



Organization of
American States



Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
in the case of
José Alfredo Mejía Idrovo
(Case 12.530)
against Ecuador

DELEGATES:

Luz Patricia Mejía, Commissioner
Santiago A. Canton, Executive Secretary

ADVISORS:

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I. INTRODUCTION

1. The Inter-American Commission (hereinafter “the Commission” or “the IACHR”) presents before the Inter-American Court for Human Rights (hereinafter “the Inter-American Court” or “the Court”) an application in case 12.530, Jose Alfredo Mejia Idrovo against the State of Ecuador (hereinafter the “State of Ecuador”, “Ecuador”, or “the State”) because it did not comply with a decision issued by the Constitutional Tribunal that declared two executive decrees to be unconstitutional. Such decrees established the suspension and discharge of the Army of Mr. Jose Alfredo Mejia Idrovo (hereinafter “Mr. Mejia Idrovo” or “the victim”) and it ordered reparation of the harms caused.

2. The Commission requests that the Court adjudge the international obligation of Ecuador for failing to comply with its international obligations by its violation of Articles 8.1 and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in conjunction with Article 1(1) of that instrument, against Jose Alfredo Mejia Idrovo.

3. The present case has been processed in accordance with the American Convention and is submitted to the Court pursuant to Article 34 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter “the Rules of Court”). Affixed to this application as an appendix is a copy of the Report on the Merits No. 07/09, prepared pursuant to Article 50 of the Convention¹.

4. The Commission highlights the importance of presenting this case before the Court because more than seven years have elapsed since the ruling of Constitutional Tribunal of March 12, 2002 that ordered the State to repair the damages caused to Jose Alfredo Mejia Idrovo. However, the State has not complied with the order.

5. Failure to carry out judicial rulings not only affects juridical security but also threatens the essential principles of the rule of law. In the Inter-American System of Human Rights the adequate functioning of the Judiciary Branch is an essential element for the protection on human rights. Indeed, if the judicial branch is to serve effectively as an organ for the control, guarantee and protection of human rights, it must not only be constituted formally, but it also has to be independent and impartial, and its rulings must be carried out.

II. PURPOSE OF THE APPLICATION

6. The purpose of the present application is to petition the Court to adjudge and declare that Ecuador is responsible for violation of Articles 8.1 and 25 of the American Convention, in conjunction with Article 1(1) of that instrument, against Jose Alfredo Mejia Idrovo.

7. In consideration of the above, the Inter-American Commission is asking the Court to order that the State to adopt the necessary measures to ensure effective compliance with the judgment of the Constitutional Court of the Republic of Ecuador issued on March 12, 2002, which orders reparation of the damages caused to Mr. José Alfredo Mejía Idrovo.

III. REPRESENTATION

¹ Admissibility and Merits Report 07/09. March 17, 2009, José Alfredo Mejía Idrovo, Ecuador, Appendix 1.

8. In accordance with the provisions of articles 23 and 34 of the amended Rules of Court, the Commission has appointed Commissioner Luz Patricia Mejia and Executive Secretary Santiago A. Canton to serve as its delegates in this case. Assistant Executive Secretary Elizabeth Abi-Mershed and attorney Karla I. Quintana Osuna have been appointed to serve as legal advisers.

IV. JURISDICTION OF THE COURT

9. Under Article 62(3) of the American Convention, the Inter-American Court is competent to hear all cases submitted to it regarding interpretation and application of the provisions of this Convention, provided that the states parties to the case recognize or have recognized its jurisdiction.

10. The Court has jurisdiction to take up the present case. The Ecuadorian State ratified the American Convention on December 8, 1977, and accepted the Court's binding jurisdiction on July 24, 1984.

V. PROCEEDING BY THE COMMISSION

11. On October 24, 2002 the Commission received a petition presented by the Ecumenical Commission on Human Rights on behalf of José Mejía Idrovo. The Commission assigned the petition case number 434/02 and on November 15, 2002, requested the State to provide information in accordance with Article 30(3) of its Rules of Procedure.

12. On December 30, 2002 and May 2, 2003, the Commission received additional information from the petitioners which was relayed to the State. On June 26, 2003, the petitioners submitted further information which was forwarded to the State on July 21 of that year. The Commission received various communications from the petitioners, dated October 29, 2003; February 24, June 16, and June 30, 2004; and January 10 and August 4, 2005.

13. On November 14, 2005, the IACHR informed the parties that, pursuant to Article 37(3) of its Rules of Procedure, it had decided to defer its treatment of admissibility until the debate and decision on merits, and it requested the State and the petitioners to submit their final observations on the merits of the petition within two months. The Commission assigned the case number 12.530. Afterwards, the Commission asked the State and the petitioners to present final observations regarding the merits of the petition within two months. Article 37(3) of the Rules of Procedure of the Commission has been applied in this and other cases, due to the passage of time and the opportunities of the parties to substantiate their arguments in the contradictory process.

14. On March 7, 2006, the petitioners submitted additional information in accordance with Articles 37(3) and 38(1) of the Rules of Procedure of the IACHR on the admissibility and merits of the case, which were conveyed on April 4, 2006, to the State, which was given two months in which to present its comments.

15. On May 11, 2006, the State sought a 30-day extension to present its observations, which was granted on June 9, 2006. On July 25, 2006, the Commission received the observations of the State on the admissibility and merits of the case, and these were transmitted on August 17 of that year to the petitioners, which were given one month to submit such observations as they deemed appropriate.

16. On September 29 and October 17, 2006, the Commission received additional information from the petitioners, which was forwarded to the State on October 6 and December 1, 2006, respectively. On February 6, 2007, the Commission received a communication from the petitioners requesting that it adopt a report on merits in the case.

17. On January 9, 2007, the State requested an extension of the deadline in which to present its comments on the case. On April 26, 2007, the Commission reiterated its request for information made to the government on December 1, 2006, and at the same time transmitted the communication of the petitioners of February 6, 2007.

18. On April 7, 2008, the Commission received a communication from the petitioners which was forwarded to the State on the May 9 of that year.

19. On October 24, 2008, a working meeting was held at the headquarters of the Commission. On November 19, 2008, the petitioners presented additional information, which was conveyed to the State on November 25 of that year.

20. On March 17, 2009, at its 134th regular session, the Commission adopted Report on Merits No. 07/09 in this case, developed in compliance with Article 50 of the American Convention. In that report, it concluded that:

a) The Commission is competent to examine the complaint presented by the petitioners with regard to the alleged violations of Articles 8(1) and 25(2)(c) of the Convention and of the general obligations contained in Article 1(1) of said treaty. Furthermore, the Commission decided to declare inadmissible the allegations with regard to Articles 2, 17 and 24 of the American Convention.

b) Ecuador is responsible for violation of the rights to a fair trial and judicial protection recognized in Articles 8(1) and 25 of the American Convention, respectively, to the detriment of Mr. José Mejía Idrovo.

21. In the report, the Commission recommended the State to adopt the necessary measures to ensure effective compliance with the judgment of the Constitutional Court of the Republic of Ecuador issued on March 12, 2002, which orders reparation of the damages caused to Mr. José Alfredo Mejía Idrovo.

22. On May 19, 2009, the Commission forwarded its Admissibility and Merits Report to the State and gave it two months to adopt its recommendations. That same day, as per Article 43.3 of its Rules, the Commission notified the representatives of the victims of the adoption of the Report and its transmission to the State. Similarly, it asked the State to state an opinion with respect to the submission of the case to the Inter-American Court.

23. On June 30, 2009, the representatives submitted a letter in which they expressed their desire to submit this case to the Inter-American Court. In Addition, they pointed out that the decision of the Constitutional Tribunal of March 12, 2002 had not been executed.

24. On July 16, 2009, the State sent a note requesting an extension of the deadline for addressing the recommendation of the Commission. It also expressly and irrevocably accepted that the granting of the extension would suspend the deadline for submission of the case to the Court.

25. On August 12, 2009 the Commission gave the State a three-month extension, in order to provide it with additional time for meeting the Commission's recommendation and to make progress with its implementation. The Commission also asked the State to report, on September 30, 2009, on the measures adopted to implement the recommendation.

26. On August 24 and 28, 2009, the State informed the Commission that it was looking for the way to repair the damages caused to Mr. Mejia Idrovo in compliance with the Constitutional Tribunal's promulgation of March 12, 2002. In fact, the State mentioned that it was making all the efforts to provide integral restitution of Mr. Mejia's rights and to legally clarify everything related with his possible reinstatement to the Army. The state

further informed the Commission that staffs from both the Ministry of Justice and Human Rights and the Ministry of Defense held a meeting, in order to calculate the combined indemnification and liquidation amounts. The State also stated that in the joint meeting that the Ministry will execute as a satisfaction measure the publication of a public apology recognizing the facts and the State's culpability. Additionally, it indicated that during the previous meeting, regarding the guarantees of non-repetition, it was discussed the normative reform regarding the military fora, which should be adjusted to the new constitutional precepts and international law regarding procedural guarantees, equity and impartiality. Such documents were transmitted to the petitioners on September 11, 2009.

27. On October 8, 2009, the representatives stated that the State had only presented a proposal for an incomplete indemnification that would not cover all the material and non-material aspects, nor the costs and expenses. Moreover, the representatives aver that the State did not explain what measures it was going to adopt to reintegrate Mr. Mejía Idrovo to the Army, nor the measures of satisfaction and guarantees of non-repetition that it would adopt in the present case and in other similar cases. The document was transmitted to the State that had a 15 day deadline to present the pertinent observations. The State did not present its observations.

28. The State did not present its report of November 10, 2009 requested by the Commission on August 12, 2009.

29. On November 12, 2009, the Commission decided to submit the present case to the jurisdiction of the Inter-American Court, in accordance with Articles 51.1 of the Convention and 44 of its Rules, given that the State did not present any information regarding the fulfillment of the recommendations put forth in the Admissibility and Merits Report.

VI. CONSIDERATIONS OF FACT

30. Having reviewed the arguments of the petitioners and the Ecuadorian State on the facts and rights allegedly violated, as well as on the documentary and other evidence in the record, and in the absence of other facts that might lead it to conclude otherwise, the Commission takes the following facts as established in the instant case.

1. Events prior to the decision of the Constitutional Court

31. On December 21, 1972, José Mejía Idrovo was commissioned into the Army as a second lieutenant, and thereafter performed various military activities. Mr. Mejía was promoted to the rank of Army colonel on December 21, 1994. In 2000 the victim presented himself before the Council of General Officers of the Land Forces in order to be assessed for promotion to the rank of brigadier general.

32. In December 2000,² the Council of Generals sent the victim a note without a date or reference number in which he was informed that: "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; 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 [...]."

² Unnumbered note from the Council of General Officers of the Land Forces addressed to Col. GS José Mejía Hidrovo, notarized on August 28, 2001.

33. On December 15, 2000, the victim 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.³ On December 26, 2000, the victim was informed in a Land Forces memorandum that the Council of Generals, in a session held that day, had "decided to confirm its original decision and considered his promotion to the next rank UNFAVORABLE" without offering any grounds or justification.⁴

34. On January 30, 2001, at the request of the Minister of Defense, the President of the Republic issued Executive Decree 1185, which placed the victim on suspension, and indicated that he would "cease to be a part of the land forces from January 15, 2001."⁵ Later, on July 18, 2001, at the request of the Minister of Defense, the President of the Republic issued a second executive decree (No. 1680), which ordered the discharge of the victim under Article 76(j) of the Military Service Code,⁶ while at the same time indicating that the Minister of Defense was in charge of carrying out the decree.⁷

2. The action for unconstitutionality and the decision of the Constitutional Court

³ Brief 20000056-25-BAL-CNDO from Col. GS José A. Mejía I. requesting reconsideration.

⁴ Land Forces memorandum Ref.: 000251-JEMFT of December 26, 2000.

⁵ Copy of Decree 1185 signed by the Constitutional President of the Republic and the Minister of Defense (Presidential MS-1-4), January 30, 2001. Published in General Order 021 of January 31, 2001.

⁶ Article 76 of the Military Service Code (Law 118. RO/ Sup 660) of April 10, 1991 provides:

Art. 76.- Any of the following shall be cause for suspension of military personnel:

- a) When voluntarily requested;
- b) When the person is within the annual discharge quota in accordance with the instant law;
- c) Sickness, once the time limit provided in the instant law has been reached;
- d) Disability, in accordance with the relevant law;
- e) When the person concerned reaches the age limit set forth in the instant law or completes 41 years of active and effective service, in the case of line, services, or technical officers; 35 years in the case of specialist officers, counted from their graduation from the officer training Institute, and 35 years of active and effective service in the case of troops, not counting commutations for time served.
- f) When a reasoned judicial order or indictment are issued for military or common offences, once confirmed;
- g) When the person is graded unsuitable for promotion to the next rank, in accordance with the instant Law;
- h) When the person is graded on list 3 for one year in the case of general officers; on list 3 for two years in the case of superior officers; and on list 4 for two years in the case of all other ranks of officer and troops;
- i) When it is in the best interests of the service, whether for misconduct or for professional incompetence of the serviceman, as assessed by the respective Council, pursuant to the appropriate rules of procedure; and,
- j) Any other cause set out in the instant Law.

⁷ Copy of Decree 1680 signed by the Constitutional President of the Republic and the Minister of Defense (Presidential MS-1-4), July 18, 2001. Published in General Order 133 of July 20, 2001.

35. On October 4, 2001, with the auspices of the Office of the Ombudsman, the victim filed an application for unconstitutionality with the Constitutional Court.⁸ In that application the victim asked the Court to find the aforesaid executive decrees to be unconstitutional and unlawful, order his reinstatement in the permanent armed forces, and order his promotion to brigadier general with full honors, pay and statutory rights in reparation for the damages caused. The victim argued that the executive decrees breached. Articles 3(2),⁹ 6,¹⁰ 23,¹¹ 24,¹² 35,¹³ and 186 of the Constitution in force at the time of the facts,¹⁴ as well as several provisions in the Military Service Code and the Rules of Procedure of the Council of General Officers of the Armed Forces.

36. On March 12, 2002, the Criminal Chamber of the Constitutional Court decided to accept the application, ruled that the executive decrees were fundamentally unconstitutional, and ordered that the victim receive reparations for the harm caused. The Constitutional Court reasoned that,

⁸ Official Letter 04121 DNRC by which the Ombudsman presented the application for unconstitutionality with respect to Executive Decrees 1185 and 1680 lodged by José Alfredo Mejía Idrovo, October 4, 2001.

⁹ Constitution of Ecuador of 1998, adopted on June 5, 1998.

Art. 3.- The following are essential duties of the State: 2. To ensure observance of human rights, fundamental liberties of women and men, and social security.

¹⁰ Constitution of Ecuador of 1998, adopted on June 5, 1998.

Art. 6.- Ecuadorians hold their nationality by birth or by naturalization. All Ecuadorians are citizens and, as such, enjoy the rights recognized in this Constitution, which they shall exercise in the circumstances, and subject to the requirements, determined by law.

¹¹ Constitution of Ecuador of 1998, adopted on June 5, 1998.

Art. 23.- Notwithstanding the rights set forth in this Constitution and the international instruments in force, the State shall recognize and ensure the following rights for individuals:

[...] 3. Equality before the law. All persons shall be considered equal and enjoy the same rights, liberties, and opportunities, without discrimination by reason of birth, age, sex, ethnicity, color, social background, language; religion, political affiliation, financial position, sexual orientation; state of health, disability, or any other difference.

26. Legal security.

27. The right to a fair trial and justice without delay.

¹² Constitution of Ecuador of 1998, adopted on June 5, 1998.

Art. 24.- To ensure a fair trial the following basic guarantees shall be observed, without prejudice to any other guarantees recognized by the Constitution, international instruments, laws, or case law:

12. Everyone has the right to be properly informed in a timely manner, and in their mother tongue, of any charges brought against them.

13. The authorities shall substantiate all decisions that affect persons. Said substantiation shall be deemed lacking if the decision does not state the legal principles or provisions on which it is based or if there is no explanation of the relevance of its application to factual precedents. No decision on a challenge to a penalty shall worsen the situation of the appellant.

¹³ Constitution of Ecuador of 1998, adopted on June 5, 1998.

Art. 35.- Work is a right and a social duty. Anyone who ensures for the worker respect for their dignity, a decent existence, and a fair wage that covers their needs and those of their family, shall enjoy the protection of the State.

¹⁴ Constitution of Ecuador of 1998, adopted on June 5, 1998.

Art. 186.- Subject to the exceptions established by the Constitution and the law, members of the security forces shall have the same obligations and rights as all Ecuadorians. 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.

[...]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 the instant 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 for 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;

Finally, in the instant 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.

Based on the above considerations, the Constitutional Court decided:

1. Declare fundamentally unconstitutional Executive Decrees 1185 of January 15, 2001 and 1680 of July 18, 2001, published in General Order 031 of January 31, 2001 and General Order 133 of July 20, 2001;
2. Order reparation for the harm caused to Col. GS (Ret.) José Alfredo Mejía Hidrovo; [...] ¹⁵.

37. The record before the Commission contains a note from the Clerk of the Constitutional Court indicating that on March 25, 2002, Alfredo Mejía Idrovo, the President of the Republic, and the Prosecutor General were notified of the decision of the Constitutional Court by means of slips left in Constitutional Court postboxes 056, 001, and 018, respectively ¹⁶.

38. The above judgment was published in the Official Register on April 4, 2002, making it enforceable from the date of its promulgation. ¹⁷

¹⁵ Constitutional Court, Decision 039-2001-TC of March 12, 2002.

¹⁶ Constitutional Court, Clerk of the Court, March 25, 2002.

¹⁷ Constitution of Ecuador of 1998, adopted on June 5, 1998.

Art. 278.- [...] 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 a retroactive effect, nor shall it be subject to any appeal whatever.

3. Events after the decision of the Constitutional Court

39. On April 8, 2002, the representatives of the Army Command requested the President of the Court for an opinion on the scope of the section in Article 278 of the Constitution which provides,¹⁸ "the declaratory ruling shall not have a retroactive effect," and how it related to the possible reinstatement of the victim in the armed services. The military entity's motion also 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."¹⁹

40. On April 26, 2002, the victim sent a communication to the President of the Constitutional Court in which he requested that the motion for clarification of the decision be rejected and argued that "inasmuch as the executive decrees were declared unconstitutional [...] I am by right and justice restored to my status prior to the decrees; that is, in active and effective service; with the rank of colonel on the general staff and graded by the Council of Generals for promotion to the rank of brigadier general in accordance with the Ecuadorian Military Service Code."²⁰

41. On May 30, 2002, the President of the Constitutional Court issued a resolution which determined that the decision of the Plenary of the Constitutional Court entered into force upon its publication in the Official Register. That decision voided "the act declared unconstitutional, but does not have a retroactive effect; and [...] since, as paragraph 2 of the ruling provides, the applicant is in retirement because decisions of this type are not retroactive. Therefore, RESOLVES [...] "that the decision of the Plenary of the Constitutional Court in Case 039-2001-TC be carried out immediately, that is, that Colonel Jose 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."²¹

42. In response to the resolution of the President of the Constitutional Court the victim presented a series of briefs of complaint [*escritos de queja*] to the President and Plenary of said Court requesting that the resolution of the President be withdrawn,²² *inter*

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.

¹⁸ Constitution of Ecuador of 1998, adopted on June 5, 1998.

Art. 278.- [...] 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 a 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.

¹⁹ Letter from the Commanding General of the Land Forces to the President of the Constitutional Court, April 8, 2002.

²⁰ Letter from Colonel José Alfredo Mejía Idrovo to the President of the Constitutional Court, stamped received at Army Headquarters on April 24, 2002.

²¹ Resolution of the President of the Constitutional Court, May 30, 2002.

²² Brief of June 5, 2002, from the representatives of the victim to the President of the Constitutional Court, which questions the Resolution of May 30, 2002 based, *inter alia*, on the following arguments: 1) Lack of notification; 2) the second resolution was issued by authority of the President of the Constitutional Court and not by the Constitutional Court *en banc*; 3) the Commanding General of the Army is not a party in the proceeding, given that the respondent is the Constitutional President; 4) a clarification or elaboration cannot modify or alter the main decision of the Plenary of the Constitutional Court; 5) upon being declared unconstitutional, the executive decrees have ceased to exist or have any effect whatever; therefore, since they do not exist or have any effect, I revert to my previous status, that is in active and effective service with the

alia because it exceeded the President's authority and because he had not been adequately notified.

43. On July 12, 2002, that Court wrote to the Constitutional President of the Republic, the Minister of Defense, the Head of the Joint Chiefs of Staff of the Armed Forces, and the Prosecutor General in order to request information on compliance with the ruling adopted *en banc* by the Constitutional Court.²³

44. The record before the Commission shows that on July 17, the Office of the Prosecutor General sent a reply to the Constitutional Court, noting that the decrees "declared unconstitutional were issued by the President of the Republic and it falls to that office to carry out the decision of the Constitutional Court."²⁴

45. The record contains a communication from the Ministry of Defense to the Constitutional Court which states that "this Ministry has ordered the General Command of the Land Forces to comply with the RESOLUTION of the Constitutional Court of May 30, 2002, in Case 039-2001-TC, which orders "that Colonel Jose Alfredo Hidrobo (sic), 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."²⁵

46. The record shows that on August 14, 2002, the Joint Chiefs of Staff of the Armed Forces wrote to the Constitutional Court saying, "On May 30, 2002, the Constitutional President, Dr. Marco Morales Tobar, forwarded to the General Command of the Armed Forces the order of execution of the Decision of the Plenary of the Constitutional Court [...]. In same it clearly states that Colonel Mejía cannot be reinstated in because of the non-retroactivity of the decision."²⁶

47. In the same missive, the Head of the Joint Chiefs of Staff of the Armed Forces informed the Constitutional Court that Mr. Mejía Idrovo had failed to provide the necessary documents to carry out the procedure before the Armed Forces Social Security Institute (ISSFA),²⁷ that "the remunerations accrued by Colonel Mejía had been paid up to the month of July 2001 and that he should request the corresponding amounts up to the month of July 2002 by means of the appropriate application form created for that purpose. This being the case, once Colonel Mejía completes the procedures described herein we will comply immediately."

same rights and guarantees as other members of the Armed Forces, as well as the right to promotion and to keep honors, rank and other benefits, in accordance with the law. Similar communications were conveyed to the Plenary of the Constitutional Court on June 5 and July 2, 2002.

²³ Constitutional Court, Official letters 573-TC-P, 574-TC-P, 575-TC-P, and 576-TC-P dated July 12, 2002 addressed to the Constitutional President of the Republic, Minister of Defense, Head of the Joint Chiefs of Staff of the Armed Forces, and Prosecutor General, respectively.

²⁴ Official Letter 25152 from the Office of the Prosecutor General of the Republic of Ecuador to the Constitutional Court, July 17, 2002.

²⁵ Official Letter 021130-MS-7-1 from the Ministry of Defense to the Constitutional Court, July 31, 2002.

²⁶ Official Letter 2002-213-AJ-CCFFAA from the Joint Chiefs Of Staff of the Armed Forces, August 14, 2002.

²⁷ Certificate of the Armed Forces Social Security Institute (ISSFA) dated February 13, 2002, which certifies that "COL. (Ret.) MEJIA IDROVO JOSE ALFREDO [...] is a retired servicemen given that his discharge, dated July 15, 2001, was published in General Order 133 of July 20, 2001, but he has yet to receive his retirement insurance and severance pay because he has not presented the documents, which he must do as the beneficiary."

48. He also attached a decision adopted by the Second Chamber of the Constitutional Court in Case 133-2000-RA, which determined that Mr. Mejía Idrovo was free whenever he saw fit to approach military offices in order to request his pay.²⁸

49. On August 7, 2002, the victim wrote a letter to the President of the Republic in order to request compliance with the ruling of the Plenary of the Constitutional Court.²⁹

50. On August 28 and September 6, 2002, the victim and the petitioners, respectively, wrote to the Constitutional Court owing to the non-compliance with the decision, alleging violation of Ecuadorian constitutional standards and, in the case of the latter, also infringement of Article 25(2)(c) of the American Convention.³⁰

51. The record before the Commission contains a certificate from the Department of Retired Personnel and Reserves of the Land Forces of the General Command of the Land Forces, which certifies that:

COL. (Ret.) MEJIA HIDROVO JOSE ALFREDO [...] received a commission as second lieutenant in the Adjutant General's Department dated December 21, 1972, and continued in the Armed Forces until July 15, 2001, when his discharge was published, pursuant to Article 87(c), in Ministerial General Order 133 of July 20, 2001.³¹

52. On January 20, 2003 and February 12, 2003, the victim and the petitioners, respectively, wrote to the President of the Republic requesting compliance with the decision of the Constitutional Court. On March 10, 2003, the victim wrote to the Office of the President of the Republic in order to request that the decision of the Constitutional Court be fulfilled and decrees drafted ordering his reinstatement in the Armed Forces and promotion to the rank of brigadier general.³²

53. The record shows that on March 18, 2003, the Office of the President of the Republic replied to two of Mr. Mejía Idrovo's communications, informing him that "the settlements to which you are entitled are being handled by the ISSFA and, to that end, you must personally complete the processes set out in the rules of procedure to enable you to collect your benefits and severance pay." The Office of the President also said that based on the resolution of the President of the Constitutional Court of May 30, 2002, "compliance with the decision of the Constitutional Court does not entail reinstatement in the armed forces, although it does reparation for the harm caused, for which purpose the

²⁸ Joint Chiefs Of Staff of the Armed Forces, Official Letter 2002-213-AJ-CCFFAA, August 14, 2002.

²⁹ Communication dated August 7, 2002, from the victim to the President of the Constitutional Court in which he says, *inter alia*, "In keeping with the Constitution of the Ecuadorian State which provides that the decisions of the Constitutional Court are not retroactive, with pain in my heart I would have to resign from active service in my sacred institution and present my request for voluntary suspension. The financial amount of the irreparable damages that have been caused to me as a result of the truncation of my professional aspirations to serve in the highest military posts is one million five hundred thousand US dollars and, therefore, I ask that you inform the Prosecutor General so that he might proceed to issue the necessary approval for payment pursuant to Article 12 of the Organic Law of the Office of the Prosecutor General".

³⁰ Letters from Colonel José Alfredo Mejía Idrovo to the Constitutional Court, September 6 and 10, 2002.

³¹ Certificate of the General Command of the Land Forces of September 26, 2002.

³² Communication dated March 10, 2003, from the petitioner to the President of the Republic. In this communication, the petitioner mentioned:

[...] this problem has deeply affected my family which is experiencing a psychological and financial crisis because I have not received a cent in pay for two years and I was the only breadwinner in the family. I am in a unique situation in that, as the decrees that ordered my suspension and discharge were annulled, naturally I am still in active service. However, I have not received my active service pay and, with bad faith, the aim is to pay me benefits as a retired officer, including my severance pay, without executive decrees ordering my discharge [...].

relevant statutory procedures must be carried out."³³ This communication was ratified by the Office of the President of the Republic on April 14, 2003.

54. The record before the Commission includes a communication from the ISSFA to the petitioner dated April 7, 2003, informing him that "to date, the Armed Forces Social Security Institute, has not processed any settlement or benefit payment in your favor for separation from the Armed Forces since there are no documents from you claiming any benefits to which you might be entitled."³⁴ The record also contains a second communication from the ISSFA dated May 16, 2003, in which the petitioner is requested to present the documents for retirement and severance to be submitted through the Social Welfare Office of the Land Forces.

55. On May 20, 2003, the Plenary of the Constitutional Court informed the victim that:

In case 039-2001-TC, the brief submitted by Colonel José Mejía Idrovo on April 22, 2003, is added to the record. As to the main question, the parties shall abide by the ruling of the Plenary of the Constitutional Court of March 12, 2002, notified on the 25th day of the same month and year. No subsequent procedural decision may modify the aforementioned ruling.-So ordered³⁵.

56. The record contains a communication from the petitioners to the President of the Republic dated June 10, 2003, in which they inform him that:

[...] it is false that any settlement has been processed at the ISSFA since there is no decree of discharge by which to calculate the amount of time served in the forces. Moreover, the decision of the Plenary of the Constitutional Court clearly determined that the acts of the executive violated the Constitution since the aforesaid officer met all of the requirements to be promoted to the next rank. and it ordered that the situation be repaired, which reparation obviously entails his immediate reinstatement in the institution and promotion to the next rank.

In a procedural decision of May 20 of this year, the Plenary of the Constitutional Court unanimously decided that the parties shall abide by ruling of March 12, 2002, [...] and that no subsequent procedural decision may modify the aforementioned ruling. This decision recognizes that the petitioners are in the right and, therefore, in strict compliance [...], given the disobedience hitherto observed, I request that you proceed at your earliest convenience to issue the appropriate executive decree, abiding by the decision of the highest court of Constitutional control and ordering the reinstatement of the aforesaid officer in his activities and, as he meets the requirements that the military career system demands and given that the necessary vacancy exists, his immediate promotion to the rank of brigadier general.

In the hope that no further harm will be caused to Colonel José Mejía, which would only make him the beneficiary of a larger amount in compensation than he should receive, we await news of the decision that you adopt [...]³⁶.

57. In the record before the Commission there is a communication dated June 17, 2003, from the Office of the President of the Republic to the victim, in which he advises him, inter alia, that:

³³ Official Letter T.1308-SJ-2003-230 from the Office of the President of the Republic to the petitioner, March 18, 2003.

³⁴ Official Letter 030096-c2 from the ISSFA to the petitioner, April 7, 2003.

³⁵ Notice from the Plenary of the Constitutional Court to the petitioner, May 20, 2003.

³⁶ Official Letter 453-CEDU/03 to the Constitutional President, June 10, 2003.

The Minister of Defense, in Official Letter MS-7-1-2003-392 of June 10, 2003, has stated that "The Personnel Department of the Land Forces and the ISSFA... are ready to meet the requests of Colonel (Ret.) José Mejía with regard to severance and retirement, to which end said officer should approach the Land Forces and the ISSFA in order to carry out the relevant statutory procedures, in order to realize his pre-acknowledged rights."

58. In the record before the Commission there is a note from the ISSFA to the Chair of the Committee for Labor and Social Matters of the National Congress, which mentions that:

[...] COL. MEJIA IDROVO JOSE ALFREDO, Army, discharged on June 15, 2001, is entitled, in view of his contribution of 28 years, 6 months, and 24 days of active and effective service, to an initial retirement pension, from August 1, 2001, of \$696.63, equivalent to 95.75% of his taxable salary of \$727,56 on the date of his discharge; from May 1, 2002, the pension will increase to \$766.29 as a result of the 10% increase to the calculation base made on that date.

As regards the aforementioned officer's severance pay, he is entitled to the sum of \$62,196.91 from which deductions will be made for an unsecured ISSFA loan which is past due, as well as amounts owing to the Land Forces, pursuant to Article 20 of the Land Forces Social Security Law, the amounts of which are unknown because the insured has not submitted any documents to this Institute in order to claim his rights.³⁷

59. On December 17, 2003, the Office of the President of the Republic sent a communication to the victim informing him, inter alia, that:

The Constitution of the Republic provides at Article 278 that "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 a retroactive effect, nor shall it be subject to any appeal whatever..." In other words, under the Constitution, the declaration of unconstitutionality on the aforementioned decrees does not have a retroactive effect and, therefore, the decision of the Constitutional Court does not imply reinstatement in the Armed Forces although it does recognize the damages caused, for which it is necessary to complete the relevant procedures.

It is worth noting that the Office of the President of the Republic has always attended to your multiple petitions, for which reason it would be futile to seek a new opinion and attempt to obtain through administrative silence rights that the Constitutional Court has not granted you.³⁸

60. The record in the possession of the Commission contains certificates from the Ministry of Defense and the Department of Retired Personnel and Reserves of the Land Forces, which indicate that the victim remained in the Armed Forces until January 15, 2001, at which time he was placed on suspension and, after the period of suspension expired, his discharge was made public on July 15 of that year.³⁹

61. The record before the Commission includes Decision 0040074 of the ISSFA Benefit Evaluation Board, which decides:

³⁷ ISSFA, Official Letter 030217-e2, July 10, 2003.

³⁸ Official Letter T1308-SGJ-2003-3380 from the Office of the President of the Republic of Ecuador, December 17, 2003.

³⁹ Certificate of the Ministry of Defense dated January 29, 2004 and Certificate of the Department of Retired Personnel and Reserves of the Land Forces, dated January 28, 2004. The record contains a Report on Severance Settlement and Retirement Settlement issued by the ISSFA Insurance System on March 2, 2004.

Art. 1. - To grant [...] an initial MILITARY RETIREMENT pension of \$696.63, equivalent to 95.75% of his taxable salary of \$727,56 on the date of his discharge, which benefit will be payable from August 1, 2001, by reason of the 28 years, 6 months, and 24 days of contributions until July 15 of that year.

Art. 2.- To grant him a SEVERANCE PAYMENT of \$62,196.91 calculated as a function of the taxable salary according to seniority, rank, and length of service, computed using the calculation base of \$85,00 established for this payment by the Executive Council of the ISSFA in Decision 01-01.1 of January 19, 2001, which amount, in turn, is multiplied by a weighting factor of 2.5014 for the time contributed in active and effective service accredited in complete years in the Armed Forces.

Art. 3- Payment of pension benefits and severance pay is made in accordance with Articles 21, 22, 43, 44 (as amended), 101, and 112 of the Armed Forces Social Security Law; Articles 106 and 120 of the Implementing Regulations of this Law; and the Resolutions of the Executive Council of the ISSFA January 9, 2001, by this Institute in the Plaza de Quito, and the amounts shall be deposited in the bank account indicated by the beneficiary.

Art. 4- Grant a new retirement pension as of May 1, 2001, in the amount of \$766,29.⁴⁰

62. The record contains a communication from the victim to the Chair of the ISSFA Benefit Evaluation Board in which he objects to the decision, stating that:

[...] I have been granted rights to which I am not yet entitled. [...] In granting me these benefits, the ISSFA Benefit Evaluation Board violates the law and the Constitution since it is disregarding the fact that the executive decree ordering my discharge, cited in the aforementioned decision, was declared unconstitutional.

[...]

By law, the decision of the organ of constitutional control enters into force upon its publication in the Official Register. Therefore, the decrees ordering my suspension and discharge have been null and void since Thursday, April 4, 2002, and, therefore, those decrees can scarcely stand as legal grounds for the ISSFA to consider me a pensioner of the Armed Forces.

[...]

Based on the foregoing, I hereby request the honorable ISSFA Benefit Evaluation Board to reconsider its decision to regard me as a pensioner of the Armed Forces. Should it deem that my petition lack merits, I subsidiarily file an appeal against your decision so that a careful study of my situation and strict application of the Constitution and the law might correct your error in considering me retired on the basis of executive decrees that have been declared unconstitutional, since, at present, I am an officer on active service, given that, as yet, no new executive decrees had been issued separating me from the institution.⁴¹

63. On March 29, 2004, the ISSFA Benefit Evaluation Board refused the reconsideration requested by the victim and granted him the right to appeal to the Executive Council.⁴² By Resolution 04-05-06.2 the ISSFA Executive Council resolved:

To confirm the Decision [...] of February 12, 2004, inasmuch as it is in keeping with the Law and the appellant's right based on the documents included in the record and [that] the Benefits Department should proceed with the settlement of the retirement

⁴⁰ Decision 0040074 of the ISSFA Benefit Evaluation Board, February 12, 2004.

⁴¹ Undated communication from the victim, marked Annex 4 of the communication of the petitioners of November 4, 2008, addressed to the Chair of the Benefit Evaluation Board of the Armed Forces Social Security Institute

⁴² Notice of the Benefit Evaluation Board of the Armed Forces Social Security Institute dated March 29, 2004.

pension and, with regard to the amount in military severance pay, to deduct the sums corresponding to the debts contracted with the Land Forces [...]⁴³

64. The record before the Commission contains a request submitted by the victim to the ISSFA in which he asks that it inform him if the institution has any pay pending collection and how much he might withdraw. In an official letter dated September 22, 2006, the ISSFA assured the victim that, "having checked the database, at this time there is no record of any amounts in your favor. I should clarify that the only thing that could be considered pending is the payment of your pension for the month of September and the 14th wage, which will be paid at the end of this month."⁴⁴

65. On March 26, 2007, the victim sent another communication to the President of the Republic requesting, *inter alia*, that new decrees be issued placing him on suspension and promoting him to the next rank. He also asked that the intervention be sought of the Mediation Center of the Office of the Prosecutor General, with a view to reaching a permanent solution to the problem and that he be granted compensation.⁴⁵

66. There appears in the record before the Commission a communication from the Office of the President of the Republic addressed to the victim, which says:

For approximately the last six years you have written on multiple occasions to the Office of the President of the Republic requesting promotion in your military rank, along with compensation, for which there is no legal basis whatsoever [...]

IV.-CONCLUSION

1.- Each and every one of your petitions has been duly answered, in accordance to law. The fact that the responses from this General Secretariat have not accepted your claims does not mean that they are not consistent with the legal standards applicable in such matters:

2.- The decision of the Constitutional Court that ruled Decrees 1185 and 1680 unconstitutional clearly states that you should not be reinstated in the Armed Forces, and therefore, much less should you be promoted to brigadier general.

3.- With regard to your compensation claim, as you have been informed on innumerable occasions, it has no merits, even less so now since, under Article 211 of the Statutes of the Legal and Administrative Regime of the Executive Branch, your right has lapsed.⁴⁶

67. In an official letters dated September 14, 2007, the victim submits a brief to the Constitutional Court requesting a declaration of contempt "committed by the President of the Republic" for failure to comply with the Constitutional Court ruling of March 12, 2002.⁴⁷

68. On October 9, 2007, the Office of the Prosecutor General submitted an official letter to the Ministry of Defense, requesting compliance with the ruling of the Constitutional Court. The official letter sent to the Ministry of Defense says:

⁴³ Executive Council of the Armed Forces Social Security Institute (ISSFA), Resolution 04-05.06.2 of July 28, 2004.

⁴⁴ Communication from the victim of September 18, 2006, to the Armed Forces Social Security Institute and Official Letter 060087-ISSFA-e of September 22, 2006.

⁴⁵ Communication from the victim to the President of the Republic of March 26, 2007.

⁴⁶ Office of the President of the Republic, Official Letter T.J.1308-SGJ-07-1274 of May 30, 2007.

⁴⁷ Communication of the victim to the Constitutional Court stamped September 14, 2007

The decision of the Constitutional Court is published in Official Register 548 of April 4, 2002, since which time the Armed Forces have not carried out the final decision of the highest organ of constitutional control.

In view of this non-compliance, Colonel José Mejía filed a petition against the Ecuadorian State with the Inter-American Commission on Human Rights for violation of Article 25 of the American Convention, which recognizes the obligation of the State to carry out decisions adopted by the domestic courts and to grant appellants suitable and adequate remedies.

[...]

Based on the foregoing, [...] I request that you examine the possibility of proceeding to draw up the appropriate executive decrees for the consideration of the President of the Republic. Said decrees shall give effect to the judgment of the Constitutional Court and the necessary measures must be adopted to repair the harm caused to Colonel Mejía.⁴⁸

69. On August 28, 2008, the Office of the Prosecutor General sent an official letter to the Commanding General of the Land Forces, requesting compliance with the decision of the Constitutional Court. The letter mentioned:

[...] the existence of an unconstitutionality action that was favorable to the claims of the appellant, [...] although lacking clarity in the operative part, it should be complied with in accordance to law [...]. In order to contribute to the adoption of a mechanism for complying with the ruling of the Constitutional Court, I venture to suggest the following alternatives [...]:

1. Clarify the process of promotion in rank from colonel to general, setting out the easily corroborated objective parameters and outlining the discretionary parameters used by the evaluating body.
2. Clarify any differences, should there be any in the rules on military practice, between the promotion of a services officer and a line officer.
3. One possibility, although removed from the reasoning provided in the decision of the Constitutional Court, would be to reinstate Colonel Mejía at the rank of colonel on the general staff and subject him to a new grading process before the Council of General Officers, regardless of the length of service of its members in comparison to that of Colonel Mejía. Obviously, given the time elapsed, there are no officers with a longer service record.
4. A second possibility, should he be promoted to the next rank based on the grades (brigadier general), would be to place him under the orders of the Minister of Defense in order to receive the appropriate depositions.
5. Finally, the Minister of Defense, if possible and acting within his powers, might order a Ministerial Decision to be drawn up that contains an administrative formula repairing the matter hierarchically by bestowing an honorary rank.

To comply with the order to provide reparation, [...] the possibility should be borne in mind of paying just compensation to cover material and non-pecuniary damages, life aspirations, and reimbursement of costs, deducting the amount received in severance (a sum of approximately 60,000 dollars, auction of vehicle and service weapon) and his monthly retirement pension as Colonel

[...]

I should clarify, however, that the opinions set out in this official letter are not binding in nature.⁴⁹

70. The record before the Commission contains an official letter of September 14, 2008, from the Land Forces to the Ministry of Defense, which says:

⁴⁸ Office of the Prosecutor General, Official Letter 05107 of October 9, 2007.

⁴⁹ Office of the Prosecutor General, Official Letter 002804 dated August 28, 2008.

[...] this General Command of the Army has proceeded to comply with the decision of the Constitutional Court of March 12, 2002, in the action brought by Col. (Ret.) JOSE MEJIA IDROVO, based on a legal analysis and the reports on reparation of damages [...] the final decision of the Constitutional Court orders reparation of damages, this command, in order to have sufficient elements on which to base its decision in this regard, ordered the creation of a multi disciplinary committee [...] so that it might proceed to quantify the reparation for the damages caused to COL. (Ret.) JOSE MEJIA IDROVO.

The Report of the Committee [...] contains the sum in damages due to COL. (Ret.) JOSE MEJIA IDROVO of two hundred eleven thousand, six hundred fifteen dollars and twenty-two cents (US\$ 211,615.22) which should be paid to the applicant as the law provides through the Legal Counsel for the Armed Forces, thereby complying with Decision 039-2001-TC, of March 12, 2002, published in Official Register 548 of April 4, 2002.⁵⁰

71. On September 24, 2008, the victim wrote to the Minister of Defense, requesting that he

Order immediate compliance with the ruling [...] in keeping with the universally recognized principle of Comprehensive Reparation, [...]. Leading to my reinstatement, promotion, and reparation for moral damages [...]. That, should attempts persist in arriving at a solution solely through pecuniary measures, let there be no procedure at all, since the crux and shape of my complaint and of the decision of the Court, is channeled, in particular, toward recognition of professional damages.⁵¹

72. On October 7, 2008, the Ministry of Defense forwarded a copy of the official letter of September 14, 2008, to the victim, requesting him "to state his agreement with that settlement." That same day, the Ministry of Defense notified the President of the Constitutional Court of the aforementioned official letter containing the calculation of the damages settlement as well as relaying him a copy of the note sent to Mr. Idrovo Mejía, informing him of the steps taken to carry out the decision of the Constitutional Court.⁵²

73. On October 13, the victim wrote a letter to the Minister of Defense in which he rejects "utterly the settlement [...] as it is inadmissible because it is unconstitutional, unlawful, and illegitimate, prepared unilaterally and in an arbitrary manner [...], I ask that you be good enough to arrange for the executive decrees ordering my reinstatement and promotion to be drawn up [...]."⁵³

74. In Ecuador, law establishes mechanisms tailored to comply the obligations due to the lack of consent from a party. According to Title XIV of the Civil Code of Ecuador, the payment by deposit is considered in the following way:

Art. 1641.- For the payment to be valid it is not necessary that it be done with the consent of the creditor; the payment may be validly made by deposit even against the creditor's will.

⁵⁰ Land Forces, Official Letter 2000-1014-DJFT of September 18, 2008, with Enclosure: Calculation of Damages Settlement in favor of Col. (Ret.) Mejía Idrovo José Alfredo, which offers for consideration a date for payment of compensation (October 30, 2008), proposes the following settlement that considers a real average life expectancy of 72 years, and establishes the amount of compensation to be paid at US\$ 211,615.22.

⁵¹ Communication from the victim to the Minister of Defense, September 24, 2008.

⁵² Ministry of Defense, Official Letter MS-7-5-2008-396 of October 7, 2008 and Ministry of Defense, Official Circular MS-7-5-2008-397 of October 7, 2008.

⁵³ Communication from the victim to the Minister of Defense, 13 de octubre de 2008.

Art. 1642.- Payment by deposit is the deposit of the thing owed, done on account of the refusal or non appearance of the creditor to receive it, and with the necessary formalities, into the hands of a third party.

Art. 1643.- The payment by deposit must be preceded by an offer; and for the latter to be valid it shall meet the following conditions:

1.- That it be done by any person who is able to pay;

2.- That it be paid to the creditor, provided he is capable of receiving the payment, or to their legitimate representative;

3.- That if the obligation is subject to a time limit or a condition, the time limit has expired or the condition has been met;

4.- That it be offered to make the payment in the appropriate place; and,

5.- that the debtor place in the hands of the judge a summary of what is owed, including any interest past due and all other cash charges, along with a specific description of the thing offered.

Art. 1644.- The judge shall order the creditor to appear at a certain time within three days to receive the thing offered. If they appear and accept the offer, the thing shall be delivered to them and a record made accordingly.

Art. 1645.- If they do not appear, or for any reason oppose the offer, the deposit shall be made with a secure and responsible person, and the procedure set out in the Code of Civil Procedure shall be followed.⁵⁴

VII. CONSIDERATIONS OF LAW

1. Right to effective judicial protection and a fair trial (Articles 25(1) and 1(1) of the American Convention)

Effective judicial protection

75. In the Inter-American system of human rights, the proper functioning of the judicial branch is an essential element for preventing the abuse of power by other State organs, and therefore, for the protection of human rights. The fundamental corollary of human rights is the possibility to turn to judicial bodies for the enforcement of rights.⁵⁵

76. If the judicial branch is to serve effectively as an organ for the control, guarantee and protection of human rights, it must not only be constituted formally, but it also has to be independent and impartial, and its rulings must be carried out. This constitutes a right that member states of the OAS, and in particular States Parties to the American Convention, have the obligation to respect and to guarantee for all persons under their jurisdiction.

77. The execution of sentences of the judicial branch is intimately linked, therefore, with the very concept of the judicial function of the State. The principle of that function is to ensure social peace and harmony by seeing to the enforcement of law and guaranteeing judicial order and individual liberty in concrete cases, by means of decisions that are binding on the parties to the proceedings.⁵⁶ The corollary of the jurisdictional function is that judicial decisions must be carried out, in either a voluntary or coercive manner, with the assistance of the forces of public order if necessary.

⁵⁴ Codificatio of the Ecuadorian Civil Code. TITLE XIV On Ways to Extinguish Obligations, and Firstly Effective Payment or Solution, of the Civil Code of Ecuador (Catalogue No. 000. RO/ Sup 104 of November 20, 1970)

⁵⁵ IACHR, *Annual Report 1998*, Report on Paraguay, pars. 50 and 51.

⁵⁶ Véscovi, Enrique, *Teoría General del Proceso*, Editorial Temis, Santafé de Bogotá, 1984, p. 120.

78. Failure to carry out judicial rulings not only affects juridical security but also threatens the essential principles of the rule of law. Ensuring the execution of judicial judgments thus constitutes a fundamental aspect that is the very essence of the rule of law.

79. As regards judicial protection, Article 25 of the American Convention provides as follows:

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

2. The States Parties undertake:

- a. To ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State;
- b. To develop the possibilities of judicial remedies; and
- c. To ensure that the competent authority shall enforce such remedies when granted.

80. The importance of the right to judicial protection has been reiterated by the Inter-American Court of Human Rights on various occasions.⁵⁷ It has ruled, for example, that this right "constitutes one of the basic pillars, not only of the American Convention, but of the rule of law itself in a democratic society in the sense of the Convention."⁵⁸

81. The Inter-American court has held that it is not sufficient that such remedies formally exist, but they must also be effective, that is, they must offer results or responses to violations of rights established in the Convention.⁵⁹ The effectiveness of the remedy, as a right, is precisely what is enshrined in the final clause of Article 25 of the Convention, which establishes the obligation of the State to guarantee the enforcement of decisions when such remedies are granted. This obligation is the culmination of the fundamental right to judicial protection.

82. The Inter-American Court has found that:

[...] States have the responsibility to embody in their legislation and ensure due application of effective remedies and guarantees of due process of law 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 obligations⁶⁰. However, State responsibility does not end when

⁵⁷ See for example, I-A Court, *Judicial guaranties in states of emergency*, Advisory Opinion OC-9/87 of October 6, 1987, Series A N° 9, par. 24; *Suarez Rosero case*, Judgment of November 12, 1997, Series C N° 35, pars. 61-66; *Loayza Tamayo case*, Judgment of September 17, 1997, Series C N° 33, pars. 52-55; and *Habeas Corpus under suspension of guarantees*, Advisory Opinion OC-8/87 of October 6, 1987, Series A N° 8, par.32.

⁵⁸ I-A Court, *Suarez Rosero case*, Judgment of November 12, 1997, Series C N° 35, pars. 61-66.

⁵⁹ I/A Court H.R., *Case of Ximenes Lopes. Preliminary Objections*, Judgment of November 30, 2005. Series C No. 139. par. 4; *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 184; and *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, par. 93.

⁶⁰ I/A Court H.R., *Case Acevedo Jaramillo et al.*, par. 72 and 216; *Case Suárez Rosero*, Merits. Judgment of November 12, 1997. Series C No. 35, par. 65; *Caso Claude Reyes et al*, párr. 130.

the competent authorities issue the decision or judgment. The State must also guarantee the means to execute the said final decisions.⁶¹

The Court has also held that:

[T]he effectiveness of judgments depends on their execution. 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.⁶²

[That is,] the State must also guarantee the means to execute the said final decisions [...issued by] 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 obligations⁶³.

83. In view of the precedents established in the System, it would be reasonable to say that the right to judicial protection would be illusory if a Contracting State's domestic legal system were to allow a final binding decision to remain inoperative to the detriment of one party.⁶⁴ Apart from undermining the rule of law, non-compliance with judicial decisions violates the right to effective judicial protection enshrined in Article 25 of the American Convention. A fundamental premise of the administration of justice is the binding nature of the decisions adopted in the judicial determination of citizens' rights and obligations, which must be carried out.

84. In the instant case, the Commission notes that the judgment rendered by the Constitutional Court on March 12, 2002, published in the Official Register on April 4, 2002, ruled that Executive Decrees 1185 of January 15, 2001, and 1680 of July 18, 2001, were fundamentally unconstitutional, and it ordered that reparation be provided to Colonel GS (Ret.) Jose Alfredo Mejía Idrovo for the harm caused to him. With respect to compliance with the aforementioned judgment, the petitioners say that the decision of the Constitutional Court became enforceable on April 4, 2002, the date of its publication in the Official Register, since which time, the State has been in non-compliance.

85. For its part, as the record before the Commission shows, at no time has the State disputed the fact that, as yet, the decision of the Constitutional Court has not been carried out. The record also shows that the petitioner has made efforts to secure its implementation. The State, for its part, has made proposals with regard to compensation, which have not been put into effect.

86. Therefore, based on the evidence in the record and the submissions of the parties, the Commission considers that it has been established that at the time of this writing the Ecuadorian State has not complied with the judicial order to provide reparation to the victim for damages sustained as a result of the application of two executive decrees that resulted in the suspension and discharge of the victim, constituting an unwarranted delay of more than six years in the effective implementation of the aforesaid judgment of the Constitutional Court of March 12, 2002, promulgated following its publication in the official record on April 4, 2002.

87. In light of the foregoing, the Commission finds that the Ecuadorian State violated Article 25 of the American Convention, in connection with Article 1(1) of that international instrument, to the detriment of Mr. José Antonio Mejía Idrovo.

⁶¹ I/A Court H.R., *Case of Acevedo Jaramillo et al.* Judgment of February 7, 2006. Series C No. 144, par. 216.

⁶² I/A Court H.R., *Case Acevedo Jaramillo et al.*, *supra*, par. 217.

⁶³ I/A Court H.R., *Case Acevedo Jaramillo et al.*, *supra*, par. 72, 216 and 220; *Caso Baena Ricardo et al*, *supra*, par. 82.

⁶⁴ I/A Court H.R., *Case Acevedo Jaramillo et al.*, *supra* note 77, par. 219.

2. Right to a Fair Trial

88. Article 8(1) of the American Convention provides,

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

89. In the present case, the Commission notes that there is controversy between the parties regarding the legality of the resolution of the President of the Constitutional Tribunal. Petitioners argued that the resolution of May 30, 2002 did not provide proper legal notice to the parties and that Jose Alfredo Mejía Idrovo knew of the content and repercussions of the judgment through the file as he insisted that the judgment be executed⁶⁵. They also said that when issuing the Interpretation decision, the President of the Constitutional Tribunal violated the internal law for adopting a resolution that corresponded to the same instance that issued the resolution in its favor, that is, all the justices of said Tribunal and the General Commander of the Army, without being a party in the process, because the person being sued is the Constitutional president, made the application extemporarily.⁶⁶ Moreover, according to the file presented before the Commission, the State agents based their reasoning on the resolution of the president of the Constitutional tribunal and not on the resolution of the Tribunal as a whole.

90. The request for clarification of the judgment referred to a Resolution issued by all the members of the Constitutional Tribunal for a third party in the process, that is, the victim and the national Executive branch. Moreover, the Commission notes that the request of clarification of March 12, 2002, providing notice to the parties on March 25, 2002, was done on April 8, 2002, that is, past the deadline of three days established by the Ecuadorian law. Consequently, it was reasonable to presume that the decision of the Constitutional Tribunal had been executed without delay giving the victims judiciary security that there would be no other processes or procedures to clarify or to amplify the Resolution issued in his favor. Contrary to this, the victim knew unilaterally, without being officially notified, of the existence of an application of extemporary clarification and posterior resolution of the president of the Constitutional Tribunal.

91. The Commission considers that the fact that the President of the Constitutional Court admitted a time-barred motion from an institution that was not a party in the judicial

⁶⁵ Section 3. Of the citation and notification of the codification of the Civil Procedure Codification. Art. 73. [...] Notification is the act through which judgments and judiciary acts are put into notice of the parties or other persons or staff members. It also refers when the judiciary branch notifies someone that he or she must comply with an order, or accept a designation done by a judge. Art. 74.- [...] The clerk will take note of the notification. He/she will write the name of the person notified and the date and time of the notification. More than one notification can be stated in the same document that must be signed by the clerk. Art. 75. Anyone who is a party in a judiciary procedure will designate the place in which he or she must be notified. That place must be the judiciary window and/or the judiciary electronic address of an attorney with any Ecuadorian bar. The notification will not be done if one of the parties has not complied with this requirement. However, the right to be notified will start when the party makes the designation mentioned in the previous sentence and since then, he should be notified. Notifications to the General Attorney of the State must be done according to Art. 6 of the Organic Law of the Office of the Attorney General of the State. Notifications to the representatives of the State institutions and of the staff of the Public Ministry that must intervene in the trials will be done at their offices in the place of the trial, or in the judiciary window and in the judiciary electronic address they have offered to that effect.

⁶⁶ Articles 285 and 286 of the Civil Procedure Code of Ecuador establish: the competent authority to make clarifications or amplifications; the persons entitled to formulate such applications and the deadlines to do so. 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. 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.

proceeding and subsequently adopted a resolution without the legal authority to do so, meant in Mr. Idrovo's case that the decision of the Constitutional Court was subject to a procedure not recognized by the law. Furthermore, the Commission finds that the resolution adopted contributed to the lack of clarity and the unwarranted delay in carrying out the ruling of March 12, 2002, promulgated on April 4 of that year. In light of the foregoing, the Commission concludes that the Ecuadorian State violated the right to a fair trial recognized in Article 8(1) of the American Convention, in conjunction with Article 1(1) of same instrument, to the detriment of Mr. Mejía Idrovo.

VIII. REPARATIONS AND COSTS

92. The *jurisprudence constante* of the Inter-American Court is that "it is a principle of international law that any violation of an international obligation that has caused damage creates a new obligation, which is to adequately redress the wrong done."⁶⁷ Given the facts alleged in the present application, and in application of that jurisprudence, the Commission is submitting to the Court its claims as to the reparations and costs that the Ecuadorian State must pay as a consequence of its responsibility for the human rights violations committed against José Alfredo Mejía Idrovo.

93. Pursuant to the Rules of Court, which give the individual autonomous standing in its proceedings, in these submissions the Commission will confine itself to elaborating upon the general standards that the Court should apply in the matter of reparations and costs in the instant case. The Inter-American Commission understands that it is up to the victims and their representatives to spell out precisely what their claims are, pursuant to Article 63 of the American Convention and article 24 and others of the Rules of Court. Should the next of kin of the victims not exercise this right, it is requested that the Court grant the IACHR a procedural opportunity to quantify the pertinent claims. The Inter-American Commission also would like to indicate that it will inform the Court at the appropriate time if it has any observations regarding the quantification of claims of the next of kin of the victims or their representatives.

A. Obligation to make reparations

94. Article 63(1) of the American Convention provides that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

95. As this Court has previously held,

Article 63(1) of the American Convention reflects a customary rule that is one of the fundamental principles of contemporary international law regarding the responsibility of States. When a wrongful act occurs that is imputable to a State, the latter incurs international responsibility for violation of an international rule, and thus incurs a duty to make reparation and putting an end to the consequences of the violation.⁶⁸

⁶⁷ I/A Court H.R., *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119, para. 230; I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 85; I/A Court H.R., *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, para. 138.

⁶⁸ I/A Court H.R., *Caso Montero Aranguren et al (Detention Center of Catia) vs. Venezuela*, liminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, par. 116 that cites *Case Baldeón García*, par. 175; *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits,

96. Reparations are crucial to ensuring that justice is done in an individual case and are the means by which the Court's judgments are carried beyond the realm of moral condemnation. Reparations are the measures that will cause the effect of the violations committed to disappear. Reparation of the damage caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which is to restore the situation as it was prior to the violation.

97. Where full restitution is not possible, as is true in the instant case, it is up to the Inter-American Court to order a series of measures that will not only ensure that the violated rights are respected but also redress the consequences that the violations caused and ensure payment of indemnification as compensation for the damage caused in that case.⁶⁹ "

98. The obligation to make reparations is regulated in all its aspects (scope, nature, modes and determination of beneficiaries) by international law and cannot be modified by the respondent State by invoking the provisions of its own domestic laws; nor can the latter decline to discharge that obligation by invoking provisions of its own domestic laws.⁷⁰ "Whenever a violation goes unpunished or a wrong unredressed, the law is in crisis, not just as a means for settling a certain litigation, but as a method for settling any litigation; in other words, as a tool to ensure peace with justice."⁷¹

99. In the instant case, the Commission has proved that the State incurred in international responsibility for the breach of Articles 8(1) and 25 of the American Convention, in conjunction with Article 1.1 of the same treaty, against José Alfredo Mejía Idrovo. Seven and a half years have elapsed since the decision of the Constitutional Tribunal was issued protecting his right. However, until today the decision has not been complied. Consequently, the Commission asks the Court to order the State to take the necessary measures to comply in an effective way the decision of the Constitutional Tribunal of Ecuador, issued on March 12, 2002.

100. Moreover, the Commission deems it necessary to repair the damages caused by the lack of compliance with the judgment the victim suffered. These damages violate Mr. Mejía's rights protected under the American Convention through the payment of an indemnity as compensations for the damaged caused⁷². In general terms, the indemnities of such cases have the basic objective of repairing the real material and non-material damages caused to the injured party⁷³. The calculation of the damages must

Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, par. 196, y *Case Acevedo Jaramillo et al*, par. 295.

⁶⁹ I/A Court H.R., *Case of Carpio Nicolle et al*. Judgment of November 22, 2004. Series C No. 117, para. 87; I/A Court H.R., *Case of the Plan de Sánchez Massacre*. Judgment of November 19, 2004. Series C No. 116, para. 53; I/A Court H.R., *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, para. 140.

⁷⁰ I/A Court H.R., *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119, para. 231; I/A Court H.R., *Case of Carpio Nicolle et al*. Judgment of November 22, 2004. Series C No. 117, para. 87; I/A Court H.R., *Case of the Plan de Sánchez Massacre*. Judgment of November 19, 2004. Series C No. 116, para. 53.

⁷¹ SERGIO GARCÍA RAMÍREZ, *LAS REPARACIONES EN EL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS*, paper presented at the seminar titled "The inter-American system for the protection of human rights on the threshold of the XXI century," San José, Costa Rica, November 1999.

⁷² Corte IDH, *Caso de los Hermanos Gómez Paquiyauri*, *supra*, párrafo 189; *Caso de los 19 Comerciantes*, *supra*, párrafo 221; *Caso Molina Theissen. Reparaciones (Art. 63.1 de la Convención Americana Sobre Derechos Humanos)*, Sentencia del 3 de julio de 2004, Serie C N° 108, párrafo 42.

⁷³ Corte I.D.H., *Caso Bulacio*. Sentencia de 18 de septiembre de 2003. Serie C N° 100, párr. 70; *Caso Hilaire, Constantine y Benjamin y otros*. *supra*, párr. 204; y *Caso de la "Panel Blanca" (Paniagua Morales y otros)*. *Reparaciones* (art. 63.1 Convención Americana sobre Derechos Humanos). Sentencia de 25 de mayo de 2001. Serie C N° 76, párr. 80.

necessarily be proportional to the “gravity of the violations and the resultant damage”⁷⁴. Moreover, the reparations have the additional but no less fundamental objective, of preventing future violations.

101. Notwithstanding any claims that the victim may make at the appropriate stage in the proceedings, the Commission is asking the Court, in exercise of its broad authority, to set an amount, in equity, as compensation for material and non-material damages.

B. The persons entitled to the right to receive reparations

102. Article 63(1) of the American Convention requires reparation of the consequences of a breach of a right or freedom and that fair compensation be paid to the injured party. The persons entitled to that compensation are, as a rule, those directly harmed by the facts of the violation in question.⁷⁵ In the present case, the person entitled to the right to receive compensation is Mr. Mejía Idrovo.

C. Costs and expenses

103. The *jurisprudence constante* of the Court is that costs and expenses should be understood to be included within the concept of reparation established in Article 63(1) of the American Convention because the measures taken by the victim or victims, their heirs or their representatives to have access to international justice imply disbursements and commitments of a financial nature that must be compensated.⁷⁶ The Court has also held that the costs to which Article 59(1)(h) of its Rules refers also include the various necessary and reasonable expenses that the victim or victims incur to have access to the oversight bodies established by the American Convention. The fees of those who provide legal assistance are included among the expenses.⁷⁷

104. In the present case, the Commission is asking the Court, once it has heard the representatives of the victims, to order the Ecuadorian State to pay the costs incurred in bringing their case to the domestic courts, and the costs that they incurred in bringing the case to the Commission and those resulting from the filing of the present application with the Court and that have been duly proven by the representatives.

IX. CONCLUSIONS

105. Based on the considerations in the present application, the Commission concludes that Ecuador is responsible for violation of articles 8.1 and 25 of the American Convention, in conjunction with Article 1(1) of that instrument, against Jose Alfredo Mejia Idrovo.

⁷⁴ Naciones Unidas, *Principios y directrices básicos sobre el derecho de las víctimas de violaciones de las normas internacionales de derechos humanos y del derecho internacional humanitario*, E/CN.4/Sub.2/1996/17, párr. 7. Asimismo, ver Corte IDH, *Caso Hilaire, Constantine y Benjamin y otros*, supra, párr. 205; *Caso Cantoral Benavides. Reparaciones* (art. 63.1 Convención Americana sobre Derechos Humanos). Sentencia de 3 de diciembre de 2001, Serie C Nº 88, párr. 42 y *Caso Cesti Hurtado. Reparaciones* (art. 63.1 Convención Americana sobre Derechos Humanos). Sentencia de 31 de mayo de 2001, Serie C Nº 78, párr. 36.

⁷⁵ I/A Court H.R., *Case of Villagrán Morales (The “Street Children” Case), Reparations*, Judgment of May 26, 2001, para. 107 and 108.

⁷⁶ I/A Court H.R., *Case of Carpio Nicolle et al. Case*, Judgment of November 22, 2004. Series C No. 117, para. 143; I/A Court H.R., *Plan de Sánchez Massacre Case*. Judgment of November 19, 2004. Series C No. 116, para. 115; I/A Court H.R., *De la Cruz Flores Case*. Judgment of November 18, 2004. Series C No. 115, para. 177.

⁷⁷ I/A Court H.R., *Case of the “White Van” (Paniagua Morales et al.)*, Reparations, Judgment of May 25, 2001, para. 212.

106. As a consequence, the Commission is asking the Court to order the State to adopt the necessary measures to ensure effective compliance with the judgment of the Constitutional Court of the Republic of Ecuador issued on March 12, 2002, which orders reparation of the damages caused to Mr. José Alfredo Mejía Idrovo.

X. EVIDENTIARY SUPPORT

A. DOCUMENTARY EVIDENCE

107. The documentary evidence available at this time is listed below:

Appendix 1. Admissibility and Merits Report 07/09. March 17, 2009, José Alfredo Mejía Idrovo, Ecuador.

Appendix 2. File before the Commission.

Annex 1. Unnumbered note from the Council of General Officers of the Land Forces addressed to Col. GS José Mejía Idrovo, notarized on August 28, 2001.

Annex 2. Brief 20000056-25-BAL-CNDO from Col. GS José A. Mejía I. requesting reconsideration.

Annex 3. Land Forces memorandum Ref.: 000251-JEMFT of December 26, 2000.

Annex 4. Copy of Decree 1185 signed by the Constitutional President of the Republic and the Minister of Defense (Presidential MS-1-4), January 30, 2001. Published in General Order 021 of January 31, 2001.

Annex 5. Military Service Code (Law 118. RO/ Sup 660) of April 10, 1991.

Annex 6. Copy of Decree 1680 signed by the Constitutional President of the Republic and the Minister of Defense (Presidential MS-1-4), July 18, 2001. Published in General Order 133 of July 20, 2001.

Annex 7. Official Letter 04121 DNRC by which the Ombudsman presented the application for unconstitutionality with respect to Executive Decrees 1185 and 1680 lodged by José Alfredo Mejía Idrovo, October 4, 2001.

Annex 8. Constitution of Ecuador of 1998, adopted on June 5, 1998.

Annex 9. Constitutional Court, Decision 039-2001-TC of March 12, 2002

Annex 10. Constitutional Court, Clerk of the Court, March 25, 2002.

Annex 11. Letter from the Commanding General of the Land Forces to the President of the Constitutional Court, April 8, 2002.

Annex 12. Letter from Colonel José Alfredo Mejía Idrovo to the President of the Constitutional Court, stamped received at Army Headquarters on April 24, 2002.

Annex 13. Resolution of the President of the Constitutional Court, May 30, 2002.

Annex 14. Constitutional Court, Official letters 573-TC-P, 574-TC-P, 575-TC-P, and 576-TC-P dated July 12, 2002 addressed to the Constitutional President of the Republic, Minister of Defense, Head of the Joint Chiefs of Staff of the Armed Forces, and Prosecutor General, respectively.

Annex 15. Official Letter 25152 from the Office of the Prosecutor General of the Republic of Ecuador to the Constitutional Court, July 17, 2002.

Annex 16. Official Letter 021130-MS-7-1 from the Ministry of Defense to the Constitutional Court, July 31, 2002.

- Annex 17. Official Letter 2002-213-AJ-CCFFAA from the Joint Chiefs Of Staff of the Armed Forces, August 14, 2002.
- Annex 18. Certificate of the Armed Forces Social Security Institute (ISSFA) dated February 13, 2002.
- Annex 19. Joint Chiefs of Staff of the Armed Forces, Official Letter 2002-213-AJ-CCFFAA, August 14, 2002.
- Annex 20. Communication dated August 7, 2002, from the victim to the President of the Constitutional Court.
- Annex 21. Letters from Colonel José Alfredo Mejía Idrovo to the Constitutional Court, September 6 and 10, 2002.
- Annex 22. Certificate of the General Command of the Land Forces of September 26, 2002.
- Annex 23. Communication dated March 10, 2003, from the petitioner to the President of the Republic.
- Annex 24. Official Letter T.1308-SJ-2003-230 from the Office of the President of the Republic to the petitioner, March 18, 2003.
- Annex 25. Official Letter 030096-c2 from the ISSFA to the petitioner, April 7, 2003.
- Annex 26. Notice from the Plenary of the Constitutional Court to the petitioner, May 20, 2003.
- Annex 27. Official Letter 453-CEDU/03 to the Constitutional President, June 10, 2003.
- Annex 28. ISSFA, Official Letter 030217-e2, July 10, 2003.
- Annex 29. Official Letter T1308-SGJ-2003-3380 from the Office of the President of the Republic of Ecuador, December 17, 2003.
- Annex 30. Certificate of the Ministry of Defense dated January 29, 2004.
- Annex 31. Certificate of the Department of Retired Personnel and Reserves of the Land Forces, dated January 28, 2004.
- Annex 32. Decision 0040074 of the ISSFA Benefit Evaluation Board, February 12, 2004.
- Annex 33. Undated communication from the victim, marked Annex 4 of the communication of the petitioners of November 4, 2008, addressed to the Chair of the Benefit Evaluation Board of the Armed Forces Social Security Institute
- Annex 34. Notice of the Benefit Evaluation Board of the Armed Forces Social Security Institute dated March 29, 2004.
- Annex 35. Executive Council of the Armed Forces Social Security Institute (ISSFA), Resolution 04-05.06.2 of July 28, 2004.
- Annex 36. Communication from the victim of September 18, 2006, to the Armed Forces Social Security Institute.
- Annex 37. Official Letter 060087-ISSFA-e of September 22, 2006.
- Annex 38. Communication from the victim to the President of the Republic of March 26, 2007.
- Annex 39. Office of the President of the Republic, Official Letter T.J.1308-SGJ-07-1274 of May 30, 2007.
- Annex 40. Communication of the victim to the Constitutional Court stamped September 14, 2007.

- Annex 41. Office of the Prosecutor General, Official Letter 05107 of October 9, 2007.
- Annex 42. Office of the Prosecutor General, Official Letter 002804 dated August 28, 2008.
- Annex 43. Land Forces, Official Letter 2000-1014-DJFT of September 18, 2008, with Enclosure: Calculation of Damages Settlement in favor of Col. (Ret.) Mejía Idrovo José Alfredo.
- Annex 44. Communication from the victim to the Minister of Defense, September 24, 2008.
- Annex 45. Ministry of Defense, Official Letter MS-7-5-2008-396 of October 7, 2008
- Annex 46. Ministry of Defense, Official Circular MS-7-5-2008-397 of October 7, 2008.
- Annex 47. Communication from the victim to the Minister of Defense, October 13, 2008.
- Annex 48. IACHR, Annual Report 1998. Report of Paraguay, par. 50 and 51.
- Annex 49. Document where the victim gives powers of attorney.
- Annex 50. Resume of the expert witness.

B. STATEMENTS BY VICTIMS, WITNESSES, AND EXPERTS

108. In compliance with Article 50 of the Court's amended Rules of Procedure, the Commission asks that it hear statements from the victim José Alfredo Mejía Idrovo, whose testimony will cover the obstacles that he has faced in order to have the order of March 12, 2002 of the Constitutional Tribunal complied with, among other aspects related to the purpose and goal of the present law suit.

109. The Commission asks the Court to hear the testimony of expert witness Jaime Vintimilla, attorney. Mr. Vintimilla is a specialist in Ecuadorian Constitutional Law. The Commission offers this expert, so that he can inform the Court about the lack of enforcement of the decisions of the Constitutional Tribunal, among other aspects related to the purpose and goal of the present law suit.

XI. INFORMATION ON THE REPRESENTATIVES

110. In compliance with Article 34 of the Court's amended Rules of Procedure, the Inter-American Commission submits the following information:

111. José Alfredo Mejía Idrovo granted a power of attorney to Cesar Duque of CEDHU to represent him before the Inter-American Court of Human Rights.

112. The representatives of the victims have given their address as [REDACTED].