substantiate his claims regarding the alleged violation of Article 9 of the American Convention which protects the right to freedom from ex post facto laws.[FN38] Further, the petitioners alleged that the facts of the case constituted a violation of the right to social security set forth in Article XVI of the American Declaration. The Commission has already addressed this in its conclusions on violation of the rights under Articles 10, 11, 13, 24, and 25 of the Convention, and Articles IV and XXVI of the American Declaration, and therefore no separate questions need to be addressed regarding the

alleged violation of Article XVI of the American Declaration. G. Alleged violation of Articles 1(1) y 2 (obligation to respect rights, and the duties of the State to adopt legislative measures in domestic law)

[FN38] Article 9 of the American Convention provides: “No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.”

126. The violations described in this case show that the Uruguayan State did not fulfill its commitment enshrined in Article 1(1) of the Convention to respect the rights and freedoms recognized in it and to ensure its free and full exercise to all persons subject to their jurisdiction.

127. On this point, the Court has pointed out that:

The first obligation assumed by the States Parties under Article 1(1) is to respect the rights and freedoms recognized by the Convention. The exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State.[FN39]

[FN39] See I/A Court H.R., Case Velásquez Rodríguez Case (Honduras), Judgment of July 29, 1988, para. 165.

128. The second obligation is to “ensure” the free and full exercise of the rights recognized by the Convention to everyone subject to their jurisdiction. This obligation implies the duty of States Parties to organize the apparatus of government and, in general, all those structures through which public power is exercised so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of human rights recognized by the Convention and, moreover, if possible, attempt to resolve the right violated and provide compensation as warranted for damages produced by the violation of human rights.[FN40]

[FN40] *Íd.*, para.166.

129. It is a generally recognized principle of international law that non-compliance by a State involves an obligation to compensation.[FN41] The responsibility is a necessary corollary of a right. All rights of an international nature involve State responsibility. If the obligation in question is not satisfied, the responsibility carries with it the obligation to provide compensation

in an adequate form. Compensation, therefore, is the indispensable complement by non-compliance of a State in applying a convention or international commitment.

[FN41] I/A Court H.R., Case Aloeboetoe and others. (Reparations) Judgment September 10, 1993, para. 43.

130. Article 2 of the American Convention provides that:

Where the exercise of any rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention such legislative or other measures as may be necessary to give effect to those rights or freedoms.

131. The Court has pointed out that the general duty of the State, established by Article 2 of the Convention, includes the “issuance of rules and development of practices leading to an effective enforcement of said guarantees.”[FN42] The American Convention establishes the general obligation of every State Party to adapt its domestic law to the provisions of the Convention to ensure the rights enshrined in it. This general duty of the State Party implies that measures in domestic law have to be made effective.

[FN42] I/A Court HR., Durand and Ugarte, Judgment of August 16, 2000, para. 137.

132. In the case under consideration, during the de facto regime in Uruguay there was no effective recourse that the petitioner could invoke, and with the change of government there was no recourse to compensate the violation suffered. Even though the State recognized the arbitrary nature of the disciplinary action against the petitioner, it did not recognize the illegality of the action, and even though it has restored his status as a retired officer, it has not complied with its obligation to adopt measures in domestic law to compensate the injury of the petitioner’s honor and dignity to make the rights enshrined in the American Convention effective, as established by Article 2 of the same.

VI. CONCLUSIONS

133. For the foregoing reasons, the Commission concludes that through the punishment given of the Tribunal de Honor as a disciplinary measure, the Uruguayan State has subjected Mr. Tomás Eduardo Cirio to a military trial in reprisal to his denunciation about human rights violations perpetrated by members of the Uruguayan Armed Forces. The Uruguayan State has failed to comply with its obligation to respect and ensure the right to be heard by a competent, independent and impartial tribunal, established previously by law (Article XXVI of the American Declaration) and the right to judicial protection (Article 25 of the American Convention), the right to freedom of expression (Article IV of the American Declaration), the right to dignity and honor (Article 5 of the Declaration and 11 of the Convention), the right to

equality before the law (Article 24 of the Convention) and the right to compensation (article 10 of the Convention). The Commission equally concludes that in view of the foregoing violations, the Uruguayan State has failed to comply with its obligation to respect and ensure the human rights and guarantees imposed by Article 1(1) of the American Convention and to adopt the provisions in domestic law imposed by Article 2. Having concluded that these provisions of the American Convention have been violated, the Commission considers that the petitioner has not substantiated his allegations in this case with respect to the alleged violation of Articles 9 of the American Convention.

VII. RECOMMENDATIONS

134. In accordance with the analysis and conclusions of the present report,

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS RECOMMENDS TO THE URUGUAYAN STATE:

1. To nullify forthwith and to rescind retroactively Executive Resolutions Nos. 46.202 and 46.204 of January 2, 1973, Ministry of Defense Resolution No. 6.540 of December 20, 1973, and the ruling of the Tribunal of Honor that harmed him; restoring all the rights, benefits, honors and other prerogatives pertaining to him as a retired member of the Armed Forces of Uruguay;
2. To adopt all necessary measures for reparation and compensation, so as restore the honor and reputation of Mr. Tomás Eduardo Cirio;
 - a) Publication in the same daily newspapers in which the communiqué of October 5, 1972 was published (or in newspapers of the greatest circulation if the referenced publications no longer exist), in the same position and in the same manner, of a new communiqué in which the violation of the rights established here is clearly recognized;
 - b) Acceptance of his resignation from the Military Center dated July 6, 1972.
3. To promote measures that lead to the adoption of domestic legislation in conformity with the norms of the American Convention with respect to freedom of expression and due process within military jurisdiction.
4. To adopt the necessary measures so that Mr. Tomás E. Cirio and his family member receive prompt and adequate reparation, both moral and material, for the violations heretofore established.
5. The Commission agrees to transmit this report to the State of Uruguay and to grant it a period of two months to comply with the recommendations formulated. This period will be calculated from the date on which this report is transmitted to the State, which will not be authorized to publish it. Simultaneously, the Commission agrees to notify the petitioners of the approval of the report under Article 50 of the Convention.

VIII. Proceedings following the adoption of Merits Report N° 93/05

135. The Commission examined the present report during its 123^o period of sessions and on October 24, 2005 adopted Report N° 93/05, in accordance with Article 43(2) of its Rules of Procedure. The report was notified to the State on November 7, 2005 and the State was given a

two month period within which to comply with the recommendations, pursuant to Article 43(3) of the Commission's Rules of Procedure. The Executive Secretariat notified the petitioners of the adoption of the report and of its transmission to the State, requesting the petitioner's opinion with regard to the submission or not of the case to the Inter-American Court.

136. The State presented a report on January 5, 2006 in which it informed the Commission of a series of measures that had been undertaken to comply with the Commission's recommendations, mentioned above. The Commission granted three extensions to the State in light of the fact that it had adopted a series of measures intended to comply with the recommendations. The first extension was for three months beginning January 17th until April 17, 2006, the second until July 17th and the third until October 17th.

137. By means of a communication dated September 18, 2006, the State presented a letter informing that "Uruguay has fully complied with the Commission's merits report No. 93/05" and as a consequence, requests that the Commission file the case. On January 13, 2006, Mr. Tomas E. Cirio reiterated his interest in the case going to the Court "because the Uruguayan State has not completely complied with the recommendations formulated by the Commission in its report N° 93/05 adopted October 24, 2005." On October 11, 2006, General Tomas E. Cirio responded to a request of the Commission in which he states: "In response to your note of September 20, 2006, let me inform you that I consider the measures taken by the Uruguayan State by means of resolution N° 83.805 of September 4, 2006 to be satisfactory."

138. In conformity with the terms of Article 51(1) of the American Convention, the Commission must determine at this stage of the proceedings whether the State has complied with the recommendations which were issued at the relevant time. In continuation the actions taken by the State in compliance with the recommendations of the Commission will be reviewed.

Recommendation 1: The obligation to nullify forthwith and to rescind retroactively Executive Resolutions Nos. 46.202 and 46.204 of January 2, 1973, Ministry of Defense Resolution No. 6.540 of December 20, 1973, and the ruling of the Tribunal of Honor that harmed him; restoring all the rights, benefits, honors and other prerogatives pertaining to him as a retired member of the Armed Forces of Uruguay.

139. The State informed the Commission that Resolution No.83.805 of September 4, 2006, provides reparations for General (ex-Major Tomas Eduardo Cirio Barboza), who voluntarily sought the protection of Law No. 17.949 (which provides reparation for military officers who were fired, lost their jobs or were placed in a situation of "reform" for political or ideological reasons). The Resolution was signed by Dr. Tabaré Vasquez, the President and Dra. Azucena Berrutti, the Minister of Defense and it promotes him to the rank of General, effective February 1, 1986.

140. By means of an Executive Branch Resolution dated December 28, 2005 (internal number 83.329), it was resolved to revoke, with retroactive effect, Executive Branch Resolutions Of January 2, 1973 (internal numbers 46.202 and 46.204) and Resolution 6.540 of December 20, 1973 of the Ministry of National Defense, annulling the legal effects of the decision of the Military Tribunal of Honor and restoring his rights, benefits and honors as a retired officer.

Recommendation 2: To adopt all necessary measures for reparation and compensation, so as to restore the honor and reputation of Mr. Tomás Eduardo Cirio.

141. On April 21, 2006, Major Cirio presented himself at the Ministry of Defense and sought the protection of Law 17.949 and the reparation that it provided; according to the State, Article 10 of the Law applies to his situation since it establishes that such a request entails ipso jure the renunciation of any procedure pending before any jurisdiction.

142. In order to provide reparations for his honor, the Government promoted Major Cirio to the rank of General beginning February 1, 1986, reformulating his pension in accordance with his current rank, beginning September 4, 2006; without the right to retroactive payments.

143. In addition, his pension was increased 25% beginning September 4, 2006, in terms of lifetime payments and without the requirement of transmission by means of succession; the payment of the indemnification, which amounts to 24 times the pension corresponding to July 2005, is to be paid in conformity with the regulations to be established for this purpose and finally, the Government decided that General Tomas Cirio is entitled to the benefits of his rank, the honors that correspond thereto, health services and the elimination of unwarranted information from his personal file.

Promotion to General

144. The State took the decision to promote Mr. Cirio to the rank of General, an autonomous decision which had not been recommended by the Commission. The promotion to the rank of General re-established the honor and reputation of Mr. Cirio.

Recommendation 2(a): Publications

145. On December 6, 2005, the Minister of Defense published the following press communiqué in the newspapers El País, la República and Ultimas Noticias:

Communiqué of the Ministry of National Defense. We note that this Ministry, in compliance with No. 2(a) of the Inter-American Commission on Human Rights' recommendations, formulated in the case brought by retired Major Tomas E. Cirio, this Secretariat of State declares: That it does not share the opinion of the communiqué of the Military Center dated October 5, 1972.

146. In its communication dated June 8, 2006, the State pointed out that "according to the very text of the Law, with regard to those whom it covers, no degrading treatment suffered could affect his honor, his good name and the respect gained from the entire society. (...) Such concepts also refer to the publicity required by the petitioner, given that it is "the society", which recognizes the respect, honor and name of each of the military officials who suffered persecution for political or ideological reasons, and the guarantee for this is precisely that they be granted the reparation that the law prescribes."

Recommendation 2(b): Resignation from the Military Center

147. On the other hand, taking into account that the Military Center is a private entity which is not part of the structure of the State, the Ministry of National Defense sent a note to this Center transmitting the recommendations of the Inter-American Commission. As regards this communication, the victim pointed out that “it is obvious the kind of response that this institution was going to give, it would have been desirable if the State had made an exhortation rather than a mere consultation.” This point was not included in the recent correspondence of either of the parties.

Recommendation 3: To promote measures that lead to the adoption of domestic legislation in conformity with the norms of the American Convention with respect to freedom of expression and due process under military jurisdiction.

148. By Ministerial Resolution dated December 19, 2005, a Commission was created within the Ministry of National Defense to deal with this specific question. Mr. Cirio has raised no objections with regard to this point.

149. The Commission appreciates the efforts made by the State in the process of complying with the recommendations and in conformity with the provisions of its Rules of Procedure, decided, by an absolute majority of its members to not submit the present case to the Inter-American Court of Human Rights, by virtue of the Uruguayan State’s substantial compliance with its recommendations.

IX. DECISION OF THE COMMISSION AND PUBLICATION

150. For these reasons, on October 16, 2006, during its 126^o period of sessions, the Commission decided, by the unanimous vote of its six voting members, to not send the case to the Court, to approve the present report and to publish it and include it in its Annual Report to the OAS General Assembly.

151. The Commission understands that the publication of this report represents a form of reparation and restitution to Mr. Cirio for the violations of his rights. At the same time, the Commission considers that by making this report public it is taking note of the good faith with which the Uruguayan Government has employed its best efforts to completely carry out the recommendations formulated by the Commission. By making its decisions public, the Commission hopes that this action will be transformed into an example of best practices as regards the complete compliance with its recommendations.

Done and signed in the city of Washington, D.C., on the 27th day of the month of October, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Freddy Gutiérrez, Paolo G. Carozza and Víctor E. Abramovich, Members of the Commission.