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REPORT No. 36/15
PETITION 717-05

REPORT ON ADMISSIBILITY

JULIO ROGELIO VITERI UNGARETTI AND FAMILY
ECUADOR

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I. SUMMARY

1. On January 3, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a complaint from Navy Captain Julio Rogelio Viteri Ungaretti (hereinafter "Viteri Ungaretti" or "the petitioner") on his own behalf and on behalf of his wife, Ligia Rocío Alarcón Gallegos, his children Michelle Rocío Viteri Alarcón and Rogelio Sebastián Viteri Alarcón, and other members of his family, alleging the international responsibility of the Republic of Ecuador (hereinafter "the State" or "Ecuador") for the violation of his human rights, in retaliation for having reported acts of corruption involving high-ranking officers of the Ecuadorian Armed Forces.

2. The petitioner alleged that while he was working as the Naval and Military Defense Attaché to the Embassy of Ecuador in London, he submitted a report to the Ecuadorian Ambassador to the United Kingdom that revealed confidential information about alleged acts of corruption in the administration of public funds by the Ecuadorian Armed Forces. He indicated that, in light of this denunciation, he had been the victim of disciplinary sanctions, arrests, removal from his post, the deprivation of his salary, the blocking of his promotion, forced resignation, and discharge from military service, as well as multiple acts of persecution, including being subjected to judicial and disciplinary proceedings. He further alleged that both he and members of his family had been the victims of threats, attacks, and harassment, because of which he and his wife, his two children, and his mother-in-law were forced to seek asylum in the United Kingdom, where they currently reside with refugee status. He alleged that these acts constitute a violation of Articles 1.1 (Obligation to Respect Rights), 2 (Domestic Legal Effects), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 10 (Right to Compensation), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 14 (Right of Reply), 17 (Rights of the Family), 19 (Rights of the Child), 21 (Right to Property), 24 (Right to Equal Protection), and 25 (Right to Judicial Protection) of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention"), to his detriment and to the detriment of his relatives (hereinafter "the alleged victims").

3. With respect to the requirements for the admissibility of the petition, the petitioner alleged that under current law it was impossible to obtain real justice in his case. Nevertheless, he reported that he filed a petition for a constitutional remedy [*acción de amparo*] challenging the decisions issued against him, and that this remedy was not effective.

4. The State, for its part, argued that the petitioner went before the Commission without having sought or exhausted the appropriate remedies under domestic law and without demonstrating the reasons for which those remedies were ineffective to resolve his legal status. In addition, in the opinion of the State, the facts alleged do not constitute a violation of any right enshrined in the American Convention.

5. After examining the positions of the parties in light of the admissibility requirements established in Articles 46 and 47 of the Convention, and without prejudging the merits of the case, the IACHR decided to declare the petition admissible with respect to the alleged violation of Articles 5, 7, 8, 13, 22, and 25 of the American Convention, in connection with the general obligations enshrined in Articles 1.1 and 2 thereof. The Commission further decided to declare the petition inadmissible with respect to the alleged violation of Articles 4, 10, 11, 14, 17, 19, 21 and 24 of the American Convention. Consequently, the Commission decided to give notice to the parties, continue with the examination of the merits with regard to the alleged violations of the American Convention, publish this Admissibility Report, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

Precautionary Measures

6. This petition was received by the IACHR on January 3, 2002, together with a request for precautionary measures. On February 11, 2002, the Commission granted the precautionary measures and requested that the State take the necessary measures to protect the life and safety of the petitioner and his family, and to investigate the alleged acts "in order to establish the facts of the situation and take the appropriate measures."[1] In view of these measures, the State forwarded information on compliance with the measures on March 1, 2002. For his part, the petitioner sent information to the Commission on March 14, April 15 and 22, May 16 and 28, and June 18 and 21, 2002, the pertinent parts of which were promptly forwarded to the State on April 1, May 9, and July 22, 2002. After the petitioner and his relatives left the country for the United Kingdom in June 2002 under the protection of the measures and their request for asylum, the precautionary measures were set aside.

Processing of the Petition

7. The Commission received additional information from the petitioner on October 3, 2002, June 1, 2004, and August 4, 2005. In addition, on June 22, 2005, the Commission received a new brief from the petitioner. On October 7, 2005, the IACHR asked the petitioner to present specific documents needed to complete the initial study of the petition, which the petitioner submitted on December 6, 2005. The petitioner also sent the IACHR a brief, received on February 25 and March 4, 2008, adding new legal representatives[2] and setting forth legal arguments.

8. On March 10, 2010, the IACHR decided to begin processing the petition, and on April 15, 2010, it forwarded the pertinent parts of the petition to the State, requesting that it submit a reply within two months. On June 1, 2010, the State sent a communication to the Commission stating that the documentation it had received was illegible, and it asked for the petition to be sent again and for a new deadline for the submission of its observations. On November 12, 2010, the State submitted its reply to the petition, the pertinent parts of which were forwarded to the petitioner on December 8, 2010. On January 6, 2011, the petitioner requested an extension of the deadline for the submission of his observations, and on February 16, 2011, he presented additional observations that were forwarded to the State on March 22, 2011. For its part, the State requested an extension on April 28, 2011, and submitted additional observations on June 20, 2011, which were forwarded to the petitioner on June 28, 2011. On July 14, 2011, the petitioner presented new observations, and on October 13, 2011, the State presented its reply. Both communications were duly forwarded to the respective party.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

9. In the initial petition submitted to the IACHR on January 3, 2002, the petitioner stated that on November 8, 2001, while he was working as the Naval and Military Defense Attaché to the Embassy of Ecuador in London, he sent a communication to the then-Ecuadorian Ambassador to the United Kingdom, denouncing alleged acts of corruption in the administration of public resources by the Ecuadorian Armed Forces, which he detected in the performance of his duties. He sent the communication "in order for the competent authorities in Ecuador to be notified." The petitioner explained that, in the discharge of his duties, "he witnessed first-hand" all of the aspects of the irregular negotiation of insurance contracts for aircraft belonging to the Ecuadorian Armed Forces, and in the leasing of the headquarters of the Office of the Naval

[1] IACHR. 2002 Annual Report. Chapter III. The Petition System and Individual Cases (C. Precautionary measures granted by the Commission during 2002), OEA/Ser.L/V/II.117 Doc. 1 rev. 1. March 7, 2003, para. 51.

[2] In a brief received by the petitioner on February 25 and March 4, 2008, attorneys Farith Simon and Alejandro Ponce of the Legal Clinics of the University of San Francisco in Quito were added to this case as co-petitioners.

Attaché in London. He stated that, because these were serious acts of which he had direct and immediate knowledge by virtue of his position, and because the alleged perpetrators were his superiors in the Armed Forces, he reported these acts to the higher civil authority which was not under the orders of those implicated in the acts alleged—in this case, the head of the diplomatic mission where he was employed.

10. The petitioner stated that on November 26, 2001 he received notice to appear before the Joint Command of the Armed Forces in Quito within 72 hours, to explain the report he had submitted to the Ambassador. The petitioner nevertheless alleged that, when he appeared before the Command on December 3, 2001, he was not heard and was only informed that he would be called before a Disciplinary Board. The petitioner alleged that on December 5, 2001, he was detained and brought before a Disciplinary Board that proceeded to sentence him to 15 days of strict arrest, on charges of (i) publishing documents against military authorities, (ii) making false reports, (iii) insulting a superior, verbally or in writing, and (iv) violating, through negligence or through orders, provisions contained in documents of the Armed Forces. The petitioner alleged that during his confinement he was kept "in precarious conditions, denied food, unable to wash, and unable to sleep uninterrupted.

11. He underscored that while he was detained he filed a writ of *habeas corpus* before the Mayor of the Municipal District of Quito. However, it was denied on December 12, 2001, because he was being held under disciplinary arrest. The petitioner explained that after he was released, on December 22, 2001, he returned to London, where he alleges that he was prevented from resuming his duties and his salary was suspended. He further stated that on December 27 he was given two hours to clean out his office, leave his post, and return to Ecuador. On January 27, 2002, the petitioner returned to Quito with his wife, Ligia Rocío Alarcón Gallegos. He stated that he was then ordered to go to Guayaquil. The petitioner alleged that, once he was in Guayaquil, on January 29, 2002, a second arrest order was issued against him, and he was again held in "atrocious conditions," in a cell that was "unventilated, hot, and infested with cockroaches," and that he was not given food. The petitioner added that, after his release on February 2, 2002, he was assigned to work in an administrative office that was not part of the branch of the Armed Forces to which he belonged, that the work was below his rank, and that he had been isolated in a specific area of the barracks. He stated that during his stay there, shots were fired during the night outside his window.

12. He added that on February 14, 2002, he was subjected to 5 days of strict arrest, accused of insulting the chiefs of the Armed Forces and the Minister of Defense. He was again held in poor conditions, and on April 8, 2002, he was subjected to a fourth period of strict arrest for 3 days, this time for insulting the Armed Forces and using the press for that purpose. The petitioner stated that he received threatening and insulting phone calls at his residence, both in Ecuador and in London, and asserted that he had received information from a Navy officer that his phones had been tapped. In addition, he described several incidents involving attacks and harassment against him and his family. He also cited constant threats to his sister-in-law and legal representative in Ecuador, Ana Lucía Alarcón Gallegos, and mentioned that he had received packages with no sender's name at his workplace that were meant to intimidate him.

13. The information provided indicates that the alleged victim informed the commanding general of the Joint Command of the Armed Forces of the threats, persecution, and surveillance that he and his family had experienced, and asked that an end be put to "the persecution to which [he] had been subjected." He maintains that he never received a response to these requests, which demonstrates that "he did not have the option of a remedy to safeguard his rights" within the military institution. He explained that although Article 25 of the Regulations of Military Discipline provided for "a remedy that the serviceman can use to file requests, he must do so before his superior or, in that person's absence, the next highest-ranking officer." Furthermore, that article made it a serious infraction "to lodge petitions or complaints using impolite terms or criticizing the attitude of one's superior."

14. The petitioner stated that on March 11, 2002, he filed a petition for a constitutional remedy before the Court for the Judicial Review of Administrative Action [*Tribunal Contencioso Administrativo*] alleging the violation of his constitutional rights as a result of the decisions sentencing him to strict arrest, as well as the decision relieving him of his duties and excluding him from the list of officers for the XXI Joint Command and General Staff Course, a prerequisite for promotion within the Navy. The court ruled this appeal

inadmissible on April 2, 2002 based on the reasoning that a constitutional remedy cannot be requested for a multitude of allegedly unlawful acts, but rather for only one such act. The petitioner stated that his representatives in court appealed the decision before the Constitutional Court.

15. The petitioner stated that, in light of the attacks, the ongoing telephone threats, the inadequate police protection received and his mistrust in the existence of a "real justice proceeding," he was forced to request asylum from the authorities of the United Kingdom and leave the country with his wife on June 10, 2002. He explained that the appeal in his *amparo* case was decided on August 28, 2002, once he was in the United Kingdom. He stated that although the Constitutional Court ruled to set aside the arrest orders imposed against him, "there was no acknowledgement or declaration of any of the human rights violations" alleged. In particular, the Court failed to take account of the infringement of his rights as a result of his removal from the position of Naval and Military Defense Attaché to the Embassy of Ecuador in London, and his exclusion from the promotion course, in retaliation for having exposed acts of corruption within the Armed Forces. The Court also did not order any type of reparation. The petitioner underscored that the Constitutional Court had the authority to put a stop to the violation of all of his rights and to order reparation. In the petitioner's opinion, "The judgment was ineffective because it in no way ordered the restitution of all his violated rights."

16. The petitioner affirmed that on July 14, 2003, the government of the United Kingdom granted his asylum request. He also cited a number of additional proceedings brought against him subsequent to his departure from Ecuador. He also stated that he filed a case before the Ecuadorian Navy to set aside the orders that forced him to resign from his post. He alleged that he was never served notice of the decisions issued for those purposes, nor was he allowed to exercise his right to a defense. According to the petition, on February 18, 2003, he requested that the decisions ordering said measure be set aside, and in March 2003 his request was denied. In addition, the petitioner stated that on February 8, 2003, he filed an administrative claim before the Executive Branch, asking the President of the Republic to order compensation for the unlawful arrest orders issued against him. This request was denied in an official letter dated April 22, 2003, which stated that the petitioner needed to bring a new civil action before the courts.

17. Similarly, the petitioner made reference to the court martial for the alleged alteration of documents brought against him on December 26, 2002, based on a complaint filed by the then-Minister of Defense. With respect to that proceeding, the petitioner asserted that he was not allowed to exercise his right to a defense, and that he has no knowledge of the current procedural status of the case. The petitioner stated that, for purposes of intimidating him, and in retaliation for his whistle-blowing, another administrative proceeding was brought against him on March 17, 2003, alleging the mismanagement of financial resources in the discharge of his duties as Naval Attaché to the Embassy of Ecuador in the United Kingdom. In addition, on February 5, 2004, the Manager of District I of the Ecuadorian Customs Corporation issued a tax correction decision against him, in connection with the import of a vehicle used during his tenure at that post. The petitioner reiterated that all of these acts were designed to intimidate him and perpetuate his forced exile.

18. Finally, the petitioner stated that he had appeared before the Government Accountability Office and before the Civic Anti-Corruption Commission to give an accounting of his corruption complaint. The Commission issued a report acknowledging some of the acts of corruption reported by the petitioner and opened investigations with a view to prosecuting the accused service members before the Court of Military Justice. The petitioner underscored that, notwithstanding the investigations, these cases were dismissed on December 17, 2003 without any results having been obtained.

19. In view of the above, the petitioner affirmed generally that the State is responsible for the violation of Articles 4, 5, 7, 8, 10, 11, 13, 14, 17, 19, 21, 24, and 25 of the American Convention, to his detriment and to the detriment of his wife Ligia Rocío Alarcón Gallegos, his children Michelle Rocío Viteri Alarcón and Rogelio Sebastián Viteri Alarcón, and his mother-in-law Rosa María Humbertina Gallegos Pozo, all of whom were granted asylum in England, as well as to the detriment of his sister-in-law and legal representative in Ecuador, Ana Lucía Alarcón Gallegos, and her family, namely her husband Luis Naveda and their children David Naveda Alarcón and Diana Naveda Alarcón. The petitioner is also of the opinion that the State has failed to comply with the general obligations contained in Articles 1.1 and 2 of the American

Convention. He additionally invokes the Inter-American Convention against Corruption, to which Ecuador is a party, and which requires it, among other things, to create "Systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public."

B. Position of the State

20. The State requested that the petition be declared inadmissible, on the argument that it does not meet the requirements set forth in Articles 46.1(a) and 47 (a) and (b) of the American Convention. The State maintains that the alleged victim availed himself of the Inter-American Commission on January 3, 2002 without having sought or exhausted the appropriate remedies under domestic law and without demonstrating the reasons for which the IACHR should find that the remedies available at that time in Ecuador were ineffective to resolve his legal status. The State asserted that the petitioner had effective domestic remedies available to him which he should have exhausted prior to filing his initial petition — specifically, a petition for a constitutional remedy, writ of *habeas corpus*, and request for the judicial review of administrative acts.

21. The State later asserted that, after filing the initial petition, Mr. Viteri filed a petition for a constitutional remedy that resulted in a Constitutional Court judgment partially in his favor. The State maintained that, in granting partial *amparo* relief with respect to the strict arrests, the Constitutional Court's decision repeatedly noted that Mr. Viteri's due process rights had been violated. The State thus alleged that "Mr. Viteri neither asserts nor demonstrates that there was any type of harm during the constitutional case directly or indirectly attributable to the State. On the contrary, the Ecuadorian State maintains that the alleged victim, through the petition for a constitutional remedy, accessed independent, impartial courts previously established by law; he was assisted by a defense attorney of his own choosing, he was given the time and means to prepare his claim, and he was able to exercise his right to appeal the decision of the lower court judge to the Constitutional Court as provided by law."

22. In view of the above, the State maintained that the subject of the international claim is limited to compliance with the judgment of the Constitutional Court, in particular, the awarding of compensation. It argued that the alleged victim has not exhausted the domestic remedies available in Ecuador to satisfy that right. It asserted that the administrative proceeding brought before the Executive Branch by the alleged victim for such purposes on February 8, 2003 was not a suitable remedy. In the State's opinion, the appropriate remedy would be to file a civil action for non-pecuniary damages before the Court for the Judicial Review of Administrative Action, in accordance with Article 212 of the Statute of the Administrative Legal System of the Executive Function. It argued that there was no evidence that Mr. Viteri Ungaretti had attempted to obtain compensation for non-pecuniary damages based on the judgment of the Constitutional Court.

23. The State further indicated that the Constitution of Ecuador, in force since 2008, includes a guarantee for the enforcement of judgments called "noncompliance action," contained in Articles 93 of the Constitution[3] and 52-57 de la Organic Law of Judicial Guarantees and Constitutional Control. It explained that this action is an appropriate remedy, "which provides citizens with additional mechanisms for the protection of their fundamental rights that Mr. Viteri could and should exhaust as a prerequisite for accessing the Inter-American Human Rights System." According to the State, the fact that this remedy was not available at the time the petition was filed in no way prevents Mr. Viteri or his representatives from exhausting it now, in order to obtaining the just satisfaction of his claims without needing to go before international authorities.

[3] Article 93 of the Constitution of Ecuador provides that: "The purpose of the noncompliance action is to ensure the application of the rules that make up the legal system, as well as compliance with the judgments or reports of international human rights bodies, when the rule or decision in question involves a clear, express, and enforceable obligation to do or not do something. The action will be brought before the Constitutional Court." Available at: http://www.asambleanacional.gov.ec/documentos/constitucion_de_bolsillo.pdf

24. The State alleged that "the effectiveness of the noncompliance remedy for the case in question lies in the fact that it falls within a framework of constitutional rights created to comprehensively guarantee the rights of the individuals subject to the jurisdiction of the State. In this regard, it is important to underscore that the aim of the remedies created by the Constitution of Montecristi is not just an enunciative acknowledgement of the potential infringement of rights or the mere imposition of precautionary measures; rather, they establish the principle of *restitutium in integrum*, the judge being authorized to examine the plaintiff's claim in its entirety and, if appropriate, order the necessary measures to grant him or her comprehensive restitution."

25. In short, the State maintained that, given the existence of a judgment of the Constitutional Court of Ecuador that partially upheld Mr. Viteri's claims, it is incumbent upon him and his representatives in Ecuador to continue to pursue the remedies available under domestic law so that, with regard to the proceedings before the Disciplinary Board and the following three strict arrests, the petitioner can obtain fair reparation in a domestic court before availing himself of international proceedings.

26. As for Mr. Viteri Ungaretti's claims that were dismissed by the Constitutional Court, the State asserted that they are not subject to review by the IACHR, insofar as they do not involve the violation of any right enshrined in the American Convention. According to the State, the decision to deny the petition for a constitutional remedy for the acts concerning Mr. Viteri's removal from his position as Naval Attaché to the Embassy in the United Kingdom was rendered in strict adherence to the procedural rights to which he was entitled, and therefore a review of this aspect of the decision would lead the Commission to act as an appeals court or a court of fourth instance.

27. The State added that "There is nothing in the case record to indicate that these two acts were a direct consequence of the December 5, 2001 decision of the Disciplinary Board, the February 8, 2002 decision of the Naval Operations Commander and Chief of Zone One, and the November 13, 2001 decision of the Commander General of the Navy ordering the three strict arrests against Mr. Viteri, which were later the subject of the *amparo* petition that was filed by Mr. Viteri and granted by the Constitutional Court. The State is of the opinion that these acts are distinct, and that although they were challenged in the appeal, it concerns other claims that must be adjudicated separately, as the Constitutional Court did." It reiterated that, "If Mr. Viteri believes, as he has maintained in his most recent brief, that these events are directly connected to the strict arrests and that they should be remedied as such, it is then urgent that he file a noncompliance action to give the Ecuadorian State the opportunity to address his claims at the domestic level."

V. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

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

28. Under Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, the petitioner has *locus standi* to file petitions before the Inter-American Commission. With respect to the State, Ecuador is a party to the American Convention, and therefore is internationally accountable for violations of that instrument. The alleged victims are individuals with respect to whom the State agreed to guarantee the rights enshrined in the American Convention. Accordingly, the Commission has jurisdiction *ratione personae* to examine the petition.

29. The IACHR has jurisdiction *ratione materiae* because the petition concerns alleged violations of human rights protected by the American Convention. In addition, the Commission notes that Ecuador has been a State Party to the Convention since December 28, 1977, the date on which it deposited its ratification instrument. Therefore, the Commission has jurisdiction *ratione temporis* to examine the petition.

30. Finally, the Inter-American Commission has jurisdiction *ratione loci* to examine the petition because it alleges that rights protected in the American Convention were violated within Ecuadorian territory.

C. Other Requirements for the Admissibility of the Petition

1. Exhaustion of Domestic Remedies

31. Article 46.1.a of the American Convention provides that for a petition submitted to the Inter-American Commission to be admissible under Article 44 of the Convention, the petitioner must first have pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law. This requirement is intended to allow national authorities to consider an alleged violation of a protected right and, when applicable, to give them the opportunity to correct it before it is heard and decided by an international body. The Commission has reiterated that in situations where the evolution of the facts initially presented at the domestic level signifies a change in compliance with the admissibility requirements, the petition must be examined based on the current situation at the time the admissibility decision is rendered.

32. As the Commission has noted, in order to examine compliance with the exhaustion of domestic remedies requirement, it must determine the object of the claim and the appropriate remedy to be exhausted according to the circumstances of the case, understood as that remedy which can resolve the alleged violation. In fact, the Inter-American Court of Human Rights has held that it is only necessary to exhaust remedies that are suitable for addressing the violations allegedly committed.[4]

33. The Commission observes that the petitioner's claim is related to the failure to protect a government employee who exposes information that may provide evidence of serious irregularities in public administration or acts of corruption (whistleblower) and who alleges to be the victim of retaliation as a result of his denunciation.

34. The information provided to the IACHR indicates that on March 19, 2002, Mr. Viteri filed a petition for a constitutional remedy before the courts for the judicial review of administrative acts, alleging the violation of his constitutional rights as a consequence of the strict arrests to which he was subjected, the order removing him from his Naval Attaché post, and the denial of the opportunity to meet one of the requirements for promotion within the Navy. He alleged that these acts, taken together, were intended to hold him back because he had exposed corruption and to pressure him to back down from pursuing the respective investigations. The petitioner affirmed that the claim was filed "to restore the rights that were violated," and to obtain "the immediate execution of all measures deemed necessary to remedy the harm," as established in Article 51 of the Constitutional Control Law in force at the time of the events. The Commission also takes account of the writ of *habeas corpus* challenging his detention, which was filed and denied in December 2001.

35. According to the information received, on April 2, 2002, Court No. 1 for the Review of Administrative Acts ruled the action inadmissible on the grounds that this remedy could only be filed against a single act or omission by a government authority and not against numerous cumulative administrative acts. On August 28, 2002, the Constitutional Court handed down a judgment partially granting the petition for a constitutional remedy and ordered "the strict arrests imposed against him to be set aside." Nevertheless, the Constitutional Court dismissed the *amparo* petition with respect to the petitioner's removal from his post when he learned of the alleged acts of corruption and with respect to his exclusion from the list of officers named to take the course required to be eligible for a promotion. It is the petitioner's opinion that this decision failed to guarantee his right to denounce corruption without being subject to retaliation.

36. With respect to these events, the State maintained that the petitioner should have exhausted the available domestic remedies to enforce the judgment of the Constitutional Court and in particular the awarding of compensation in his favor. Specifically, the State asserted that Mr. Viteri Ungaretti did not seek non-pecuniary damages based on the Constitutional Court decision that was partially in his favor, and that he could have filed a civil action for non-pecuniary damages before the Court for the Judicial Review of Administrative Action, pursuant to Article 212 of the Statute of the Administrative Legal System of the

[4] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 63.

Executive Function. In addition, the State asserted that, in order to have the judgment enforced, the petitioner should have exhausted "the noncompliance action" established by the 2008 Constitution of Ecuador, given that, although the remedy was not available at the time the petition was filed, it could be exhausted now.

37. Bearing in mind the principle of the effectiveness of laws (*effet utile*), the Inter-American Court has established that not all remedies available in the State have to be exhausted in order for the rule to be satisfied.[5] The IACHR has held on other occasions[6] that if the alleged victim pursued the matter through any valid and appropriate alternatives under domestic law and the State had the opportunity to remedy the issue within its own jurisdiction, the purpose of the international rule would have been met.

38. The Commission finds that in this specific the petition for a constitutional remedy filed by the alleged victim was, in principle, suitable for resolving the legal situation that was alleged to have been a violation of the petitioner's constitutional rights. The domestic courts accepted jurisdiction to hear and decide the case, and in fact did so, acknowledging their aptness to protect the legal status alleged to have been violated. Consequently, it can be considered an appropriate remedy for purposes of determining compliance with the exhaustion of domestic remedies requirement in this case.[7]

39. With respect to the alleged victim's opportunity to file a civil action in order to ensure pecuniary reparation for the parts of the *amparo* judgment that were adjudicated in his favor, it bears repeating that remedies designed to guarantee compensation—such as a civil action—are not *per se* an effective and suitable remedy for the comprehensive reparation of that violation, and are not necessary for the exhaustion of domestic remedies.[8] In addition, with respect to the possibility of filing a noncompliance action, the Commission observes that this judicial remedy was introduced in the Ecuadorian legal system as a result of the 2008 constitutional amendment. In other words, it was not available to the alleged victim at the time the relevant facts of this case took place.[9]

40. The Commission concludes that, for purposes of admissibility, the August 28, 2002 Constitutional Court decision adjudicating the alleged victim's petition for a constitutional remedy exhausted the domestic remedies, thereby meeting the requirement of Article 44 of the Convention. The adherence of the *amparo* decision to the American Convention must be examined at the merits phase of this case.

41. Finally, the Commission observes that several cases were brought against the petitioner subsequent to his filing of the petition and his departure from Ecuador, which he believes have the sole purpose of punishing him for his denunciation of corruption (*supra* paras. 17-18). The petitioner stated that he presented defense arguments in these proceedings through a legal representative, to no avail. Nevertheless, he alleges that given his refugee status and the threats received by his legal representative, he was prevented from filing all of the judicial remedies available at the domestic level. The State did not make reference to these judgments. The IACHR takes note of these legal actions, which will be examined at the merits phase of this case, taking account of their development and supposed connection with the facts alleged in the petition for a constitutional remedy, as well as the effect that exile may have had on the alleged victim's ability to access the justice system.

[5] I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras.* Merits. Judgment of July 29, 1988. Series C No. 4, para. 64. See also, ECHR, *Kudla v. Poland* [GC], no. 30210/96, 26 October 2000, para. 152; & *Selmouni v. France*, no. 25803/94 de 28 July 1999, para. 74.

[6] See IACHR, Report No. 40/08 (Admissibility), Petition 270-07, I.V. v. Bolivia, June 23, 2008, para. 70. IACHR, Report No. 57/03 (Admissibility), Petition 12.337, Marcela Andrea Valdés Díaz v. Chile, October 10, 2003, para. 40.

[7] See IACHR. Report No. 97/06. Petition 2611-02. Admissibility. José Gerson Revanales. Venezuela. October 23, 2006. Available at: http://www.IACHR.oas.org/annualrep/2006sp/Venezuela2611.02sp.htm

[8] I/A Court H.R., *Case of the Rochela Massacre v. Colombia.* Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 163, para. 220; See also, I/A Court H.R., *Case of the Ituango Massacres v. Colombia.* Judgment of July 1, 2006 Series C No. 148, para. 340; & *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, para. 209.

[9] See: *Case of Mejía Idrovo v. Ecuador*. Merits. Judgment of July 5, 2011. Series C No. 228, para. 33, p. 10.

2. Timeliness of the Petition

42. Article 46.1.b of the Convention establishes that, in order for the petition to be declared admissible, it must be filed within 6 months of the date on which the interested party was served notice of the final decision that exhausted the domestic remedies.

43. The Commission observes that the initial petition was filed on January 3, 2002 and that later, in October 2002, the petitioner was formally served notice of the *amparo* decision that exhausted the domestic remedies. In addition, the Commission notes that the petitioner asserts that the facts complained of in this case and the alleged denial of justice have continued to affect his rights and the rights of his family. Accordingly, and in view of the particular circumstances of the processing of this matter, the IACHR finds that the admissibility requirement pertaining to timeliness has been met.

3. Duplication of Proceedings and International *Res Judicata*

44. There is nothing in the case record to indicate that the subject of the petition is pending adjudication in another international proceeding, or that it duplicates a petition already examined by this or another international body. Therefore, the requirements established in Articles 46.1.c and 47.d of the American Convention have been met.

4. Colorable Claim

45. The Inter-American Commission must determine whether the act described in the petition amount to violations of the rights enshrined in the American Convention, according to the requirements of the Article 47.b, or whether the petition, according to Article 47.c, should be dismissed as "manifestly groundless" or "obviously out of order." At this stage of the proceedings, the IACHR must conduct a *prima facie* evaluation, not for purposes of establishing the alleged violations of the American Convention, but rather to examine whether the petition alleges acts that could potentially constitute violations of the rights guaranteed in the American Convention. This analysis does not entail prejudgment or an advance opinion on the merits of the case.[10] By establishing two clear phases of admissibility and merits, the Rules of Procedure of the Commission reflect this distinction between the evaluation that the Commission must perform for purposes of declaring a petition admissible and the analysis required to establish a violation.

46. Neither the American Convention nor the IACHR's Rules of Procedure require the petitioner to identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although the petitioners may do so if they wish. It is incumbent upon the Commission, based on the case law of the system, to determine in its admissibility reports what provision of the relevant inter-American instruments is applicable and to find a violation of the facts alleged are proven through sufficient evidence.

47. The petitioner claimed that he had been the victim of disciplinary sanctions, arrests, removal from his post, the deprivation of his salary, the blocking of his promotion, forced resignation, and discharge from military service, as well as multiple acts of persecution, including being subjected to judicial and disciplinary proceedings, after he exposed acts of corruption in the administration of public funds by the Ecuadorian Armed Forces. He further alleged that as a result of such events he and his family were forced to seek asylum in the United Kingdom. He argues that judicial remedies were not effective to protect his right to report corruption without being subjected to reprisals.

48. In the opinion of the Commission, the facts alleged by the petitioner may constitute, if proven at the merits stage, a violation of the rights enshrined in Articles 5 (humane treatment), 7 (personal liberty), 13 (Freedom of Thought and Expression), 22.1 (Freedom of Movement and Residence), 8 (Right to a

[10] IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luís Tapia González et al., Chile, February 24, 2004, paras. 33 & 52.

Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, to the detriment of the alleged victim and his relatives, in connection with Articles 1.1 thereof.

49. In view of these potential violations, it will be necessary to examine the responsibility of the State in terms of its compliance with the general obligations to enact the domestic law provisions necessary for their exercise, as provided in Article 2 of the Convention.

50. In conclusion, the IACHR finds that the petition is neither "manifestly groundless" nor "obviously out of order," and therefore declares that the petitioner has met *prima facie* the requirements contained in Article 47.b. of the American Convention with respect to potential violations of Articles 5, 7, 8, 13, 22, and 25 of the American Convention, in relation to the general obligations enshrined in Articles 1.1 and 2 thereto, as specified earlier.

51. The Commission additionally concludes that the alleged facts, if proven, would not provide sufficient evidence of the violation of Articles 4, 10, 11, 14, 17, 19, 21 and 24 of the American Convention, and therefore declares the petition inadmissible with respect to the alleged violation of those rights.

V. CONCLUSION

52. The Inter-American Commission concludes that it has jurisdiction to examine the merits of this case and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention. Based on the foregoing points of fact and of law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible with respect to the alleged violations of the rights protected under Articles 5, 7, 8, 13, 22, and 25 of the American Convention, in connection with Articles 1.1 and 2 thereto.

2. To declare this petition inadmissible with respect to Articles 4, 10, 11, 14, 17, 19, 21 and 24 of the American Convention.

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

4. To proceed to the merits of the case.

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

Done and signed in the city of Washington, D.C., on the 22nd day of the month of July, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez, Second Vice President; Felipe González, Rosa María Ortiz, Tracy Robinson and Paulo Vannuchi, Commissioners.