OEA/Ser.L/V/II.151
Doc. 18
21 July 2014
Original: Spanish

REPORT No. 53/14
PETITION 202-03

REPORT ON ADMISSIBILITY

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ECUADOR

Approved by the Commission at its session No. 1990 held on July 21, 2014
151 Regular Period of Sessions

Cite as: IACHR, Report No. 53/14, Petition 202-03. Admissibility. Luis Bolívar Hernández Peñaherrera. Ecuador. July 21, 2014.

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I. SUMMARY

1. On March 13, 2003, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition alleging responsibility of the Republic of Ecuador (hereinafter "the State") for violations of the due process rights of Luis Bolívar Hernández Peñaherrera (hereinafter "the alleged victim") in the context of the evaluation process for his promotion to the rank of Brigadier General, which he was denied for alleged unsuitability. It is alleged that despite meeting all the requirements of the law for such purposes, the alleged victim was prevented from continuing his military career without military authorities had explained the reasons for he was considered not "eligible" for promotion. They argue that it was actually a retaliation against Mr. Hernández Peñaherrera, for promoting the income of women officers into the Armed Forces. It is also claimed that the alleged victim lacked adequate and effective remedies for discovering the reasons for which he had been denied promotion or requesting a review of the decision. The petition was initially filed by Alejandro Ponce Villacís and Mr. Hernández Peñaherrera, who subsequently accredited Mr. Íñigo Salvador Crespo as his representative (hereinafter "the petitioners"), replacing Mr. Ponce Villacís.

2. The petitioners allege that the State is responsible for the violation of the alleged victim's right to a fair trial, honor, freedom of thought and expression, equal protection and judicial protection, as enshrined in Articles 8, 11, 13, 24, 25 and 2 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), all in conjunction with the general obligation to respect and ensure rights, as provided for in Article 1(1) thereof; together with his right of petition, as established in Article XXIV of the American Declaration of the Rights and Duties of Man (hereinafter "the American Declaration"). The State contends that the complaint is inadmissible because the domestic remedies have not been exhausted and because the facts described do not constitute human rights violations but merely expresses the alleged victim's disagreement with decisions issued in compliance with the rights and guarantees enshrined in the Convention. It further contends that the IACHR may not review them because it would be acting as an appellate court.

3. After examining the position of the parties in light of the admissibility requirements prescribed in Articles 46 and 47 of the Convention, the Commission finds that it is competent to hear the claim of the alleged violation of Articles 8, 13, 24 and 25 of the Convention, in connection with Article 1(1) of that instrument. The Commission also finds that the claims pertaining to the alleged violation of Articles 2 and 11 of the American Convention are inadmissible. Accordingly, it resolves to notify the parties of the report, order publication of the report, and include it in the IACHR Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE IACHR

4. The Commission assigned the number 202-03 to the petition and, after conducting a preliminary review, on December 4, 2003, it forwarded it to the State for its response. On September 30, 2004, the State submitted its response, which was forwarded to the petitioners for their comments on March 8, 2005.

5. On November 12, 2010, the Commission requested up-to-date information from the petitioners. In their response, on January 24, 2011, they reported that the human rights violations charged in the petition were still ongoing. Said communication was forwarded to the State on January 18, 2011 for its comments. On February 15, 2013, and May 5, 2014, the Commission renewed its request for information from the State. As of the date of approval of the instant report, no response had been received from the State.

6. In a communication of May 16, 2014, Mr. Íñigo Salvador Crespo was accredited as co-petitioner, replacing Mr. Alejandro Ponce Villacís.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioners

7. The petitioners contend that the alleged victim was a member of the Ecuadorean Army on active duty, attained the rank of Colonel of the Joint Staff, served as Director of the Eloy Alfaro Advanced Military School (Escuela Superior Militar Eloy Alfaro), and was publically recognized as a "hero" for his performance in the "Alto-Cenepa War." They point out that the alleged victim received important decorations during his military career and was never subject to disciplinary or other proceedings.

8. They indicate that during his tenure as director of the "Eloy Alfaro" Military School, the alleged victim opened the door to women in the Army by admitting the first female cadets (officer candidates) in October 1999. They explain that the Army and the Armed Forces in general had traditionally opposed the entry of female officers and that the entry of the first class of female cadets met great resistance on the part of a group of generals. They indicate that, from the outset of this initiative, his superiors made him aware "in various ways" of their disapproval of opening the door and admitting women to the army. They claim that despite the foregoing, the alleged victim continued to train the woman cadets.

9. The petitioners assert that on June 21, 2001, the Council of Generals of the Army (hereinafter the "COGFT") assembled to determine which colonels would be promoted and, the following day, the alleged victim was informed that he was not "eligible" for promotion. They contend that the decision provided no explanation of why the alleged victim was considered ineligible despite having met all of the legal requirements for promotion in rank. They indicate that it was conveyed to him through unofficial channels that his mistake had been that "he had gotten too far with the issue of admittance of women."

10. They also state that on June 27, 2001, the alleged victim filed a motion for reconsideration of the decision, within the five-day period, as established by the Rules of the Council of Generals of the Armed Forces, arguing a violation of his constitutional rights based on the absence of any grounds for denial of promotion. In this connection, they claim that, in violation of procedure and the stipulated regulatory period, the COGFT met on June 28, 2001, and confirmed its decision without indicating the reasons.

11. The petitioners claim that the alleged victim subsequently appealed to the Supreme Council of the Armed Forces (hereinafter the "CSFA"), on the grounds of failure to specify the basis or reasons for the decision and an alleged violation of his right to a defense. On August 2, 2001, the CSFA informed him that he must appeal to the Council of Senior Officers of the Army. They report that the alleged victim applied to said Council, which denied his application on August 9, 2001 "without mentioning the constitutional issues raised."

12. They indicate that the alleged victim submitted a new request for review to the Council of Senior Officers of the Army, but that on August 23, 2001 the Council denied the request and sent the case to the Supreme Council of the Armed Forces for appeal. On October 30, 2001, the CSFA denied the appeal and confirmed the contested decisions. The petitioners report that, once again, no reasons were given for the decision, and that a majority of the generals on the Council of Senior Officers of the Armed Forces were also on the Supreme Council of the Armed Forces.

13. The petitioners note that on November 12, 2001, the alleged victim filed a special appeal for constitutional relief (*amparo)* with the District Court for Administrative Matters (hereinafter "the Administrative Court") alleging violations of his right to a defense, due process, non-discrimination, and good reputation. He argued that the decisions declaring him ineligible for the promotion to which he aspired infringed his right to a defense because they did not specify the basis or reasons, even though the public authorities were required to do so under the Ecuadorian Constitution then in effect, which took precedence

over any norm. It asserted that, with no basis or reasons provided, he could not tell if he had been tried for an administrative or disciplinary act or omission and that he had learned through unofficial channels of statements made against him in Council. The alleged victim also claimed that the Council's unexplained decision to declare him ineligible had given rise to a series of conjectures about the reasons for such a decision, which had damaged his honor and reputation.

14. They note that on December 12, 2001, the Administrative Court ordered a stay of execution of the acts being challenged and directed the COGFT to proceed, within a period of five days, to conduct an assessment and examination to establish the appropriate promotion eligibility for the alleged victim. This was to be by means of a reasoned decision, as provided for by law and the Constitution. Said decision was appealed before the Constitutional Court by the Assistant Chief Legal Counsel of the State, the Minister of Defense, the Commander General of the Armed Forces and the Commander General of the Army. In this connection, the petitioners contend that, although the appeal process did not interrupt enforcement of the *amparo* judgment, the Armed Forces did not comply with the Court's order.

15. The petitioners assert that, in its decision of September 10, 2002, the Constitutional Court overturned the lower court ruling, declaring the petition for *amparo* inadmissible in the absence of an "unlawful act by a public authority." They also indicate that the contested decision was opposed by four of the nine judges, who deemed it unreasoned because it failed to identify the basis for the alleged victim's ineligibility, as required by the Constitution, which recognizes the right to due process and provides that "public authority decisions that affect persons must be reasoned." They add that the decision was served on the alleged victim on September 17, 2002, at which point the domestic remedies were allegedly exhausted.

16. With respect to the alleged violation of Articles 8 and 25 of the Convention, the petitioners assert that the remedy of *amparo* was ineffective, since the Constitutional Court did not rule on whether rights guaranteed by the Constitution had been violated, thereby impeding his right to a hearing and right to a defense. They also cite press releases indicating that this decision was subject to political pressure and negotiations, from which they infer that the Constitutional Court lacked impartiality.

17. Regarding the alleged violation of Articles 13 and 24 of the American Convention, the petitioners contend that the alleged victim was denied career advancement because of his status as a defender of equal opportunity in the Armed Forces. They repeat their claim that the military hierarchy acted discriminatorily in the Peñaherrera case because it declared him ineligible for promotion without explanation, despite the fact that the alleged victim met the objective requirements and that explanations were required under national law for decisions of this nature. They also argue that this is an instance of discriminatory conduct because the reported unexplained denial of promotion was motivated by his outspokenness on the equality of women in the Armed Forces.

18. The petitioners claim that the State has also violated Article 11 of the Convention, inasmuch as the failure to justify the rejection of his promotion allegedly reflects a barrier to promotion in rank in the eyes of society. They claim that, during the evaluation process, participants constantly assailed the alleged victim's honor with partisan statements about his performance as a military officer.

19. The petitioners argue that, in light of the facts described, the State has failed to meet its obligation under Article 2 of the Convention, since the structure of the military legal system would appear not to have provided adequate protection for the rights of the alleged victim. Lastly, the petitioners allege that the State violated the "right of petition" enshrined in Article XXIV of the American Declaration, because the various requests submitted received consistently negative responses for which no explanation was provided.

B. Position of the State

20. In response to the submitted claim, the State contends, first, that the Commission cannot act as an appellate court or "fourth instance" by reviewing domestic judgments that, while unfavorable to the alleged victim, were issued within a reasonable time period and in accordance with due process of law. On

that basis, it contends that the facts described do not tend to establish violations of the rights enshrined in the American Convention engaging its international responsibility.

21. In support of its argument, the State contends that the Constitutional Court has established that the decisions for which the alleged victim requested stays of execution are lawful: "They do not arise from inequity or injustice; they are not characterized by arbitrariness; in short, they are not unlawful acts," and "in the absence of an unlawful act [...], it becomes unnecessary to analyze the other factors involved in the admissibility of a petition for constitutional relief (*amparo*)." It therefore reversed the decision of the District Court for Administrative Matters and declared the alleged victim's application for *amparo* inadmissible.

22. The State has also provided copies of the responses submitted by the authorities involved in the appeal of the petition for *amparo* to the Constitutional Court, which reiterate the Army's position that the alleged victim was evaluated objectively in a comprehensive evaluation process designed to ensure the moral, ethical and professional qualities required for the delicate role of officers vis-à-vis the country and the military institution. It argues that the decisions of the COGFT and the CSFA were based on Articles 183 and 184 of the Constitution;[1] the Armed Forces Personnel Law, and the Rules of the Council of Generals of the Army. It contends that the alleged victim's eligibility decision was duly reasoned; he simply did not consider the reasons given to be sufficient.

23. It adds that, in its decision of August 9, 2001, the COGFT explained that the five-day period mentioned by the alleged victim "refers exclusively to the portion of the procedures that must be followed by the affected officer and not to a rule that must be followed by the Council of Generals of the Army." Upon receiving the alleged victim's petition for review, the COGFT immediately called a meeting for June 28, 2001, in accordance with the Rules. In its turn, on October 30, 2001, the CSFA confirmed the COGFT decisions of August 9 and 23, 2001, which meant that there had been no violation of due process. The State also contends that the acts that the alleged victim sought to have invalidated were two different administrative decisions, one by the COGFT and the other by the CSFA: two separate bodies with different membership.

24. Secondly, the State contends that the claim is inadmissible because the alleged victim has not duly exhausted the domestic remedies. It argues that the remedy of *amparo* was not "adequate and sufficient for correcting the alleged situation of legal infringement," primarily because, under the Constitution then in effect, it was "preventative rather than judicial" in nature, in that an *amparo* judge could adopt "urgent measures to prevent harm" but that, in this case, if the alleged victim's purpose was to contest administrative acts, he should have sought judicial remedy by filing an administrative complaint.[2]

25. In summary, the State contends that, with a petition for *amparo*, it would have been impossible "under any circumstances to have had the Armed Forces decisions declared illegal, but that this

[1] In this regard, it is noted: Art. 183. The public security forces shall consist of the Armed Forces and the National Police. Their mission, structure, use and control shall be regulated by law.

The fundamental mission of the Armed Forces shall be to preserve the nation's sovereignty, defend its independence and territorial integrity, and uphold its laws.

Furthermore, the standing Armed Forces shall organize reserve forces, in accordance with national security requirements.

The fundamental mission of the National Police shall be to ensure safety and public order. It shall be an auxiliary force of the Armed Forces for the defense of national sovereignty. It shall be subject to the supervision, evaluation, and control of the National Police Council, whose structure and functions shall be regulated by law.

The law shall determine the cooperation to be provided by the public security forces in the country's social and economic development, without prejudice to the exercise of their specific functions.

Art. 184. The public security forces shall be answerable to the State. The President of the Republic shall be their commander-in-chief and may delegate such authority in the event of a national emergency, in accordance with the law. Military and political command shall be exercised in accordance with the law."

[2] The State cites Article 1 of the Administrative Court Law, which establishes that "administrative complaints may be filed by natural or legal persons contesting rules, acts, and decisions by the public administration or semi-public legal persons that are final and infringe the claimant's right or direct interest."

could have been attempted by initiating subjective or full jurisdiction proceedings in the competent court." It adds that within the administrative complaint system, there was also the possibility of an appeal in cassation, which allowed the Supreme Court to rule on whether the lower courts had committed legal errors harmful to the alleged victim.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission *Ratione Materiae, Ratione Personae, Ratione Temporis*, and *Ratione Loci*

26. The petitioners are entitled, under Article 44 of the American Convention, to file complaints with the Commission. The petition identifies as the alleged victim an individual, for whom the Ecuadorean State undertook to respect and ensure the rights enshrined in the American Convention. As for the State, the Commission notes that Ecuador has been a party to the American Convention since December 28, 1977, when it deposited the requisite instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition.

27. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was already in effect on the State at the time when the facts alleged in the petition took place. Lastly, the Commission is competent ratione *materiae,* inasmuch as the petition charges potential violations of human rights protected under the Convention.

28. With respect to the allegations of violations of the American Declaration, the IACHR has previously established that once the Convention has entered into force in a State, it and not the Declaration becomes the specific source of law to be applied by the Commission, as long as the petition alleges violation of substantially identical rights set forth in both instruments and a continuing situation is not involved.[3]

B. Admissibility Requirements

1. Exhaustion of Domestic Remedies

29. In order for a claim of an alleged violation of the American Convention to be admitted, the requirement of prior exhaustion of available domestic remedies, as set forth in Article 46(1)(a) of said instrument, must be met in accordance with generally recognized principles of international law. However, Article 46(2) of the American Convention provides that the prior exhaustion of domestic remedies requirement shall not be applicable when (i) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

30. As established in the Rules of Procedure of the Commission and held by the Inter-American Court, any time a State alleges petitioners' failure to exhaust domestic remedies, it is incumbent upon the State to identify the remedies that should be exhausted and demonstrate that the remedies that have not been exhausted are "adequate" to rectify the alleged violation, that is to say, the function of those remedies within the domestic legal system is suitable to address an infringement of a legal right. [4]

31. In this petition, the State claims that the requirement in question has not been met because the alleged victim has not exhausted the appropriate remedy for contesting the legality of the administrative act denying his promotion; that is, he has not filed an administrative appeal. For their part, the petitioners

[3] IACHR, Admissibility Report No. 03/01, Case 11.670, Amilcar Menéndez *et al.* (Argentina), January 19, 2001, par. 41; IACHR, Admissibility Report No. 16/05, Petition 281/02, Claudia Ivette González (Mexico), February 24, 2014, par. 16.

[4] IA Court of HR, Case of Velásquez Rodríguez, Judgment of July 29, 1988, par. 64.

contend that by filing the application for *amparo*, the alleged victim brought the alleged violations of constitutional rights before the national authorities, from whom he was unable to obtain a ruling on the substance, for which reason the domestic remedies were exhausted with the Constitutional Court decision of September 10, 2002.

32. In view of the positions of the parties, the Commission shall examine exhaustion of domestic remedies based on the information available in the case file.[5] It notes, first, that this petition contests decisions that allegedly do not specify a basis or reasons and arbitrarily declare the alleged victim ineligible for promotion in military rank. It asserts that these decisions infringed the right to judicial protection and guarantees, honor, freedom of thought, nondiscrimination, and equality before the law. It also contests the effectiveness of the legal remedies the alleged victim exercised to rectify these violations.

33. Secondly, the IACHR notes that national norms allow an official harmed by a negative evaluation during the promotion process to request a review of this decision. The case file shows that the alleged victim requested a review of the COGFT eligibility determination, which was conducted the following day and confirmed the determination of ineligibility for promotion. The alleged victim appealed this decision to the COGFT, which denied his appeal as groundless. This decision was appealed to the Supreme Council of the Armed Forces, which denied the appeal on October 30, 2001.

34. On November 12, 2001, the alleged victim filed a petition for constitutional relief (*amparo*) with the District Court for Administrative Matters, which found in his favor in its decision of December 12, 2001, and ordered the Council of Officers of the Army to reevaluate and reanalyze the alleged victim's eligibility in a reasoned decision. On July 30, 2002, representatives of the Armed Forces filed an appeal of this decision with the Constitutional Court, which on September 10, 2002 reversed the decision of the District Court for Administrative Matters and denied the petition for *amparo* because the remedy did not meet the requirements for admissibility; in other words, because the decisions for which the alleged victim had requested stays of execution were "lawful" decisions by a public authority and not obviously arbitrary.

35. The IACHR takes into account the fact that the alleged victim filed the above-mentioned claims in the domestic jurisdiction, both with the military authorities and by means of the petition for *amparo*, as well as the petitioners' assertion that the Court ruled without analyzing the substance of the alleged violations of constitutional rights; specifically, failure to specify a legal basis or reasons and denial of the right to a defense. According to the information available, the alleged victim informed the Constitutional Court that not staying execution of the contested decisions would cause imminent irreparable harm because, under national law, being declared ineligible for promotion resulted in placement on inactive status and final separation from active service in the Armed Forces.

36. The IACHR reiterates that, in accordance with the burden of proof applicable in this area, a State arguing non-exhaustion must indicate the domestic remedies that must be exhausted and also must provide proof of their effectiveness[6]. On this subject, the Commission notes that the State has not indicated the appropriateness or effectiveness of administrative proceedings for remedying the situation of supposed legal infringement described by the alleged victim. Furthermore, it is obvious that both the administrative bodies and the domestic courts accepted jurisdiction to adjudicate the alleged victim's claim and effectively did so. In brief, the Commission considers that the alleged victim not only exhausted the available remedies for the decision barring his promotion, but also filed an application for *amparo*, which was denied on appeal to the Constitutional Court on September 10, 2002.

[5] IACHR, Report No. 44/09, Petition 12.161, Peru, Ciro Abdías Bodero Arellano, March 27, 2009, par. 26; Report No. 41/09, Petition 459-03, Roberto Villeda Arguedas *et al*., Guatemala, March 27, 2009, par. 33; Report No. 107/06, Petition 12.318, Peru, Jorge Teobaldo Pinzás Salazar, October 21, 2006, par. 28.

[6] See IACHR, Report No. 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et al. (Persons living with HIV/AIDS), Guatemala, Marcha 7, 2005, paras. 33-35; I/A Court, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Preliminary objections*, para. 53; *Case of Durand and Ugarte. Preliminary objections.* Judgment of May 28, 1999. Series C No. 50, para. 33; and *Case of Cantoral Benavides. Preliminary objections*. Judgment of September 3, 1998. Series C No. 40, para. 31.

37. In view of these considerations and given the characteristics of the claims submitted, which focus, in particular, on the areas of due process and equality before the law, the Commission finds that the petitioners have met the requirement of prior exhaustion of domestic remedies established in Article 46(1)(a) of the American Convention.

2. Timeliness of the Petition

38. Pursuant to Article 46(1)(b) of the American Convention, in order for a petition to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment exhausting domestic remedies.

39. The petition was received on March 13, 2003, and domestic remedies were exhausted with the decision of the Constitutional Court on September 10, 2002, with notification thereof on September 17, 2002, within the prescribed time period of six months. Therefore, the Commission finds that the admissibility requirement regarding timeliness has been fulfilled.

3. Duplication of International Proceedings

40. Nothing in the case file indicates that the subject of the petition is pending decision in another international settlement proceeding, or that it duplicates a petition already examined by this or any other international body. Therefore, the requirements of Articles 46(1)(c) and 47(d) have been met.

4. Colorable Claim

41. For the purposes of admissibility, the Commission must determine whether the facts described could establish a violation, as stipulated in Article 47(b) of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order", pursuant to paragraph (c) of the same article. The standard of appreciation in this situation differs from the standard for determining the merits of a complaint. The IACHR must carry out a *prima facie* analysis to determine if the complaint provides a basis for the apparent or potential violation of a right guaranteed by the Convention, not to establish the existence of a violation. This is a preliminary analysis that does not imply a prejudgment or a preliminary opinion on the merits of the case.[7]

42. The Commission notes that the instant case involves the military authorities' alleged refusal to grant promotion to the alleged victim, Colonel of the Joint Chiefs Luis Hernández Peñaherrera, thereby preventing him from continuing his military career, by means of decisions that simply declare him ineligible for promotion in rank without explaining the reasons or basis for his ineligibility. The Commission takes into account that in Ecuador, the Armed Forces Personnel Law establishes that "promotion shall constitute a military right to move to the next higher rank, in accordance with the requirements established by law, provided there is a corresponding existing vacancy."[8] The procedure established by said law and its regulations determines the evaluation criteria for promotions and allows some room for discretion for military officers.[9] The Commission also notes that, under the Constitution then in effect, "public authority decisions that affect persons must be reasoned." [10]

[7] IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luis Tapia González *et al.*, Chile, February 24, 20014, par. 33.

[8] Art. 101, Armed Forces Personnel Law (Law 118), Registro Oficial, Supplement 660, April 10, 1991.

[9] "In addition to the core prerequisites for promotion, military . . . officers shall met the following requirements, depending on their rank:

"For military officers:

"1. Obtain a favorable decision from the Force's Council of Generals or Admirals; and

"2. Have passed the Joint Chiefs of Staff Course." Art, 122, Law 118, Registro Oficial, Supplement 660, April 10, 1991.

[10] Art. 24 of the Constitution of Ecuador. The Ecuadorian Constitutional Court has also stated, *inter alia*, that:

[continues ...]

43. The petitioners assert that, because of the evaluation process and the alleged ineffectiveness of the legal remedy exercised to rectify the alleged situation of legal infringement, the alleged victim was prevented from continuing his military career for reasons unknown to him in the absence of a reasoned decision. They contend in particular that the Armed Forces took these actions in retaliation for his outspokenness on equal rights for men and women in the military. They therefore assert infringement of the alleged victim's rights under Articles 2, 8, 11, 13, 24 and 25 of the American Convention, in conjunction with Article 1(1) of that instrument. For its part, the State asserts that it has fulfilled its due process and judicial protection obligations, since the decisions were issued by competent authorities, and that, while they happen to be unfavorable, they are not subject to review by the Commission.

44. In view of the legal and factual information submitted by the parties and the nature of the case before it, the Commission considers that the assertions regarding the failure to explain the decisions against the alleged victim, which kept him ignorant of the grounds on which they were based; the issue of whether they were objective and in compliance with the applicable legal framework or whether, as alleged, they were in retaliation for his outspokenness about admitting women to the institution; as well as the assertion that the remedies exercised were ineffective require an in-depth analysis to identify possible violation of Articles 8, 13, 24 and 25 of the American Convention in conjunction with Article 1(1) thereof. Since these aspects of the complaint are not obviously groundless or out of order, the Commission considers that the requirements established in Article 47(b) and (c) have been satisfied.

45. Lastly, the Commission considers that the petitioners have not presented basic information to support their claims of alleged violation of Articles 2 and 11 of the American Convention. Therefore, these claims do not meet the requirements established in Article 47(b) and (c) of the American Convention and should be declared inadmissible.

V. CONCLUSIONS

46. The Commission concludes that it is competent to examine the claims raised by the petitioners regarding the alleged violation of Articles 8, 13, 24 and 25; in connection with Article 1(1) of the American Convention and that these claims are admissible pursuant to the requirements set forth in Articles 46 and 47 of the American Convention.

47. Based on the foregoing arguments of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find the petition admissible as to Articles 8, 13, 24 and 25, in connection with Article 1.1 of the American Convention.

2. To find the petition inadmissible as to Articles 2 and 11 of the American Convention.

3. To notify the Ecuadorean State and the petitioners of this decision.

4. To proceed to examine the merits of the matter.

[… continuation]

> [...]Both the Constitution and the Statutes of the Executive Branch require decisions to be clearly substantiated. The doctrine states that the decisions of state organs must express all the factual and legal underpinnings that combine to apply laws, determine their legitimacy, and justify the standards of appreciation as to merits and reasonableness. [...]the exercise of discretion is limited by provisions set out in the system of laws, in this case by the Military Service Code, which determine the requirements and conditions for promotion to a higher rank […]

Cited in I/A Court H.R., *Case of Mejía Idrovo v. Ecuador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 5, 2011. Series C No. 228, para. 50.

5. To publish this decision and include it in the Annual Report of the Commission to the OAS General Assembly.