INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF MEJÍA IDROVO *v.* ECUADOR

JUDGMENT OF JULY 5, 2011
(Preliminary Objections, Merits, Reparations, and Costs)

In the case of Mejía Idrovo,

The Inter-American Court of Human Rights[*] (hereinafter, the "Inter-American Court," the "Court," or the "Tribunal"), composed of the following judges:

Diego García-Sayán, President;
Leonardo A. Franco, Judge; Vice President
Manuel E. Ventura Robles, Judge;
Margarette May Macaulay, Judge;
Rhadys Abreu-Blondet, Judge;
Alberto Pérez Pérez, Judge;
Eduardo Vio Grossi, Judge; and,

Also present[**]:

Pablo Saavedra Alessandri, Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, the "Convention" or the "American Convention") and to Articles 30, 32, 38, 56, 57, 58, and 61 of the Rules of Procedure of the Court[***] (hereinafter, the "Rules of Procedure"), delivers this Judgment.

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[*] Judge Alberto Pérez Pérez, informed the Court that for reasons of *force majeure*, he would not be present at the deliberation in this case.

[**] The Deputy Secretary, Emilia Segares Rodríguez, informed the Court that for reasons of *force majeure* she would not be present at the deliberation of this Judgment.

[***] Pursuant to that established in Article 79(1) of the Rules of Procedure of the Inter-American Court that came into force on January 1, 2010, "[c]ontentious cases which have been submitted for the consideration of the Court before January 1, 2010, will continue to be processed, until the issuance of a judgment, in accordance to the previous Rules of Procedure," and as such, the Rules of Procedure in this case correspond to the instrument approved by the Court in its XLIX Ordinary Period of Sessions held on November 16 to 25, 2000, partially amended by the Court in its LXXXII Ordinary Period of Sessiones, held on January 19 to 31, 2009, and that was in force since March 24, 2009 until January 1, 2010.

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I
INTRODUCTION TO THE CASE AND PURPOSE OF THE CONTROVERSY

1. On November 19, 2009, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "Inter-American Commission") presented, pursuant to Articles 51 and 61 of the Convention, an application against the Republic of Ecuador (hereinafter "the State" or "Ecuador") in regard to the case of Mejía Idrovo v. Ecuador. The initial petition was presented before the Commission on October 24, 2002 by the Ecumenical Commission on Human Rights, (hereinafter "CEDHU"). On March 17, 2009, the Commission adopted the Admissibility and Merits Report No. 07/09,[1] wherein it declared the admissibility of the case and recommended the State to adopt the necessary measures to assure effective compliance of the action of unconstitutionality issued on March 12, 2002, by the Constitutional Tribunal of Ecuador[2] and to repair the harm caused to José Alfredo Mejía Idrovo (hereinafter "Colonel Mejía Idrovo," "Mr. Mejía Idrovo" or "alleged victim"). Given that in the opinion of the Commission the recommendations were not adopted by the State in a satisfactory manner, it decided to submit the present case to the Court's jurisdiction. The Commission appointed as Delegates, Mrs. Luz Patricia Mejía, Commissioner, and Mr. Santiago A. Canton, Executive Secretary, and as legal advisors, Mrs. Elizabeth Abi-Mershed, Deputy Executive Secretary, and Karla I. Quintana Osuna, specialist with the Executive Secretary.

2. The facts alleged by the Commission alluded to the State's failure to comply with the ruling issued by the Constitutional Tribunal that declared the unconstitutionality of the Executive Decrees, which ordered that Mr. Mejía Idrovo could be suspended and discharged from the army and provided the reparation for the harm.

3. The Commission requested that the Court establish the international responsibility of the State because it has not complied with its international obligations upon violating Articles 8(1) and 25 of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Mejía Idrovo, given that more than seven years had passed since the Constitutional Tribunal issued a judgment on March 12, 2002, ordering the State to repair the damage caused to the alleged victim, without the State complying with said order.

4. On March 13, 2010, Sister Elsie Monge and Mr. César Duque, members of the Ecumenical Commission on Human Rights, in representation of the alleged victim

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1 The Commission concluded that it has jurisdiction to analyze the claim presented by the petitioners regarding the alleged violations of Article 8(1) and 25(2)(c) of the American Convention, in relation to the generic obligations of Article 1(1) of said treaty, pursuant to the requirements established in Articles 46 and 47 of the Convention. Moreover, the Commission declared the extremes that regard Articles 8(1) and 25 of the American Convention as inadmissible, in relation to Article 1(1) of said instrument, to the detriment of Mr. Mejía Idrovo.

2 Note for clarification: In October 2008, via referendum, to the new Political Constitution came into force in *Ecuador*. As of this moment, the Constitutional Court of *Ecuador* was called the "Constitutional Court of *Ecuador*." Taking this into account, this body will be referred to as the "Constitutional Court" for all resolutions issued after said date.

(hereinafter "the representatives"), presented their brief of pleadings, motions, and evidence (hereinafter "the brief of pleadings and motions") before the Court. In this brief, they alluded to the facts noted in the Commission's application, expanding on the information therein. In general, they agreed with the legal arguments of the Commission. Nevertheless, they also requested that the Court declare a violation of Articles 24 (Right to Equal Protection) and 2 (Domestic Legal Effects) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Mejía Idrovo. Lastly, they requested various measures of reparation.

5. On June 24, 2010, the State presented its brief containing preliminary objections, answer to the application, and observations to the brief of pleadings and motions (hereinafter "answer to the application"). The State, in its answer, referred to the arguments of fact and of law presented by the Commission and the representatives and requested that the Court accept the preliminary objections and declare that the State did not violate Articles 8(1), 25, 24, 2 and 1(1) of the American Convention, "as it guaranteed and guarantees the protection of human rights, and its corresponding guarantees," and it referred to the reparations. Moreover, the State filed two preliminary objections, one "arguing Court of Appeals or Fourth Instance," and the other "arguing the non-exhaustion of domestic remedies." The State appointed Erick Roberts, National Director of Human Rights of the Prosecutor General's Office, Agent, and Messers. Rodrigo Durango and Alfonso Fonseca Garcés, as Deputy Agents.

6. On August 19 and 21, the Commission and representatives presented, respectively, their written arguments to the brief containing the preliminary objections filed by the State, and they requested the Court to dismiss them and to please continue on with the merits of the case.

II
PROCEEDINGS BEFORE THE COURT

7. The application was notified to the State[3] and the representatives on January 18, 2010.

8. By Order of December 2, 2010, the President of the Court (hereinafter, "the President") ordered that a statement be rendered before a notary public (affidavit) by an expert witness, and he summoned the parties to a public hearing to hear the statements of the alleged victim and the expert witnesses proposed by the Commission and the State, as

3 When the application was notified to the State, it was informed of its right to assign an *ad hoc* Judge to participate in the deliberation of the case. On February 11, 2010, the State assigned Mr. Hernán Salgado Pesantes as *ad hoc* Judge. Nevertheless, on March 2, 2010, Mr. Salgado Pesantes informed the Court that upon being asked by the Prosecutor General of the State he accepted the role, but then, "upon investigating some information regarding this case, [he] established that the petitioner filed to claim before the Constitutional Court of *Ecuador* for the alleged violation of his rights, and he did so at a time where the [judge] formed part of that body. [He] is certain he acted in this case –as a member of the Court- thereby constitutiting an impediment for him to participate in the matter, pursuant to Article 19(1) of the Rules of the Inter-American Court," and as a consequence, he presented his excuse to hear the case. On March 4, 2010, the Secretary, following instructions from the President, accepted the mentioned excusal.

well as the oral arguments of the parties regarding the preliminary objections and possible merits, reparations, and costs, and he also set a date of March 28, 2011, for the parties to present their final written arguments.

9. On January 19, 2011, the representatives submitted a "sworn statement" of the expert witness Mr. Víctor Hugo López Vallejo, seven days after the period for submission had lapsed, given that pursuant to Operative Paragraph two of the Order of the President of December 2, 2010, presentation of said statement was set for no later than January 12, 2011. Due to this, following instructions by the President, the represented were informed that the mentioned expert statement was dismissed due to its time-barred presentation before the Court.

10. The public hearing was held on February 28, 2011, during the 96th Regular Period of Sessions, held at the seat of the Court.[4]

11. On March 28, 2011, the Commission, the representatives, and the State presented their final written arguments. On April 5th and 15th, 2011, the representatives and the State, respectively, submitted the annexes [attachments] stated in the written briefs of final arguments.

12. On April 5, 2011, the Inter-American Commission submitted a document entitled, "La Justicia Constitucional Ecuatoriana en la Constitución de 2008" [Ecuadorian Constitutional Justice in the Constitution of 2008] authored by the expert witness Jaime Vintimilla.

13. On April 26, 2011, the parties were given a period until May 4, 2011, to present the observations they deemed necessary, where necessary, regarding the annexes submitted by the State and the representatives (*supra* para. 11). On May 4, 2011, the Commission and the representatives presented their observations. The State did not offer observations in this regard. On May 16, 2011, the State expressed that the representatives breached the provisions ordered by the Court, given that they did not comment on the annexes presented together with the final arguments of the State, rather they commented on the written arguments of the State, and it requested that the intervention by the representatives be revoked. Subsequently, on June 20, 2011, the State provided information regarding the new qualification procedures for the alleged victim. In this regard, on June 24, 2011, the Secretariat, following instructions by the President, requested the Commission and representatives to provide, "if they deemed it pertinent," observations to the State's brief. On June 28, 2011, the representatives and the Commission provided the respective briefs.

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[4] At this hearing, the following were present: a) for the Inter-American Commission, Paulo Sérgio Pinheiro, Commissioner, and Lilly Ching, Legal Advisor; b) for the representatives of the alleged victim, César Duque, of the CEDHU and Xavier Mauricio Mejía Herrera, and c) for the State, Erick Roberts Garcés, National Human Rights Director; Alonso Fonseca Garcés, Supervising Litigation Attorney 2, Carlos Espinoza, Legal Advisor of the Ministry of Defense, and Anabell Rubio, Affiliations Chief Social Security Institute of the Armed Forces.

III
PRELIMINARY OBJECTIONS

14. In its brief answering the application, the State filed two preliminary objections: one related to the argument of the court of appeals or court of fourth instance, and the other related to the non-exhaustion of domestic remedies. The Court will now analyze the admissibility of the preliminary objections filed in the order they were raised.

A. Court of Appeals or Fourth Instance

Arguments of the parties

15. The State expressed that the "international protection offered by the monitoring bodies of the Convention is of a subsidiary nature," and therefore, the "Inter-American Court of Human Rights does not examine the resolutions, rather it does so, always and only if, they involve established human rights violations." The State affirmed that "the claim of the alleged victim would lead the Court to analyze and decide on issues of fact and law, within the case *sub judice* and the Ecuadorian legal system, which oversteps its jurisdiction." In fact, Ecuador claimed that "the Ecuadorian tribunals in its resolutions always preserve all judicial guarantees for the petitioner and they are issued pursuant to the guiding lines of due process and without violating any rights protected by the Convention."

16. On its behalf, the representatives noted that at no time did they request the Court to "determine the errors of fact or of law committed by the full Constitutional Tribunal," but rather, "to declare the responsibility of the State for the violation of Article 25 of the American Convention, as it has not complied with the judgment rendered by the highest body of constitutional control." They added that what the State had affirmed "would be in contradiction with the petition that a violation be declared for noncompliance" with the judgment rendered by the Full Chamber of the Constitutional Tribunal on March 12, 2002. The representatives highlighted that "demanding compliance with a legal judgment does not constitute using the Inter-American Court as a court of fourth instance" and as such, they requested that the Court declare the preliminary objection inadmissible.

17. The Commission argued that "it does not plan on presenting issues related to the interpretation or application of the domestic law of the State to the facts" of said judgment, "but rather to request the Court to declare the State of Ecuador as responsible for the violation" of some of the rights enshrined in Inter-American instruments. Moreover, the Commission highlighted that it had analyzed "duly and opportunely the issues regarding admissibility in the present case," and that in the report on the merits and in the application, it considered that "the State was responsible for the violation of judicial protection and judicial guarantees [fair trial] to the detriment of Mr. Mejía Idrovo." Lastly, it noted that the "objection filed by the State was unfounded, given that the States arguments assumed an assessment of the merits of the application, that which does not constitute a preliminary objection."

Considerations of the Court

18. This Court has established that international jurisdiction is of a subsidiary,[5] reinforcing, and complimentary nature,[6] reason for which it does not perform the functions of a court of "fourth instance." The Court will decide if, in the case concerned, the State violated a right protected by the Convention, thereby incurring international responsibility. This implies that the Court is not a court of appeals that is able to settle the disagreements of the parties regarding the scope of the application of domestic law in areas that are not directly related to compliance with international human rights obligations. It is for this reason that the Court has maintained that, in principle, "the courts of the State are expected to examine the facts and evidence submitted in particular cases." [7] The foregoing implies that upon assessing the compliance of certain international obligations, such as guaranteeing that a domestic legal judgment be duly complied with, there is an intrinsic relationship between the analysis of international law and that of domestic law.[8]

19. The Court has affirmed that preliminary objections are actions that seek to prevent an analysis of the merits of the matter in question, by way of an objection regarding the admissibility of an application or the jurisdiction of the Court to hear a specific case or any part of it, based on the person, matter, time, or place, when said arguments are of a

5 *Cf. Case of Acevedo Jaramillo et al. v. Perú. Interpretation of the* Judgment *of Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2006. Series C No. 157, para. 66; *I/A Court of H.R., Case of Cabrera García and Montiel Flores V. México. Preliminary Objection, Merits, Reparations and Costs.* Judgment of November 26, 2010. Series C No. 220, para. 16.

6 In the Preamble of the American Convention, it is stated that international protection is "in the form of to convention reinforcing or complementing the protection provided by the domestic law of the American states." See also, *The Effect of Reservations on the Entry into Force of the American Convention on Human,* Rights (Arts. 74 and 75). Advisory Opinion OC-2/82 of September 24, 1982. Series to No. 2, para. 31; *The Word "Laws" in Article 30 of the American Convention on Human Rights.* Advisory Opinion OC-6/86 of May 9, 1986. Series to No. 6, para. 26; *Case of Velásquez Rodríguez v. Honduras*. *Merits*. Judgment of July 29, 1988. Series C No. 4, para. 61, and *Case of Cabrera García and Montiel Flores V. México, supra* note 5, para. 16.

7 *Case of Nogueira of Carvalho et al. v. Brazil. Preliminary Objections and Merits*. Judgment of November 28, 2006. Series C No. 161, para. 80; *Case of Cabrera García and Montiel Flores V. México, supra* note 5, para. 16.

8 *Cf. Case of Cabrera García and Montiel Flores V. México, supra* note 5, para. 16.

preliminary nature.[9] If these actions cannot be assessed without also analyzing the merits of the case, they cannot be analyzed under a preliminary objection.[10]

20. Given the foregoing, and in consideration of the alleged objection filed regarding "fourth instance," the Court must verify if in the steps effectively taken at the domestic level there was a violation of international obligations of the State derived from Inter-American instruments that grant the Court jurisdiction. The Court deems it timely to note, as it has done before in its jurisprudence,[11] that in ascertaining whether the actions of judicial bodies constitute a violation of the State's international obligations, this may lead the Court to examine the domestic proceedings in order to establish compatibility with the American Convention, and in that case, the domestic proceedings must be considered as a whole. In this case, the Court must analyze the merits of the case.

21. The Court notes that, in its observations of July 10, 2006, in the proceeding before the Commission, the State filed the objection of court of appeals, affirming that "the nonconformity alleged by the petitioner with the domestic judicial decision […] does not provide the basis for the Commission to review said decision," and it argued the same arguments reported in the answer to the application (*supra* para. 5). The Commission, in its Report on Admissibility and Merits of March 17, 2009, stated that "there is a controversy between the parties regarding the retroactivity of the declarations of unconstitutionality […] and the subsequent scope of the resolution of the decision of the Constitutional Tribunal which establishes the unconstitutionality of the Executive Decrees that suspend and discharge José Alfredo Mejía ldrovo from the Armed Forces. The Commission understands that the controversy depends on the reading of the mentioned decision and that its clarification corresponds, in principle, to the jurisdiction of said court. Consequently, the claim of the petitioners regarding the alleged right to restitution of Mr. Mejía ldrovo to active service with a promotion to the rank of General, is outside of the framework of its jurisdiction." The Commission noted that, nevertheless, "pursuant to the general principle of international legislation *iura novit curia*, international bodies have the power, as well as the obligation, to apply all of the relevant legal provisions, including those not raised by the parties. In light of this principle, the Commission considered that the facts alleged by the petitioners that are related to the failure to properly provide legal notice of the decision of the request for clarification filed

9 *Cf. Case of Las Palmeras v. Colombia. Preliminary Objections.* Judgment of February 4, 2000. Series C No. 67, para. 34; *Case of Manuel Cepeda Vargas V. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment on May 26, 2010. Series C No. 213, para. 35, and *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2010. Series C No. 219, para. 11.

10 *Cf. Case of Castañeda Gutman v. México. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of August 6, 2008. Series C No. 184, para. 39; *Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil, supra* note 9, para. 17, and *Case of Cabrera García and Montiel Flores V. México, supra 5*, para. 17.

11 *Cf. Case of the "Street Children"(Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222; *Case of Gomes Lund et al. ("Guerrilha Do Araguaia) v. Brazil, supra* note 9, para. 49, and *Case of Cabrera García and Montiel Flores V. México, supra* note *5*, para. 19.

by the Armed Forces to the President of the Constitutional Tribunal may involve violations to Article 8(1) (Judicial Guarantees) of the American Convention." This was reiterated by the Commission in its observations of August 19, 2010, to the preliminary objections in the proceeding before the Court. In said communication, it noted that "it considered the objection filed by the State to be unfounded, given that the State's arguments assume an analysis of the merits of the application, which cannot thereby constitute a preliminary objection," reason for which the Commission requested that the Court dismiss the objection as inadmissible.

22. Taking the foregoing into consideration, in the present case, the Inter-American Court must determine if the actions of the Council of General Officers and the Constitutional Tribunal constitute a violation of the State's international obligations. As a consequence, the arguments that make reference to said objection are directly related to the merits of the controversy, and as such, this will be analyzed in the pertinent chapter of this Judgment.

23. Due to the foregoing, the Court considers that it must dismiss said preliminary objection as inadmissible.

B. Non-exhaustion of domestic remedies

Arguments of the parties

24. In its answer to the application, the State contested the admissibility of the case, given that, allegedly, the domestic remedies have still not been exhausted. Specifically, the State argued that "the alleged victim must have, timely, presented a civil [tort] action for damages against the State before the competent judges in Ecuador, for them to determine the damage caused to [C]olonel Mejía [Idrovo] and to establish the amount for compensation, in a judicial proceeding of a civil nature within the ordinary [civil] forum." Moreover, the State expressed that on April 22, 2009, "the citizen Mejía Idrovo filed an action for noncompliance before the Constitutional Court," wherein he requested "compliance with the Resolution of the Constitutional Tribunal of March 12, 2002." Pursuant to the State, the action for damages and the action for noncompliance "could be appropriate" and efficient remedies, given that their purpose is suitable to "protect the infringed legal situation" and they would be "able to produce the result for which they were established to produce."

25. The representatives argued that the sole purpose for the civil action for damages is to "establish the economic values in favor of the petitioner," without allowing, "by way of said judicial remedy, for a judge to order measures of reparation of a non-patrimonial nature such as the reinstatement of the petitioner in the armed forces, public apologies to the [alleged] victim or his family, and guarantees of non-repetition, among others, for which said remedy is not appropriate to fully repair the [alleged] victim." As such, the representatives requested "that the second preliminary objection also be dismissed and for the Court to continue on to an analysis of the merits of the case."

26. The Commission considered that "the requirement of non-exhaustion of domestic remedies does not mean that the alleged victims have the obligation to exhaust all of the remedies available to them." Moreover, it noted that the "civil action for damages was not the most appropriate remedy to achieve that which was established by the Resolution of the Constitutional Tribunal." In this sense, the information provided to the Commission notes that the Resolution of the Constitutional Tribunal, "according to said Court, was self-executable; therefore the Executive Branch and the Armed Forces were obligated to comply" with the Resolution of March 12, 2002. As such, the Commission considered "the objection filed by the State of Ecuador to be unfounded and inadmissible, reason for which it requested the Court to dismiss it."

Considerations of the Court

27. Article 46(1)(a) of the American Convention provides that in order to determine admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 of the Convention, it is necessary that the domestic remedies be pursued and exhausted in accordance with the generally recognized principles of international law.[12] The Court recalls that the principle of prior exhaustion of domestic remedies is designed for the benefit of the State, given that it attempts to excuse the State from going before an international body for acts attributed to it, before having had the opportunity to remedy them using its own means.[13]

28. The foregoing means that these remedies must not only exist formally, but rather that they must also be appropriate and effective, as shown by the exceptions enshrined in Article 46(2) of the Convention.[14]

29. This Court has affirmed consistently that an objection to the exercise of the Court's jurisdiction based on the alleged lack of exhaustion of domestic remedies must be submitted in a timely manner from the procedural standpoint[15], that is, during the admissibility of the proceeding before the Commission.[16] Moreover, the Court reiterates

12 *Cf. Case of* Velásquez Rodríguez *V.* Honduras. *Preliminary Objections*. Judgment of Julne 26, 1987. Series C No. 1, para. 85; *Case of Cabrera García and Montiel Flores V. México, supra* note 5, para. 19; and *Case of Vera Vera et al. V. Ecuador*. *Preliminar Objection, Merits, Reparations and Costs*. Judgment of May 19, 2011. Series C No. 224, para. 13.

13 *Cf.* Case of *Velásquez Rodríguez. Merits, supra* note 6, para. 61, and *Case of Fairén Garbi and Solís Corrales*. Judgment of March 15, 1989, Series C No. 6, para 85.

14 *Cf. Case of* Velásquez Rodríguez *V.* Honduras. *Preliminary Objections*, *supra* note 12, para. 63; *Case of* Vélez Loor *V.* Panamá. *Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2010. Series C No. 218, para. 19, and *Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 13.

15 *Cf. Case of Velásquez Rodríguez V. Honduras*. *Preliminary Objections, supra* note para. 88; *Case of Gomes Lund et al. ("Guerrilha Do Araguaia) V. Brazil, supra* note 9, para. 38, and *Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 14.

that pursuant to its jurisprudence[17] and international jurisprudence[18,] it is not the task for the Court nor of the Commission to identify *ex officio* the remedies to be exhausted, but rather it is up to the State to identify, in a timely manner, the domestic remedies that should be exhausted and their effectiveness.

30. In the present case, the State raised the objection of non-exhaustion of domestic remedies in relation to the civil action for damages in its brief presented to the Commission on July 10, 2006. At said time, it claimed that Mr. Mejía Idrovo had to have lodged a civil action for damages before the competent judges of Ecuador for them to determine the damage and amount of compensation. Subsequently, on June 24, 2010, in its answer to the application, the State added that the action for noncompliance introduced by the new Ecuadorian Constitution was also an appropriate remedy.

31. In its Report on Admissibility and Merits No. 07/09, the Commission concluded that the civil action for damages within the judicial proceedings of an ordinary nature did not constitute an appropriate remedy to comply with that established by the Constitutional Tribunal in its Resolution of May 12, 2002, which according to said Court, was self-executable, and as such the Executive branch and Armed Forces should have complied with said decision. As such, it considered that the action of unconstitutionality filed by Colonel Mejía Idrovo before the Constitutional Tribunal was the appropriate remedy to declare unconstitutional the challenged executive decrees.

32. In regard to the civil action for damages, the Court adheres to the position adopted by the Commission in its Report on the Admissibility and Merits, in that it considers that the action for damages was not the most appropriate remedy to repair the infringed legal situation regarding the alleged violations of the rights to judicial guarantees and protection of Mr. Mejía Idrovo. In this sense, the Court notes that both the Commission and representatives argued that pursuant to current domestic law of the State at the time of the facts, the decisions of the Constitutional Tribunal were self-executing, given that they involve a procedural act that has a *res judicata* effect, that is, that they must be complied with by the different domestic authorities without the need rising for another legal action. In this regard, the State did not present arguments related to the self-executing nature of the Constitutional Tribunal's rulings (*infra* para. 70*)*, but rather it limited itself to noting that the alleged victim should have presented said civil action, which is of an ordinary [civil] nature. The Court also observes that the civil action only allows for the reparation of damage that is of a patrimonial nature and therefore does not

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16 *Cf. Case of Velásquez Rodríguez V. Honduras, Preliminary Objections, supra* note *12, para. 88; Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil, supra* note *9, para. 38, and Case of Vera Vera et al. V. Ecuador, supra* note *12, para. 14.*

17 *Cf. Case of Velásquez Rodríguez V. Honduras, Preliminary Objections, supra* note *12, para. 88; Case of Gomes Lund et al. (Guerrilha do Araguaia) V. Brazil, supra* note *9, para. 38, and Case of Vera Vera et al. V. Ecuador, supra* note *12, para. 14.*

18 *Cf.* ECHR. *Case of Deweer v. Belgium*, Judgment of 27 February 1980, Series to no. 35, para. 26; ECHR. *Case of of Jong, Baljet and van den Brink v. the Netherlands*, Judgment of May 22, 1984, Series to no. 77, para. 36, and *Case of Paksas versus Lituania*, Judgment 01.06.2011, para. 75.

constitute an appropriate measure to fully achieve the objective desired by Mr. Mejía Idrovo regarding his reinstatement.

33. With regard to the action of noncompliance presented by the alleged victim before the Constitutional Court, the Inter-American Court notes that said action of noncompliance was introduced in the Ecuadorian legal system by a constitutional reform in 2008, and therefore, was not accessible to the alleged victim at the moment the relevant events of this case transpired. Notwithstanding the aforementioned, the Court notes that the alleged victim filed said action on April 22, 2009, and as indicated by the State, this remedy was opportunely exhausted.

34. Consequently, the Court dismisses the objection of non-exhaustion of remedies raised by Ecuador.

IV
JURISDICTION

35. The Court has jurisdiction to hear the present case, pursuant to Articles 62(3) of the American Convention, given that Ecuador has been a State Party to the Convention since December 28, 1977, and recognized the contentious jurisdiction of the Court on July 24, 1984.

V
EVIDENCE

36. Based on that established in Articles 44 and 45 of the Rules of Procedure, as well as the jurisprudence of the Court regarding evidence and its assessment[19], the Court will proceed to examine and assess the documentary supporting evidence submitted by the Commission, the representatives, and the State on the various procedural opportunities, as well as the statements rendered by means of affidavit and those rendered at the public hearing held in the present case. Therefore, the Court will head to the rules of competent analysis, within the corresponding legal framework.[20]

A. Statement of the alleged victim and expert evidence

19 *Cf. Case of the "White Van" (Paniagua Morales et al.) V. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, para. 76; *Case of Abrill Alosilla et al. V. Perú. Merits, Reparations and Costs.* Judgment of March 4, 2011. Series C No. 223, para. 35; and *Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 19.

20 *Cf. Case of the "White Van" (Paniagua Morales et al.) V. Guatemala. Merits, supra* note 19, para. 76; *Case of Abrill Alosilla et al. V. Perú, supra* note 19, para. 39, and *Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 19.

37. Pursuant to the Order of the President of December 2, 2010,[21], the Court heard the following declarations at the public hearing from the alleged victim and two experts:

a) *José Alfredo Mejía*, alleged victim proposed by the Commission and the representatives, who declared on: i) the alleged obstacles he has had to confront regarding compliance with the Constitutional Judgment of March 12, 2002; ii) how the alleged unconstitutional actions taken by the Council of General Officers affected his professional career and life plan by not allowing him to rise in rank, as it was his alleged right given that he satisfied all the legal requisites; iii) how he was affected by the issuance by the President of the Republic of the executive decrees of suspension and discharge, and iv) how his life was affected given that during eight years the respondents allegedly refused to comply with the judgment issued on March 12, 2002, and the action of noncompliance ordered by the Constitutional Court of October 8, 2009.

b) *Jaime Vintinilla*, proposed by the Commission, who rendered an expert statement on the failure to execute the judgments of the Constitutional Tribunal.

c) *Alex Valle Franco*, proposed by the State, who rendered an expert statement on: i) the nature of the action of unconstitutionality of Executive Decrees in the Constitution of 1998; ii) the legal effect of the action of unconstitutionality of the Executive Decree in the Constitution of 1998 in the former Constitutional Tribunal of Ecuador; iii) the legal effects of the action of unconstitutionality, illegality, and illegitimacy, in regard to the reparation of damages. Basic differences, complimentary analysis and an analysis of context in the Constitution of 1998, and iv) the juridical nature of the action of noncompliance in the current Constitution.

B. Admissibility of the documentary evidence

38. In this case, as in others, [22] the Court accepts the probative value of the documents presented by the parties at the proper procedural opportunity that were not contested or opposed, and the authenticity of which was not questioned.

39. In the written brief containing the preliminary objections of August 19, 2010, of the representatives and in the brief of December 11, 2009 of the State, several annexes were attached. Moreover, during the public hearing, the State presented two orders, and the representatives and the State submitted various annexes together with the final written arguments presented on March 28, 2011. In this regard, the Court highlights that various

21 In said order, the statement rendered by public notery (affidavit) of expert *Víctor Hugo López* was ordered. Nevertheless, given that said affidavit was presented in to time-barred fashion it was not admitted. *(supra* para. 9).

22 *Cf. Case of Velásquez Rodríguez V. Honduras. Merits, supra* note 6, para. 140; *Case of Abrill Alosilla et al. V. Perú, supra* note 19, para. 38, and *Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 22.

documents had been offered opportunely[23] by the parties and are admitted into the body of evidence of this case. Nevertheless, the rest of the documentation[24] was not presented prior, despite which, in accordance with Article 45 of the Rules of Procedure, the Court decides to admit it as it considers it useful for the resolution of this case, with the exception of the documents submitted by the representatives regarding the alleged expenditures made under the domestic law and those relating to proceedings or appearances before the Inter-American Commission, for not having been filed in a timely manner (*infra* paras. 159 and 162). Similarly, with regard to documents relating to the new qualification procedure of Mr. Mejía Idrovo presented both by the representatives and the State, [25] in accordance with Article 46(3) of the Rules of Procedure, they relate to new supervening facts that are therefore incorporated into the evidence of the case.

40. On the other hand, the Inter-American Commission presented a document titled, "La Justicia Constitucional Ecuatoriana en la Constitución de 2008" [Ecuadorian Constitutional Justice in the Constitution of 2008] by the expert witness Jaime Vintimilla, which was requested during the public hearing by the Court. The Court admits it as it deems it useful, pursuant to Article 47(2) of the Rules of Procedure.

41. Lastly, the State presented a brief on May 16, 2011, wherein it stated that the representatives did not comply with the provisions of the Court regarding the annexes to

23 Namely: 1) Noncompliance action issued by the Constitutional Court on October 8, 2009; 2) Evaluation sheet of personal history carrie dout by the Council of Generals in 2000 as to requirement for promotion to the rank of Brigadier General, 3) Diploma of Merit granted on October 18, 1991 and grade of excellent issued by the head of the General Army Staff on December 21, 1922; 4) Resolutions former Constitutional Court and Constitutional Court of *Ecuador*, and 5) Military Service Code.

24 Namely: 1) Report of the Social Security Institute of the Armed Forces; 2) Report of the Grading Process for General Officers of the Land Forces; 3) Decree of Re-Instatement of Colonel José Mejía Idrovo; 4) Internal Regulations of the Council of General Officers; 5) Result and Analysis of the Gauss Curve and Graphics; 6) Report of the Commission on Document Analysis for Grading to Brigadier General of Colonel José Mejía Idrovo; 7) Evaluation slip of Lieutenant Colonel to Coronel; 8) Resolution of the Council of Superior Officers, Promotion and Standardization; 10) Receipts of the Book of Life; 9) Regulations of Grading and Promotion Requisites from 1992; 10) Vacancy chart; 11) Organic Code of the Judicial Roles; 12) the Law of Judicial Guarantees and Constitutional Control; 13) Title of Office of General Staff of Services, granted on September 18, 1989 by the War Academy; in addition, in 1993, he obtained the title in Brazil of General Staff of Services Corps, noted on his curriculum; 14) Decision for clarification issued by the Constitutional Court on March 11, 2010; 15) Curriculum vitae of José Mejía issued on February 8, 2011; 16) Note of February 8, 1994, addressed to the Commander General of the **Army requesting compliance to the consideration carried out by the unit commander**; 17) Diploma of August 10, 1995, granted by the Chief of General State of the Land Forces by the Commander General of the Land Forces; 18) Note of December 8, 2010, addressed to the Commander General of the Army requesting full compliance with the Judgment issued at a constitutional level, and 19) Receipts of travel expenses, lodging, visas and exit fees, etc., to attend the public hearing at the Court, in Costa Rica, for him and his attorney Xavier Mejía.

25 1) Namely: 1) Offcial letter No. 2011-0046-SCOGFT of March 22, 2011, of the Land Forces that contains the Legal Notice of Resolution of the General Council of Officers and Official letter 2011-0062-SCOGFT of April 6, 2011; 2) Brief challenging the resolution of March 22, 2011, issued by the General Council of Officers of the Land Forces; 3) Official letter of reconsideration of rank of April 6, 2011, and 4) Decision for clarification issued by the Constitutional Court on March 11, 2010.

the written arguments, when they made reference to the written arguments presented by the State but not to the annexes themselves as ordered by the Court. As such, the State requested that this anomaly be considered and that the intervention of the representatives for the alleged victim regarding the abovementioned legal actions be revoked, as it violates the principle of procedural certainty (*supra* para. 13). This Court, by way of a communication from its Secretariat on April 26, 2011, requested observations from the parties regarding the annexes presented and highlighted that "this was not another procedural opportunity to expand on existing arguments." In this regard, the Court notes that in fact the representatives in their communication of May 4, 2011, made observations, on the one hand, to the annexes themselves, and in other opportunities, they presented arguments regarding the merits of the case. Given the aforementioned, this Court decides to admit, in accordance with Article 46 of the Rules of Procedure, the brief of the representatives yet only where they present observations regarding the annexes presented by the State. To this end, the Court takes into account the observations of the State and the body of evidence in order to assess the mentioned brief, according to the rules of sound judgment.

C. Admission of the statement of the alleged victim and the expert evidence

42. Regarding the statement of the alleged victim and twp of the expert witnesses (*supra* para. 37), the Court finds them pertinent only to the extent that they comply with the purpose defined by the President of the Court in the Order which required they be submitted, those of which will be assessed in the corresponding chapter. In regard to the statement of the alleged victim, for having an interest in the present case, it will not be assessed separately, but rather within the body of evidence in the proceeding.[26] On the other hand, in its final written arguments regarding the expert report rendered by Mr. Jaime Rafael Vintinilla, the State noted that the expert witness "begins with value judgments and fails to recognize, or diminishes the important changes being experienced in Ecuador since the approval by referendum in 2008 of the new Montecristi Constitution." As such, the Court finds them pertinent only to the extent that they comply with the purpose defined by the President of the Court in the Order which required they be submitted (*supra* para. 8), and assesses it in conjunction with the other elements of the body of evidence, taking into account the observations made by the State.

VI
ARTICLES 8 AND 25 OF THE AMERICAN CONVENTION

43. In this Chapter, the Court will refer, first to some relevant facts in regard to the proceedings carried out within the domestic jurisdiction that are related to the alleged violations to judicial guarantees [fair trial] and judicial protection. Subsequently, it will refer to the arguments of the parties in this regard, and will analyze the guarantees

26 *Cf. Case of Loayza Tamayo V. Perú. Merits.* Judgment of September 17, 1997. Series C No. 33, para. 43; *Case of* Gelman *V. Uruguay. Merits and Reparaciones.* Judgment of February 24, 2011. Series C No. 221, para. 40, *and Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 23.

involved in the proceeding in light of Article 8(1) of the Convention, and effective judicial protection in the execution of the ruling, enshrined in Articles 25(1) and 25(2)(c) of the American Convention.

A. Relevant Facts

a) Proceeding before the Council of General Officers of the Land Forces

44. On December 21, 1972, José Alfredo Mejía Idrovo joined the Army as a second lieutenant[27] and on December 21, 1994, he rose to the rank of Colonel of the Army.[28] In the year 2000, Mr. Mejía Idrovo went before the Council of General Officers of the Land Forces (hereinafter "Council of General Officers") for them to qualify him in order for him to rise to the rank of General. The State argued that Mr. Mejía Idrovo was one of "five colonels of general staff" that participated[29] in said promotion. In December of 2000, the Council of General Officers forwarded a letter without a date and without a number in order to inform him of the following:

> Matter: Appreciation for Service
>
> 1. It is the opinion of the Council that you are an honorable, loyal, truthful, and honest man, and that your professional qualities are consistent with those that a military career demands, which is why you have reached the rank of Colonel of the Republic.
>
> 2. Regrettably, the institution must follow a selection process governed by the laws and rules of procedure that permit the selection of those within a human group who display certain characteristics that set them apart.

27 He received various awards for his work, he earned to scholarship and carried out to Course on Command and General Staff of the Army of the Republic of Brazil, where he was awarded the "Medal for Peace-maker." (case file *Preliminary Objections, Merits, Reparations and Costs*, tome I, fs. 100 and 101).

28 According to the representative, between 1992 and 1999, he was graded annually by the Council of General Officers of the Army. He received scores of 20 on to scale of 20 for "moral conduct," "intellectual-physical fitness" and "technical-professional training," each year, except the year 1998 when he scored the yearly average of 19.897. The awards, diplomas, and titles of Mr. Mejía Idrovo were included in the annexes forwarded by the Commission (annexes to the application, Appendix 2, tome III, fs. 770 to 830). Cf. Military Awards Regulations, Official Registrar No. 2780 of November 26, 1991 published in the General Ministerial Order No. 226 on the same date (annexes to ESAP, Appendices 1 and 2, fs. 1519-1600). He was also to professor at the School of Superior of Guerra of Brazil in 1996, and once he returned from his mission in Brazil, he served the institution in several offices, including Chief of General Staff for the Logistics Brigade "Reino de Quito" [Kingdom of Quito] and Secretary General of the Land Forces. (Case file *Preliminary Objections, Merits, Reparations and Costs*, tome I, fs. 103, 818, 827 to 829).

29 *Cf.* As note by the State (*Case file Preliminary Objections, Merits, Reparations and Costs*, Brief in answer to the application, tome 1, fs. 217 to 277).

> 3. Based on the foregoing, allow me, on behalf of the Council of General Officers of the Land Forces, to thank you for your valuable services to the Institution and hope that life will provide you with better opportunities as a retired officer. Additionally, I remind you that the Land Forces will always be willing to lend you support where necessary, because you remain a part of it. [30]

45. On December 15, 2000, Mr. Mejía Idrovo requested the Commanding General of the Land Forces and the Chairman of the Council of Generals of the Land Forces to reconsider the refusal of his promotion to the next rank as well as asking for an explanation of the reasons and grounds. [31.] On December 26, 2000, Mr. Mejía Idrovo was informed in memorandum N-251-JEMFT of the Council of Generals that "[p]ursuant to your request, […] we make known to you, Mr. Colonel, that the Council of Generals of the Land Forces, in its session held on December 26, 2000, decided to confirm its original decision and considered the promotion to the next rank UNFAVORABLE" without offering any grounds or justification." [32]

46. On January 30, 2001, the President issued Executive Decree No. 1185, which stated that Mr. Mejía Idrovo "would cease to be a part of the Land Forces from January 15, 2001." [33] On July 18, 2001, at the request of the Minister of Defense, the President issued Executive Decree No. 1680, which ordered the discharge of the victim under Article 76(j)[34] of the Military Service Code.[35]

b) Appeal for Legal Protection [Amparo] before the Contentious-Administrative Court

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30 Note from the Council of General Officers, without to date and number, signed by Roberto Moya Arellano (annexes to the application, annex 1, f. 1203).

31 Letter from Colonel José A. Mejía Idrovo addressed to the President of the Council of General Officers, sent on December 14, 2000 (annexes to the application, annex 2, f. 1205). The State affirmed that this procedure is in the official letter No. 200056-25-BAL-CMDO.

32 Letter from the Secretary of the Council of General Officers of the Land Forces addressed to Colonel José Mejía Idrovo on December 26, 2000 (annexes to the application, annex 3, f. 1210), and the memorandum N-251-JEMFT of the Council of General Officers on December 26, 2000, addressed to Mr. Mejía Idrovo (*Annexes to the application, Appendix 2, Tome III, f. 838*).

33 Decree No. 1185 signed by Gustavo Noboa Bejarano, Constitutional President of the Republic of *Ecuador*, on January 30, 2001 (annexes to the application, annex 4, f. 1212).

34 "Any of the following shall be cause for suspension of military personnel […] (j) Any other cause set out in the instant Law."

35 Decree No. 1680 signed by Gustavo Noboa Bejarano, Constitutional President of the Republic of *Ecuador*, on July 18, 2001 (annexes to the application, annex 6, f. 1250). *Cf.* Military Service Code of the Armed Forces, Law No. 118. RO/Sup 660 of April 10, 1991 (annexes to the application, annex 5, f. 1225).

47. Mr. Mejía Idrovo filed an appeal for legal protection [amparo] before the Contentious-administrative Court of Quito, wherein he requested that Decrees No. 1185 and No. 1680 of suspension and discharge be revoked. [36] The Second Chamber of the Contentious-administrative Court recognized the action and on June 28, 2001, declared the amparo action inadmissible because the petition was incomplete given that he had only resorted to those two decrees and had not filed against the actions executed by the Council of Generals.[37] On July 9, 2001, Mr. Mejía Idrovo appealed the ruling before the Constitutional Tribunal. On October 19, 2001, the Court decided, "to confirm the original resolution and in the meanwhile, not admit the appeal for legal protection raised by Colonel Mayor José Alfredo Mejía," given that the petitioner mistook the legal means for the executive decrees to be suspended in the revocation.[38]

c) Proceedings before the Constitutional Tribunal for the Action of Unconstitutionality

48. On October 4, 2001, Mr. Mejía Idrovo filed a petition for unconstitutionality with the Constitutional Tribunal with the Report on Procedural Admissibility of the Office of the Ombudsman,[39] wherein it was requested, *inter alia*, that the Court deem the Executive Decrees to be unconstitutional and unlawful (Nos. 1185 and 1680), order his reinstatement in the permanent Armed Forces, and order his promotion to Brigadier General on December 21, 2000, with full honors, compensation, and statutory rights established in current legislation, in reparation for the damage caused by the constitutional, legal, and regulatory violations. In said petition, he argued that section (j) of Article 76 of the Military Service Code was used "arbitrarily." Lastly, he argued that the processing violated guarantees enshrined in Articles 3(2), 6, 23(3), 23(26), 23(27), 24(12), and 24(13), 35, and 186 of the Political Constitution of the Republic of Ecuador; Articles 76, 91, 92, 101, 105, 106, 127, 128 of the Military Service Code of the Armed Forces, and Article 37 and Chapter X of the Rules of Procedure of the Council of General Officers of the Armed Forces. [40]

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36 Appeal for legal protection [amparo] filed by Mr. Mejía Idrovo before the District Court No. 1 of the Administrative Contentious –no date- (annexes to the brief of pleadings and motions, annex 14, f.1632).

37 *Cf.* Judgment of the District Court No. 1 of the Contentious-administrative Second Chamber of June 28, 2001 (annexes to the evidence of the brief of pleadings and motions, annex 15, f.1636).

38 *Cf.* Judgment No. 470-RA-01-I.S. of the First Chamber of the Constitutional Court on October 19, 2001 (annexes to the evidence of the brief of pleadings and motions, annex 16, f. 1641).

39 *Cf.* Official Letter 04121of the Ombudsman addressed to the Constitutional Court on October 4, 2001. (annexes to the application, annex 7, fs. 1252 y1254). In said official letter, there is to report on admissibility issued by the Ombudsman to file an application of unconstitutionality regarding Executive Decrees Nos. 1185 and 1680 filed by Mr. Mejía Idrovo.

40 *Cf.* Action of Unconstitutionality before the Constitutional Court (annexes to the brief of pleadings and motions, annex 17, f. 1646).

49. On March 12, 2002, the Criminal Chamber of the Constitutional Tribunal admitted the petition and declared the following:

> 1. To declare fundamentally unconstitutionality Executive Decrees No. 1185 of January 15, 2001, and 1680 of July 18, 2001, published in the General Order No. 031 of January 31, 2002, and General Order No. 133 of July 20, 2001;
>
> 2. To order reparation for the harm caused to Col. (Ret.) José Alfredo Mejía Idrovo, [ret.];[41]

50. Moreover, the Constitutional Tribunal, among other things, noted that:

> [...]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. [...] In the case *sub judice* no such substantiation was provided, which signifies a violation of the aforesaid constitutional rule;
>
> […]Article 186(2) of the Constitution provides: "The tenure and profession of members of the security forces are guaranteed. They shall not be divested of their rank, honors and pension for any reason other than those provided by law." This precept has not been observed in this case, since there are elements of subjectivity in the suspension and discharge of the applicant officer that exceed the legal framework; 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. This Court finds that the provisions contained in the Service Code favored the promotion of Colonel GS José Mejía Idrovo. If, based on these rules, other superior officers were promoted, to not have proceeded in the same manner with the applicant violates the right to equality before the law [...];
>
> […]One of the requests of the applicant is that this Court declare the challenged decrees unlawful; as is known, the action of unconstitutionality is not concerned with the possible unlawfulness of a legal norm. In this case, it is up to the contentious-administrative courts to declare the challenged decrees unlawful. On the other hand, a declaration of unconstitutionality suspends the effects of the disputed legal provisions; however, as the Constitution provides at Article 278, such a declaration does not have a retroactive effect;

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41 Cf. Judgment of May 30, 2002 of the Constitutional Court (annexes to the application, annex 13, f. 1332)

> […]Finally, in this case, the immediate precedents for decrees ordering the suspension and discharge of an officer from the Armed Forces lie in the decisions adopted by the Council of General Officers of the Land Forces, which provide their grounds. Therefore, those decisions are also tied to the two decrees challenged as unconstitutional.[42]
>
> […]

51. The Clerk of the Constitutional Tribunal indicated that on from the note of March 25, 2002, Mr. Mejía Idrovo, the President of the Republic, and the Prosecutor General were provided legal notice of the decision of the ruling by means of slips left in the corresponding Constitutional Tribunal postboxes.[43] This judgment was published in the Official Register No.-548 on April 4, 2002,[44] making it enforceable from the date of its promulgation. [45]

52. On April 8, 2002, the Army Command requested that the President of the Constitutional Tribunal to provide an opinion on the scope of the section in Article 278 of the Constitution regarding the possible reinstatement of the Mr. Mejía Idrovo to the Armed Forces and requested a clarification with respect to reparations, because it considered that as the military institution did not issue the Executive Decrees, it did not cause nor has caused any harm to the superior officer."[46] Mr. Mejía Idrovo, argued that "he is aware, unofficially, that there is a petition for review that has been presented in an illegal and unjust manner outside the law, to which a situation has been created that constitutionally is not permitted." [47] Moreover, a request was allegedly made by the petitioner that the petition of the representatives of the Army Command not be admitted

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42 Resolution No.. 039-2001-TC of the Constitutional Tribunal of March 12, 2002 (annexes to the application, Appendix 2, tome III, fs. 1052 to 1062).

43 *Cf.* Oficial letter of Guide of Constitutional Tribunal postboxes states that the Judgment of the Constitutional Tribunal of March 12, 2002 was notified to Mr. Mejía Idrovo, to the President of the Republic, and to Attorney General of the State (appendixes of the judgment of the commission, appendix 2, tome III, f. 1068).

44 *Cf.* Oficial Registrar No. 548 (annexes of the application, appendix 2, tome III, f. 1063).

45 *Cf.* Political Constitution of *Ecuador* of 1998, approved on June 5, 1998, Article 278 (annexes to the application, annex 8, f. 1302): The article 278 states "The declaration of unconstitutionality shall be enforceable and promulgated in the Official Register. It shall enter into force on the date of its promulgation and render void the provision or act declared unconstitutional. The declaration shall not have to retroactive effect, nor shall it be subject to any appeal whatever." "If the decision of the Court is not carried out by the official or officials responsible within 30 days of its publication in the Official Register, the Court, acting ex officio or on request, shall punish them in accordance with the law."

46 *Cf.* Letter from the Commanding General of the Land Forces to the President of the Constitutional Court, April 8, 2002. (annexes to the application, annex 12, fs. 1323 and 1324).

47 *Cf.* Letter from Colonel José Alfredo Mejía Idrovo to the President of the Constitutional Court on April 24, 2002. (annexes to the application, annex 12, fs. 1323 to 1324).

and that he return "in accordance with his right and justice to the rank [he held] prior to the decrees; that is, in active and effective service with the rank of colonel of the general staff and qualified by the Council of Generals for promotion to the rank of brigadier general in accordance with the Ecuadorian Military Service Code."

53. On May 30, 2002, the President of the Constitutional Tribunal issued a Resolution which determined that the decision of the Plenary of the Constitutional Tribunal entered into force upon its publication in the Official Register, "voiding the act declared unconstitutional" and ordered the "the Resolution be carried out immediately,[…] that is, that Colonel José Alfredo Idrovo, Army (Ret.), receive reparation for the harm he sustained, but since the decision is without retroactive effect, the applicant should not be reinstated in the Armed Forces." [48] According to the alleged victim, he became aware of the decision of the President of the Constitutional Tribunal, without stating when, by way of a brief offered upon insistence regarding the execution of the ruling.[49]

54. The alleged victim presented a series of briefs addressed to the President and the Plenary of the Constitutional Tribunal requesting that the decision of March 12, 2002, be complied with.[50] Because of the briefs presented by Mr. Mejía Idrovo, on May 20, 2003, the Plenary of the Constitutional Tribunal stated the following, "[i]n the case numbered No. 039-2001-TC, the brief presented by Colonel José Mejía Idrovo on April 22, 2003 is added. Mainly, the parties are awaiting the resolution by the Plenary of the Constitutional Tribunal on March 12, 2002, notified on the 25 of that month and year. No subsequent measure can modify the mentioned resolution."[51]

d) Noncompliance Action before the Constitutional Court

48 Resolution of the President of the Constitutional Tribunal issued on May 30, 2002 (annexes to the application, annex 13, f. 1332).

49 *Cf.* Communication of Mr. Mejía Idrovo addressed to the President of the Constitutional Court presented on June 5, 2002, in operative paragraph 2(1) it literally states "I have not been provided with legal notice of this second order [of May 30, 2002] in this case (*Case file* of the annexes to the answer of the application, tome I, annex 38, f. 227).

50 *Cf.* Letter from Colonel José Alfredo Mejía Idrovo to the President of the Constitutional Court, received on April 8, 2002. (annexes to the application, annex 12, fs. 1327); letter of the representatives addressed to the President of the Constitutional Tribunal of April 26, 2002 (annexes to the application, annex 12, fs. 1323 to 1324); letter of the representatives addressed to the President of the Constitutional Tribunal presented on August 7, 2007 (annexes to answer of the application, annex 32, tome I, fs. 223); letter to Mr. Mejía Idrovo addressed to President of the Republic dated on September 14, 2007 (appendix to the application, Appendix 12, tome I, f. 1329); Communication of the representatives addressed to President and members of the Constitutional Court presented on September 14, 2007, (annexes to the application, annex 40, f. 1405), and communication of Mr. Mejía Idrovo addressed to the President of the Republic on March 26, 2007 (appendixes of the Commission, appendix 2, tome II, f. 764).

51 *Cf.* Legal notice to the Plenary of the Constitutional Court on May 20, 2003, addressed to the alleged victim (case file of annexes to the application, annex 26, folio 1368).

55. On April 22, 2009, Mr. Mejía Idrovo filed a noncompliance action of the Resolution of the Constitutional Tribunal of March 12, 2002, before the Constitutional Court of Ecuador against the General Command of the Army.[52.]

56. On October 8, 2009, the Constitutional Court ruled on the noncompliance action filed by Mr. Mejía Idrovo, stating that:

> The declaration of unconstitutionality results in the expulsion of the law or legal instrument classified as such (unconstitutional), which from that point on it does not produce any effects; however, as a general rule, the effects produced during the period between the emergence of the rule and its declaration of unconstitutionality, exist and can not be ignored unless they involve effects where from the non-observance everything reverts back to its previous state. Thus, there are cases whose effects are such that it is impossible to go back to the previous state; on the other hand, there are other cases where the effects are such that they could go back to previous state.
>
> When it comes to that which regards the case at hand, there is no doubt about the unconstitutionality of the presidential decrees, those of which gave rise to the declaration of suspension and discharge of the officer of the Armed Forces that, in this case in particular, plays the role of plaintiff; however, the nature of this case is one whose effects can not be ignored and carried back to the previous state, because it is physically impossible to apply retroactivity in such a way that the plaintiff is returned to his original status, since this possibility does not depend on mere will or human desire, but rather, it depends on the factual constraints of the real world.
>
> Therefore, it is physically impossible to go back in time, imagining that facts revert back to their original state, as that would not imply a lack of knowledge of and invalidation of any type of event or action that emerged or was alive during the period between the enactment of Presidential Decrees and the present, that is: the mandates, orders, and decisions of the Land Forces and those military officials who carried out their corresponding roles in the absence of the plaintiff, although his absence was beyond their control. [53]

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52 *Cf.* Brief of Mr. Mejía Idrovo addressed to the Constitutional Court of *Ecuador* on April 22, 2009 (annexes to the ESAP, annex 57, fs. 1865 to 1878); Letter from Xavier Mejía to the Constitutional Court of *Ecuador* on August 25, 2009 (annexes to the ESAP, annex 59, fs. 1884 and 1885); Letter from Xavier Mejía to the Constitutional Court, stamped as received by the Constitutional Court on August 14, 2009 (annexes to the brief of pleadings and motions, annex 59, fs. 1886 and 1887).

53 *Cf.* Judgment No. 0013-09-SIS-CC of the Constitutional Court of *Ecuador* on October 8, 2009 (annexes to the brief of pleadings and motions, annex 60, fs. 1889 to 1897).

In addition, it ordered that:

> a) The reinstatement of the plaintiff to the professional status he held within the Land Forces, on the date immediately prior to the issuance of Executive Decrees declared unconstitutional.
>
> b) The recognition of patrimonial rights consisting of the payment of all fees that so correspond in accordance with applicable laws and regulations, as well as those for loss of earning that he stopped receiving as of the declaration of unconstitutionality, until the date of his effective reinstatement therein;
>
> c) The promotion of administrative and judicial actions to enforce the right of repetition to the benefit of the State, for the amounts it paid as a result of the noncompliance of the resolution of the former Constitutional Tribunal. [54]

57. On November 9, 2009, the Commander General of the Army forwarded the President of the Republic the draft of the Executive Decree for the reinstatement of Mr. Mejía Idrovo to active service, in order to render full compliance to the mentioned judgment[55] (*supra* para. 56). By means of Executive Decree in Supplement No. 504 of the Official Registrar No. 302, of October 18, 2010, Mr. Mejía Idrovo was reincorporated to active service as Colonel of the Army.[56]

58. In 2010, the alleged victim asked the Constitutional Court to clarify and expand the noncompliance Judgment, particularly in what regards the promotion to the next immediately proceeding rank pursuant to the Military Service Code.[57] On March 11, 2010, the Constitutional Court denied the expansion and clarification requested, noting that the reinstatement should be carried out "in the conditions in which [the petitioner] was in when the executive decrees, later deemed unconstitutional, were issued [...], that

54 Judgment No. 0013-09-SIS-CC of the Constitutional Court of *Ecuador*, *supra* note 53.

55 *Cf.* According to the State in official letter No. 2009-1199-DJFT the General Commander of the Army forwarded tot he President of the Republic the draft of Executive Decree for the reinstatement of Mr. Mejía Idrovo to active service (*Case file* of *Preliminary Objections, Merits, Reparations and Costs*, brief of final arguments of the State, tome III, f. 538).

56 *Cf.* Decree of reinstatement of Colonel José Mejía Idrovo published on October 18, 2010 in the Supplement of Official Registrar No. 504 (annexes to the brief of final arguments of the State, tome I, f. 423).

57 *Cf.* Motion for Clarification and Expansion of the Judgment No. 0013-09-SIS-CC issued by the Plenary of the Court –without a date-, presented on October 30, 2009 (annexes to the brief of pleadings and motions, annex 61, f.1898).

is, that he be reinstated to the rank of colonel." [58] Moreover, information was requested from the Minister of National Defense and the Commander General of the Army, on the actions taken to fully comply with the ruling.

e) Requalification before the Council of Generals of the Armed Forces.

59. On March 23, 2011, the President of the Council of General Officers communicated to Mr. Mejía Idrovo that the Council of General Officers decided to qualify him as "not apt for the promotion to the rank of Brigadier General,"[59] applying the provisions of Article 76, section (f) [60] of the Military Service Code. On March 25, 2011, Mr. Mejía Idrovo presented the appeal to the resolution of the Council of General Officers. [61] On April 6, 2011, the Council of General Officers decided "to deny the appeal filed by the [petitioner], and as a consequence the resolution rendered in session on March 10, 2011, was ratified."[62]

B. Procedural Guarantees in the processing of the case before the Council of General Officers of the Land Forces and before the Constitutional Tribunal (Article 8 of the American Convention)

60. The Court will analyze the alleged violation of judicial guarantees [fair trial] recognized in Article 8(1) of the American Convention. As such, the Court will analyze the irregularities produced in the processing of Mr. Mejía Idrovo's case.

a) Lack of motive before the Council of General Officers of the Land Forces

Arguments of the parties

61. The Court notes that the representatives argued that the communications of the State authorities must have an established motive, given that without it there is a violation to the principle of due process of the alleged victim, who is thereby unable to duly

58 *Cf.* Request for clarification and amplification of the judgment No. 0013-09-SIS-CC of the Constitutional Court of October 8, 2009 issued by the Constitutional Court on March 11, 2010 (annexes to the brief of final arguments of the representatives, annex 2, fs. 777 to 779).

59 *Cf.* Official Letter N. 2011-0046-SCOGFT of March 22, 2011 (annexes to the brief to the final arguments to the representatives, Annex 3. AF. Rep. para. 34).

60 "The officer will be considered available, for one of the following causes [...] (f) upon issuance of an order of motive and summons for a full trial, for military infractions or common infractions once executed."

61 *Cf.* Escrito of impugnación a la resolución of 22 of marzo of 2011 emitida por el Consejo of Generales of la Fuerza Terrestre (annexes to the final arguments of the representatives, tome I, f. 813).

62 *Cf.* Letter No. 2011-0062-SCOGFT of April 6, 2011 (*Case file* of *Preliminary Objections*, *Merits*, *Reparations and Costs*, tome III, fs. 666 to 670).

exercise his defense. To justify this position, they cited Article 24, section 13 of the Political Constitution in force at the time of the facts[63] and letter "a" of annex "A"[64] of the Rules of Procedure of the Council of General Officers, without relating these arguments with the alleged violation of an Article of the Convention. The Commission did not state anything regarding the proceedings carried out before the Council of General Officers.

62. On its behalf, the State alleged that on December 26, 2000, Mr. Mejía Idrovo received a reasoned resolution from the Council of General Officers regarding the non-promotion founded in the regulations of the military land forces on technical standards of a hierarchical analysis. It noted, also, that at all times due process was respected and without prejudice to Mr. Mejía Idrovo's right to petition or establish a claim.

Considerations of the Court

63. Regarding the alleged lack of motive, the Court notes that the Constitutional Tribunal in its ruling of March 12, 2002, established—in relation to decisions of the Council of General Officers—that "motive has not been provided, which is thereby a violation of the constitutional norm." In this regard, Article 24(13) of the Political Constitution states: […] "the resolutions of the public powers must be reasoned."

64. Since the Constitutional Tribunal ruled on the lack of reason of the decisions of the Council of General Officers, the Court considers that the omission was recognized and corrected in the domestic jurisdiction. In addition, neither the Commission in the application or the representatives in their pleadings and arguments alleged a violation of Article 8 of the Convention for the lack of motive in the decisions issued by the Council of General Officers in December 2001.

b) Irregularities in the processing before the Constitutional Tribunal

Arguments of the parties

65. The Inter-American Commission stated that the Resolution of the President of the Constitutional Tribunal of May 30, 2002, infringed the domestic right upon being deemed legal, since legal notice was not provided to Mr. Mejía Idrovo nor was it requested by a

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63 Political Constitution of *Ecuador* of 1998, Article 24, numeral 13: "The resolutions of public powers that affect persons, must be reasoned. There is no motive if in the resolution the norms or legal principles are not mentioned from which the resolution is founded, and if the pertinence of their application is not explained regarding the facts. Upon resolving the challenge of a punishment, a worse punishment cannot be established."

64 Rules of Procedure of the Council of General Officers, section a):
"If a candidate is deemed not apt in any of the concepts for moral qualities, his or her evaluation must be suspended immediately, but the assessor must prove that fact."

competent party within the period established by law. This generated a proceeding that was not foreseen by Ecuadorian legislation in contravention with the guarantees of Article 8 of the Convention.

66. The representatives as well as the Commission requested the Court to declare the State's international responsibility for violation of Article 8(1) of the Convention, as the President of the Constitutional Tribunal, although the request for clarification was time-barred when filed and presented by a person outside of the proceeding, exceeding his jurisdiction, he issued the resolution of March 30, 2002, which was not notified to the alleged victim and prevented his right to a defense.

67. The State at the hearing said that by way of the briefs submitted by the Commander of the Land Forces, the President of the Constitutional Tribunal, in order to comply with the resolution that corresponds to this case, issued statement No. 039-2001 T.C. Also, it stated that the President of the Constitutional Tribunal has jurisdiction to implement the resolutions issued by the plenary of the judiciary. On the other hand, it stated that Article 8 of the Convention was not violated because the reasonable time period was not lapsed, since it is necessary to examine and consider the density of the procedural and legal actions that each includes. In its final arguments, the State argued that the Inter-American System attributed to the procedural actions of the interested party a portion of responsibility in the calculation of the reasonable period established to obtain justice, and that in this case, Colonel Mejía Idrovo, regardless of his procedural relationship in the Ecuadorian courts, delayed compliance with various orders. [65]

Considerations of the Court

68. In regard to the alleged violation of Article 8 of the Convention, this Court notes that the controversy argued by the Commission and the representatives is in regard to the jurisdiction or competence of the President of the Constitutional Tribunal to admit and resolve the issue regarding the request for clarification of April 8, 2002, by the Commander General. In order to consider the application of Article 8 to the facts in the context of the processing of the case before the Constitutional Tribunal, the Court will refer to the alleged irregularities in the following manner: 1) the time-barred nature of the request for clarification of the judgment issued by the Constitutional Tribunal; 2) lack of jurisdiction of the President of the Constitutional Tribunal to make the clarification regarding the judgment by means of a resolution, and 3) failure to transfer the motion for clarification and lack of legal notice to the parties of the resolution.

69. Upon examination of the arguments of the parties and of the evidence provided, this Court notes the following: a) that legal notice of the decision of the Constitutional

[65] Namely, the brief of April 4, 2002 whereby Mr. Mejia Idrovo asked to be reinstated to active duty with the immediate promotion process, and the brief of August 7, 2002, of Mr. Mejia Idrovo in which he makes a misinterpretation and invokes the unconstitutional executive orders to his promotion to the next higher rank level as of December 21, 2000. In this way, he addressed the Constitutional President of the Republic of *Ecuador* at the time, pointed to a disproportionate amount that denatures any judicial discretion for reparation. (brief of the final arguments of the State, f. 542).

Tribunal of March 12, 2002, was provided to the alleged victim, to the President of the Republic, and to the Prosecutor General of the Republic on March 25, 2002,[66] and that it was published in the Official Register No. 548 on April 4, 2002, (*supra* note 51) which as of its promulgation is executable[67]; b) that the Army Command on April 8, 2002, founded in Article 67 of the Rules of Processing of Case Files submitted a clarification to the President of the Constitutional Tribunal (*supra* note 52); c) that Mr. Mejía Idrovo became aware, unofficially, that a motion for clarification had been filed by the Constitutional Tribunal of March 12, 2002 (*supra* note 52); d) that the President of the Constitutional Tribunal accepted the request for clarification and issued a statement on May 30, 2002 (*supra* note 53); e) that according the alleged victim "he became aware of the decision of the President of the Constitutional Tribunal, without stating when, by way of a brief offered upon insistence regarding the execution of the ruling." (*supra* note 53). Subsequently, the alleged victim addressed several briefs to the President and the Plenary of the Tribunal to complain of the situation that ensued due to said decision (*supra* note 54), and f) on May 20, 2003, the Plenary of the Constitutional Tribunal decided to revoke any orders subsequent to the resolution of the Plenary of the Constitutional Tribunal of March 12, 2002, where legal notice was provided on the 25th of said month and year. (s*upra* note 54).

70. The Court notes that the State did not present any arguments nor did it raise any objections argued by the Commission and representatives, and neither did it provide evidence in this regard, but rather it limited itself to noting that the President of the Constitutional Tribunal has "jurisdiction to execute the resolutions rendered by the plenary of the judiciary" (*supra* note 67).

71. The Court notes that in the period in which the facts occurred, the proceedings before the Constitutional Tribunal were governed by, *inter alia*, the following provisions then in force: Article 67[68] of the Rules of Procedure on the Processing of Case Files of the Constitutional Tribunal, and Articles 285[69] and 286[70] of the Code of Civil Procedure of Ecuador. Moreover, the Constitution that was in force until 2008, in Article 276(7), established that the Constitutional Tribunal could "exercise the powers conferred by the Constitution and laws." In application of this norm, the Code of Civil Procedure in its

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66 Cf. Oficial Letter of Guide of the Constitutional Tribunal postboxes, *supra* note 43.

67 Art. 278 of the Political Constitution of *Ecuador*, *supra* note 45.

68 Art. 67 states that: "Execution of the plenary resolutions.-the resolutions orderd by the Plenary shall be Executed by the President of the Tribunal.

69 Art. 285: "The judge that issued the Judgment cannot repeal nor alter its sense in any case. However, he/she can clarify or amplify its content if one of the parties asks him/her to do so within a three day deadline."

70 Art. 286: The clarification will take place if the Judgment was obscure. The amplification will take place when one of the controversial issues had not been solved, or if the Judgment had not referred to the interests or costs. The remaining party must be heard."

Article 285 establishes the possibility of making clarifications or amplifications of a judgment.

1) time-barred nature of the motion for clarification of the judgment rendered by the Constitutional Tribunal

72. In Article 285 of the Code of Civil Procedure, a period of three days is established in order to present a clarification or amplification. In the present case, on March 25, 2002, legal notice was presented to the parties of the mentioned judgment of March 12, 2002, to which any clarification should have been presented within the following three days.

73. In this regard, during the public hearing before the Court, the expert witness Jaime Rafael Vintimilla stated that "Article 43 [of the Law of Constitutional Control] expressly stated: requests to the Tribunal for reconsideration or reversal cannot be made, but a request for expansion or clarification can be made within a period of three days […]. Once published in the official record, no appeal can be made as this would infringe upon due process, the basic rights of citizens."

74. However, in this case, the General Command filed, on April 8, 2002, a motion for clarification, that is, 14 days after legal notice of the Judgment. Additionally, it is worth mention that the aforementioned decision was published in the Official Register No. 548 on April 4, 2002, date from which, according to the current regulations was enforceable, to which the motion for clarification was submitted four days after the promulgation of the judgment. As a consequence, this Court finds that the submission of such a clarification by the General Command was time-barred.

75. In addition, both the representatives and the Commission argued that the General Command was not a party to the proceedings in the case, and as such could not request clarification. This Court notes that from the evidence presented and the norms indicated by the parties, there is not sufficient information to determine with certainty that said institution was not a party in the present matter. Or, whether third or affected parties could file a motion for clarification or amplification of the ruling. As such, this Court cannot rule on the matter.

2) lack of jurisdiction of the President of the Constitutional Tribunal to provide clarification on the ruling by way of a resolution

76. Article 285 of the Code of Civil Procedures clearly establishes that, "the judge that issued the judgment cannot repeal nor alter its sense in any case," however, the judge can clarify or amplify its content, and that pursuant to Article 67 of the Rules for the Processing of Case Files of the Constitutional Tribunal, it is the responsibility of the President of the Constitutional Tribunal to execute the judgment of the plenary of the Tribunal. In this regard, the expert witness Jaime Rafael Vintimilla stated that Article 14

of the Law of Constitutional Tribunal "corroborated this, since it indicated that the resolutions of the Constitutional Tribunal, […] do not allow […] for any appeal. Only in the Organic Law of the Constitutional Tribunal was a motion for amplification or clarification mentioned."

77. This Court has established that a judge, as director of the proceeding, should ensure full compliance of the rules of due process of the parties and failure to do so might open the possibility for the application of the rules of nullification.

78. It is evident from the facts of the case that the President, on the one hand, admitted a time-barred clarification. On the other hand, being that the current regulations at that time provided that only the judge that rendered the judgment could clarify or amplify, the President, himself, decided to clarify the judgment, when this corresponded to the plenary of the Constitutional Tribunal, and therefore his decision was not in accordance with the applicable law (*supra* para. 71). This Court considers that the President of the Constitutional Tribunal acted outside the scope of his jurisdiction, to which due process was not guaranteed upon application of procedures that were not legally established. [71]

79. Moreover, this Court notes that as a result of that decision of the President of the Constitutional Tribunal, a situation of legal uncertainty and doubt arose regarding the implementation of the ruling of the Constitutional Tribunal of March 12, 2002. This due to the fact that Mr. Mejía Idrovo demanded compliance with the decision of the Plenary of the Constitutional Tribunal, while the defendant, the President of the Republic, argued that he would satisfy that decided by the President of the Constitutional Tribunal.

3) failure to transfer the motion for clarification and legal notice to one of the parties subsequent to the resolution

80. The Commission and the representatives argued that Mr. Mejía Idrovo was informed, without being officially provided with legal notice of the motion for a clarification by the General Command of the Land Forces and of the subsequent decision of the President of the Constitutional Tribunal of May 30, 2002. The State did not dispute this allegation. In regard to the motion for clarification, Article 286 of the Code of Civil Procedure expressly states that "for clarification or expansion, the remaining party must be heard."

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[71] *Cf. Case of Castillo Petruzzi et to V. Perú. Merits, Reparations and Costs*. Judgment of May 30, 1999. Series C No. 52, para. 129; *Case of Ivcher Bronstein V. Perú. Merits, Reparations and Costs.* Judgment of February 6, 2001. Series C No. 74, para. 112, and *Case of the Constitutional Tribunal V. Perú. Merits, Reparations and Costs.* Judgment of January 31, 2001. Series C No. 71, para. 73. See also Principle 5 of the Basic Principles of the United Nations on the Independence of the Judiciary. Adopted by the Seventh Congress of the United Nations on Crime Prevention and Treatment of Offenders held in Milan from August 26 to September 6, 1985, and confirmed by the General Assembly in its resolutions 40/32 of November 29, 1985 of and 40/146 of December 13, 1985.

81. Notwithstanding the foregoing, this Court has found that the representatives and the Commission, in their briefs, refer either to the lack of legal notice regarding the motion for clarification and the resolution of the President, stating the applicable law, without indicating the date that the alleged victim learned, unofficially, of such action and without identifying and determining the evidence in support of their arguments. Accordingly, this Court does not have enough elements to consider and determine whether Mr. Mejía Idrovo had the procedural opportunity to exercise his right to a defense.

82. In light of that mentioned in this section, the Court concludes that the State carried out a procedure that was beyond its jurisdiction upon admitting a time-barred request for clarification, and for clarifying a judgment issued by the Plenary of the Constitutional Tribunal.

83. Notwithstanding the foregoing, the Court refers to the decision issued on May 20, 2003 by the Plenary of the Constitutional Tribunal, which revoked the decision of the President of the Constitutional Tribunal of May 30, 2002, stating that "the parties, in principle, await the resolution of the Plenary of the Constitutional Tribunal of March 12, 2002, and that no subsequent order can modify that resolution" [72] (*supra* para. 54). Therefore, the Court concludes that such irregularities were corrected within the domestic courts. Because of this, it does not declare a violation of Article 8(1) of the Convention in this case.

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84. In what regards the alleged violation of a reasonable time period, the Court notes that the arguments of the Commission and representatives are focused on the alleged lack of compliance with the judgment of March 12, 2002, by the State authorities with jurisdiction to do so. Given that the lack of implementation of the judgment of the Constitutional Tribunal is directly linked to effective judicial protection of the execution of domestic rulings, this Court will carry out its analysis in the section on Article 25(2)(c) of the American Convention.

C. Effective judicial protection in the implementation of the rulings (Article 25 of the American Convention)

Arguments of the parties

85. The Commission expressed that the State has not complied with the mandate to provide reparation to the victim for damages incurred given the application of two executive decrees that resulted in the suspension and discharge of the victim, thereby producing an unreasonable delay (contrary to its own standards) of more than eight years in the effective implementation of the judgment of the Constitutional Tribunal of March

72 However, it is noted that the decision of the Plenary of Constitutional Tribunal of May 20, 2003 did not conduct an analysis of the irregularities in the procedure followed by the Constitutional President of the Tribunal.

12, 2002. Moreover, it found that "the noncompliance with the judicial decisions not only affects legal certainty but also threatens the basic principles of the Rule of Law", to which the State upon guaranteeing the rights enshrined in the Convention, must not only respect them (negative obligation), but must also take all appropriate measures to ensure them (positive obligation). Due to the foregoing, the State violated Article 25 of the American Convention, in accordance with Article 1(1) of that international instrument, to the detriment of José Alfredo Mejía Idrovo.

86. The representatives argued that "the declaration of unconstitutionality of the Executive Decrees of suspension and discharge produces an immediate revocation pursuant to that established in Article 276, numeral 2, of the Constitution [in force at said time], to which its direct consequence is the reinstatement of the offer to the institution, the promotion and payment of loss of income. Nevertheless, the order of the Constitutional Tribunal was not complied with by the State, arguing that said decision was not retroactive,[73] without the body of constitutional control carrying out the actions necessary for the implementation of the ruling." Subsequently, with the noncompliance action, the Constitutional Court, by way of the judgment of October 8, 2009, noted the measures to be taken in order to comply with the judgment issued in 2002 by the former Constitutional Tribunal. On October 18, 2010 "the judgment was partially complied with, since [Mr. Mejía] was reinstated into active service," without fulfilling the order to assure his patrimonial rights and push forward the administrative and judicial actions for the right to repetition in favor of the State, "or taking the steps in line with that provided in the decision on clarification […] regarding promotion to a higher rank."

87. On its behalf, the State argued that it has provided Mr. Mejía Idrovo with effective remedies in order to resolve his legal situation, to which it has not violated Article 25 of the American Convention. In particular, it noted that on the one hand, the declaration of unconstitutionality of the executive decrees […] does not imply a return to the situation that existed prior to the issuance of the provision that is contrary to the constitutional norm. The alleged victim should have used numeral 2 of Article 276 and, in said case, the arguments of Mr. Mejía Idrovo would be legally founded. Notwithstanding, the reasoning of numeral 2, noted by Mr. Mejía Idrovo in the motion for unconstitutionaliy, he sought a declaration of unconstitutionality of two decrees, that is, of legal norm; thus, in application of Article 278, the resolution of the Constitutional Tribunal does not have a retroactive application. Nevertheless, the main controversy with the alleged victim is the consideration that the effect of said ruling [included] a promotion to a higher rank. This is a legal impossibility, in accordance with the Constitution that was in force, pursuant to that noted by the State.

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[73] It is non-retroactive when the ruling is about general -rules, laws, regulations, ordinances, statutes- but when the decision is about individual rights then in a correct application of paragraph 2 of that constitutional provision, the act declared unconstitutional does not have legal effect, reverting the resolution to the time of submission of the act. *Cf.* Judgment of the Constitutional Tribunal of March 12, 2002 (*supra* note 42).

88. Moreover, Ecuador noted that the new constitutional framework provides for the noncompliance action, that which was used by the alleged victim and produced a favorable result. Currently, the highest constitutional tribunal of justice is implementing the legal measures of the case in order to comply with its mandate, as is clear from the ruling issued by that tribunal on May 11, 2010, by which the Constitutional Court "asks the Minister of Finance to, within a period of five days, allocate and credit the budget line in order to legalize the draft of the executive order to reinstate Col. GS José Alfredo Mejía Idrovo to active service in the Armed Forces, and to make effective the severance pay and payment of the benefits that correspond to the said Colonel, as determined by the judgment in this cause of action, and to report to this Court within the period allowed." Likewise, in an effort to comply with the recommendations of the Commission, the State, through the Ministry of Justice and Human Rights, has carried out actions aimed at complying with the decisions of the national tribunals to provide reparation to the alleged victim.

Considerations of the Court

89. In light of the facts from which allegations of the violation of Article 25 of the Convention originate (*supra* para. 48 to 58), the Court notes the following points of the controversy: a) the suitability and effectiveness of the motion for unconstitutionality; b) the scope of the obligation to provide reparation; c) compliance with the judgment of the Constitutional Tribunal, and d) the implementation of the Judgment of noncompliance by the Constitutional Court.

90. Because of this, the Court will examine in the following sections if: a) the unconstitutionality action provided judicial protection in accordance with Article 25(1) of the American Convention, as this is an effective remedy, and b) effective judicial protection was provided by the authorities for the execution of the domestic rulings in accordance with Article 25(2)(c) of the Convention.

a) Effectiveness of the unconstitutionality action (Article 25(1) of the American Convention)

91. Article 25(1) of the Convention guarantees the existence of a simple, quick, and effective remedy before a judge or competent Tribunal. The Court recalls its constant jurisprudence in that said remedy must be appropriate and effective.[74]

92. In regard to the unconstitutionality action, the Court notes that the Constitution of Ecuador, at the time of the facts, provided in Article 276 that it is incumbent on the Constitutional Tribunal to:

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[74] *Cf. Case of Velásquez Rodríguez V. Hondura*. Merits, *supra* note 6, para. 63; *Case of Vélez Loor V. Panamá*, *supra* note 14, para. 19, and *Case of Vera Vera et al. V. Ecuador*, *supra* note 12, para. 13.

> 1. Hear and resolve the claims of unconstitutionality of the merits or substance that are present regarding organic and ordinary laws, decrees-law, ordinances, statutes, rules or procedure, and resolutions issued by the organs of State institutions, and to suspend, in part or in full, its effects.
>
> 2. Hear and rule on the unconstitutionality of administrative acts of any public authority. The declaration of unconstitutionality entails the revocation of the act, without detriment to the administrative body adopting the necessary measures to preserve the respect for constitutional norms.
>
> […]

93. Regarding the suitability of the unconstitutionality action, the Court finds that there is no controversy between the parties regarding whether said action was appropriate to protect the rights that the alleged victim argued before the Constitutional Tribunal. However, the State has expressed that Mr. Mejía Idrovo should have argued that provided in numeral 2 of Article 276 of the Constitution in force and not numeral 1, as the latter could only suspend these effects and not make them retroactive (*supra* para. 87). Moreover, the State expressed that Mr. Mejía Idrovo should have exhausted a civil action for damages against the State. In this regard, the Court depends on the decision and scope of the Judgment delivered by the Constitutional Court on October 8, 2009, wherein it interpreted the Judgment of March 12, 2002, of the Constitutional Tribunal and referred to the scope of the reparation and affirmed that it included the reinstatement of Mr. Mejía Idrovo, without regarding this as a retroactive effect, as well as the recognition of his patrimonial rights and the right of repetition (*supra* para. 56). In view of the foregoing, the Court finds that the unconstitutionality action was the appropriate remedy, that is, the most suitable for safeguarding the violated legal situation in this case.

94. As for the effectiveness of the remedy, the Court has established that for such an effective remedy to exist, it is not enough that it be provided by the Constitution or by law or that it be formally recognized, but rather it must be truly effective in establishing whether there has been a violation of human rights and in providing redress. A remedy that proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective. [75]

95. Moreover, the Court has noted that "Article 25(1) of the Convention contemplates the duty of the States Parties to ensure to all persons subject to their jurisdiction an effective recourse against acts that violate their fundamental rights. Said effectiveness presupposes that, in addition to the existence of formal remedies, there be results or answers to the violations of rights enshrined in the Convention, in the

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[75] *Cf. Case of Velásquez Rodríguez V. Honduras. Preliminary Objections, supra* note 12, para. 93; *Case of the Xákmok Kásek Indigenous Community. v. Paraguay.* Merits, Reparations and Costs. Judgment of August 24, 2010. Series C No. 214, para. 140, *and Case of Abrill Alosilla et al. V. Perú, supra* note 19, para. 75.

Constitution, or in laws. […] The process should lead to the materialization of the protection of the right recognized in the judicial ruling, by the proper application of this ruling." [76]

96. Specifically, the Court deems that to maintain the *effet util* of the decisions, the domestic tribunals, in rendering decisions in favor of the rights of people and in ordering reparations, should establish in a clear and precise manner - according to its competence - the scope of the reparations and the method for their implementation thereof. According to the standards of this Court and the international law of human rights, the scope of these measures must be comprehensive in nature and, if possible, return the person to the position they were in before the violation occurred (*restitutio in integrum*). Among these measures are, where applicable, restitution of property or rights, rehabilitation, satisfaction, compensation and guarantees of non-repetition, *inter alia*. [77]

97. In this case, having established that the unconstitutionality action was the most suitable remedy to redress the rights alleged by Mr. Mejía Idrovo, the Court notes that the ruling of March 12, 2002, of the Constitutional Tribunal, while declaring the executive decrees of discharge and suspension unconstitutional, as well as ordering, in general, that the harm caused to the alleged victim be repaired, it lacked precision and clarity to determine the extent of the reparations and their method of implementation. Subsequently, the Resolution of the President of the Tribunal of May 30, 2002 - which showed the irregularities already analyzed (*supra* para. 53, 78, and 79)--, contributed to the confusion regarding the scope of that decision by restricting its application in a unilateral manner, declaring it as non-retroactive and thereby preventing the reinstatement of the plaintiff to the Armed Forces. However, later the Constitutional Court clarified the meaning and scope of that ordered in the judgment of March 12, 2002**.**

98. Based on the foregoing, the Court deems that the unconstitutionality action although it may have been suitable to protect the affected legal interests, lacked effectiveness upon not repairing the situation and not allowing it to produce the result for which it was designed, [78] by not specifying the scope of the orders, in contravention of Article 25(1) of the Convention.

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[76] *Cf. Case of Baena Ricardo et al. V. Panamá. Competence.* Judgment of November 28, 2003. Series C No 104. para. 73; *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") V. Perú. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 1, 2009 Series C No. 198, para. 69, and *Case of Abrill Alosilla et al. V. Perú, supra* note 19, para. 75.

[77] *Cf. Case of Velásquez Rodríguez V. Honduras. Reparations and Costs*. Judgment July 21, 1989. Series C No. 7, paras. 25 and 26*; Case of González et al. ("Cotton Field") V. México. Preliminar Objection, Merits, Reparations and Costs.* Judgment of November 16, 2009. Series C No. 205, para. 450, *and Case of Barreto Leiva V. Venezuela. Merits, Reparations and Costs.* Judgment of November 17, 2009. Series C No. 206, para. 128.

[78] *Cf.* Case of the Dos Erres Massacre V. Guatemala. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 24, 2009. Series C No. 211 para. 121.

1) Regarding the scope of the unconstitutionality judgment in regard to the promotion to the rank of General.

99. The Court notes that Mr. Mejía Idrovo has insisted, by way of various briefs, that the judgment of the Constitutional Tribunal that declared the executive decrees unconstitutional, as well as the judgment of the Constitutional Court, intrinsically included that he be promoted to the higher rank of Brigadier General. In addition, Mr. Mejía Idrovo noted in the brief of final arguments that on March 22, 2011, the Council of General Officers resolved to qualify him as not fit for the promotion to rank of Brigadier General. Therefore, the Council "did not proceed as ordered in the decision of the Constitutional Court of March 2009 […], but simply reverted back to the beginning, as if José Idrovo had just been submitted to an evaluation process for promotion." Subsequently, by means of supervening evidence, they reported that upon a request for appeal, on April 6, 2011, the same Council ratified the decision.

100. In this regard, the Court notes that established in the mentioned judgments of the Constitutional Tribunal and Constitutional Court, specifically that provided in the decision for clarification of the Constitutional Court of March 11, 2010, by which it ordered that the reinstatement must be to the conditions he was in at the time of the issuance of the decrees declared unconstitutional, that is, to the rank of Colonel (*supra* para. 58).

101. Likewise, the Tribunal notes that the decision for clarification of the Constitutional Court stated that:

> [T]he case under analysis, is one in which it is impossible to return to the previous state, in an absolute manner, because doing so would be tantamount to ignoring the situations that emerged in the legal world of the Armed Forces. [...] The Court insists that having met all requirements for the corresponding promotion of the plaintiff to the rank of Brigadier General, this should be done in accordance with the Law and Rules of Procedure that govern military activity. [...] The Court recognizes the patrimonial rights of the plaintiff; that is, the right to receive a pecuniary compensation according to the legal norms and regulations. [79]

102. In view of the foregoing, the Court finds that in regard to the scope of the Judgment, those decisions are clear regarding the reinstatement of the plaintiff to the rank he held prior and not to his immediate ascent in rank.

b) Effective judicial protection in the implementation of the domestic rulings (Article 25(2)(c) of the American Convention)

[79] Request for clarification and amplification of the Constitutional Court on March 11, 2010, *supra* note 58, fs. 777 to 779.

103. Article 25(2)(c) of the Convention states that the States undertake to "ensure that the competent authorities shall enforce such remedies when granted."[80]

104. As such, the Court has noted that "under the terms of Article 25 of the Convention, it is possible to identify two specific responsibilities of the State. The first one is that the States have the responsibility to embody in their legislation and ensure due application of effective remedies before the competent authorities, which protect all persons subject to their jurisdiction from acts that violate their fundamental rights or which lead to the determination of the latter's rights and obligations. The second one is that States must guarantee effective mechanisms to execute the decisions or judgments delivered by such competent authorities[81] so that the declared or recognized rights are protected effectively. The process should lead to the materialization of the protection of the right recognized in the judicial ruling, by the proper application of this ruling." [82] This, since a judgment, which has enforceable authority, gives rise to certainty as to the right or dispute under discussion in the particular case, and therefore its binding force is one of the effects thereof. The contrary would imply the denial of this right." [83]

105. The Court considers that the implementation of judgments should be governed by those specific standards that enable the realization of the principles of, *inter alia*, judicial protection, due process, legal certainty, judicial independence, and rule of law. The Court agrees with the European Court of Human Rights upon considering that to achieve full effectiveness of the judgment, its implementation should be complete, perfect, comprehensive, [84] and without delay. [85]

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[80] Moreover, the Court declared violations of Article 25 because of the lack of due diligence and tolerance by the tribunals when processing [... remedies], and the lack of effective judicial protection, which have allowed the abusive use [...] as a delaying tactic in the process. *Case of the Dos Erres Massacre V. Guatemala, supra* note 78, para. 120.

[81] *Cf. Case of Suárez Rosero V. Ecuador. Merits.* Judgment of November, 1997. Series C No. 35, para. 65; *Case of Rosendo Cantú et al. V. México. Preliminar Objection, Merits, Reparations and Costs.* Judgment of August 31, 2010. Series C No. 216, para. 166, *and Case of Cabrera García and Montiel Flores V. México, supra* note 5, para. 142.

[82] *Cf. Case of Baena Ricardo et al. V. Panamá. Competence, supra* note 76, para. 73; *Case of Acevedo Buendía et al. ("Cesantes and Jubilados of la Contraloría") V. Perú, supra* note 76, para. 66, and *Case of Abrill Alosilla et al. V. Perú, supra* note 19, para. 75.

[83] *Cf. Case of Baena Ricardo et al. V. Panamá. Competencia, supra* note 76, para. 82; *Case of Acevedo Jaramillo V. Perú, Preliminary Objections, Merits, Reparations and Costs.* Judgment of February 7, 2006, para. 220, and *Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") V. Perú, supra* note 76, para. 72.

[84] *Cf.* CtEDH, *Case of Matheus versus Francia*, n° 62740/00, Judgment of 31.03.2005, para. 58; CtEDH, Case of *Popescu versus Romania*, n° 48102/99, Judgment of 2.03.2004, para. 68 and ss. According to standards developed by the Consultative Committee of European Judges (CCJE), an advisory body of the Committee of Ministers of the Council of Europe in matters relating to the independence, impartiality and professionalism of judges, "the execution of decisions of justice should be fair, prompt, effective and proportionate "" (*Cf.* Opinion no.13 (2010) *on the role of judges in the enforcement of judicial decisions*, available in english, french, and polish,

106. Likewise, the principle of effective judicial protection requires that the implementation procedures be accessible to the parties, without hindrance or undue delay in order to quickly, simply, and comprehensively satisfy their purpose.[86] Additionally, the provisions governing the independence of the judicial order must be made in an appropriate way so as to ensure the timely execution of the judgments without any interference by other branches of government[87] and guarantee the binding and obligatory nature of the decisions of last resort. [88] The Court considers that in a system based on the principle of rule of law, all public authorities, within the framework of their jurisdiction, must head to the judicial decisions and push forward the execution of these decisions without hindering the purpose and scope of the decision or unduly delaying its implementation. [89]

107. In the present case, Mr. Mejía Idrovo filed, in 2001, an unconstitutionality motion that handled part of his claims by judgment of March 12, 2002, issued by the Constitutional Tribunal (*supra* para. 48 and 49). After the issuance of the ruling, said Tribunal addressed some communications to various State institutions, wherein it requested a report regarding compliance with said resolution.[90] In response to this, said

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athttps://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CCJE(2010)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864, last visit July 1, 2011.

[85] *Cf.* CtEDH, *Case of Cocchiarella versus Italia* (GC), n° 62361/00, Judgment of 29.03.2006, para. 89; CtEDH, Case of *Gaglioneversus Italia*, n° 45867/07, Judgment of 21.12.2010, para. 34. In light of the established jurisprudence of the ECtHR the delay in implementing the court decision may constitute a violation of the right to be tried within a reasonable time protected by Article 6 para. 1 of the ECHR and that the execution "should be considered part of the process for the purposes of Article 6." *Cf. Case of Hornsby versus Grecia*, n° 18357/91, Judgment of 19.03.1997, para. 40. *Cf. Case ofs Di Pede versus Italia and Zappia versus Italia*, n°s15797/89 and 24295/94,of 26.09.1996, para. 16 and 20 respectively. "A delay in the execution of a decision can be justified in particular circumstances. However, in any Case of the delay may compromise the essence of the right protected by Article 6." *Cf.* CtEDH, *Case of Jasiūnienė versus Lithuania*, n° 41510/98, Judgment of 6.03.2003, para. 27.

[86] *Cf.* Opinion no.13 (2010) *on the role of judges in the enforcement of judicial decisions*, cit., conclusions, H), *supra* note 84.

[87] *Cf.* Opinion no.13 (2010) *on the role of judges in the enforcement of judicial decisions*, cit., conclusions, F). *Cf.* tambien *Matheus versus Francia*, n° 62740/00, para. 58 and ss; *Cabourdin versus France*, nº 60796/00, Judgment of April 11, 2006, para. 28-30.

[88] This means that their compliance is forced, and that if they are not obeyed voluntarily, may be coercively enforceable.

[89] The European Court has established in the Case of *Inmobiliare Saffi versus Italia*: "In conclusion, while it may be accepted that Contracting States may, in exceptional circumstances and, as in this instance, by availing themselves of their margin of appreciation to control the use of property, intervene in proceedings for the enforcement of a judicial decision, the consequence of such intervention should not be that execution is prevented, invalidated or unduly delayed or, still less, that the substance of the decision is undermined." *Cf. Case of Inmobiliare Saffi versus Italia*, n° 22774/93, Jugdment of 07.28.1999, para 74.

[90] *Cf.* Official letters Nos, 576-TC-P, 573-TC-P, 574-TC-P of the Secretary General of the Constitutional Tribunal of July 12, 2002 addresed, respectively, to the Prosecutor General of the Republic,

institutions reported on the actions carried out in compliance, without objecting to said requirement.[91] It was not until the issuance of the new Constitution of Ecuador (2008) that the noncompliance action was incorporated, which aims to ensure "the implementation of judgments" and that public acts do not violate constitutional rights. [92] On April 22, 2009, Mr. Mejía Idrovo filed said remedy before the Constitutional Court, which rendered a judgment on December 8, 2009, and ordered his reinstatement, patrimonial payment, and rights of repetition (*supra* para. 56). On October 18, 2010, Mr. Mejía Idrovo was reinstated in the military to the rank of colonel. From the final written arguments of the parties, the Court has noted that the State has made certain steps to determine the amount of compensation for the victim through the Multidisciplinary Commission (*infra* para. 151). However, to date, these points laid down in the judgment have not been fully complied with.

108. In this regard, during the public hearing before the Court, the expert witness Jaime Rafael Vintimilla referred to the process of implementation and noted that the Constitutional Tribunal should put pressure and take on the measures of the case so as to require compliance of the judgment, nevertheless, this obligation has been overshadowed by elements such as permanent legislative changes, excessive formalism, arbitrariness in the interpretation of those who execute the judgment, those of which carry out roles that are not for them to execute, and conceptual confusion. Upon referring to Article 278, numeral 2, the Constitution in force at the time of the facts (1998), it was noted that "if thirty days passed as of the publication of the resolution of the tribunal in the Official Gazette, [and] the officials responsible did not comply *ex officio*," the Constitutional

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the Constitutional President of the Republic, the Miniter of National Defense (annexes to the application, appendix 2, tome III, fs. 1073, 1109, 1110). In this respect the Article 60 of the Rules of Procedure of the Constitutional Court Records from January 7, 2002, states: "[in] the case of noncompliance with rulings of the Constitutional Court, the Plenary of the Court shall communicate the fact to the Attorney General to implement the provisions of Articles 251, 277 and others applicable to this case, in the Penal Code."

[91] *Cf.* Official letter No, 2002-194-AJ-CCFFAA of the Chief of Joint Fores of the Armed Forces, addressed to the Office of the Constitutional Tribunal on July 22, 2002, Official letter No, 021130- MS-7-1 of the Ministry of National Defense addressed to the Secretary General of the Constitutional Tribunal on July 31, 2002, Official Letter No, 2002-213-AJ-CCFFAA of the Commander of Joint Forces of the Armed Forces addressed tot he Secretary General of the Constitutional Tribunal on July 31, 2002 (annexes to the application, appendix 2, tome III, fs. 1113, 1117 1120). Moreover, the Official Letter No, 25152 of the Office of Sponsorship of the Prosecutor General of the State addressed tot he Secretary General of the Constitutional Tribunal on July 17, 2002, where in informed that the Prosecutor General was party to the case, and that in virtue of Articles 2 and 6 of the Organic Law of the Prosecutor General of the State it does not have anything to comply with or report regarding National matters (annexes to the application, appendix 2, tome III, fs. 1113).

[92] Article 93 of the Constitutoin of *Ecuador*, 2008. *Cf.* The Constitutional Court admits in regardo the Judgment of October 8, 2009:

> For its part, the connotation of "judicial guarantees," one of them being the action for breach of constitutional Judgments, directly related to the obligation of the constitutional court to control public acts from not violating constitutional rights. In short, within the new judicial safeguards implemented in the *Ecuador*ian Constitution of 2008, the action for noncompliance can be identified, which incidentally is a constitutional guarantee that did not exist in the past of constitution of *Ecuador*.

Tribunal should send the case to criminal judges, for [them] to apply a norm, […] a revision of the Substantive Criminal Code, where crimes such as malfeasance or contempt are dealt with." It added that "it is not that the Constitutional Tribunal could directly punish, [and as such,] no punishments have been set in practice. It has merely remained a threat." Lastly, Mr. Vitimilla stated that with the Constitution of Montecristi (Constitution of 2008) the noncompliance action has been incorporated so that all judgments not complied with can be brought to full effect, being "a tool that has come to fill a procedural and cultural gap that suffers in Ecuador and has generated insecurity [...]. However, "I would say it is very difficult to comply with, and often one has to beg for it to be fulfilled; a pilgrimage is necessary, as it is not that compliance is immediate."

109. Thus, Article 93 of the 2008 Constitution provides that "[t]he noncompliance action's purpose is to ensure the application of the rules that form the legal code, as well as the compliance with the judgments or reports of international human rights organizations, when the rule or decision sought after involves an obligation to make or not make a decision clear, express, and enforceable. The action will be brought before the Constitutional Court."

110. In response to said norm, the expert witness Alex Iván Valle Franco, noted in the public hearing that:

> [T]his guarantee has as a principal strength […] the establishment of legal certainty, […] and being in line with the new principles that have been provided to public servants in the current constitution under the principles of efficiency, opportunity, effectiveness and more, because although there were some judgments of certain tribunals or international resolutions that were not met and that [at the] time there was no appropriate mechanism for effective action, now there is the noncompliance action.

111. In light of the foregoing, the Court deems that the State did not comply-for a prolonged period of time-with an effective judicial protection to execute its domestic rulings. After the passage of nine years since the declaration of unconstitutionality of Executive Decrees Nos. 1185 and 1680 that discharged Mr. Mejía Idrovo, the State has not effectively complied with the obligations derived from the ruling. This generated a new violation to the detriment of the victim upon leaving him in a state of helplessness and legal uncertainty, which impeded him from duly reestablishing his contested and recognized rights by competent authorities. Moreover, given that the ruling of the Constitutional Tribunal was self-executing, the authorities responsible for its implementation were negligent in carrying it out. It was not until seven years after the issuance of the ruling, that the victim was provided with the necessary measures in Ecuador to appeal said noncompliance, and notwithstanding, to date, that ordered by the Constitutional Court has not been complied with in an integral manner (*supra* paras. 56 and 107, *infra* paras. 154 and 155). Therefore, the State, through the judiciary and other authorities responsible for implementing the ruling, has failed in its duty to ensure full compliance with the mentioned judgments, in violation of Article 25(2)(c) of the Convention.

112. In conclusion of the present Chapter, the Court considers that the State did not guarantee an effective remedy to redress the affected legal situation nor did it guarantee the implementation of the domestic rulings, by means of effective judicial protection, in violation of Articles 25(1) and 25(2)(c) of the American Convention, to the detriment of Mr. Mejía Idrovo.

VII
OBLIGATION TO ADOPT DOMESTIC LEGAL EFFECTS AND EQUAL PROTECTION BEFORE THE LAW (ARTICLES 2 AND 24 OF THE AMERICAN CONVENTION)

1) Regarding the alleged violation of Article 2 of the American Convention

Arguments of the parties

113. The Inter-American Commission did not allege a violation of Article 2 of the American Convention. The representatives of the victim expressed in their brief of pleadings and motions that "the actions of the national authorities demonstrate that the State" has not complied with the obligation enshrined in Article 2 of the American Convention upon not adopting, through its constitutional processes, the legislative or other measures necessary to make Mr. Mejía Idrovo's rights effective, given that eight years passed since the body charged with constitutional control deemed the executive decrees to be unconstitutional, since the proceeding observed by the Executive Branch to separate the plaintiff from the ranks of the Army was in violation of due process." "If the [State] considers that due to constitutional provisions the action does not have retroactive effect, then it is its obligation to carry out a constitutional reform to protect the rights recognized in the judgment of the tribunal. Nevertheless, far from this, the government limited itself to stating that there is nothing to fulfill and that its decrees are in force." "In so doing, the State has abandoned the alleged victim without having carried out any actions to establish legal or administrative mechanisms that would allow for the domestic laws to be adapted so that the remedies are effective," which has violated Article 2 of the Convention. It should be noted that later, the representatives did not take a position on the alleged violation of Article 2 of the American Convention, neither at the public hearing nor in their final arguments.

114. On its behalf, the State rejected the argument regarding the violation of Article 2 of the Convention, and it noted that to argue a violation of this provision is rushed, incoherent, and not very cautious in both the resolution of the Constitutional Tribunal and the judgment of the Constitutional Tribunal, which are still unfolding the effects of its legal compliance. It added that this provision recognizes not only the obligation to adopt norms, but also, in general, measures of all character—institutional or economic—to ensure effective compliance of the Convention. In this regard, it noted that "the State is in the process of adopting legislative measures to harmonize with the constitution in the National Assembly and in producing legal research by the teams of the Subsecretariat of Normative Development of the Ministry of Justice and Human Rights." Therefore, the process of regulatory harmonization with the Constitution should be taken

into account, as well as that the international human rights instruments are incorporated in all procedural and substantive reforms.

Considerations of the Court

115. The Court notes that the representatives limited themselves exclusively in their brief of pleadings and motions upon formulating arguments without offering relevant evidence to support the existence of an alleged violation of Article 2 of the Convention.[93] Moreover, in their final brief, the representatives did not address the matter. Given the foregoing, the Court dismisses said argument for lack of evidence. In addition, the Court already substantively ruled on the failure to execute the judgment in the corresponding section (*supra* VI. C. b)).

2) Regarding the alleged violation of Article 24 of the American Convention.

Arguments of the parties

116. The Commission did not argue a violation of Article 24[94] of the American Convention. The representatives argued a violation of Article 24 for the failure to promote Mr. Mejía Idrovo, while others were promoted who were in allegedly similar circumstances. In this regard, they expressed that the decision of the Council of General Officers results in an "evident unequal treatment of the victim by [said] Council […] upon favoring other candidates for promotion to brigadier general" and not promoting Mr. Mejía Idrovo. They added that "the discretion is limited by the Military Service Code of the Armed Forces" and "if [based] on said regulations other superior officers were promoted, not having done the same for the plaintiff, violations his right to equal protection before the law enshrined in the Constitution." Moreover, they argued that the application of the ruling of the Constitutional Tribunal was discriminatory, given that in other cases a similar ruling has been implemented. Specifically, the stated that the lack of implementation of the ruling was a result of discrimination, since applying non-retroactivity implies "differential treatment." It is worth mention that subsequently, the representatives did not address the alleged violation of Article 24 of the Convention.

117. The State argued that there is no violation of Article 24 of the Convention, and in its answer to the application it noted that, pursuant to Advisory Opinion 4/84, "it follows that not all differences in legal treatment are discriminatory […]There may well exist

93 The general duty of the State to adapt its domestic law to the provisions of the Convention to guarantee the rights enshrined thereof, provided for in Article 2, which involves action on two fronts. On the one hand, elimination of rules and practices of any kind involving violations of the guarantees under the Convention. On the other hand, the issuance of rules and the development of practices leading to effective enforcement of those guarantees. *Cf. Case of Castillo Petruzzi et to V. Peru*, *supra* note 71, para. 207, and Case of Reverón Trujillo V. Venezuela*. Preliminar Objection, Merits, Reparations and Costs.* Judgment of June 30, 2009. Series C No. 197, para. 60.

94 Report on Admissibility and Merits No. 7/9, the Commission considered that it had not been duly informed by the petitioners in case in particular, and therefore did not accept that point of the request.

certain factual inequalities that might legitimately give rise to inequalities in legal treatment that do not violate principles of justice […]."

118. In regard to the process of requalification of the promotion of Mr. Mejía Idrovo, the representatives noted that the State reported, by means of a note of February 25, 2011, that the Ministry of Defense summoned the Council of General Officers to initiate a process of qualification. They added that on March 23, 2011, Mr. Mejía Idrovo received Official letter N.-2011-0046-SCOGFT of March 22, 2011, signed by the President of the Council of General Officers, wherein he was informed that said Council resolved to qualify him as not apt to ascend to the rank of Brigadier General, applying that provided by Article 76(f) of the Military Service Code. In this regard, the representatives affirmed that the Council of General Officers "did not proceed as ordered in the judgment [of noncompliance], but rather reverted back to the beginning, as if Mr. Mejía Idrovo had just been submitted before a process of qualification for his ascent" (*supra* para. 99). As such, on March 25, 2011, Mr. Mejía Idrovo presented an action to challenge the decision of the Council.

119. On its behalf, the State informed of the initiation of the process of requalification of the promotion of the alleged victim, and forwarded the decisions issued by the Council of General Officers, official letters N.-2011-0046-SCOGFT of March 22 and N.-2011-0062-SCOGFT of April 6, 2011. [95]

Considerations of the Court

120. In the present case, the Court notes that the Constitutional Tribunal, in its decision of March 12, 2002, (*supra* para. 50), noted that "if on the basis of [the Military Service Code] the promotion of other superior officers came to be, not having done the same with the plaintiff violates the right to equal protection of persons before the law […]." Following the judgments of the Constitutional Court on October 8, 2009 and March 11, 2010, Mr. Mejía Idrovo, on October 18, 2010, was reinstated to active duty as a colonel in the Army (supra paras. 57 and 58).

121. Moreover, it is worth mention that, despite the ruling of the Constitutional Tribunal, it does not have sufficient elements to establish, in light of the American Convention, if there was unequal protection of the domestic law. The representatives did not submit specific evidence in this case, such as the situation of the other officers who participated in the request for qualification, the names and technical criteria used, in each

[95] On June 20, 2011, the State submitted the Official letter No. 2011-0087- SCOGFT, of May 19, 2011, signed by General Patricio Cardenas Proaño, Commanding General of the Land Forces, in relation to the process of qualification of Colonel Mejia Idrovo. In this respect, the Secretariat forwarded the letter to the Representatives and the Commission in order for them to submit their observations. On June 28, 2011, the Representatives submitted their comments and the Commission stated that it had no comments in this regard, *supra* para. 13.

case, for their promotion, so as to allow the Court-acting within its jurisdiction-to conclude that Mr. Mejía Idrovo had been subject to discriminatory treatment. [96]

122. In consideration of the foregoing, this Court deems that in the present case there are not sufficient evidentiary elements for the assessment of a violation to the right to equal protection in Article 24 of the American Convention. [97]

123. On the other hand, the Court notes that both the representatives as well as Ecuador communicated that on February 25, 2011, the State informed Mr. Mejía Idrovo that the Ministry of Defense summoned the Council of General Officers of the Land Forces to a new process of qualification of the alleged victim. On March 22, 2011, said Council decided to qualify him as not apt to ascend to the rank of Brigadier General. This resolution was ratified by the Council of General Officers on April 6, 2011.

124. The Court highlights that the new process of qualification and promotion is not the subject of the litigation at hand. Therefore, the Court considers that the processing of the qualification cannot be considered as part of the controversy of the case in the proceedings before the Inter-American System and that it is not appropriate to render a decision regarding the recent decisions of the Council of General Officers.

125. Finally, it what regards the argument regarding the failure to apply the ruling of the Constitutional Tribunal of March 12, 2002, (*supra* para. 111), the Court ruled on this in the section regarding judicial protection in light of Article 25(2)(c) of the American Convention.

VIII
REPARATIONS
(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION*)*

126. Pursuant to the provisions of Article 63(1) of the American Convention, the Court has stated that all violations of international obligations that result in harm, entail the duty to provide adequate reparations, [98] and that this provision codifies a rule of common law that is one of the fundamental principles of contemporary international law on State responsibility. [99]

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[96] *Cf. Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18 of September 17, 2003. Series A No. 18, paras. 56 and 57.

[97] *Cf. Case of Apitz-Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 5, 2008. Series C No. 182*, para. 200.

[98] *Cf. Case of Velásquez Rodríguez V. Honduras*. *Reparations and Costs*, *supra* note 77, para. 25; *Case of Salvador Chiriboga V. Ecuador. Reparations and Costs*. Judgment of March 3, 2011. Series C No. 222, para. 32, *and Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 106.

[99] *Cf. Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala.* Reparations and Costs. Judgment of May 26, 2001. Series C No. 77, para. 62; *Case of Salvador Chiriboga V. Ecuador.*

127. In consideration of the violations of the American Convention declared in chapter VI, the Court will proceed to examine the requests of both the Commission and the representatives, as well as the arguments of the State on the matter, in light of the standards established in the jurisprudence of the Court in regard to the nature and scope of the obligation to remedy, [100] with the purpose of issuing measures capable of repairing the damage caused to the victim.

128. The reparation of the damage caused by the breach of an international obligation requires, whenever possible, full restitution (*restituto in integrum*), which consists in the reestablishment of the previous situation. If this is not feasible, as in most cases, including this one, the international tribunal will determine measures to guarantee the violated rights, repair the consequences of the violations, and establish a compensation to offset the damage incurred. [101]

129. This Court has established that the reparations must have a causal connection with the facts of the case, the violations established, the damages proven, as well as with the measures requested to repair the respective damage. Therefore, the Court must observe that concurrence in order to render a decision that is proper and in accordance with the law.[102]

A. Injured Party

130. The Tribunal reiterates that the injured party is considered to be, in the terms of Article 63(1) of the Convention, those that have been declared as victims of the violation of any of the rights enshrined thereof.[103] Therefore, this Court considers Mr. José Alfredo Mejía Idrovo to be the "injured party."

131. It is worth mention that the representative requested by way of one of the various briefs that reparation be provided to the next of kin of Mr. Mejía Idrovo for "their moral

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Reparations and Costs, supra note 98, para. 32, *and Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 106.

100 *Cf. Case of Velásquez Rodríguez V. Honduras. Reparations and Costs, supra* note 77, paras. 25 to 27; *Case of Abrill Alosilla et al. V. Perú, supra* note 19, para. 88, *and Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 108.

101 *Cf. Case of the Constitutional Tribunal V. Perú. Reparations and Costs.* Judgment of January 31, 2001. Series C No. 71, para. 119; *Case of González et al. ("Cotton Field") V. México, supra* note 77, para. 450, and *Case of Barreto Leiva V. Venezuela, supra* note 77, para. 128.

102 *Cf. Case of Ticona Estrada et al. V. Bolivia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 191, para 110; *Case of Abrill Alosilla et al. V. Perú, supra* note 19, para. 87, and *Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 107.

103 *Cf. Case of Bayarri V. Argentina. Preliminar Objection, Merits, Reparations and Costs.* Judgment of October 30, 2008. Series C No. 187, para. 126; *Case of Abrill Alosilla et al. V. Perú, supra* note 19, para. 89, and *Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 109.

suffering upon being subjected to a criminal trial for supporting José Mejía's battle" and […] demanding compliance of the judgment from the body that oversees constitutional control, as well as the suffering that stemmed from the noncompliance of the judgment to the detriment of his family. Nevertheless, the Court has established that the alleged victims must be noted in the application and in the report of the Commission, pursuant to Article 50 of the Convention. Moreover, pursuant to Article 33(1) of the Rules of Procedure, it corresponds to the Commission and not the Court, to identify the alleged victims with precision and at the opportune procedural moment in the case before the Court.[104] As such, being that the next of kin of Mr. Mejía Idrovo were not indicated as victims, the Court cannot deem them to be injured parties in this case.

B. Comprehensive measures of reparation: restitution and satisfaction

132. The Tribunal will determine other measures that seek to repair the non-pecuniary damage that do not have a pecuniary nature, and will provide for measures that extends to public reach or repercussion. [105]

133. The Court takes into account that during the public hearing Mr. Mejía Idrovo stated that:

> [T]he situation was outrageous for the reason that, for us who have chosen this profession, a military career, it is of mystics, ideals and objectives; it is a life plan which we draw from as any other profession, and having made great efforts, demonstrating all my abilities [...] this has produced an imbalance in me, including problems with the family that to date we have not overcome; I have felt almost helpless; my health has suffered terribly, [...] and all this has prompted me because unfortunately there has been no willingness on the behalf of the authorities to head to the domestic ruling, and unfortunately, even I, as a victim, had asked and pleaded with the authorities that the case be resolved domestically so that the image of the State of Ecuador, my country, is not seen negatively in an international judgment, but to date, all I get is the contempt and noncompliance of the judgments that were in my favor.

134. The international jurisprudence, and particularly the jurisprudence of the Court, has established repeatedly that a judgment can constitute a *per se* form of reparation. [106]

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[104] *Cf. Case of the Ituango Massacres V. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of 1 of julio of 2006. Series C No. 148, para 98; *Case of Gomes Lund et al. V. Brazil, supra* note 9, para. 78, and *Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 28.

[105] *Cf. Case of the "Street Children" (Villagrán Morales et al) V. Guatemala. Reparations and Costs, supra* note 99, para. 84; *Case of of Salvador Chiriboga V. Ecuador. Reparations and Costs, supra* note 98, para. 125, and *Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 106.

[106] *Cf. Case of Neira Alegría et to V. Perú. Reparations and Costs*, Judgment of September 19, 1996. Series C No. 29, para. 56; *Case of Abrill Alosilla et al. V. Perú, supra* note 19, para. 132, and *Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 135.

Notwithstanding, considering the circumstances of the case *sub judice*, the suffering caused to Mr. Mejía Idrovo, due to the alterations to his condition and life plan, expectations regarding his professional development, and the other consequences of a non-pecuniary nature suffered as a consequence of the violations of Articles 25(1) and 25(2)(c) of the American Convention, declared to the detriment of the victim, the Court deems it pertinent to establish the following measures.

1. Restitution

135. The representatives requested the Court to order the State to "take the necessary actions in order to carry out the promotion procedure as ordered by the Constitutional Court, that is, that once it has met the requirements established in the law, as pointed out by the Constitutional Tribunal, it is to proceed according to the military legislation and that the Council of General [Officers] request the respective authorities to issue the [d]ecrees of promotion and to make public said decrees in the respective general order." The Commission did not state a specific position regarding this point, and limited itself to request that this Court "order the State to take necessary measures to effectively comply with the judgment of the Constitutional Tribunal of Ecuador issued on March 12, 2002.

136. In this regard, the State sustained, contrary to that claimed by the representatives, that the ruling of the Constitutional Tribunal, by not having retroactive effects did not imply the promotion of Mr. Mejía Idrovo to the next higher rank. "The Constitutional Tribunal ordered instead the reparation of the damages."

137. The Court notes that it indeed was proven in Chapter VI that there were omissions in the due process, which were corrected in the domestic forum during the processing of the case before the Court. The Tribunal notes that, by decision of October 8, 2009, the Constitutional Court ordered "[t]he reinstatement of the plaintiff to the professional situation that he held within the Land Forces, on the date immediately prior to the issuance of the Executive Decrees declared unconstitutional." Subsequently, on October 18, 2010, Mr. Mejía Idrovo was reinstated to active duty as Colonel of the Army.

138. In view of the foregoing, the Court finds that during the processing of the case before this Tribunal, Mr. Mejía Idrovo was reinstated to his position, to which his rights have been restored for the time the violation occurred. Therefore, in this aspect he has received reparation.

2. Satisfaction

a) Publication of the Judgment

139. The representatives requested that "the State must publish in the Official Gazette and in a newspaper of national circulation, once, the chapter on the established facts" in the judgment of this Court and "the operative paragraphs therein." Moreover, they requested that the State "carry out a public military celebration of redress for José Mejía wherein it offers an apology for the damage incurred by him and his family during these

years and official disapproval of the direct perpetrators of the violations at hand, in addition to the contempt against the victim and his family."

140. In this regard, the State noted that there is a lack of cooperation by the representative of Colonel Mejía Idrovo "in order to comply with the recommendations of the Commission, despite the State's good faith." It added that "the Ministry of Justice and Human Rights drafted an extract of a public apology" that was rejected by Mr. José Mejía Idrovo's attorney on November 5, 2009. According to the State "the ruling of the Constitutional Tribunal is, in itself, a remedy that, once published in the Official Gazette, produces the same effect as a public apology." Therefore, the State indicated that "this measure is not applicable in this case."

141. The Court considers it appropriate to order, [107] as it has done in other cases, within a period of six months, from the notification of this Judgment:

a) the official summary of the Judgment drafted by the Court, once, in the Official Gazette;

b) the official summary of the Judgment drafted by the Court, once, in a newspaper of national circulation, and

c) this judgment in its entirety, available for one year, on the official website.

142. The Court considers that said measures of satisfaction are sufficient to repair this aspect of the present case.

C. Other requested measures of reparation

1. Measures for training of public officials

143. The representatives requested that the State be ordered to carry out specific training courses on human rights for the military high command "in order for them to understand that they are subject to legal rules and forced to comply with the judgments issued by tribunals," and to take all necessary measures to adapt its legislation with the American Convention and the jurisprudence of this Court, especially with regard to the enforcement of court decisions and other measures to ensure that such events do not recur. For its part, the Commission did not submit specific comments regarding the guarantee of non-repetition, and the State did not address this point.

144. This Court deems that since no violation of Article 2 of the Convention was declared, nor the existence of general patterns of noncompliance with the rulings, the Court considers that it is unnecessary to order this measure in the present case.

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[107] *Cf. Case of Barrios Altos V. Perú. Reparations and Costs.* Judgment of November 30, 2001. Series C No. 87, Operative Paragraph 5.d); *Case of Abrill Alosilla V. Perú, supra* note 19, para. 92, *and Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 125.

2. Obligation to carry out an administrative investigation that resulted in a violation

145. The representatives made known before the Court that "as a guarantee of non-repetition, administrative or other measures should be applied to remove the State officials responsible for the contempt of the judgments of the domestic tribunals." Moreover, they requested that the Court order the State to, "within a reasonable period of time, remove all the legal and factual obstacles and mechanisms that prevent the investigation, identification, prosecution and punishment of those responsible" for the noncompliance of the decision issued by the highest governing body of constitutional control. For its part, the Commission did not address this aspect. The State noted that national authorities have "taken measures of various kinds to comply with the ruling of the Constitutional Court."

146. The Court notes that the representatives did not demonstrate the existence of impediments to the investigation, prosecution, and punishment of those responsible, to which said request lacks a causal connection with the violations declared in this ruling.

D. Compensation for pecuniary and non-pecuniary damages

147. The Commission considered it "relevant that there be reparation for the consequences produced by the lack of compliance of the judgment, by means of the payment of a compensation for the damages caused in the case" and requested that the Court, "notwithstanding any claims that the victim may make at the appropriate stage in the proceedings," set an amount, in equity, as compensation for pecuniary and non-pecuniary damages, in exercise of its broad authority in this matter.

148. The representatives[108] requested that the Court establish the amount of US$ 358,033.59 (three hundred and fifty-eight thousand thirty-three dollars of the United States of America and fifty-nine cents) established "by the State itself" and that it order the State to pay the victim that amount, to which "should be added only the difference resulting between June 2009 and October 2010 in which Mr. Mejía Idrovo was reinstated to active service," to the concept of reparation of pecuniary and non-pecuniary damage. The representatives emphasized that the State has never complied with the second point of the judgment of the Constitutional Court of October 2009, because the State made a payment of US$570,772.68 (five hundred and seventy thousand, seven hundred seventy-two dollars of the United States of America and sixty-eight cents), "nonetheless, it did not [specify] that this payment was made in favor of the victim as ordered in the judgment, but made in favor of the [Armed Forces Social Security Institute of Ecuador] [(hereinafter "ISSFA")]. Likewise, the representatives requested that the Court, "in

[108] Attached are the corresponding supporting documents (*annexes to the brief of pleadings, motions No. 70, 71 and 72, fs 1983 to 2000*).

equity, set an amount for the concept of extra patrimonial reparation that the victim's next of kin should receive."

149. The State argued that "the alleged victim, in a systematic way, has refused to recognize the efforts of the State regarding a potential reparation." It added that "the Ministry of Justice and Human Rights, as well as the Prosecutor General of the State in the specific field of their competence, have received the refusal of Mr. Mejía Idrovo to accept the amounts calculated by the corresponding entities." The State asserted that "through the Ministry of Justice and Human Rights, the ISSFA, and the Ministry of Defense, it has made, and at present is making the greatest efforts to provide reparation to the citizen Mejía Idrovo according to the decision of the Constitutional Court" and that "it committed itself with the Inter-American Court to inform [...] on the severance payments being carried out in the ISSFA. In this regard, the State expressed that "it heeded to the creation of a multidisciplinary [c]ommission, which has met on three occasions, in order to establish the total compensatory amount whose final value" was US$ 358,033.59 (three hundred and fifty-eight thousand, and thirty-three dollars of the United States of America and fifty-nine cents).

Considerations of the Court

150. The Court has established that pecuniary damage consists of "the loss of income to the victim, the costs effectuated with motive in the facts, and the consequences of pecuniary nature that are connected with the facts of the case."[109] Moreover, the Court has developed the concept of non-pecuniary damages and has established that non-pecuniary damages "may include the suffering and distress caused to the victim directly and the victim's relatives, the erosion of values that are very meaningful to people, as well as changes, of a non-pecuniary nature, in the living conditions of the victim or the victim's family." In the present case, the existence of pecuniary and non-pecuniary damage is understandable.

151. In this regard, on November 2009, the State sent the Inter-American Commission three technical notes (Nos. 06054 and 10391 notes of November 13, 2009, and note No. 10529 of November 23, 2009) in which it said that the corresponding sum for the compensation to Coronel Mejía Idrovo is of U.S$358,033.58 (of which U.S. $194,895.81 is for pecuniary damage and U.S.$163,137.58 for non-pecuniary damage) calculated in June 2009. According to the information provided by the State, this calculation was performed by an *ad hoc* multidisciplinary committee formed to calculate the amount of compensation for Mr. Mejía Idrovo, which was "comprised by the Legal Department of the Army, the Army Finance Director, and the staff of the Armed Forces Social Security Institute (ISSFA)." The Court also notes that the representatives expressed their agreement regarding the amount of U.S.$358,033.58 for pecuniary and non-pecuniary

[109] *Cf. Case of Bámaca Velásquez V. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, para. 43; *Case of Abrill Alosilla V. Perú, supra* note 19, note 91, *and Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 128.

damages established by the State, requesting only the resulting difference between June 2009 and October 2010, in which Mr. Mejía Idrovo was reinstated to active service.

152. The Court notes that in the chart submitted to the Commission by the State and then to the Court in the final arguments, the following three rubrics regarding pecuniary damages can be distinguished, translated as loss of earnings:[110] a) "the remunerations that [Mr.] Mejía [Idrovo] should have received had he staid in active service until June 2009, subtracted from the military pensions," after discharge until said date; b) "the loss of income that [Mr.] Mejía [Idrovo] should have received had he remained until 2009 in active service, subtracted from the loss of income already received upon remaining in active service until June 2001," and c) "the corresponding value of the pensions to be paid out, under the assumption that he had remained in active service until 2009, from July to December 2009."

153. Likewise, the Court notes that the amount calculated by the State for non-pecuniary damage suffered by Colonel Mejía [Idrovo] is based on the "severance pay carried out by the ISSFA of the pensions estimated under the following [standards]:[111] a) discharge in 2009"; b) "rank of Colonel"; c) "[t]ime of [s]ervice of 36 years and 6 months"; d) "life expectancy of approximately 72 years"; e) "existence of an injury, of an emotional and not patrimonial nature."

154. On the other hand, the Court recalls that the representatives noted, pursuant to that expressed by the State, that at the domestic level a sum of payment had not been established for the victim's compensation and that the calculation had been done by the ISSFA, in which the victim still owed said institution the sum of US$6.076.00 (six thousand and six dollars of the United States of America), for individual and employer contributions since the declaration of unconstitutionality of the decrees of suspension and discharge until the effective reinstatement to active service of Mr. Mejía Idrovo, which was also expressed by the State in the public hearing. Nevertheless, the Court considers that these declarations cannot invalidate the documentary evidence and the written comments of the State in the proceeding before the Commission and the Court where Ecuador expresses, explicitly and repeatedly, that the "total sum recognized for pecuniary damage is of [US]$194,895.81." This position has been confirmed by the State in the final written arguments submitted to this Court on March 28, 2011.

155. Moreover, the Court notes that the Minister of Defense –Land Forces- paid off the amount of US$570,772.86 (five hundred and seventy thousand, seven hundred and seventy-two dollars of the United States of American with eighty-six cents), in favor of

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[110] Pecuniary damages **$194.895,81**

- Amount of remuneration – Paid pensions = 118.212,98
- Severence pay to be paid = 7.524,89
- Severence payments of loss of earnings – paid loss of earnings = 69.158,14

[111] Non-pecuniary damages US $163.137,58
Foreseeable amount of pensions for life expectancy = US$163.137,58
Total US$358.033,59

the ISSFA in order to allow for the conditions of reinstatement of Mr. Mejía Idrovo[112] to active service. Nevertheless, even though the State has not explicitly addressed this point, the Court considers that it is clear from the case file that to date, no payment, has been, with or without the ISSFA, made directly in favor of the victim.

156. In consideration of the agreement between the parties of the amount established by the State itself as reparation of the pecuniary and non-pecuniary damages suffered by the victim, the Court, in the present case, deems it pertinent to establish the amount of US$ 358,033.59 (three hundred and fifty-eight thousand, thirty-three dollars of the United States of America and fifty-nine cents), proposed by Ecuador, calculated until June 2009. Subsequently, the State provided new information, [113] which included that regarding the period between June 2009 and September 2010, until Mr. Mejía Idrovo's reinstatement in the armed forces. Taking into account the parameters of the calculations provided by the State, the Court sets, in equity, the amount of US$26,000.00 (twenty-six thousand dollars of the United States of America) for the mentioned period, added to the amount for pecuniary damages indicated above. Therefore, the Court considers that the State should pay Mr. Mejía Idrovo the total sum of US$358,033.59 (three hundred and fifty-eighty thousand, and thirty three dollars of the United States of America with fifty-nine cents) be provided to Mr. Mejía Idrovo, as compensation for pecuniary and non-pecuniary damages. This amount must be paid to Mr. Mejía Idrovo within one year as of legal notice this Judgment, without applying any discount or deduction for taxes.

E. Costs and Expenses

157. As has been noted previously by the Court in prior opportunities, the costs and expenses are understood within the concept of reparations enshrined in Article 63(1) of the American Convention. [114]

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112 *Cf.* Report of the Social Security Institute of the Armed Forces of the State (ISSFA) (annexes to the final arguments of the State, annex 1, tome I, fs. 340 and 355).

113 *Cf.* report on the legal conditions that define the legal framework that regulates the the military profession, as well as severence of securities, drafted for the recognition of the economic/patrimonial rights pursuant to Judgment No. 002-09-SIS-CC, issued by the Constitutional Court of Ecuador of 08-OCT-2009 relating to the concerns of the Inter-American Court of Human Rights, generated at the hearing held against the State of Ecuador for Colonel José Mejía Idrovo. Section entitled: *Liquidación of emolumentos of ley como militar en servicio activo – período of reincorporación. "Rubros entre the que se consideran las remuneraciones que les correspondían recibir como Militar Activo to señor CRNL. JOSÉ ALFREDO MEJÍA IDROVO* [Liquidation of emoluments of law and active military duty - the period of reinstatement. "Items that are considered among the remuneration Mr. Col. JOSE ALFREDO MEJIA IDROVO. Active Military, was entitlted to recieve, from August 01, 2001 until September 30, 2010." Total income of settlement of $ 250,345.47. (annexes to the final arguments of the State, annex I, pages 340-341).

114 *Cf. Case of Garrido and Baigorria V. Argentina. Reparations and Costs.* Judgment of August 27, 1998. Series C. No. 39, para. 79; *Case of Abrill Alosilla V. Perú, supra* note 19, para. 133, *and Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 140.

158. The Commission requested that “once the representatives of the victim had been heard,” the Court order the State to pay the costs that have been incurred at the domestic level, as well as those incurred from the handling of the case before the Commission and those that arose as a consequence of the processing before the Court that have been duly proven.

159. The representatives requested the Court to order the State to reimburse the costs and expenses incurred by the victim for the legal assistance for his defense in the proceedings carried out at the domestic, as well as the international level. On the other hand, they requested the reimbursement of expenses incurred by the CEDHU by representing the victim before international bodies, mainly relating to communication and travel costs made by an attorney representing him during the procedure of the case before the Commission and before this Court. As a consequence, they requested that the Court order payment for costs and expenses in the amount of US$15,000.00 (fifteen thousand dollars of the United States of America). In the final arguments, they noted that Mr. Mejía Idrovo hired the professional services of Mr. Edison Burbano Portilla for the amount of US$ 30,000.00 (thirty thousand dollars of the United States of America), which would be paid once Mr. Mejía Idrovo was reinstated in active service, and the damage is recognized, and they also submitted receipts of the flight expenses of colonel Mejía Idrovo and his lawyer Xavier Mejía traveling to a working session of the Inter-American Commission in 2008, as well as the receipts related to the expenses incurred in regard to his attendance at the public hearing before the Court in the amount of US$ 4,022.88 (four thousand and twenty-two dollars of the United States of America and eighty-eight cents). In short, the representatives requested the reimbursement of expenses amounting to a total of approximately US$ 34,000.00 (thirty-four thousand dollars of the United States of America). With regards to expenses incurred by the CEDHU in the international forum and the nine years of litigation, the representatives made "available information regarding costs before the Commission and [...] in the stage of the proceedings being carried out before the Court," they considered that "it would be reasonable that [...] the Court order the State to reimburse to the CEDH "[...] the amount of 15,000 dollars." However, lacking evidence of "all the expenses incurred," the representatives requested the Court to "determine how much the State should provide to the CEDHU" based on its jurisprudence and equity.

160. The State has not taken a position regarding the claims of the representatives on costs and expenses.

161. As the Court has indicated previously, costs and expenses are included in the concept of reparations, when the actions taken by the victims in order to obtain justice at both the domestic and the international levels involve expenditure that should be compensated when the State’s international responsibility is declared in a judgment that returns a guilty verdict. Regarding reimbursement, the Court must prudently assess the scope, which includes the expenses incurred before the authorities of the domestic system of justice, as well as those arising from the proceedings before this Court, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be based on the

principle of equity, taking into consideration the expenses indicated by the parties, provided the *quantum* is reasonable. [115]

162. The Court has noted repeatedly that "the claims of the victims or their representatives in regards to costs and expenses, and the evidence that sustains it, must be presented to the Court in the first procedural moment granted, namely, in the brief of motions and pleadings, without detriment that such claims are updated at a later time, pursuant to the new costs and expenses that are incurred in the proceeding.[116] In this regard, it was found that the representatives incurred expenses related to the handling of this case before the domestic courts and before the Commission and this Court regarding professional services, mailing expenditures, airplane tickets, lodging expenses, and other expenses related to visas and departure taxes, etc., related to the public hearing in San Jose, Costa Rica, for which they submitted the receipts of such expenses. Nevertheless, the Court notes that the presentation of the receipts and the requests for payment of professional services of Mr. Edison Burbano Portilla, the expenses related to travel and lodging of Attorney Xavier Mejía and Mr. Mejía Idrovo in the City of Washington in the year 2008, as well as some expenses incurred by CEDHU before the Commission were time-barred(*supra* para. 39) and is therefore inadmissible.

163. Notwithstanding the foregoing, and considering that the victims or their representatives have incurred certain expenses, the Court sets a total amount of $ 15,000.00 (fifteen thousand dollars of the United States of America) for costs and expenses incurred in the litigation of the Inter-American proceeding. This amount must be delivered to Mr. Mejía Idrovo, who in turn must pay the amount corresponding to the persons or organizations, which have represented him.

164. In the process of monitoring compliance with this Judgment, the Court may order reimbursement by the State to the victims or their representatives of the duly proven reasonable expenses.

F. Method of Compliance with the Payments Ordered

165. The State must pay the compensation for pecuniary and non-pecuniary damage to Mr. Mejía Idrovo, and the reimbursement of costs and expenses directly to the victim, within one year as of legal notice of this Judgment, under the terms of the following paragraphs.

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[115] *Cf. Case of Garrido and Baigorria V. Argentina, supra* note 114, para. 82; *Case of Abrill Alosilla V. Perú, supra* note 19, para. 137, *and Case of Vera Vera et al. V. Ecuador, supra* note 12, para. 144.

[116] *Cf. Case of Chaparro Álvarez and Lapo Iñiquez V. Ecuador. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 21, 2007. Series C. No. 170, para. 275; *Case of of Salvador Chiriboga V. Ecuador. Reparations and Costs, supra* note 98, para. 138, and *Case of Abrill Alosilla V. Perú, supra* note 19, para. 137.

166. The compensation established for pecuniary and non-pecuniary damages does not preclude any other benefit where by law Mr. Mejía Idrovo is creditor, pursuant to the norms of Ecuador.

167. Should the beneficiary die before he has received the respective compensation, it shall be delivered directly to his heirs, in accordance with the applicable domestic laws.

168. The State must comply with its obligations by payment in dollars of the United States of America.

169. If, for reasons that can be attributed to the beneficiary of the compensation or to his heirs, it is not possible to pay the amounts established within the time indicated, the State shall deposit the amount in his favor in an account or a deposit certificate in a solvent Ecuadorian financial institute in dollars of the United States of America and in the most favorable financial conditions permitted by law and banking practice. If, after ten years, the compensation has not been claimed, the amounts shall revert to the State with the accrued interest.

170. The amounts allocated in this Judgment as compensation and for reimbursement of costs and expenses must be delivered to the person indicated in whole, as established in this Judgment, without any deduction arising from possible taxes or charges.

171. If the State should fall into arrears, it shall pay interest on the amount owed, corresponding to the banking interest on arrears in Ecuador.

IX
OPERATIVE PARAGRAPHS

172. Therefore,

THE COURT

DECIDES:

Unanimously, to

1. Dismiss the preliminary objections filed by the State under the terms of paragraphs 18 to 23 and 27 to 34 of this Judgment.

DECLARES:

Unanimously, that

1. It does not correspond to rule on the alleged violation of due process established in Article 8(1) of the American Convention on Human Rights, under the terms of paragraphs 63 and 64 and 68 to 84 of this Judgment.

2. The State is responsible for the violation of the right to judicial protection established in Articles 25(1) and 25(2)(c) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of José Alfredo Mejía Idrovo, in the terms of paragraphs 89 to 112 of this Judgment.

3. It was not demonstrated that the State failed to comply with the obligation enshrined in Article 2 of the American Convention on Human Rights, to the detriment of José Alfredo Mejía Idrovo, in the terms established in paragraph 115 of this Judgment.

4. It does not correspond to rule on the alleged violation of the right to equal protection before the Law established in Article 24 of the American Convention on Human Rights, pursuant to paragraphs 120 to 125 of the present Judgment.

5. The State complied with its obligation to reinstate Mr. José Alfredo Mejía Idrovo, and to thereby restore his rights, under the terms of paragraphs 137 and 138 of this Judgment.

AND ORDERS,

Unanimously, that

1. This Judgment is, *per se*, a form of reparation.

2. The State must carry out the publications ordered in paragraphs 141 of this Judgment, in the manner and period indicated in the mentioned paragraph of this Judgment.

3. The State must pay the amounts established in paragraphs 156 and 163, within the respective periods, as compensation for pecuniary and non-pecuniary damages, and costs and expenses, in the terms and conditions indicated in paragraphs 150 to 155 and 161, 162 and 164 of the present Judgment.

4. Within a period of one year as of notification of this Judgment and in monitoring compliance with the Judgment, the State shall submit to the Court a report on the measures adopted in order to comply with the Judgment.

5. The Court shall close this case once the State has fully complied with the provisions established in this Judgment.

Diego García-Sayán
President

Leonardo A. Franco

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary