



ORGANIZATION OF AMERICAN STATES
Inter-American Commission on Human Rights

Application to the Inter-American Court of Human Rights
in the case of
Francisco Usón Ramírez
(Case 12.554)
versus the Bolivarian Republic of Venezuela

DELEGATES:

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**APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
TO THE INTER-AMERICAN COURT OF HUMAN RIGHTS
VERSUS THE BOLIVARIAN REPUBLIC OF VENEZUELA**

**CASE 12.554
FRANCISCO USÓN RAMÍREZ**

I. INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission”, “the Commission” or “the IACHR”), submits to the Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, “the Court” or “the Tribunal”) an application in Case 12.554, Francisco Usón Ramírez, versus the Bolivarian Republic of Venezuela (hereinafter “the State”, “the Venezuelan State” or “Venezuela”) alleging its international responsibility in connection with the criminal prosecution of Gen. (Ret.) Francisco Usón Ramírez (hereinafter “Mr. Usón” or “the victim”) by a military tribunal for the offense of *Insult to the National Armed Forces* and his subsequent sentencing to five years and six months of imprisonment as a result of comments concerning a fire at a military barracks made by Mr. Usón during a television interview about events that were the subject of public debate and controversy at the time.

2. Having analyzed the available information, the Commission prepared Report on Merits 24/08 in accordance with Article 50 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”),¹ and concluded that the Venezuelan State violated the rights to freedom of thought and expression, personal liberty, a fair trial, and judicial protection, provided in Articles 13, 7, 8, and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof, to the detriment of Mr. Francisco Usón Ramírez.

3. The instant case has been processed pursuant to the provisions of the American Convention and is submitted to the Court in accordance with Article 33 of its Rules of Procedure. Attached as an appendix to this application is a copy of report 24/08, which was adopted by the Commission on March 14, 2008, and, on March 27, 2008, transmitted to the State, which was given two months in which to adopt the recommendations contained therein. The deadline, which was extended once at the request of the State,² elapsed without satisfactory compliance on the part of the Venezuelan State with the pertinent recommendations. In view of the foregoing, the IACHR has decided to refer the case to the Court. Consequently, the IACHR requests the Court to confirm its conclusions and find that the Venezuelan State bears international responsibility for having violated the obligations set forth in the report on merits.

4. The Commission believes that the referral of the case to the Court is justified by the obligation to obtain justice and reparation for the incompatibility of laws that recognize offenses against honor of public institutions, such as the Armed Forces, and the inhibiting effect of the existence and enforcement of such laws on the exercise of freedom of thought and expression. The case also concerns the incompatibility of laws that grant military tribunals jurisdiction over persons who are not serving members of the Armed Forces and over offenses that are not strictly military in nature, such as offenses against honor. The case also relates to the limits that exist on the power

¹ IACHR, Report on Merits 24/08, Case 12.554, Francisco Usón Ramírez, March 14, 2008. Appendix 1.

² The communication in which the State requested the extension mentions that “it expressly waives any objection to the application to the Inter-American Court on grounds of untimeliness.”

of the State to impose subsequent liability on the exercise of freedom of expression in the interest of national security and deals with the issue of the incompatibility of imposition of subsequent liability on criticisms or opinions on matters of public interest in the sense that they do not meet the requirement of necessity in a democratic society. Finally, as regards the right to personal liberty, Mr. Usón's case has to do with the incompatibility of a restriction on the right to personal liberty arising from the enforcement of a law that runs contrary to the Convention.

II. PURPOSE

5. The purpose of the instant application is to request the Court to find and declare that, as a consequence of the facts in this case, the Venezuelan State violated the rights to freedom of thought and expression, personal liberty, a fair trial, and judicial protection provided by Articles 13, 7, 8, and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof, to the detriment of Mr. Francisco Usón Ramírez.

6. Accordingly, the Inter-American Commission requests that the Court order that the State:

- a. Adopt all such judicial, administrative, and other measures as may be necessary to completely vacate all military criminal proceedings instituted against the victim, together with any decisions adopted therein; strike the criminal record from the appropriate registry, and remove any implications thereof, irrespective of their nature.
- b. Adopt all such measures as may be necessary for Mr. Francisco Usón Ramírez immediately to be granted permanent and unconditional release.
- c. Adapt its system of laws in order to make it consistent with Articles 13, 7, 8 and 25 of the American Convention, in keeping with the findings in the instant case.
- d. Adopt all necessary measures for the adequate reparation and mitigation of the emotional and material harm caused to the injured party.
- e. Pay the court costs and legal expenses incurred by the victim and his representatives in pursuing this case, both at the domestic level and in the inter-American jurisdiction.

III. REPRESENTATION

7. In conformity with Articles 22 and 33 of the Rules of Procedure of the Court, the Commission has designated Commissioner Paulo Sergio Pinheiro and its Executive Secretary, Santiago A. Canton as its delegates in this case. The Assistant Executive Secretary, Elizabeth Abi-Mershed, and attorneys Veronica Gómez, Debora Benchoam, and Lilly Ching, specialists of the Executive Secretariat of the IACHR, have been designated to act as legal advisers.

IV. JURISDICTION OF THE INTER-AMERICAN COURT

8. According to Article 62(3) of the American Convention, the jurisdiction of the Inter-American Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the State Party to the case recognizes or has recognized such jurisdiction.

9. The Venezuelan State ratified the American Convention on August 9, 1977, and accepted the contentious jurisdiction of the Court on June 24, 1981. The Inter-American Court is competent to hear the instant case inasmuch as the facts occurred after May 2003.

V. PROCESSING BY THE INTER-AMERICAN COMMISSION

10. On May 23, 2005, the IACHR received a petition lodged by Héctor Faúndez Ledesma (hereinafter “the petitioner”) concerning alleged violations of the rights enshrined in Articles 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 13 (freedom of expression), and 25 (judicial protection) of the Convention, as well as alleged breach of the general obligations of the State contained in Articles 1 and 2 of the aforementioned instrument.

11. On June 1, 2005, the Commission decided to process the petition as Case 577/05. Subsequently, on June 28, 2005, the Commission transmitted the petition to the State and granted it two months to submit its observations. On September 13, 2005, the State, following an extension, forwarded its observations on the petition to the Commission. On October 26, 2005, the Commission transmitted the pertinent portions of those observations to the petitioner and granted it one month in which to submit its comments. The Commission received no such comments from the petitioner.

12. On March 15, 2006, the Inter-American Commission issued Admissibility Report 36/06 in which it concluded that it was competent to hear the petition lodged with respect to the alleged violation of Articles 7, 8, 13, and 25 of the Convention, in connection with Articles 1(1) and 2 of said instrument. It also decided to declare the petition inadmissible with respect to the alleged violation of Article 5 of the Convention because it had not been suitably substantiated.³

13. On March 23, 2006, the Commission notified both parties of its adoption of Admissibility Report 36/06 and, in keeping with Article 38(2) of its Rules of Procedure, placed itself at their disposal with a view to reaching a friendly settlement of the matter; it also granted the petitioner two months, in accordance with Article 38(1) of its Rules of Procedure, to submit additional observations on merits. The Commission received no such observations from the petitioner.

14. On August 9, 2006, the petitioner sent the Commission a brief in which it said that “the wife of General Francisco Usón [...] had reportedly been warned that there was a plan afoot against Francisco Usón [intended to] destroy [him] physically and mentally.” The Commission transmitted said brief to the State and gave it 10 days in which to forward appropriate information in that regard. On August 21, 2006, the State provided information on measures adopted with respect to what the petitioner had reported. On October 23, 2006, the Commission relayed to the petitioner the information submitted by the State and gave it one month to present its observations in that connection, which passed without any observations being received.

15. On January 23, 2007, the Washington College of Law (WCL) Impact Litigation Project submitted a brief in which it requested the Commission to include it as co-petitioner in the instant case. On February 25, 2007, the petitioners submitted their observations on the merits of the case. On March 21, 2007, the IACHR relayed said brief to the State and granted it one month in which to present such observations as it deemed appropriate.

16. On March 29, 2007, the IACHR requested the parties to submit additional information and evidence. On March 23, 2007, the petitioners submitted to the IACHR copies of the court file on Case 008-2004 and, on April 10, 2007, submitted additional information on the case. On April 10, 2007, the IACHR also received a communication from the State in which it said that

³ IACHR, Report 36/06, Petition 577-05, Admissibility, FRANCISCO USÓN RAMIREZ, Venezuela, March 15, 2006. Appendix 2.

the request of the IACHR "is utterly inadmissible because it oversteps the powers granted by the American Convention."

17. On May 15, 2007, the IACHR informed the State that the petitioners had sent a copy of the record of the domestic proceeding against Mr. Usón Ramírez for the crime of insult to the armed forces, and it relayed to the State a copy of the communication from the petitioners of April 10, 2007.

18. On May 18, 2007, the IACHR received additional information furnished by the spouse of Mr. Usón Ramírez, which was forwarded to the State on May 29, 2007, together with a request that it submit such observations as it deemed appropriate in 15 days. The IACHR also requested the State to transmit additional evidence within the same period.

19. On June 14, the IACHR received additional information from the petitioners, which it relayed to the State on June 15 of that year, giving it one month in which to submit observations. On August 9, 2007, the IACHR requested that the State, in keeping with Article 38(1) of the Rules of Procedure of the IACHR, transmit its additional observations on merits within two months.

20. On August 23, 2007, the IACHR received additional information from the petitioners, which it conveyed to the State and gave it until the expiration of the deadline established in the communication of August 9, 2007 (supra), to submit such observations as it deemed appropriate. On October 15, 2007, the State requested the IACHR for a one-month extension in order to present its observations on merits as requested. On October 18, 2007, the IACHR granted an extension of 30 days and notified the petitioners of said decision.

21. On October 29, 2007, the petitioners presented a brief in which "they expressed their incomprehension of said decision," and requested the IACHR to explain the reasons why the aforementioned extension was agreed to.

22. On October 29, 2007, the State sent the IACHR its brief of additional observations on merits and enclosed further information on the case. On December 4, 2007, the IACHR relayed that brief to the petitioners and granted them one month to present such observations as they deemed pertinent. In that same communication, the IACHR informed the petitioners that the extension accorded to the State was granted under Article 38 (1) and (2) of the Rules of Procedure of the IACHR. On December 27, 2007, the petitioners submitted a brief in response to the State's observations on merits, which was forwarded to the State on January 8, 2008.

23. On January 7, 2008, the petitioners requested a public hearing on the case. On January 25, 2008, Mr. Usón sent the IACHR a copy of the order of the First Court of Enforcement in which he was granted release on probation. On February 26, 2008, the Commission sent a brief to the petitioners in which it informed them that it would not be possible to accede to their request to hold a public hearing on the instant case at the 131st Regular Session of the IACHR.

24. On March 14, 2008, the Inter-American Commission adopted report 24/08 on merits in the case. In that report the IACHR concluded that the Venezuelan State violated the victim's rights to freedom of thought and expression, personal liberty, a fair trial, and judicial protection, provided in Articles 13, 7, 8, and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof.

25. Based on the analysis and conclusions contained in the report, the Inter-American Commission offered the following recommendations:

1. That the State adopt all such judicial, administrative, and other measures as may be necessary to completely vacate all military criminal proceedings instituted against the victim, together with any decisions adopted therein; and strike the criminal record from the appropriate registry and any implications thereof, irrespective of their nature.
2. That the State grant adequate reparation to Mr. Francisco Usón Ramírez for violation of his rights.
3. That the Venezuelan State adopt all the measures necessary for Mr. Francisco Usón Ramírez to be granted permanent and unconditional release.
4. That the State adapt its system of laws in order to make it consistent with Articles 13, 7, 8 and 25 of the American Convention, in keeping with the findings in the [...] report.

26. The Inter-American Commission transmitted report 24/08 to the State on March 27, 2008, and gave it two months to report on measures adopted to implement the aforesaid recommendations. On that date it also transmitted the pertinent portions of the report to the injured party and requested, pursuant to Article 43(3) of its Rules of Procedure, that it indicate its position as to whether the case should be submitted to the Inter-American Court. In a communication of April 25, 2008, the representatives of the injured party expressed the interest of the latter that the case be submitted to the Court

27. On May 29, 2008, the State requested a "prudent extension" to present the information requested by the IACHR on the measures employed by the State to implement the recommendations formulated in its report 24/08 and indicated that "it expressly waives any objection to the application to the Inter-American Court on grounds of untimeliness." The IACHR granted the State an extension of one month on June 18, 2008. The time period granted expired without the State presenting its report on the recommendations contained in report 24/08.

28. In light of the foregoing, the Commission considered that the time granted to the State to implement the recommendations contained in its report on merits elapsed without the State submitting information that suggested satisfactory compliance with the recommendations made and, on July 23, 2008, the IACHR decided to submit the instant case to the jurisdiction of the Inter-American Court, in accordance with Articles 51(1) of the Convention and 44 of its Rules of Procedure.

VI. FACTS

A. Francisco Usón Ramírez, his military career, and his family

29. Mr. Francisco Usón Ramírez entered the Military Academy on August 3, 1973.⁴ He graduated on July 7, 1977,⁵ whereupon he joined the armed forces of Venezuela.⁶ In the course of his military career he specialized in combat engineering and finance,⁷ as well as pursuing

⁴ Communication of April 10, 2007, from María Eugenia Usón to the IACHR, Annex1.

⁵ Communication of April 10, 2007, from María Eugenia Usón to the IACHR, Annex1.

⁶ Service Record of Francisco Usón Ramírez provided by the Army Personnel Office (Case No. FM-005/2004, Vol. 2, pp. 268-276). Annex 2.

⁷ Service Record of Francisco Usón Ramírez provided by the Army Personnel Office (Case No. FM-005/2004, Vol. 2, pp. 268-276). Annex 2.

postgraduate studies at universities in Venezuela, Spain, and the United States.⁸ Since 1990, he has been a professor at *Universidad Andrés Bello* and *Universidad Central de Venezuela*.⁹ At the time of the events with which this case is concerned, Mr. Usón Ramírez was living in a house that he owned in the Municipality of Sucre, Miranda State,¹⁰ Venezuela, in the company of his wife,¹¹ Mrs. Maria Eugenia Borges, and their daughter, María José Usón Borges, who was born on March 3, 1988.¹²

30. During the initial years of President Hugo Chávez Frías' administration, Mr. Usón Ramírez held a number of government posts,¹³ including that of Minister of Finance,¹⁴ from which he resigned after the events of April 11, 2002,¹⁵ because, according to the testimony of Mr. Usón, he disagreed with the decision of the President and the Military High Command. The President accepted his resignation on April 17, 2002.¹⁶ Until that moment, Mr. Usón did not have a criminal record, possessed excellent references, and had no disciplinary sanctions on his military record.¹⁷

⁸ Service Record of Francisco Usón Ramírez provided by the Army Personnel Office (Case No. FM-005/2004, Vol. 2, pp. 268-276). Annex 2; see also newspaper article entitled "*Ensañamiento contra el General*" [General victimized], published in *El Universal* of October 24, 2004, available at: <http://infovenezuela.org/attachments-spanish/T5%20ST04b%20N1%20Caso%20Francisco%20Usón.pdf>. Annex 3.

⁹ See testimony of Mr. Usón at the hearing held on October 7, 2004 (Case No. FM-005/2004, Vol. 4, p. 222), in which Mr. Usón describes his position as a professor. Annex 4.

¹⁰ Certificate of residence of July 16, 2004 (Case No. FM-005/2004, Vol. 3, p. 30); Annex 5; Purchase agreement (Case No. FM-005/2004, Vol. 2, pp. 268-276). Annex 6.

¹¹ Copy of marriage certificate (Case No. FM-005/2004, Vol. 3, pp. 24-30). Annex 7.

¹² Birth certificate of María José Usón Borges (Case No. FM-005/2004, Vol. 3, p. 22). Annex 8.

¹³ Presidential Decree 1731, by which General Francisco Usón was appointed Alternate Governor to the International Monetary Fund, published in Official Gazette of the Bolivarian Republic of Venezuela No. 3.7414 of April 2, 2002, available at <http://www.tsj.gov.ve/gaceta/abril/020402/020402-37414-01.html>. Annex 9; Presidential Decree 1732, by which General Francisco Usón was appointed Alternate Governor to the World Bank, published in Official Gazette of the Bolivarian Republic of Venezuela No. 3.7414 of April 2, 2002, available at: <http://www.tsj.gov.ve/gaceta/abril/020402/020402-37414-01.html>. Annex 10; Presidential Decree 1733, by which General Francisco Usón was appointed Alternate Governor to the Inter-American Development Bank, published in Official Gazette of the Bolivarian Republic of Venezuela No. 3.7414 of April 2, 2002, available at: <http://www.tsj.gov.ve/gaceta/abril/020402/020402-37414-01.html>. Annex 11.

¹⁴ Presidential Decree 1690, by which General Francisco Usón was appointed Minister of Finance, published in Official Gazette of the Bolivarian Republic of Venezuela No. 37.392 of February 26, 2002, available at: <http://www.tsj.gov.ve/gaceta/febrero/260202/260202-37392-01.html>. Annex 12.

¹⁵ Letter of December 2, 2002, from Mr. Usón Ramírez to the Minister of Defense (Case No. FM-005/2004, Vol. 4, pages numbered 12 to 16); Annex 13. newspaper article entitled "*La Revolución Pacífica se cerró con sangre y dolor*" [Peaceful Revolution ends in bloodshed and anguish], published in *El País* of April 12, 2002, available at <http://www.ultimasnoticias.com.ve/ediciones/2002/04/12/p2n1.htm> Annex 14; newspaper article entitled "*Chávez renunció después de un día de caos y violencia en Venezuela*" [Chavez resigns after a day of chaos and violence in Venezuela], published in *La Jornada* of April 12, 2002, available at <http://www.jornada.unam.mx/2002/04/12/036n1mun.php?origen=mundo.html>. Annex 15; newspaper article entitled "*Aí menos 14 personas han muerto, entre ellas un español, en una jornada sangrienta*" [Bloody day leaves at least 14 dead, including one Spaniard], published in *La Razón* of April 12, 2002, available at <http://www.forteza.sis.ucm.es/apto/alum0102/FP15/practic/Larazon-p2.doc>. Annex 16.

Letter of December 2, 2002, from Mr. Usón Ramírez to the Minister of Defense (Case No. FM-005/2004, Vol. 4, pages numbered 12 to 16). Annex 13. In this letter, General Usón mentioned that " (...) due to the fact that I do not agree with the procedures adopted and am not convinced by the leadership capacity of those from whom I currently take orders, I find myself unwilling to accept a position in the circumstances presented to me. (...) From tonight, as in the case of the night of April 17, 2002, when it was confirmed that my resignation from the position of Minister of Finance was accepted by the President of the Republic, I shall sleep with a clear conscience because I will be at peace with myself (...)." See in this connection, Human Rights Foundation; "*Francisco Usón: A Political Prisoner and a Prisoner of Conscience of the Venezuela Government since May 22, 2004*"; Executive summary published on December 11, 2006, available at <http://www.thehrf.org/usonExecutiveSummary.html>, which mentions that Mr. Usón tendered his resignation because he

Continued...

31. After he resigned as Minister of Finance, Mr. Usón Ramírez resumed his duties as a brigadier general in the Armed Forces. On December 2, 2002, he wrote a letter to the Minister of Defense, Army Brigadier General José Luis Prieto, with copies to the Chairman of the Joint Chiefs of Staff and the Inspector General of the National Armed Forces. In that letter he said, *inter alia*, that,

[...]

As a relatively new member of the Joint Chiefs of Staff I was involved in the preparation of the document [...] which revealed serious shortcomings that cast doubt on attitudes and aptitudes in the armed forces for dealing with the current national and institutional crisis.

[...]

What has been the response [of the members of the Joint Chiefs of Staff] to [the present national institutional crisis]? On one hand deathly silence, general misinformation of subordinates, [...] in order to close ranks around the core principles of the institution and, on the other, tenacious persecution, violation of the rights and fair-trial guarantees of those charged; in short, patent arbitrariness.

[...] Due to the fact that I do not agree with the procedures adopted and am not convinced by the leadership capacity of those from whom I currently take orders, I find myself unwilling to accept a position in the circumstances presented to me.¹⁸

32. On January 27, 2003, Mr. Usón wrote another letter to the same Minister of Defense, with copies to the Inspector General of the National Armed Forces and Chairman of the Joint Chiefs of Staff, in which he said, *inter alia*,

I have the honor of writing to express my profound concern and shame [...] at the acts of Brig. Gen. (National Guard) LUIS FELIPE ACOSTA CARLES, in contravention of the most basic standards of civil behavior, as well as the indecisiveness demonstrated in that respect by the military high command.

[...]

While [the] attitude [of Gen. Acosta Carles] warrants the strongest possible repudiation, that attitude is outdone by the reticent, supine and servile position adopted by the military leadership.

[...]

I wish to reiterate my dissent at the direction in which the National Armed Forces are being led and the fact that I do not feel convinced by the leadership capacities of those above me in the chain of command.

With the deepest loyalty.¹⁹

...continuation

disagreed with the "(...)decision to activate Plan Avila, a military contingency operation that intended to restore order by using armed force to confront the civilian population protesting in the vicinity of the presidential palace." Annex 17.

¹⁷ Certificate of good conduct issued by the Municipality of Sucre (Case No. FM-005/2004, Vol. 3, p. 32). Annex 18; See, Service Record of Francisco Usón Ramírez provided by the Army Personnel Office (Case No. FM-005/2004, Vol. 2, pp. 268-276). Annex 2.

¹⁸ Letter of December 2, 2002, from Mr. Usón Ramírez to the Minister of Defense (Case No. FM-005/2004, Vol. 4, pages numbered 12 to 16). Annex 13.

¹⁹ Letter of January 27, 2003, from Mr. Usón Ramírez to the Minister of Defense (Case No. FM-005/2004, Vol. 4, pp. 152-153). Annex 19.

33. On May 30, 2003, the Minister of Defense, José Luis Prieto, “[b]y order of the President of the Bolivarian Republic of Venezuela, in accordance with Article 62 of the Organic Law of the Armed Forces”²⁰ issued resolution DG-21141, in which he decided to discharge Mr. Usón Ramírez for committing the disciplinary faults recognized in the following articles of Disciplinary Punishment Regulations N° 6: i) 115.27 minor faults by a member of the military for “expressing displeasure or half-heartedness in the performance of duties”; ii) 116.24 medium fault by a member of the military “by incorrectly addressing a superior or attempting to discredit his fellow officers or subordinates in the eyes of other members of the armed forces or civilians;” and, iii) 117.45 serious faults “by insulting, challenging, provoking, or responding in an insubordinate manner to superiors, provided that the fault does not constitute a crime under military criminal law”, with the aggravating circumstances set forth at Article 114(c) and (h). The aforesaid disciplinary faults were committed with the “delivery of two letters dated December 2, 2002, and January 27, 2003” to the aforesaid Ministry of Defense, “which employed terms that offend and slander the staff of the Military High Command, as well as the Ministry of Defense,”²¹ [given that] they “run contrary to the discipline that all serving members of the armed forces are required to observe, by violating the provisions contained in Article 20 of the Organic Law of the National Armed Forces.”²²

34. Article 240 of the Organic Law of the Armed Forces provides that “Officers and professional career non-commissioned officers are discharged when they cease to serve in the National Armed Forces as a result, [*inter alia*]: [of...] g) Disciplinary measures.”

35. On August 14, 2003, Mr. Usón’s attorneys filed a motion to vacate and applied for a writ of *amparo* against the aforesaid decision, as well as the reinstatement of Mr. Usón in the Armed Forces. In the aforementioned motion,

the attorneys of the appellant charged infringement, *inter alia*, of the right to free expression and freedom of conscience, the right to work, the right to freedom of personal development, and the right to have his psychological and moral integrity respected, based on the degrading treatment to which he claims to have been subjected.²³

36. As far as the IACHR is aware, the compulsory discharge was the first disciplinary sanction imposed on Mr. Usón Ramírez during his military career.²⁴

37. On October 15, 2003, the Political and Administrative Chamber of the Supreme Court of Justice delivered a judgment in which it ruled, *inter alia*, that

²⁰ Article 62 provides that “[t]he Ministry of Defense, in the performance of the orders of the President of the Republic, shall be the highest authority in all matters of command, governments, organization, instruction, and administration of the National Armed Forces.” Available at <http://www.gobiernoenlinea.ve/legislacion-view/sharedfiles/110.pdf>

²¹ Resolution of the Ministry of Defense of May 30, 2003 (Case No. FM-005/2004, Vol. 4, p. 153). Annex 21; Service Record of Francisco Usón Ramírez provided by the Army Personnel Office (Case No. FM-005/2004, Vol. 2, pp. 268-276) Annex 2; and Judgment No. 01574 of October 15, 2003, of the Political and Administrative Chamber of the Supreme Court of Justice on the motion for annulment, constitutional relief, and suspension of resolution No. DG-21141 of May 30, 2003 (Case No. FM-005/2004, Vol. 3, pp. 36-73) Annex 22.

²² Article 20 provides that “obedience, subordination, and discipline shall be the fundamental pillars on which the organization, unity of command, morality, and useful employment of the National Armed Forces always rest.”

²³ Judgment No. 01574 of October 15, 2003, of the Political and Administrative Chamber of the Supreme Court of Justice on the motion for annulment, constitutional relief, and suspension of resolution No. DG-21141 of May 30, 2003 (Case No. FM-005/2004, Vol. 3, pp. 36-73). Annex 22.

²⁴ Service Record of Francisco Usón Ramírez provided by the Army Personnel Office (Case No. FM-005/2004, Vol. 2, pp. 268-276). Annex 2.

the decision to discharge Mr. Usón does not constitute, assuming that the facts that gave rise to the penalty are true, an alleged gross violation of the rights as claimed since that measure could have been in accordance with the power assigned to the administration, exercised for the purpose of maintaining discipline and decorum in the national armed forces. The Chamber also rejected the motion for constitutional relief sought as a precautionary measure in conjunction with the adversarial-administrative appeal.²⁵

38. On December 12, 2006, the Political and Administrative Chamber of the Supreme Court of Justice in Caracas ruled "INADMISSIBLE the adversarial-administrative motion to vacate filed by citizen FRANCISCO VICENTE USÓN RAMÍREZ against resolution DG-21141 of May 30, 2003, issued by the Minister of Defense." In the aforesaid decision, the Court, *inter alia*, after mentioning the two letters, transcribed only parts of the text of the letter of January 2003 and said that

as the transcription [of the aforesaid letter] shows, although the appellant expressed his personal opinion about aspects connected with the armed forces, in doing so he made charges that were clearly offensive to his superiors, which gave rise to the imposition of the penalties provided at the relevant paragraphs of Articles 115, 116, and 117.

Accordingly, the Chamber concluded that the Administration's interpretation and weighing of the facts was correct.²⁶

B. The fire at Fort Mara and the reporting of that incident in a newspaper column

39. On March 30, 2004 there was a fire in a punishment cell at Fort Mara, situated in La Guaira, Zulia State, which "took the lives of [two] of [the soldiers of "Carlos Soublette" 105th Combat Engineers Battalion who were there at the time] and injured seven others."²⁷ The incident remains under judicial investigation with [nothing in the record to suggest that] the cause of the fire has yet been determined.²⁸ The incident gave rise to public discussion about the cause of the fire.²⁹ The Fire Department stated that it could "have been started intentionally."³⁰

40. On April 15, 2004, journalist Patricia Poleo published a column in *El Nuevo País* newspaper which included a description of the alleged cause of the fire in the cell at Fort Mara, the persons who were burned, and the soldier who had died by that point. That column contained the

²⁵ Judgment No. 01574 of October 15, 2003, of the Political and Administrative Chamber of the Supreme Court of Justice on the motion for annulment, constitutional relief, and suspension of resolution No. DG-21141 of May 30, 2003 (Case No. FM-005/2004, Vol. 3, pp. 36-73). Annex 22.

²⁶ Judgment No. 02856 of December 12, 2006, of the Political and Administrative Chamber of the Supreme Court of Justice on the motion for annulment of resolution No. DG-21141 of May 30, 2003. Attached to the petitioners' brief of June 14, 2007. Annex 23.

²⁷ Judgment of the First Military Trial Court of Caracas of November 8, 2004. Section on "Description of the facts in the proceeding". Annex 64; see, also, On-site inspection of the Maracaibo Fire Department of March 31, 2004 (Case No. FM-005/2004, Vol. 1, p. 99). Annex 24

²⁸ Newspaper article entitled "*Fiscalía no ha dictado acto conclusivo sobre Fort Mara*" [Prosecutor's office yet to reach final decision on Fort Mara] published on August 30, 2004 in *El Nacional* newspaper (Case No. FM-005/2004, Vol. 4, p. 122). Annex 25; Judgment of the First Military Trial Court of Caracas of November 8, 2004, third preliminary point. Annex 64.

²⁹ Newspaper article entitled "*Soldado Pedreñaz habló y desata polémica sobre el caso de Fort Mara*" [Private Pedreñaz speaks and sparks controversy about the Fort Mara case] (Case No. FM-005/2004, Vol. 1, p. 38) Annex 26; and newspaper article entitled "*Factores de Poder*" [Power Factors], published in *El Universal* newspaper of April 15, 2004 (Case No. FM-005/2004, Vol. 3, p. 117). Annex 27

³⁰On-site inspection of the Maracaibo Fire Department of March 31, 2004 (Case No. FM-005/2004, Vol. 1, p. 100). Annex 24.

following transcription of a testimony that an officer stationed at Fort Mara reportedly gave to the journalist who wrote the article:

The soldiers were lined up inside the punishment cell. They were insulted and verbally abused, to show that they were in real trouble. Present were an executive officer of the battalion in the company of a captain, two lieutenants, and a lieutenant colonel. The punished soldiers were threatened with a flamethrower, which is a piece of equipment that, as its name suggests, shoots flames up to a distance of approximately 20 meters. They threatened them, toying with this thing to scare them. This flamethrower has a pressure regulator which the persons handling it thought was turned right down. When they activated it the regulator was on full and it shot out a powerful jet of flame. The soldiers were inside the punishment cell, and they were outside [...] they were burnt from the waist up and some were burnt more than others because they were lined up in front of the flamethrower and they received a direct impact from the jet. Then they delayed in getting them out because they were shut in and they couldn't open the doors at the shock of seeing something so horrific [...] they never thought that the jet of flame was going to come out as strongly as it did.³¹

C. Interview with General Usón on the television program “La Entrevista” broadcast by Televisión

41. On April 16, 2004, Mr. Usón “appeared as a special guest, together with the journalist Patricia Poleo, on *La Entrevista*, a television program hosted by Martha Colomina that used to air beginning at 12:50 AM on channel 10 (*Televisión*).³²

42. Ms. Colomina proposed that they discuss “what is going on in the army barracks” and the column written by Patricia Poleo, who explained the testimony of an officer regarding the theory that the fire at Fort Mara was started by a flamethrower and mentioned that she had also received other testimonies. Mr. Usón Ramírez introduced himself as an engineering officer and Marta Colomina presented him as a “top military and political analyst” and asked him for his “expert opinion.” The writing on the television screen described him as a retired army general and former cabinet minister in the Chávez administration. When asked to provide his expert opinion on the matter, he said the following:³³

Usón: [...] coincidentally I am an engineering officer, so a flamethrower is a weapon that was basically created in the Second World War and was used in the Pacific theater as one of the main tools to dislodge Japanese soldiers holed up in caves on Pacific islands.

Colomina: I see.

Usón: The problem with the account that Patricia was given is that the way in which the equipment was operated and prepared for use is evidence that there was clearly premeditation. This is not something like the CICAT; that is, the CICAT might seem primitive and, despite all its crudeness, the CICAT thing could have been something spontaneous. But not this because ...

Colomina: ... In other words, the result of an outburst of rage ...

Usón: Precisely. But not this; this was premeditated because even the mixture [...]

³¹ Newspaper article entitled “Factores de Poder” [Power Factors], published in El Universal newspaper of April 15, 2004 (Case No. FM-005/2004, Vol. 3, p. 117). Annex 27.

³² CONATEL certificate of August 10, 2004 (Case No. FM-005/2004, Vol. 3, p. 182) enclosing a DVD labeled “*Entrevista*” Annex 28.

³³ Transcript of the program *La Entrevista* of April 16, 2004 (Case No. FM-005/2004, Vol. 4, p. 188). Annex 29.

Patricia Poleo: ... the way they were lined up ...

Usón: Uhuh.

Poleo: ... the formation inside the cells. So that alone shows...

Usón: Something that it would interest the public to know is that the mixture used is a blend of gasoline and napalm.

Poleo: For the flamethrower?

Usón: For the flamethrower.

Colomina: ... and that's like a kind of acetylene torch that sends out a gigantic flame.

Usón: Precisely. Think of it as a gigantic cigarette lighter.

Patricia Poleo: That explains [what happened, given] that they said that it had been caused by a cigarette, a cigarette butt. How could the fire have spread so quickly from cigarette butt? It doesn't happen [...] The father of one of the boys who died is a fireman [and] he said that a cigarette butt could not have started that fire.

Usón: All the burns are on the front.

Colomina: We'd like an explanation of that, but what you're saying is extremely serious.

Usón: Extremely serious.

Colomina: Because the commanding officers are directly involved.

Usón: Of course.

Colomina: Because presumably an order has to be given for a piece of equipment like that to be used ...

Usón: And it's kept in a warehouse and there is a certain procedure for removing it from the warehouse. In other words this is very, very serious if it turns out to be true.

Colomina: I mean, they were made to stand in a line.

Poleo: In formation but behind the bars.

Colomina: In formation behind the bars.

Poleo: Locked up, locked in...

Colomina: Locked in... so the person was outside?

Poleo: And there were several of them

Colomina: Several?

Poleo: ... of the people that were there, one was handling...

Colomina: And so they set them on fire and of course the ones who were standing in front received more fire and that must be the one who has died ...

Usón: Precisely.

Colomina: ...and those who are practically in a coma ...

Poleo: Precisely. And this is a cell meant for four people and there were eight soldiers in it, which means, therefore, that not all of them were lined up like this (signaling a horizontal line), but some were in front and the others behind ...

Colomina: ... Oh my God

Poleo: That's why -now we can see- none of them are burnt on their backs, only on their fronts ...

Colomina: ... or on the lower body either ...

Poleo: ... That's right. Only from the waist up.

Colomina: I see. You've brought a rulebook with you

Usón: Well, I have here the Disciplinary Punishment Rules and the Organic Law. These are two documents ...

Colomina: But weren't the punishment rules abolished?

Usón: No, the Disciplinary Punishment Rules were reintroduced in August 2002 basically as an instrument for prosecuting personnel who were involved in the events of April 11. We had largely stopped using these rules before Chávez came to the presidency. By 1995, when I was a battalion commander, these rules were already falling into disuse for the simple reason that they contained penalties that were contrary to the COPP. So, look here, but I'm going to read what it says about confinement under guard [*arresto severo*] in the case of enlisted men: "it shall be served in the appropriate disciplinary room. Accordingly, the punished man shall be excluded from any service or training. The punishment will be served continuously for the entire period set and the punished man shall not be permitted to leave except for the time absolutely necessary for his physical needs and under permanent guard...", in other words we are talking about an individual being held virtually incommunicado, which is something that is completely against, not only the Constitution, but also rules that predate the situation.

Poleo: Another thing we don't understand, Marta, is why they were under arrest... We still haven't been told... because it is also something that President Chávez said on the program commemorating the incident, because that's what I think it was for... they talked about the young man who died as if he had been a model professionally, as a human being, as a fellow soldier. So why was he under arrest? Why was he being punished like that?

Colomina: And in such a confined space...

Usón: No. And under those conditions of confinement, under guard. I mean, a few days ago General García Ordóñez gave a number of interviews and he mentioned something that we also talked about, which is simply that soldiers have to do something very serious for us to put them under arrest. What we used to do was prepare an open area near the place where the night guard was stationed so that the soldier would be under supervision, and there he would just sleep on the mattresses and his bedroll, and the soldier or soldiers would be detailed to perform cleaning work, clearing out undergrowth, that sort of thing. And in this way the soldier would normally go to bed at around 10 or 11 at night and we would wake him up a bit before reveille so that he could carry on his work and so serve his punishment.

43. On May 10, 2004, Mr. Usón Ramírez and Ms. Poleo again appeared on *La Entrevista*, where the discussions also addressed the Fort Mara issue, albeit in less detail. However, Mr. Usón was not prosecuted and convicted for what he said on that program.³⁴

D. Criminal proceeding No. 005-2004 instituted against Mr. Francisco Usón in the military jurisdiction for the crime of insult to the armed forces

1. The investigation stage

44. On May 10, 2004, General-in-Chief and Minister of Defense, Jorge Luis García Carneiro, issued an order in which,

by the power vested in [him] by Article 55, paragraphs 1 and 2 of the Organic Code of Military Justice in conjunction with Article 163 (2) *ejusdem*, [he instructed the Military Prosecutor General] to open a Military Criminal Investigation in connection with the alleged punishable acts of a military nature on the occasion of the statements made by citizen: Army Brigadier General Usón Ramírez, Francisco Vicente.³⁵

³⁴ Video of the program *La Entrevista* of May 10, 2004. Annex 30.

³⁵ Order No. MD-SG-2204/222 of May 10, 2004 (Case No. FM-005/2004, Vol. 1, p. 1). Annex 31.

That order does not specify in any way what the allegedly punishable statements might be.

45. On May 11, 2004, the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas, Jesús Arnoldo Rosales Castro, decided to open an investigation into the military offense of insult to the national armed forces, recognized by Article 505 of the Code of Military Justice, and so ordered a number of proceedings to be carried out³⁶ and commissioned the Sectoral Bureau of Military Intelligence and the Bureau of Intelligence and Prevention Services (DISIP) as auxiliary investigative organs.³⁷ Article 505 of the Organic Code of Military Justice provides that: "Whomsoever in any way defames, insults or disparages the National Armed Forces or any of its units, shall be liable to a term of three to eight years of imprisonment."

46. On May 21, 2004, the aforementioned military prosecutor filed a brief with the First Permanent Military Tribunal of First Instance of La Guaira, in which he requested an arrest warrant and pre-trial detention for Mr. Usón. The aforesaid brief mentioned that,

the unfounded and irresponsible statements made to the Venezuelan mass media [...] by General Francisco Vicente Usón Ramírez [...] in connection with the events that occurred at Fort Mara [are] a clear act of communication [...] The aforementioned general officer deliberately states that [the soldiers] were burned with a flamethrower, thereby lying, defaming, and insulting the institution of the national armed forces with the aim of launching a direct attack on the fundamental pillars of the institution and disturbing the peace in the Republic.

47. In his brief, the military prosecutor notes that,

the Office of the Military Attorney General believes it reasonable to assume that there is a flight risk in light of the serious crimes committed against the institution of the national armed forces and its members, to wit, the crime of defamation, insult, or disparagement of the armed forces recognized and penalized at Article 505 of the Organic Code of Military Justice, and that, despite the fact that his residence is in the capital of the Republic, it is certainly reasonable to assume that he could leave the country since Article 505 *ejusdem* provides a penalty of three to eight years of imprisonment, which is subsumed in Article 251 (2) of the Organic Code of Criminal Procedure.³⁸

48. On May 21, 2004, the same day the prosecutor submitted his request, the Permanent Military Tribunal of First Instance of La Guaira ordered the arrest of Mr. Usón Ramírez "because there is a demonstrable flight risk."³⁹

49. Article 44 of the Constitution of Venezuela states that everyone "[s]hall be tried at liberty except for reasons recognized by the law and appraised by the judge in each case."

³⁶ Resolution of May 11, 2004 of the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas (Case No. FM-005/2004, Vol. 1, p. 2). Annex 32. See Article 505 of the Organic Code of Military Justice at <http://www.mintra.gov.ve/legal/codigos/codigoorganicodejusticiamilitar.html>

³⁷ Resolution of May 11, 2004 of the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas (Case No. FM-005/2004, Vol. 1, p. 2). Annex 32.

³⁸ Request for pre-trial detention of May 21, 2004, from the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas (Case No. FM-005/2004, section on "Applicability of pre-trial detention, Vol. 1, pp. 9 and 10). Annex 33.

³⁹ Warrant of Arrest of May 21, 2004, issued by the Permanent Military Tribunal of First Instance of La Guaira (Case No. FM-005/2004, Vol. 1, p. 13). Annex 34.

50. Article 243 of the Organic Code of Criminal Procedure recognizes,⁴⁰ as a general rule, the right to be tried at liberty during the proceeding and states that “deprivation of liberty is a precautionary measure that shall only be applicable when no other precautionary measure is sufficient to ensure that the objectives of the proceeding are accomplished.”⁴¹

51. Article 246 of the Organic Code of Criminal Procedure provides that personal coercion measures “shall be carried out in such a way as to cause as little harm as possible to those concerned.”

52. Article 250 of the same Code, as applied to the instant case, establishes the requirements for court-ordered pre-trial detention to be applicable, by stating that,

The oversight judge may, at the request of the Office of the Attorney General, order the pre-trial detention of the accused, provided that the existence is attested of:

[...]

2. Due cause to presume that the accused has committed or participated in the commission of an offense;

3. Reasonable cause, based on an appraisal of the circumstances in each case, to assume the risk of flight or obstruction of the search for the truth in respect of a specific investigation. [...] Should it be deemed that the requirements set forth in this article are met and that pre-trial detention is, therefore, applicable, an arrest warrant shall be issued for the accused person against whom the measure has been requested.

53. For its part, Article 251 of the Organic Code of Criminal Procedure, provides that

In making a determination as to the risk of flight, particular consideration shall be given to the following circumstances:

1. Roots in the country, determined by domicile, habitual residence, family home, business or work activities, and facilities for permanent departure from the country or remaining in hiding;

2. *The possible penalty in the case;*

3. The extent of the harm caused;

4. The behavior of the accused during the proceeding or in other previous proceedings, to the extent that it indicates his willingness to submit to criminal prosecution;

5. The behavior prior to the commission of the offense.

First Paragraph: A risk of flight is presumed to exist in cases involving offenses punishable with a term of imprisonment of 10 years or more.

In such instances, the representative of the office of the Attorney General, provided the circumstances set forth in Article 250 are met, shall request the court to order pre-trial detention. Whatever the case, the judge, in the appropriate circumstances, of which he shall provide a reasoned explanation, may refuse the prosecution's request and impose an alternative precautionary measure on the accused. Any decision adopted may be appealed by

⁴⁰ The Organic Code of Military Justice provides as follows: Article 592. In the military criminal jurisdiction the provisions of the Second, Third, Fourth, and Fifth Books of the Organic Code of Criminal Procedure shall apply. The provisions contained in Titles IV, VI, and VII of the Third Book of said Code shall not apply.

⁴¹ See Organic Code of Criminal Procedure, available at: http://www.mipunto.com/venezuelavirtual/leyesdevenezuela/codigos/codigo_organico_procesal_penal.html

the prosecution or the victim, whether or not the latter has brought criminal charges, within five days after its publication.

54. On May 22, 2004, the Director of Investigations of the DIM sent the military prosecutor a videotape of the interview with Mr. Usón.⁴²

55. On May 22, 2004, a squad from Detachment 88 of the National Guard belonging to the Regional Command No. 8 detained Mr. Usón Ramírez at 8.30 a.m., at the airport in the city of Guayana, Puerto Ordaz, in Bolívar State, by virtue of the arrest warrant mentioned *supra*.⁴³ Mr. Usón was there attending meetings and conferences on the process of reservations for holding the recall referendum.⁴⁴ At 9:30 a.m. he signed a warning of rights form [*acta de derechos del imputado*].⁴⁵ He underwent a medical examination at the military hospital in Puerto Ordaz,⁴⁶ in which it was recorded that he suffered from sciatica and a circulatory disorder. After midday he was taken to the headquarters of the Bureau of Intelligence and Prevention Services (DISIP) in Boleíta, Caraca,⁴⁷ known as Fort Tiuna, where the tribunal of La Guaira provisionally convened.⁴⁸ The National Guard turned Mr. Usón over to the Bureau of Military Intelligence (DIM) and he was taken to the National Center for Military Defendants at Ramo Verde, Los Teques, Miranda State.⁴⁹

56. On May 22, 2004, the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas decided, in accordance with Article 304 of the Organic Code of Criminal Procedure,⁵⁰ that for 15 days "the proceedings should be conducted in complete secret" so that,

⁴² Official Letter No. DGIM-005-1923 of May 22, 2004 and Official Letter No. 057.04 of May 22, 2004 (Case No. FM-005/2004, Vol. 1, pp. 27 and 41). Annex 35.

⁴³ Communication No. GN-CR8-EM-DO-DS- 1396 of May 22, 2004 from Regional Commander No. 8 and Police Record No. GN-CR-8-1395 (Case No. FM-005/2004, Vol. 1, pp. 17 and 18). Annex 36; Newspaper article entitled "*Perseguidos*" [Persecuted], published in *El Nacional* newspaper of June 6, 2004. Annex 37.

⁴⁴ Testimony of Mr. Usón to the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 1, p. 169). Annex 38; Newspaper articles entitled "*Detuvieron en Puerto Ordaz al General Francisco Usón*" [General Francisco Usón arrested in Puerto Ordaz] and "*La captura ocurrió en el aeropuerto de Puerto Ordaz. Detenido y trasladado a la DIM general Francisco Usón Ramírez*" [Arrested at airport in Puerto Ordaz. General Francisco Usón detained and taken to the DIM], and "*Detenido en el Puerto Ordaz el general Francisco Usón*" [General Francisco Usón arrested in Puerto Ordaz]: published in *El País* (Case No. FM-005/2004, Vol. 1, pp. 120-123). Annex 39; Newspaper article entitled "*Cinco años por opinar*" [Five years for an opinion], published in *El Universal* of October 24, 2004. Annex 40; Newspaper article entitled "*Ensañamiento contra el General*" [General victimized], published in *El Universal* of October 24, 2004. Annex 41; Press article entitled "*Venezolano encarcelado por expresar su opinión; dos atentados*" [Venezuelan jailed for expressing opinion; two attacks], published in *Venezuela Real*, December 14, 2006. Annex 42.

⁴⁵ Form signed by Mr. Usón on May 22, 2004 (Case No. FM-005/2004, Vol. 1, p. 20). Annex 43.

⁴⁶ Case history of Military Hospital in Puerto Ordaz (Case No. FM-005/2004, Vol. 1, pp. 21-26). Annex 44.

⁴⁷ Newspaper article entitled "*Detenido y Traslado a la DIM el General Francisco Usón Ramírez*" [General Francisco Usón detained and taken to the DIM], published in *El Universal* of May 23, 2004, available at http://buscador.eluniversal.com/2004/05/23/pol_art_23106D.shtml. Annex 45.

⁴⁸ Official Letter No. 287 to Army Colonel Director of the Bureau of Intelligence and Prevention Services (DISIP) of May 23, 2004, (Case No. FM-005/2004, Vol. 1, p. 131). Annex 46.

⁴⁹ Writ of enforcement issued by the First Military Court of Enforcement of Caracas on July 4, 2005, first paragraph. (Case No. FM-005/2004, Vol. 7-II, p. 977). Annex 85.

⁵⁰ Article 304 of the Organic Code of or Procedure provides: "[...] The Office of the Attorney General may order, in an official document stating the reasons, that the proceedings be conducted in total or partial secrecy for a period of time not to exceed 15 consecutive days, in the event that publicity would hamper the investigation. In special cases, the period may be extended by up to the same maximum period of time; however, in such cases, any of the parties, including the victim, even if no criminal complaint has been filed, or their representatives with special power of attorney, may request the oversight judge to examine the grounds for the measure and terminate the secrecy [...]."

the accused might not know the measures that would be adopted or undertaken in the investigation, in order to keep them from being “tainted, denied, or disproved by him; accordingly, their disclosure would result in obstruction of the investigation and object of the proceeding.⁵¹

57. On May 23, 2004, Mr. Usón Ramírez appeared at a preliminary hearing before the Military Attorney General in the First Permanent Military Tribunal of First Instance of La Guaira to determine the lawfulness of, and merits for, pre-trial detention, on which occasion he named his defense counsel.⁵²

58. On June 6, 2004, the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas decided to keep the proceedings in complete secrecy for another 15 days.⁵³ The defense only had full access to the record on June 22, 2004.⁵⁴

59. In the investigation stage, Mr. Usón and his attorneys filed at least nine motions with the military judicial authorities,⁵⁵ including, a motion to vacate the arrest warrant and a motion to vacate the prosecution’s request for pre-trial detention, and, in the event of its denial, asked that the principle of *favor libertatis* be respected and requested that a less onerous precautionary measure be imposed on him, suggesting alternative measures to that end and offering evidence in respect of the nonexistence of a flight risk and Mr. Usón’s intention to submit to trial.

60. Of the nine motions filed, most were refused,⁵⁶ and on one occasion, for example, the First Permanent Military Tribunal of First Instance of La Guaira failed to respond to the motion

⁵¹ Resolution of the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas of May 22, 2004 (Case No. FM-005/2004, Vol. 1, p. 28). Annex 47.

⁵² Record of the hearing of May 23, 2004 before the First Permanent Military Tribunal of First Instance of La Guaira (Case No. FM-005/2004, Vol. 1, p. 113). Annex 50.

⁵³ Resolution of the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas of June 6, 2004 (Case No. FM-005/2004, Vol. 1, pp. 50 and 84-85). Annex 48.

⁵⁴ Motion to vacate of July 29, 2004 (Case No. FM-005/2004, Vol. 3, p. 82). Annex 49.

⁵⁵ See text of the motions in the following documents: 1) Record of the hearing of May 23, 2004 before the First Permanent Military Tribunal of First Instance of La Guaira (Case No. FM-005/2004, Vol. 1, p. 113). Annexes 50 and 53; 2) Brief presented to the Court of Appeals on May 23, 2004 (Case No. FM-005/2004, Vol. 1, pp. 137 and 138). Annex 51; 3) Brief presented to the Court of Appeals on May 24, 2004 (Case No. FM-005/2004, Vol. 1, p. 158). Annex 52; 4) Brief presented to the Second Permanent Military Tribunal of First Instance of Caracas on May 24, 2004 (Case No. FM-005/2004, Vol. 1, pp. 160-162); Annex 52; 5) Record of the hearing of May 24, 2004 before the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 1, p. 169). Annex 53; 6) Appeal filed with the Second Permanent Military Tribunal of First Instance of Caracas on May 24, 2004 (Case No. FM-005/2004, Vol. 1, pp. 196-212). Annex 54; 7) Appeal filed with the Second Permanent Military Tribunal of First Instance of Caracas on May 31, 2004 (Case No. FM-005/2004, Vol. 2, p. 34): Annex 55; 8) Record of hearing on motion for extension of the Second Military Tribunal of First Instance of Caracas of June 22, 2004 (Case No. FM-005/2004, Vol. 2, pp. 197 and 198). Annex 56; 9) Appeal filed with the Second Permanent Military Tribunal of First Instance of Caracas on June 28, 2004 (Case No. FM-005/2004, Vol. 2, pp. 209-215): Annex 57; 10). Statement of Mr. Francisco Usón to the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas on July 8, 2004 (Case No. FM-005/2004, Vol. 2, p. 277). Annex 58.

⁵⁶ See texts of the refusals in the following decisions: 1) Record of the hearing of May 24, 2004 before the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 1, pp. 166-170). Annex 53; 2) Ruling of May 27, 2004 of the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 1, pp. 183-187). Annex 59; 3) Decision of June 15, 2004, of the Court of Military Appeals, Part IV GROUNDS FOR DECISION (Case No. FM-005/2004, Vol. 2, p. 147). Annex 61; 4) Record of hearing on motion for extension before the Second Military Tribunal of First Instance of Caracas of June 22, 2004 (Case No. FM-005/2004, Vol. 2, pp. 198). Annex 56; and Ruling of the Second Military Tribunal of First Instance of Caracas of June 22, 2004. (Case No. FM-005/2004, Vol. 2, p. 204). Annex 60.

for release.⁵⁷ Thus, the courts accepted the motion of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas to order pre-trial detention and its continuation throughout the entire investigation stage.⁵⁸

61. In the judgment issued by the Court of Military Appeals on June 15, 2004, the judges explained the reasons why the pre-trial detention of Mr. Usón was applicable. In that judgment they found that “a review of the record does not support the fact that the accused has academic commitments, that his wife and daughter live in the city of Caracas and that his business activities and interests are mainly based in this city.” The judgment adds that the magnitude of the offense “leads to the presumption that the accused is a flight risk.” It also found that “the good conduct of the accused before the commission of the crime was not sufficient grounds to warrant his release, since the conduct of a person, whether good or bad, prior to the commission of a crime is not sufficient to dispel the presumption of flight”⁵⁹. This was the only decision of the military courts in which the inadmissibility of Mr. Usón’s release on the grounds of a flight risk was examined in detail.

62. The Court with Military Tribunal Oversight Functions of La Guaira declared that it clearly lacked jurisdiction to conduct any criminal investigation of Mr. Usón because the Court of Military Appeals, at sole instance, was the competent organ to take up the case, due to the fact that, as a general officer, Mr. Usón was entitled to a preliminary hearing to determine probable cause.⁶⁰ Accordingly, it referred the record to the aforementioned court-martial for a new preliminary hearing.⁶¹ The Court of La Guaira ordered Mr. Usón’s transfer and confinement at the headquarters of the DISIP until the Court of Military Appeals requested his transfer.⁶²

63. On May 24, 2004, the Court of Military Appeals issued a ruling in which it found that it lacked jurisdiction to hear the case “in light of the legal situation” of Mr. Usón Ramírez as a “retired general,” for which reason “he does not enjoy the prerogative of a preliminary hearing to determine probable cause.” Therefore, it remitted the case to the Second Permanent Military Tribunal of First Instance of Caracas.⁶³

⁵⁷ Transfer order of May 23, 2004 of the First Permanent Military Tribunal of First Instance of La Guaira (Case No. FM-005/2004, Vol. 1, pp. 113-119 and 123-125). Annex 66; Decision of May 23, 2004, of the First Permanent Military Tribunal of First Instance of La Guaira and Notice of declination of jurisdiction of May 23, 2004, of the First Permanent Military Tribunal of First Instance of La Guaira (Case No. FM-005/2004, Vol. 1, pp. 130 and 132). Annex 67; Decision of the Court of Military Appeals of May 24, 2004, and Notification Receipt of the Court of Military Appeals of May 24, 2004 (Case No. FM-005/2004, Vol. 1, pp. 142 and 40). Annexes 68 and 69.

⁵⁸ Record of the hearing of May 24, 2004 before the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 1, pp. 166-170). Annex 53; Ruling of May 27, 2004 of the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 1, pp. 183-187). Annex 59; Decision of June 15, 2004, of the Court of Military Appeals (Case No. FM-005/2004, Vol. 2, p. 147). Annex 61.

⁵⁹ Decision of June 15, 2004, of the Court of Military Appeals, Part IV GROUNDS FOR DECISION (Case No. FM-005/2004, Vol. 2, p. 147). Annex 61.

⁶⁰ Record of the hearing of May 23, 2004 before the First Permanent Military Tribunal of First Instance of La Guaira (Case No. FM-005/2004, Vol. 1, p. 124. Annex 50

⁶¹ Decision of May 23, 2004, of the First Permanent Military Tribunal of First Instance of La Guaira and Notice of declination of jurisdiction of May 23, 2004, of the First Permanent Military Tribunal of First Instance of La Guaira (Case No. FM-005/2004, Vol. 1, pp. 130 and 132). Annex 67.

⁶² Transfer order of May 23, 2004 of the First Permanent Military Tribunal of First Instance of La Guaira (Case No. FM-005/2004, Vol. 1, pp. 113-119 and 123-125). Annex 66.

⁶³ Decision of the Court of Military Appeals of May 24, 2004, and Notification Receipt of the Court of Military Appeals of May 24, 2004 (Case No. FM-005/2004, Vol. 1, pp. 142 and 40). Annexes 68 and 69.

64. On May 24, 2004, the Second Permanent Military Tribunal of First Instance of Caracas held an oral hearing.⁶⁴ On June 23, 2004, the Minister of Defense, who ordered the investigation, gave testimony to the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas in which he said that the statements made by Mr. Usón about the burns sustained by the soldiers at Fort Mara “created alarm in society with the most despicable and shameful aim of tarnishing the good name of the National Armed Forces,” caused “enormous harm to the [...] military as a whole,” and undermined “the moral standing of the institution.”⁶⁵

2. Indictment and oral proceeding

65. On July 7, 2004, the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas requested that Mr. Usón be transferred “for his arraignment.” On July 8, 2004, the aforesaid prosecutor presented an indictment against Mr. Usón to the Second Permanent Military Tribunal of First Instance of Caracas and requested that he be tried as the perpetrator of the crime of insult to the National Armed Forces for the statements made on April 15, 2004 on the program *La Entrevista*.⁶⁶ This act concluded the investigation stage.

66. On July 22, 2004,⁶⁷ September 29, 2004,⁶⁸ and August 12, 2004, at the preliminary hearing Mr. Usón’s attorneys presented a motion for review of his pre-trial detention so that he might be tried at liberty, and requested that an order, therefore, be issued for the defendant’s release.⁶⁹ The aforesaid motions were refused,⁷⁰ because the circumstances that determined the flight risk on which basis the measure was ordered remained unchanged.

67. On August 12, 2004, after the hearing, the Second Permanent Military Tribunal of First Instance of Caracas ordered the opening of public oral trial proceedings for the crime of gross insult to the armed forces. It also rejected the motion for release and imposition of less onerous precautionary measures in favor of Mr. Usón.⁷¹

⁶⁴ Record of the hearing of May 24, 2004 before the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 1, pp. 166-170). Annex 53.

⁶⁵ Record of the interview of June 23, 2004, before the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas (Case No. FM-005/2004, Vol. 2, pp. 171-175). Annex 70.

⁶⁶ Judgment of the First Military Trial Court of Caracas of November 8, 2004; Description of the facts in the proceeding. Annex 64.

⁶⁷ Motion of July 22, 2004, presented by Mr. Usón’s attorneys (Case No. FM-005/2004, Vol. 3, pp. 9-20). Annex 71.

⁶⁸ Motion of September 29, 2004, Doctor from “Dr. Carlos Arévalo” Military Hospital (Case No. FM-005/2004, Vol. 4, pp. 107-121). Annex 72.

⁶⁹ Record of the preliminary hearing of August 12, 2006, before the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 3, pp. 190-199). Annex 62.

⁷⁰ See text of the following decisions: 1) Ruling of July 29, 2004, of the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 3, pp. 122-123). Annex 73; 2) Record of the preliminary hearing of August 12, 2006, before the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 3, pp. 190-199). Annex 62; 3) Ruling of August 16, 2004, before the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 3, and pp. 213-231). Annex 75. Decision of October 4, 2004, of the Court-Martial (Case No. FM-005/2004, Vol. 4, pp. 123-129). Annex 74.

⁷¹ Record of the preliminary hearing of August 12, 2006, before the Second Permanent Military Tribunal of First Instance of Caracas and Ruling of August 16, 2004, before the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 3, pp. 190-199 and pp. 213-231). Annexes 62 and 75; Judgment of the First Military Trial Court of Caracas of November 8, 2004; Description of the facts in the proceeding. Annex 64.

68. The First Military Trial Court of Caracas held the oral proceedings on October 5, 6⁷², 7⁷³, 8,⁷⁴ and 11,⁷⁵ 2004. The hearings, which in principle were supposed to be public in accordance with Article 333 of the Organic Code of Criminal Procedure,⁷⁶ were held behind closed doors.⁷⁷ Said Article provides that an exception to this requirement is allowed when “the security of the State could be seriously impaired or disturbed, good customs seriously disturbed, and official secrets put at risk.” The Court based the aforesaid decision on the fact that

a criminal investigation is underway in the general jurisdiction regarding the events that took place at Fort Mara, in respect of which a conclusive decision has not been reached, which could affect the private lives or good name of some of the persons to be called on to participate [...], concern matters to do with the National Armed Forces [...] and would entail the improper disclosure of official and private affairs connected with the “Fort Mara” case.⁷⁸

69. The defense objected to this measure, but the Court-Martial did not uphold the objection until the afternoon of October 11.⁷⁹

3. The judgment and the appeals filed against it

70. On October 11, 2004, the First Trial Court of Caracas issued a judgment in which it found that it had jurisdiction to try the case under Articles 20 and 592 of the Organic Code of Military Justice. The defense moved that the proceeding be vacated on the grounds that the authority that ordered the criminal investigation was the Minister of Defense and not the Attorney General. That motion was also denied by the court on account of the fact that that matter had already been settled by the Second Military Tribunal with oversight functions and ratified by the Court of Military Appeals.

71. Finally, the court decided to continue to conduct the proceeding behind closed doors inasmuch as it concerned matters pertaining to the Fort Mara case which, at that time, was still under investigation in the general jurisdiction;⁸⁰ and it

⁷² Record of the hearing held on October 6, 2004 (Case No. FM-005/2004, Vol. 4, pp. 218-220). Annex 76.

⁷³ Record of the hearing held on October 7, 2004 (Case No. FM-005/2004, Vol. 4, pp. 221-228). Annex 77.

⁷⁴ Record of the hearing held on October 8, 2004 (Case No. FM-005/2004, Vol. 4, pp. 230-236). Annex 78.

⁷⁵ Record of the hearing held on October 11, 2004 (Case No. FM-005/2004, Vol. 4, pp. 236-243). Annex 80.

⁷⁶ Organic Code of Criminal Procedure of Venezuela, published in the Official Gazette, Special Edition N° 5.558 of November 14, 2001; Article 333. Publicity: Proceedings shall be public. However, the court may order all or part of them to be conducted behind closed doors, when: 1. They affect the good name or private lives of any of the parties or any of the persons summoned to participate in them; 2. They seriously disturb the security of the state or good customs; 3. They put at risk an official secret, particularly of a commercial or industrial nature, the wrongful disclosure of which is a punishable offense; 4. A minor testifies and the court considers publicity inappropriate. The order shall be justified and set down in the record of the proceeding. Once the reason for closure has disappeared, the public shall be readmitted. The court may order the parties not to disclose the facts they have witnessed or heard, which decision shall be set down in the record of the proceeding.

⁷⁷ Judgment of the First Military Trial Court of Caracas, issued on October 11, 2004 and published on November 8, 2004. Annex 64.

⁷⁸Record of the hearing held on October 5, 2004 (Case No. FM-005/2004, Vol. 4, p. 233). Annex 79. Judgment of the First Military Trial Court of Caracas, issued on October 11, 2004 and published on November 8, 2004; third preliminary point. Annex 64.

⁷⁹ Record of the hearing held on October 7, 2004 and Record of the hearing held on October 11, 2004 (Case No. FM-005/2004, Vol. 4, p. 236, reverse). Annexes 77 and 80.

⁸⁰ Judgment of the First Military Trial Court of Caracas, issued on October 11, 2004 and published on November 8, 2004; preliminary points. Annex 64.

found the accused, retired Army Brigadier General FRANCISCO VICENTE LEON USON RAMIREZ, guilty [...] as charged of the crime of Insult to the National Armed Forces, recognized at Article 505 of the Organic Code of Military Justice.

72. The court held that the acts that constituted said crime "were that on April 16, 2004, the [aforesaid gentlemen] appeared as a special guest, together with citizen Patricia Poleo, on the television program entitled '*La Entrevista*' [...] on the] Televén [network]," on which occasion he made statements concerning the events at Fort Mara." The court mentioned that Mr. Usón "added other comments, not as an expert but based on his personal opinion, in which he made a comparison with another case, saying that this case was more serious and that the CICAT case might seem somewhat primitive."⁸¹

73. Consequently, the aforesaid court " SENTENCE[D him] to FIVE YEARS AND SIX MONTHS' IMPRISONMENT, [...] ratified that the aforesaid general officer should remain at the National Center for Military Defendants until such time as the Court of Enforcement adopts the appropriate decision in that respect."⁸² The court also imposed accessory penalties [...] including disqualification from political activities for the duration of the sentence and loss of the right to rewards."

74. On November 8, 2004, the First Trial Court of Caracas stated, *inter alia*, the following grounds for the aforesaid conviction:⁸³

Article 505 of the Organic Code of Military Justice is designed to protect the right of recognized agencies to have their honor respected, as well as due respect for the national armed forces and their units. The armed forces can also be victims of crimes as legal entities. "That legal persons have reputations is beyond dispute;"⁸⁴

[State institutions] cannot be left defenseless against this abuse of freedom of expression, which signifies - at least in the case of Venezuela - that reality prevents the abolition of "contempt [*desacato*] laws," which, to some extent, act as a barrier against abusive and disrespectful exercise of freedom of expression and against this situation which places the State and, we might even say, the independence of the country, at risk;⁸⁵

The recommendations [of the Inter-American Commission on Human Rights on contempt laws] to that effect cannot be binding on Venezuela [...]. Any comment that seeks to weaken the armed forces and the citizen security bodies, as national security factors, may also incur liability under the law [...];

Mr. Usón acted knowingly and intentionally when he uttered his comments, opinions and statements, [...] on the television program *La Entrevista*. [...A]udiovisual media outlets such as this broadcast something as the truth, as something that happened, when this report

⁸¹ Judgment of the First Military Trial Court of Caracas, issued on October 11, 2004 and published on November 8, 2004, operative part (Case No. FM-005/2004, Vol. 5, p. 12). Annex 64.

⁸² Judgment of the First Military Trial Court of Caracas, issued on October 11, 2004 and published on November 8, 2004, operative part. Annex 64.

⁸³ Judgment of the First Military Trial Court of Caracas, issued on October 11, 2004 and published on November 8, 2004, operative part (Case No. FM-005/2004, Vol. 5, pp. 4-73). Annex 64.

⁸⁴ Judgment of the First Military Trial Court of Caracas, issued on October 11, 2004 and published on November 8, 2004, operative part (Case No. FM-005/2004, Vol. 5, pp. 69 and 70, Background information and the parties in the crime). Annex 64.

⁸⁵ Judgment of the First Military Trial Court of Caracas, issued on October 11, 2004 and published on November 8, 2004, operative part (Case No. FM-005/2004, Vol. 5, p. 236, reverse). Annex 64.

publicized as a matter of routine by the media outlet could be false, [...] thereby demonstrating the means used to commit the offense in the instant case;⁸⁶

Mr. Usón made abusive remarks that defame and insult the Armed Forces, since they attacked their internal harmony and peaceful coexistence with the rest of society, inasmuch as he expressed opinions and made statements through an audiovisual media outlet concerning military personnel that conflicted with reality;⁸⁷ and

The minimum penalty is not appropriate [...] because the offense committed by the accused undermines national security.⁸⁸

75. On November 23, 2004, Mr. Usón's attorneys filed an appeal against the aforementioned judgment with the Court of Military Appeals acting as Court of Appeal in the Military Criminal Justice Circuit of the Metropolitan Area of Caracas. They requested, *inter alia*, that the appealed judgment be overturned, that a new, public, oral trial be held before a court other than the one that issued the challenged judgment and that the sentence imposed be reduced to the minimum of three years, based on the violation of the rules governing publicity, the manifest groundlessness of the judgment, the patent contradiction in the reasons supporting the judgment, the evident lack of logic in the reasons given to support the judgment, and violation of the law by the failure to observe legal standards.⁸⁹

76. On January 27, 2005, the Court of Military Appeals refused the appeal and upheld the judgment.⁹⁰

77. On February 28, 2005, Mr. Usón's legal counsel filed an appeal with the Criminal Chamber of the Supreme Court of Venezuelan seeking a writ of cassation against the decision of the Court of Military Appeals of January 27, 2005,⁹¹ wherein they requested that the appealed judgment be overturned and a new decision issued.⁹² In that appeal they argued:

the clear lack of jurisdiction over the instant case of the military criminal tribunals and investigative organs due to the fact that he is a retired military officer, because the case does not concern a violation of specific military duties,⁹³ [and] because of the nullity of the investigation order ;⁹⁴

⁸⁶ Judgment of the First Military Trial Court of Caracas, issued on October 11, 2004 and published on November 8, 2004, operative part (Case No. FM-005/2004, Vol. 5, p. 71). Annex 64.

⁸⁷ Judgment of the First Military Trial Court of Caracas, issued on October 11, 2004 and published on November 8, 2004, operative part (Case No. FM-005/2004, Vol. 5, p. 71). Annex 64.

⁸⁸ Judgment of the First Military Trial Court of Caracas, issued on October 11, 2004 and published on November 8, 2004, operative part (Case No. FM-005/2004, Vol. 5, p. 72, : "Penalties to be imposed"). Annex 64.

⁸⁹ Appeal filed on November 23, 2004, with the Court of Military Appeals acting as Court of Appeals in the Military Criminal Justice Circuit of the Metropolitan Area of Caracas (Case No. FM-005/2004, Vol. 5, pp. 83-194). Annex 81.

⁹⁰ Decision of the Court of Military Appeals of the Military Justice Circuit of Caracas of January 27, 2005, operative part (Case No. FM-005/2004, Vol. 5, p. 172). Annex 82.

⁹¹ Cassation Appeal of February 28, 2005 (Case No. FM-005/2004, Vol. 7, pp. 2-239). Annex 83.

⁹² Cassation Appeal of February 28, 2005 (Case No. FM-005/2004, Vol. 7, pp. 233 and 234). Annex 83.

⁹³ Cassation Appeal of February 28, 2005 (Case No. FM-005/2004, Vol. 7, pp. 6 and 9). Annex 83.

⁹⁴ Cassation Appeal of February 28, 2005 (Case No. FM-005/2004, Vol. 7, p. 10). Annex 83.

the nullity of all of the proceedings carried out in the military jurisdiction and that the order be given for Mr. Usón's immediate release;⁹⁵ the complete groundlessness of the appealed decision;⁹⁶

The failure to demonstrate any of the elements that comprise the crime of "Insult to the national armed forces;" failure to demonstrate alleged injury to a legally protected interest; the evidence that the conduct of the accused characterizes a criminal offense is vague, contradictory and faulty; failure to demonstrate *mens rea* in the commission of the offense charged; disregard of the guilt principle;⁹⁷ and

Breach of the law through disregard of the principle of no crime or punishment without prior law.⁹⁸

78. On June 2, 2005, the Criminal Cassation Chamber of the Supreme Court of Justice "dismissed the cassation appeal filed by the defense counsel of the accused as manifestly unfounded,"⁹⁹ with which the judgment became final. In that decision, the Chamber mentioned, *inter alia*, that the military courts are competent to try military and assimilated civilian personnel for military offenses, provided that they are performing military duties; and, in exceptional circumstances, military criminal tribunals have jurisdiction to try civilians who commit military offenses.¹⁰⁰ The crime of which Mr. Usón was convicted is an offense of a military nature.¹⁰¹

79. On September 17, 2006, Mr. Usón's attorneys filed a motion for review with the Constitutional Chamber of the Supreme Court of Justice of the Bolivarian Republic of Venezuela.¹⁰² The reply to that appeal is not in the record before the Commission.

80. From the time of his arrest until the moment his conviction became final, Mr. Usón Ramírez was held in pre-trial detention for one year and eight days.

4. Enforcement of the penalty

81. On July 4, 2005, the First Military Court of Enforcement of Caracas ordered that Mr. Usón continue to be confined at the National Center for Military Defendants at Ramo Verde, Los Teques, in the State of Miranda." It said that by November 22, 2009, Mr. Usón Ramírez would have served the full sentence and that he would be eligible for parole on January 28, 2008. The Court also sent an official letter to the National Electoral Center and the Criminal Records Division of the Ministry of the Interior and Justice for the necessary registration and control.¹⁰³

⁹⁵ Decision of June 2, 2005, of the Criminal Cassation Chamber of the Supreme Court of Justice, (Case No. FM-005/2004, Vol. 7, p. 467) in which the Chamber transcribes the text of the motion filed. Annex 65.

⁹⁶ Cassation Appeal of February 28, 2005 (Case No. FM-005/2004, Vol. 7, pp. 19-58). Annex 83.

⁹⁷ Cassation Appeal of February 28, 2005 (Case No. FM-005/2004, Vol. 7, pp. 58-85). Annex 83.

⁹⁸ Cassation Appeal of February 28, 2005 (Case No. FM-005/2004, Vol. 7, pp. 190-220). Annex 83.

⁹⁹ Decision of June 2, 2005, of the Criminal Cassation Chamber of the Supreme Court of Justice (Case No. FM-005/2004, Vol. 7, p. 467). Annex 65.

¹⁰⁰ Decision of June 2, 2005, of the Criminal Cassation Chamber of the Supreme Court of Justice (Case No. FM-005/2004, Vol. 7, p. 417). Annex 65.

¹⁰¹ Decision of June 2, 2005, of the Criminal Cassation Chamber of the Supreme Court of Justice (Case No. FM-005/2004, Vol. 7, p. 423). Annex 65.

¹⁰² Special motion to review of September 17, 2006, annex forwarded together with the record of Case No. FM-005/2004. Annex 84.

¹⁰³ Writ of enforcement issued by the First Military Court of Enforcement of Caracas on July 4, 2005 (Case No. FM-005/2004, Vol. 7, p. 478). Annex 85.

5. The pardon offered by President Chávez

82. On December 6, 2006, President Hugo Chávez Frías said that he was prepared to review the cases of political prisoners. With respect to Mr. Usón's case he said, "I am prepared to review this and other cases, but that will depend on their conduct in prison; that they have not continued to encourage terrorist conspiracies."¹⁰⁴

83. On December 7, 2006, Mr. Usón wrote a letter to the President in which he said that "he [was] not interested in a pardon from him [...] because pardons are for people who feel guilty and seek forgiveness for a crime they have committed, and I am innocent[.] I exercised with moderation a universal right, [...] free expression of thoughts and ideas," "a right that I do not propose to renounce though it cost me my life."¹⁰⁵

6. The parole granted to Mr. Usón

84. On December 24, 2007, the First Court of Enforcement of Caracas adopted a ruling by which it granted Mr. Usón Ramírez the benefit of parole. The conditions stipulated by the aforesaid Court in its decision are, *inter alia*, as follows:

- 1) prohibited from leaving the territorial jurisdiction of this First Military Court of Enforcement, which encompasses the Capital District, the State of Miranda, and the State of Vargas, without its authorization;
- 2) not to change the address stated as fixed place of residence without the authorization of the Court;
- 3) refrain from frequenting dangerous areas or places, such as brothels, bars, or red light districts, and from using drugs or alcohol;
- 4) prohibited from attending, *inter alia*, demonstrations, walks, marches, assemblies, and meetings of a political nature, given the accessory penalty contained in Article 407 (1) of the Organic Code of Military Justice: Disqualification from political activities for the duration of the sentence;
- 5) not to consort with persons of doubtful reputation or meddle in criminal acts;
- 6) prohibited from giving statements to any media organizations (*inter alia*, print, radio, audiovisual) on the case examined in this proceeding;
- 7) engage in studies at a center of education to the extent possible or find steady work and periodically submit proof of studies or employment, as appropriate, to these chambers; and
- 8) appearance at this military court on the 15th and last day of every month; should these days fall on weekends or public holidays, appearance shall occur on the workday prior thereto. Furthermore, be advised that failure to comply with any of these conditions is sufficient grounds to REVOKE the benefit hereby granted.

¹⁰⁴ Newspaper article entitled "Gobierno estudiará la posibilidad de un perdón al general Francisco Usón Ramírez" [Government to examine possible pardon for General Francisco Usón Ramírez], dated December 5, 2006, available at the website of Globovisión.com: <http://www.globovision.com/news.php?id=44558>. Annex 86.

¹⁰⁵ Letter from Mr. Usón to President Hugo Chávez Frías (Case No. FM-005/2004, Vol. 8, pp. 184 and 185). Annex 87.

85. Mr. Usón Ramírez was released on probation from the National Center for Military Defendants on December 24, 2007.

VII. LEGAL ARGUMENTS

A. Right to freedom of thought and expression (Article 13 of the American Convention) and breach of the obligation to ensure human rights (Article 1(1) of the Convention)

86. Article 13 of the American Convention recognizes that:

Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

respect for the rights or reputations of others; or

the protection of national security, public order, or public health or morals.

[...]

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

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

1. Substance of the right to freedom of expression: Scope and legitimate restrictions

88. Both regional systems for the protection of human rights as well as the global system recognize the essential role that freedom of expression plays in the consolidation of a democratic society.¹⁰⁶ Without effective freedom of expression, exercised in all its forms, democracy is enervated, pluralism and tolerance start to deteriorate, the mechanisms for control and complaint by the individual become ineffectual and, above all, a fertile ground is created for authoritarian systems to take root in society.¹⁰⁷

¹⁰⁶ Inter-American Democratic Charter, Article 4. The Charter was adopted by the General Assembly at its special session held in Lima, Peru on September 11, 2001. IACHR, Case 11.500, Tomás Eduardo Cirio, (Uruguay), October 27, 2006, par. 58; I/A Court H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111. par. 86; *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, par. 113; *Case of Ivcher Bronstein*. Judgment of February 6, 2001. Series C No. 74. par. 152; *"The Last Temptation of Christ" Case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73, par. 69. See, also, *inter alia*, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 29, ECHR 2003-XI; *Perna v. Italy* [GC], no.48898/98, § 39, ECHR 2003-V; *Dichand and others v. Austria*, no. 29271/95, § 37, ECHR 26 February 2002; *Lehideux and Isorni v. France* – Rep. 1998-VII, fasc. 92 (23.9.98) para. 55; Eur. Court H.R., *Case of Lingens v. Austria*, Judgment of 8 July, 1986, Series A no. 103, para. 41; Eur. Court H.R., *Case of The Sunday Times v. United Kingdom*, Judgment of 29 March, 1979, Series A no. 30, para. 65; y Eur. Court H.R., *Case of Handyside v. United Kingdom*, Judgment of 7 December, 1976, Series A No. 24, para. 49; UN, Human Rights Committee, *Aduayom et al. v. Togo* (422/1990, 423/1990 y 424/1990), Views adopted on 12 July 1996, par. 7.4; African Commission on Human and Peoples' Rights, *Media Rights Agenda and Constitutional Rights Project v. Nigeria*, Communication Nos 105/93, 128/94, 130/94 and 152/96, Decision of 31 October, 1998, para. 54.

¹⁰⁷ I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107. par. 116.

89. The scope and content of the right to freedom of expression have been extensively developed within the inter-American system for protection of human rights. Both the Inter-American Commission and the Court have drawn attention on several occasions to the dual dimension of this right -individual and social- and in so doing have comprehensively interpreted its exercise.

90. Thus, the Inter-American Court has found that the right to freedom of thought and expression grants those who are protected by the Convention “not only the right and freedom to express their thoughts, but also the right and freedom to seek, receive and disseminate information and ideas of all kinds.”¹⁰⁸

91. In this respect, the Court has reiterated that to be in compliance with its obligations under Article 13 of the Convention the duties of the state are not exhausted by respecting the rights of the individual to exercise freedom of expression, but that it must also ensure “everyone’s right to receive other people’s opinions, information and news. For the ordinary citizen, awareness of other people’s opinions and information is as important as the right to impart their own.”¹⁰⁹

92. The importance accorded to freedom of expression does not make it an absolute right. The aforesaid provision prohibits prior censorship but in certain circumstances permits subsequent imposition of liability. The Commission notes that the duty of the State to respect the right to freedom of thought and expression and, in this particular instance, the right to express and impart information and opinions, entails the obligation not to impose any limitations other than those recognized in Article 13(2) of the Convention.

93. According to Article 13(2), a restriction is legitimate when it does not entail prior control of expression (censorship), is applied through subsequent imposition of liability for the abusive exercise of this right, the causes for which are expressly and specifically predetermined by law as conduct that gives rise to liability for abuse of freedom of expression,¹¹⁰ is necessary in a democratic society to ensure “respect for the rights or reputations of others” or “the protection of national security, public order, or public health or morals,” and in no way limits, more than strictly necessary, the full scope of freedom of expression and becomes a direct or indirect means of prior censorship.¹¹¹

94. For a state to meet its obligation to respect this right, the restriction must be established by law, proportionate to the interest that justifies it and closely tailored to accomplishing

¹⁰⁸ I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141. par. 163; *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, par. 77; *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, par. 108.

I/A Court H.R., *Case of Herrera Ulloa*, Judgment of July 2, 2004. Series C No. 107, par. 110; I/A Court H.R., *Case of Ivcher Bronstein*, Judgment of February 6, 2001. Series C No. 74. par. 148; I/A Court H.R., “*The Last Temptation of Christ*” *Case (Olmedo Bustos et al.)*, Judgment of February 5, 2001. Series C No. 73, par. 66; and I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, par. 32.

¹¹⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, par. 35.

¹¹¹ I/A Court H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, par. 95; *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, par. 120; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, par. 39.

this legitimate objective, interfering as little as possible with the effective exercise of the right to freedom of expression.¹¹²

95. The Commission notes that the requirement that restrictions must be previously established by law as a means to ensure that they are not left to the discretion of the government entails that the concept of laws established by the Inter-American system be taken into account. From that perspective, one cannot interpret the word "laws", used in Article 30, as a synonym for just any legal norm, since that would be tantamount to admitting that fundamental rights can be restricted at the sole discretion of governmental authorities with no other formal limitation than that such restrictions be set out in provisions of a general nature. The requirement that the laws be enacted for reasons of general interest means they must have been adopted for the "general welfare" (Art. 32(2)), a concept that must be interpreted as an integral element of public order in democratic states [...].¹¹³

96. Accordingly, the State must keep restrictions on the free circulation of ideas to a minimum and, if there are various options to achieve this objective, must select the one which least restricts rights. Given this standard, it is not enough, for example, to demonstrate that a law performs a useful or desirable purpose; to be compatible with the Convention, the restrictions must be justified on the basis of collective purposes that, given their importance, clearly override the social need for the full enjoyment of the right protected by Article 13 of the Convention, and must not restrict, beyond what is strictly necessary, the right enshrined therein.¹¹⁴

97. In turn, paragraph 3 of Article 13 of the Convention prohibits restriction of this right by indirect methods or means and provides a non-exhaustive list thereof, which demonstrates the exceptional nature of legitimate limitations on this fundamental right.

98. In the instant case, the Commission must analyze, in the light of Article 13(2) of the Convention, if the liability subsequently imposed by the State of Venezuela on Mr. Usón Ramírez, a retired military officer, for views expressed on a television program may be considered legitimate.

99. The facts show that Mr. Usón Ramírez is a person critical of the actions of the State, who voiced, both as a serving member of the military and after he was discharged from military service, dissent with the government's administration and the role played by the armed forces. Mr. Usón tendered his resignation as Minister of Finance on April 11, 2002, because he was in disagreement with the President. While still a brigadier general in the armed forces, Mr. Usón wrote two letters to the then-Minister of Defense, José Luis Prieto, on December 2, 2002, and January 27, 2003, in which, *inter alia*, he criticized the behavior of the armed forces and its members. Four months after the last letter was sent, the aforesaid Minister of Defense adopted a resolution ordering the discharge of Mr. Usón pursuant to Articles 115.27, 116.24 and 117.45 of Disciplinary Punishment Regulations No. 6. Subsequently, Mr. Usón, as a retired military officer,

¹¹² I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 85; *Case of Ricardo Canese*, Judgment of August 31, 2004. Series C No. 111, par. 96; *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, pars. 121 and 123; and I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, par. 46.

¹¹³ I/A Court H.R., *The Word "Laws" in Article 30 of the American Convention on Human Rights*. Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, pars. 26-29.

¹¹⁴ I/A Court H.R., *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, par. 96; *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, pars. 121 and 123; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, par. 46. See, also, *The Sunday Times v. the United Kingdom* (no. 1) – 30 (26.4.79) para. 59; and *Case of Barthold v. Germany* – 90 (25.3.85) para. 59.

was subjected to a criminal trial by a military court and suffered serious consequences for certain comments he made in the course of an interview on a television program.

100. In the instant case, the Commission notes that the State has not disputed Mr. Usón's status as a retired serviceman at the time of his criminal trial. However, in the opinion of the State, that situation

under no circumstances entails the cessation of military status and a change to civilian status [because retirement] is one of the possible types of relationship to the National Armed Forces, which in no sense breaks the legal and administrative ties that the individual has with the institution.

101. According to the State's interpretation, a retired member of the armed forces maintains their link to the institution and their military status, and therefore, when General Usón Ramírez consummated the recognized unlawful act that brought about his subsequent punishment he was a retired serviceman, not a civilian.

102. The Commission is of the view that when an officer retires they shall exercise their political rights and obligations under the Constitution, without any limitation. The right to freedom of thought and expression, as a human right, applies to all persons found in the jurisdiction of a State. Accordingly, all servicemen, retired or otherwise, have the right to express what they think without their military status entailing the relinquishment of that right.¹¹⁵ As the Commission has previously expressed,

[...] the right to freedom of expression enshrined in Article 13 does not stop at the gates of army barracks. It applies to military personnel as to all other persons within the jurisdiction of the States Parties.¹¹⁶

103. Bearing in mind the special functions of protection and defense of national security and territorial integrity of the armed forces,¹¹⁷ the Commission believes that it is permissible or reasonable for the State to adopt into law certain limitations or measures connected with the exercise of military functions that require servicemen to maintain the confidentiality of certain aspects of their duties, creating a reasonable restriction on their right to divulge certain information of a secret or confidential nature, whose breach would give rise to the imposition of administrative, tort or disciplinary liability.¹¹⁸ According to the case law of the Inter-American Court, the duty of confidentiality is not applicable to information related to the institution or the duties performed by it that is already in the public domain.¹¹⁹

104. States usually regulate misconduct by members of the armed forces through the Military Code of Justice, applying military criminal law in cases of gross misconduct and using disciplinary law "in order to maintain a level of discipline suitable to the vertical command structure

¹¹⁵ Eur.Court H.R., Case of Grigoriades v. Greece – Rep. 1997-VII, fasc. 57 (25.11.97); Case of Vereinigung v. Austria, para 37.

¹¹⁶ IACHR, Annual Report 2006, Report 124/06. Case 1500. Merits. Tomás Eduardo Cirio (Uruguay). October 29, 2006, par. 66; Annual Report 1998, Report 20/99. Case 11.317 Rodolfo Robles Espinoza and Sons (Peru), par. 151. February 23, 1999. The European Court was of the same opinion in this regard. See, for example, Eur. Court H.R., Case of Grigoriades v. Greece – Rep. 1997-VII, fasc. 57 (25.11.97), para. 45.

¹¹⁷ IACHR, Report on Terrorism and Human Rights 2002, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2002, par. 277; I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 85, par. 132.

¹¹⁸ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 77.

¹¹⁹ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 77.

needed in a military environment.”¹²⁰ Having said that, the Commission believes that any restrictions imposed on the freedom of thought and expression of military personnel in such instruments should meet the requirements contained in Article 13(2) of the Convention as regards lawfulness, legitimate purpose, proportionality, and necessity in a democratic society, as well as observance of due process guarantees. Furthermore, any such restrictions “are totally inappropriate when used to cover up allegations of crimes within the Armed Forces,”¹²¹ particularly when they involve human rights violations,¹²² or for the purpose of frustrating the expression of opinions.¹²³

105. In the instant case, in accordance with Article 240 of the Organic Law of the Armed Forces, retirement, *inter alia*, on disciplinary grounds, means that the individual punished ceases to serve in the National Armed Forces and is ineligible for reincorporation into active service during peacetime. Furthermore, Article 23 of the Organic Code of Military Justice prohibits a serviceman or servicewoman who has been retired on disciplinary grounds from serving on military tribunals. In this respect, the IACHR should point out that, according to the case law of both the Commission and the Inter-American Court, as a retired serviceman at the time of the criminal proceeding instituted against him, Mr. Usón Ramírez should have been treated as a civilian.¹²⁴

2. The remarks made on a television program, the liability subsequently imposed on Mr. Usón Ramírez for comments on matters of public interest, and the grounds argued by the State for its imposition

106. As the record shows, Mr. Usón Ramírez appeared on the television program *La Entrevista* on April 16, 2004, almost one year after he was ordered into compulsory retirement by the Minister of Defense.

107. During the aforesaid program, Mr. Usón Ramírez conversed with the program host, journalist Marta Colomina and Patricia Poleo, another journalist who was also a guest. During the interview the participants discussed various matters concerning current affairs in Venezuelan politics at the time, among which attention should be drawn, due to their relevance to the accusation against Mr. Usón Ramírez of committing the crime of insult to the armed forces, to matters connected with the fire that cost the lives of two prisoners and injured a further seven in a punishment cell at Fort Mara.

108. Mr. Usón Ramírez referred, among other things, to the theory circulated in the press that the fire could have been caused by a flamethrower activated from outside the cell; he explained how this piece of equipment works and the procedures that needed to be followed in the armed forces for its use; mentioned that “the way in which the equipment was operated and prepared for use is clear evidence that there was premeditation,” and expressed the seriousness of the incident, given that certain procedures are required for its removal from the depot.

¹²⁰ IACHR, Report 20/99. Case 11.317 Rodolfo Robles and sons (Peru). February 23, 1999, par. 151; Report 43/96. Case N° 11.430. Mexico. October 15, 1996, par. 85.

¹²¹ IACHR, Report 20/99. Case 11.317. Rodolfo Robles and sons (Peru), February 23, 1999 par. 151.

¹²² IACHR, Report 20/99, Case 11.317, Rodolfo Robles and sons (Peru), par. 102; IACHR, Report 124/06, Case 11.500, Tomás Eduardo Cirio (Uruguay) October 29, 2006, par. 72.

¹²³ Eur.Court H.R., Case of Grigoriades v. Greece para. 45.

¹²⁴ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 128; and *Case of Cesti Hurtado*. Judgment of September 29, 1999. Series C No. 56, par. 151. IACHR; Report 20/99, Case 11.317, Rodolfo Robles and sons (Peru). February 23, 1999, par. 102; IACHR, Report 124/06, Case 11.500, Tomás Eduardo Cirio (Uruguay) October 29, 2006; pars. 104 and 134.

109. As the Inter-American Court has ruled, The State has a special role to play as guarantor of the rights of those deprived of their freedom, as the prison authorities exercise heavy control or command over the persons in their custody.¹²⁵ Accordingly, in the event of an incident as serious as a fire that results in the death and injury of prisoners in a military barracks, which are criminal actions, it is reasonable for information connected with such an incident to arouse public interest and prompt heated debate on the cause of the injuries and the possible liability of the State or of the officials who were on the premises when the events occurred.

110. Therefore, the comments of Mr. Usón Ramírez on the recent events in the punishment cells at the Fort Mara barracks amounted to the exercise of his right to freedom of thought regarding an incident of public interest, to express that thought by voicing an opinion, and to comment on certain technical aspects related to one of the accounts that was circulating in the press as to how the fire in the punishment cell might have started.

111. It is the opinion of the Commission that, in keeping with the case law of the Inter-American Court, democratic control encourages transparency in State activities and promotes accountability of public officials for their administration. This is why there should be more tolerance and openness to criticism, in the face of statements and opinions advanced by individuals in the exercise of said democratic mechanism.¹²⁶ As the Inter-American Court has held, in a State governed by the rule of law there is no valid reason why this consideration should not apply to the State and its institutions, including the armed forces and their members.¹²⁷ By permitting the exercise of this democratic control, the State encourages greater participation by the individual in the interests of society.¹²⁸

112. Protection of the right to freedom of expression is not only applicable to information or ideas that are received favorably or considered inoffensive or indifferent, but also to those that offend, shock or disturb; such are the demands of pluralism, tolerance and the spirit of openness, without which a democratic society does not exist.¹²⁹

113. Therefore, in keeping with the above-described standards, opinions about events that create a stir in society expressed by a former military officer familiar with the piece of equipment described in the mass media as the possible cause of the fire, roused extensive public interest and prompted discussion in society. In light of the foregoing, such remarks enjoy broad protection. Obviously they triggered controversy in Venezuelan society, in particular among the

¹²⁵ I/A Court H.R., *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, par. 152; *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 98; *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 111; and *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, par. 138.

¹²⁶ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 83; *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, par. 97; *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, par. 127; and *Case of Ivcher Bronstein*. Judgment of February 6, 2001. Series C No. 74, par. 155. See also IACHR, Report 90/05. Case 12.142. Alejandra Marcela Matus. Chile. October 24, 2005, pars. 40-42. In that same regard, see Eur. Court. H.R., *Feldek v. Slovakia*, no. 29032/95, § 83, ECHR 2001-VIII; and *Sürek and Özdemir v. Turkey*, nos. 23927/94 and 24277/94, § 60, ECHR Judgment of 8 July, 1999.

¹²⁷ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 83.

¹²⁸ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 83. In that connection, see IACHR, Report 20/99, Case 11.317, Rodolfo Robles and sons (Peru). February 23, 1999, par. 102; Report 124/06, Case 11.500, Tomás Eduardo Cirio (Uruguay) October 29, 2006, par. 72.

¹²⁹ I/A Court H.R., *Case of Ivcher Bronstein*. Judgment of February 6, 2001. Series C No. 74, par. 152; Eur. Court H. R., *Grigoriades v. Greece* – Rep. 1997-VII, fasc. 57 (25.11.97), para 44. See also, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information (November 1996)*.

relatives of the victims burnt in the fire, and inevitably and necessarily caught the attention of public opinion.

114. The IACHR notes that in Venezuela the Criminal Code and the Organic Code of Military Justice contain provisions that criminalize and even impose prison sentences for conduct which the Commission has defined as crimes of contempt [*delitos de desacato*].

115. It should be noted that in recent years Venezuela has amended its criminal laws to provide stiffer penalties for "crimes against the branches of government and the States" enshrined in Chapter II of the Criminal Code. The Law on Partial Reform of the Criminal Code of Venezuela entered into force on March 16, 2005, and broadened protection against so-called contempt offenses to include public officials not previously identified in the law.¹³⁰

116. The IACHR has expressed its concern as far as the excessively broad range of persons against whom the offenses described in Venezuelan criminal laws can be committed,¹³¹ and has stated that it was incompatible with respect for the right to freedom of expression.¹³² Furthermore, the Inter-American Court recently held that if restrictions or limits on freedom of expression "originate from criminal law, it is essential that they meet the strict requirements characteristic of classification of crimes, in order to conform to the principle of lawfulness in that respect. Thus, all such restrictions or limits should be formulated expressly, precisely, exhaustively and in advance."¹³³

117. In the instant case, as a result of the statements that Mr. Usón Ramírez made on matters of public interest during the aforementioned interview, on May 10, 2004, almost one month after that interview was broadcast by Televisión, the General-in-Chief and Minister of Defense instructed the Military Prosecutor General to open a Military Criminal Investigation "in connection

¹³⁰ The Text of the Law on Partial Reform of the Criminal Code provides as follows: Article 8.- Article 148, now 147, was amended as follows: Any person who offends, verbally or in writing or in any other fashion, the President of the Republic or the person serving in that capacity shall be punished with a prison term of between six and thirty months, if the offense was serious, and of half that duration, if it was slight. The punishment shall be increased by one-third if the offense was made publicly. Article 9 provides: "Article 149, now 148, was amended as follows: "Article 148.- When the actions described in the Article above are made against the person of the Executive Vice President of the Republic, any of the Justices of the Supreme Court of Justice, a cabinet minister, a state governor, a deputy of the National Assembly, the Metropolitan Mayor, any of the principals of the National Electoral Council, the members of the High Military Command, the Ombudsman, the Attorney General, Public Prosecutor General, or the Republic Treasury Inspector, the punishment indicated in that Article shall be reduced to one-half or, in the case of municipal mayors, to one-third."

¹³¹ The IACHR expressed its concern at this situation in Annual Report of the Inter-American Commission on Human Rights 2005, Volume II Annual Report of the Office of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.124 Doc. 7. February 27, 2006, par. 227. See, also, Press Release 118/05 of March 28, 2005 of the IACHR Office of the Special Rapporteur for Freedom of Expression, which observed that "[t]he new legislation not only maintains the provision on *desacato* but it extends its protection to other public officials. Article 148 of the previous Criminal Code included the President of the Republic and Article 149 of the Criminal Code included the Vice-president of the Executive, the Judges of the Supreme Court of Justice, the Cabinet Ministers, the state Governors and the Metropolitan Mayor. The modified legislation adds the deputies of the National Assembly, the principals of the National Electoral Council, the members of the High Military Command, the Human Rights Ombudsman (*Defensor del Pueblo*), the Attorney General, the Public Prosecutor General (*Fiscal General*), and the Republic Treasury Inspector."

¹³² Press Release 118/05 of March 28, 2005 of the IACHR Office of the Special Rapporteur for Freedom of Expression. See also IACHR, Annual Report of the Inter-American Commission on Human Rights 2005; Volume II Annual Report of the Special Rapporteur for Freedom of Expression, OEA/Ser.L/V/II.124 Doc. 7. February 27, 2006; par. 227. Different civil society organizations also expressed similar views. See, for example, press release of the Inter-American Press Association (IAPA) of February 2, 2005, available at <http://www.sipiapa.com/pressreleases/srhccountrydetail.cfm?PressReleaseID=1300>; and news release of Human Rights Watch of March 24, 2005, available at <http://hrw.org/english/docs/2005/03/24/venezu10368.html>.

¹³³ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008 Series C No. 177, par. 63.

with the alleged punishable acts of a military nature on the occasion of the statements made by citizen: Army Brigadier General Usón Ramírez, Francisco Vicente.” Despite the fact that that order does not mention what statements Mr. Usón Ramírez made that might be construed as criminal, it subsequently emerged from the record that they were the comments concerning the fire at Fort Mara and that the crime for which he was convicted was that of gross insult to the armed forces.

118. The aforesaid offense is classified at Section IV of the Organic Code of Military Justice, which recognizes the crimes of “Insult to a Sentry, the Flag and the Armed Forces.” That provision is in force and provides as follows: “Article 505. Whomsoever in any way defames, insults or disparages the National Armed Forces or any of its units, shall be liable to a term of three to eight years of imprisonment.”

119. Such provisions are known as contempt laws on account of the nature of the persons protected against this offense and because the legally protected interests are state institutions, their emblems, or the honor of their public officials.

120. On May 22, 2004, Mr. Usón Ramírez was deprived of his liberty and, almost 6 months after the aforesaid order was issued, on November 8, 2004, the First Trial Court of Caracas sentenced Mr. Usón Ramírez to five years and six months imprisonment and confirmed that said General Officer should remain confined at the National Center for Military Defendants, with the accessory penalties of disqualification from political activities for the duration of the sentence and loss of the right to rewards. Accordingly, Mr. Usón Ramírez spent the whole of the military criminal trial deprived of his liberty and remained confined at the National Center for Military Defendants at Ramo Verde, Los Teques, in the State of Miranda for three years and seven months until he was granted his release on probation.

121. The Commission notes that among the grounds stated for the aforesaid conviction, the court mentioned that the supposed legitimate aim or legally protected interest that Article 505 of the Code of Military Justice seeks to protect is the honor of the agency recognized in said article, as well as the respect due to the armed forces and their units. In this connection, the State held that the fact “[t]hat legal persons have reputations is beyond dispute and ‘contempt [*desacato*] laws’ act as a barrier against abusive and disrespectful exercise of freedom of expression against this situation which places the State at risk. Venezuela also cites national security as grounds for subsequent imposition of liability on Mr. Usón Ramírez, since “any comments designed to undermine the credibility of the population in their military institutions and the confidence of their members in their superiors directly affect the security of the Nation and require effective condemnation on the part of the State. The situation is all the more delicate when the person who commits such an attack is a serviceman with a high rank in the armed forces (his status notwithstanding).”¹³⁴

122. In the opinion of the Commission, having considered the arguments of the parties, the opinions expressed and the liabilities subsequently imposed in the military criminal jurisdiction, there are two questions in discussion in this section that have to do with the scope of the right to freedom of thought and expression and its balancing against other rights: i) protection by criminal law of the honor or reputation of the State and its institutions: incompatibility with Article 13 of the Convention of provisions that criminalize offensive remarks against the State and its officials; and, ii) protection of national security.

¹³⁴ Brief containing observations on merits presented by the State to the IACHR on October 29, 2007.

i) Use of criminal laws to protect the honor or reputation of the State and its institutions

123. Since 1995, the Commission has maintained its position on the incompatibility between laws that criminalize offensive remarks against public officials or the State, known as contempt laws, and the requirements of the American Convention on Human Rights. In this regard, it has recommended that member states of the Organization with these or similar provisions in their legal code repeal or reform them, in order to make them consistent with international instruments and their obligations therein.¹³⁵

124. Various studies have been carried out since the inception of the Office of the Special Rapporteur for Freedom of Expression and the IACHR has monitored legislative developments in different states as regards abolition of so-called contempt laws.¹³⁶ This recommendation was also echoed by a wide array of nongovernmental and intergovernmental organizations, and several states in the region have amended their domestic laws to bring them in line with international standards.¹³⁷

125. At the Thirty-Seventh Regular Session of the OAS General Assembly held in June 2007, the States clearly expressed their will to decriminalize offenses against honor and to transfer defamation laws to the civil sphere. In that regard, the General Assembly adopted resolution AG/RES. 2287 (XXXVII-O/07), in which it was resolved, *inter alia*, “[t]o invite member states to consider the recommendations concerning defamation made by the Special Rapporteurship for Freedom of Expression of the IACHR, namely by repealing or amending laws that criminalize *desacato*, defamation, slander, and libel, and, in this regard, to regulate these conducts exclusively in the area of civil law.”¹³⁸

126. The IACHR has repeatedly demonstrated the many reasons that support the existence of a contradiction between laws of this type and the Convention, and that make their

¹³⁵ IACHR, Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights, OEA/Ser. L/V/II.88, doc. 9 rev., February 17, 1995. See in this connection, IACHR, Report 90/05. Case 12.142. Alejandra Marcela Matus. Chile. October 24, 2005, pars. 40-42. See also IACHR, Annual Report of the Inter-American Commission on Human Rights 1998. Volume III: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter IV: Laws on Contempt, Compulsory Membership, and Murder of Journalists. OEA/Ser.L/V/II.102 Doc. 6 rev. April 16, 1999; Annual Report of the Inter-American Commission on Human Rights 2000. Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2000. Chapter III: Legislation and Freedom of Expression: Overview of the Legislation of Member States, 2. Desacato, or Contempt, Laws. OEA/Ser.L/V/II.111 doc. 20 rev. April 16, 2001; Annual Report of the Special Rapporteur for Freedom of Expression. 2002, vol. III. OEA/Ser.L/V/II. 117 Doc. 5 rev, March 7, 2003.

¹³⁶ IACHR, Annual Report of the Special Rapporteur for Freedom of Expression. 2002, vol. III. OEA/Ser.L/V/II. 117 Doc. 5 rev, March 7, 2003, chapter II, par. 1.

¹³⁷ For example, Argentina abrogated then-Article 244 of its Criminal Code and Costa Rica abolished the crime of contempt in March 2002 (Law 8224) by amendment of Article 309 of its Criminal Code.

¹³⁸ AG/RES. 2287 (XXXVII-O/07), Right to Freedom of Thought and Expression and the Importance of the Media, (Adopted at the fourth plenary session of the OAS General Assembly held on June 5, 2007), operative paragraph 12.

application unnecessary in a democratic society.¹³⁹ In the first place, criminal laws are the most restrictive and severest means of establishing liability for unlawful conduct.¹⁴⁰

127. In this respect, the threat of criminal sanctions, particularly imprisonment, exerts a chilling effect on freedom of expression. Prison sentences and other harsh criminal penalties should never be employed as a means to stifle public debate about matters of general concern, and to limit criticism of officials, the State or its institutions.¹⁴¹

128. So-called contempt laws afford a higher degree of protection to public officials and state institutions than to private citizens, in direct contravention of the fundamental principle of the democratic system, whereby the government is subject to controls, such as public scrutiny, in order to impede and restrain abuse of its coercive powers.

129. Such laws are not compatible with the Convention because they lend themselves to abuse as a means to silence ideas and opinions that are unpopular or uncomfortable for the government and prevent democratic control, thus suppressing debate, which is essential for the functioning of a truly democratic system. According to the case law of the Court, it is unacceptable for criminal law to be used to conceal the actions of the State and prevent its democratic oversight.¹⁴² The legal exception must necessarily be accompanied by the principle of legal definition of the offense (*tipicidad*), which obliges the States to establish, as specifically as possible and “beforehand,” the “reasons” and “conditions” for its application.¹⁴³

130. The IACHR has addressed these issues in principles 10 and 11 of the Declaration of Principles on Freedom of Expression, bearing in mind that the right to freedom of thought and expression must coexist alongside other rights, such as a person’s right to have his or her honor and reputation respected. The Commission believes that, in those cases in which the person offended is a public official, a public person, or a private person who has voluntarily become involved in matters of public interest, the protection of his or her reputation should only be guaranteed through civil sanctions.

131. The dissemination of information or comments concerning matters of public interest should only incur civil liability if it is proven that the information or comments are false, that the person communicating them was fully aware of their falsity or acted with gross negligence in efforts to determine their truth or falsity, and had the intent to inflict harm on the plaintiff.

¹³⁹ IACHR, Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights, OEA/Ser. L/V/II.88, doc. 9 rev., February 17, 1995, 197-212, par.38. See also IACHR, Annual Report of the Inter-American Commission on Human Rights 1998. Volume III: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter IV: Laws on Contempt, Compulsory Membership, and Murder of Journalists. OEA/Ser.L/V/II.102 Doc. 6 rev. April 16, 1999; Annual Report of the Inter-American Commission on Human Rights 2000. Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2000. Chapter III: Legislation and Freedom of Expression: Overview of the Legislation of Member States, 2. Desacato, or Contempt, Laws. OEA/Ser./L/V/II.111 doc. 20 rev. April 16, 2001; Annual Report of the Special Rapporteur for Freedom of Expression. 2002, vol. III. OEA/Ser.L/V/II. 117 Doc. 5 rev, March 7, 2003.

¹⁴⁰ I/A Court H.R. *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 79; *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, par. 104.

¹⁴¹ UN, Economic and Social Council, Commission on Human Rights. Civil and Political Rights, Including the Question of Freedom of Expression. The right to freedom of opinion and expression. Report of the Special Rapporteur, Ambeyi Ligabo. E/CN.4/2006/55, December 30, 2005, paras. 52 and 55.

¹⁴² I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 88.

¹⁴³ I/A Court H.R. *Case of Chaparro Álvarez and Lapo Íñiguez*. Judgment of November 21, 2007. Series C No. 170, par. 57.

132. Thus, the precedents examined by the IACHR, together with other international precedents, permit protection of the right to reputation for individuals, including public officials, by means of alternative mechanisms to criminal proceedings.

133. In 2005, the Inter-American Court issued a landmark decision on *desacato* in the Palamara Iribarne case, in which it found that the State had enforced contempt legislation with regard to an individual for stating opinions critical, *inter alia*, of military justice authorities for the way in which they performed their public duties. The Court ordered the State to modify whatever legal provisions may be incompatible with the international standards on freedom of thought and expression, in a manner such that all persons are allowed to exercise control over all state institutions and officials, through the free expression of their ideas and opinions on their performance in office without fearing future retaliation.¹⁴⁴

134. Furthermore, in May 2008, the Inter-American Court issued its judgment in the Kimel case:¹⁴⁵

76. The Court has previously pointed out that criminal law is the most restrictive and severe means of imposing liability for illegal conduct. Broad definition of slander and libel offences may be contrary to the principle of minimum and last-resort intervention of criminal law. In a democratic society, punitive authority is only exercised to the extent strictly necessary to protect fundamental legal interests from the most serious attacks that harm or pose a threat to those interests.

77. Bearing in mind the observations hereinabove with respect to due protection of freedom of expression; the reasonable reconciliation of the need for protection of that right, on one hand, and of reputations, on the other; and the principle of minimum intervention of criminal law that is one of the hallmarks of a democratic society, the use of criminal-law mechanisms must be commensurate with the need to protect fundamental legal interests against conduct that entails serious injury to said interests, and proportionate to the extent of the presumed harm. As the case law of this Court has determined in its examination of Article 9 of the American Convention, criminal conduct must be defined in clear and precise terms.

78. As regards the expression of information or opinions, the Court does not consider all criminal-law measures to be contrary to the Convention; however, this possibility should be analyzed with particular care, weighing to that end the extreme seriousness of the conduct displayed by the divulger of such information or opinions, *mens rea*, the nature of any harm unjustly inflicted, and other factors that clearly support the absolute need to use, in genuinely exceptional circumstances, criminal-law measures. At all times, the burden of proof must be on the accuser. In light of the foregoing, the Court notes the developments in the case law of other tribunals designed to further, in a rational and balanced way, the protection that the rights apparently in dispute deserve, without undermining the guarantees required by freedom of expression as a bastion of the democratic system.¹⁴⁶

¹⁴⁴ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, pars. 254 and 94.

¹⁴⁵ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008 Series C No. 177, pars. 37 *et seq.* [Free translation]

¹⁴⁶ In the *Mamère Case*, the European Court of Human Rights found that, “the eminent value of freedom of expression, especially in debates on subjects of general concern, cannot take precedence in all circumstances over the need to protect the honour and reputation of others, be they ordinary citizens or public officials”. *Cfr. Mamère v. France*, no. 12697/03, § 27, ECHR 2006.

Furthermore, in the *Castells Case*, the European Court considered ruled that “it remains open to the competent State authorities to adopt, in their capacity as guarantors of public order, measures, even of a criminal law nature, intended to react appropriately and without excess to defamatory accusations devoid of foundation or formulated in bad faith”. *Cfr. ECHR, Castells v. Spain*, judgment of 23 April 1992, Series A no. 236, § 46.

135. In the instant case, in spite of recognizing that Mr. Usón's comments amounted to the expression of an opinion and that the criminal complaint contained no mention of any injury to any person in particular, the First Trial Court of Caracas, sentenced Mr. Usón to five years and six months of imprisonment for committing the crime of "Insult to a Sentry, the Flag and the Armed Forces" provided in Article 505 of the Organic Code of Military Justice.

136. Article 505 of the Venezuelan Code of Military Justice protects the State and its institutions by criminalizing criticism of the State itself without the need for the defamatory, insulting, or disparaging remark to be directed towards an individual, resulting in harm to his or her honor or reputation.¹⁴⁷

137. The grounds for imposing subsequent liability were based on the fact that the "abusive remarks" uttered by Mr. Usón Ramírez "that defame and insult the Armed Forces" undermined that institution's "internal harmony and peaceful coexistence with the rest of society" as well as national security. Thus, the crime of insult to the Armed Forces of which Mr. Usón Ramírez was convicted is consistent with the concept of so-called contempt laws since it recognizes said State institution as a possible victim thereof.

138. The IACHR considers it both useful and necessary to refer to the judgment of the Court in the *Kimel* case,¹⁴⁸ in which the Court held as follows:

84. As regards the instant case, the restriction would have to accomplish significant compliance with the right to reputation without rendering ineffectual the right to free criticism of how government officials perform their duties. For the purposes of this evaluation it is necessary to analyze: i) the degree of impairment of one of the rights in play, determining if the intensity of said impairment was serious, middling, or moderate; ii) the level of satisfaction of the opposing right, and iii) if satisfaction of the latter justifies restriction of the former. In some cases, the scales will tip toward freedom of expression and in others toward protection of the right to reputation.

85. With respect to the degree of impairment of freedom of expression, the Court considers that the consequences of the criminal proceeding in itself, the penalty imposed, the registration of a criminal record, the latent risk of possible loss of personal liberty, and the stigma of the criminal conviction imposed on Mr. Kimel show that the subsequent liability imposed in this case was severe. Even the fine constitutes, in itself, a serious impairment of freedom of expression given its size relative to the beneficiary's income.

86. In reference to the right to reputation, in order to foster democratic debate, remarks concerning the suitability of a person for public office or acts carried out by government officials in performance of their labors enjoy greater protection. The Court has found that in a democratic society public servants are more exposed to public scrutiny and criticism. This different threshold of protection is explained by the fact that they have voluntarily exposed

...continuation

In a recent decision, the Court held that "the imposition of a prison sentence for a press offense will be compatible with journalists' freedom of expression as guaranteed by Article 10 of the Convention only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in the case of hate speech or incitement to violence". *Cfr. Cumpăna and Mazare v. Romania* [GC], no. 33348/96, § 115, ECHR 2004-XI.

¹⁴⁷ On contempt [*desacato*] for State institutions and symbols, see IACHR, Annual Report of the Special Rapporteur for Freedom of Expression. 2002, Vol. III. OEA/Ser.L/V/II. 117 Doc. 5 rev, March 7, 2003, chapter II. See also Declaration of Chapultepec; Preamble and Principle 10. See Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, OSCE the Representative on Freedom of the Media, and the OAS Special Rapporteur for Freedom of Expression of November 30, 2000.

¹⁴⁸ I/A Court H.R. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008 Series C No. 177, pars. 84-88. [Free translation]

themselves to more intense scrutiny. Their activities go beyond the private sphere and belong to the realm of public debate. This threshold is not based on the nature of the individual, but on the public interest in the activities they perform, as when a judge investigates a massacre in the context of a military dictatorship, as occurred in the instant case.

87. Democratic control exercised through public opinion encourages the transparency of State activities and promotes the accountability of public officials in public administration. For that reason there should be a reduced margin for any restriction on comments and opinions made by the citizenry in exercise of that democratic control. Such are the demands of the pluralism necessary in a democratic society, which requires the greatest possible circulation of information and opinions on matters of public interest.

88. In the arena of public debate on matters of pressing public interest, protection extends not only to opinions that are received favorably or considered inoffensive by public opinion, but also to those that shock, irritate, or trouble government officials or any sector of the population [...]

139. In the instant case, subsequent liability established in the Organic Code of Military Justice was imposed on Mr. Usón Ramírez for a purpose that cannot be considered legitimate, given that subsequent liability as permitted by the Convention allows protection for the reputation of a public official or an individual but not for legal persons, which are not protected by the American Convention. Accordingly, while the aforesaid restriction is recognized by law, it does not have a legitimate purpose as recognized in Article 13(2)(a).¹⁴⁹

140. In the instant case, Article 505 of the Organic Code of Military Justice punishes criticism of the institution of the armed forces and provides a prison term of up to eight years. This is quite clearly incompatible with the standards recognized by the inter-American system in the area of freedom of expression and for that reason the domestic courts should have refrained from enforcing it.¹⁵⁰

141. The existence of a provision that threatens anyone who insults, offends or disparages the institution of the armed forces with incarceration, deters individuals from expressing themselves freely about issues of public interest connected with said institution.¹⁵¹ In view of its onerousness and severity, a prison sentence is a disproportionate penalty for someone who expresses themselves, and it cannot be considered a law in the material sense described by the case law of the system. Furthermore, the threat of deprivation of liberty contained in the Organic Code of Military Justice inevitably has an inhibiting effect on the public, curbs criticism, and stifles dialogue and dissent, which are necessary elements for strengthening a democratic society. The foregoing is all the more serious in this case, given the number of years of imprisonment imposed on the victim.

142. Based on the foregoing considerations, the inclusion in the domestic statutes of laws that criminalize contempt, the consequences of the institution of a criminal proceeding against Mr. Usón Ramírez before authorities that lacked jurisdiction, the imposition of a prison sentence of five years and six months, the resulting record, and the stigma of a prison conviction in itself and of the

¹⁴⁹ In this connection, see, also, Principle 3 “*Defamation of Public Bodies*”. *Principles on Freedom of Expression and Protection of Reputation*”. Article 19. *International Standards Series*, which provides that Public bodies of all kinds – including all bodies which form part of the legislative, executive or judicial branches of government or which otherwise perform public functions – should be prohibited altogether from bringing defamation actions. Principle 4.iii, after recognizing that in many states criminal defamation laws are still the primary means of addressing unwarranted attacks on reputation, recommends that in those states public authorities should take no part in the initiation or prosecution of criminal defamation cases, regardless of the status of the party claiming to have been defamed, even if he or she is a senior public official.

¹⁵⁰ In this regard, see, I/A Court H.R., *Case of Almonacid Arellano et al.*. Judgment of September 26, 2006. Series C No. 154. par. 121.

¹⁵¹ Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights.

classification of a person as a criminal are also disproportionate and unnecessary in a democratic society.

ii) Protection of national security

143. While the State may impose subsequent liability based on “national security,” it may only legitimately do so if “its genuine purpose or demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.”¹⁵²

144. In this regard, it is incumbent on the State to show that it has complied with the requirements set forth in the Convention when establishing restrictions on freedom of thought and expression,¹⁵³ which is not the case in this instance.

145. The conduct for which Mr. Usón Ramírez was convicted fell within the bounds of reasonable exercise of his right to freedom of thought and expression, given that his remarks concerned matters of interest to Venezuelan public opinion and their aim was to contribute to the debate and serve as a means of control of State activities.¹⁵⁴

146. The Commission finds it reasonable that Mr. Usón Ramírez’s training and professional and military experience would have helped him to support his comments and that it does not entail *per se* an abuse of his right to freedom of thought and expression. According to the case law of the Court, any interpretation to the contrary would prevent individuals from using their education or professional training to enrich the expression of their ideas and opinions and,¹⁵⁵ consequently, utilize that knowledge to enhance debate, argument, and discussion on matters connected with their training.

147. Furthermore, in convicting Mr. Usón Ramírez the State disregarded the above-outlined rules on the different threshold of protection for remarks concerning matters of public interest; the obligation, shared by the State and its institutions, to be more tolerant of criticism and opinions; and the application of the least restrictive means possible recommended by both the Commission and the Court which clearly apply in the instant case. In this case a criminal conviction was imposed on Mr. Usón, who was the only person who openly denounced the incident at Fort Mara.

148. The rule of greater protection applies to the information and opinions about the origin of the fire at Fort Mara, its possible causes, and the various theories under discussion in Venezuela on which Mr. Usón Ramírez expressed his thoughts and ideas in the interview aired by Televén. Furthermore, the armed forces and their officials, as institutions and representatives of the State, should tolerate any opinion referring to incidents that occurred at their facilities and resulted in the deaths of two persons and injuries to seven others. Criticism of the armed forces in this case

¹⁵² IACHR, Report on Terrorism and Human Rights 2002, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2002; CHAPTER III; D.1.b, par. 277 and *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information* (November 1996), available at <http://www.article19.org/pdfs/standards/joburgprinciples.pdf>.

¹⁵³ I/A Court H.R., *Case of Claude Reyes et al.*. Judgment of September 19, 2006. Series C No. 151, par. 93. See also Principle 1: Freedom of Opinion, Expression and Information. *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information* (November 1996).

¹⁵⁴ See principle 5 and 7 of *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information* (November 1996).

¹⁵⁵ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 76.

cannot be regarded as placing the national security of Venezuela at risk, and therefore the State violated Article 13 of the Convention.

149. Finally, the IACHR notes that the order of release on probation of the First Court of Enforcement of Caracas of December 24, 2007, contains, *inter alia*, prohibitions on giving statements to the media and attending demonstrations.

150. According to the case law of the Court, any order that prohibits a person from expressing themselves constitutes an act of censorship incompatible with the American Convention.¹⁵⁶ As the record attests, Mr. Usón Ramírez is a person who is critical of the government and has suffered serious consequences as a result of expressing his thoughts. The prohibition against his making statements about matters that directly concern him and have a direct bearing on how the authorities in Venezuela have behaved in his case,¹⁵⁷ as well as the prohibition from exercising his right to express himself, violate Article 13 of the Convention and could make it possible for the victim to be punished further for his comments, thereby preventing his participation in public debate.

151. The Commission concludes, therefore, that the State violated the right to freedom of thought and expression recognized at Article 13 of the Convention to the detriment of Mr. Francisco Usón Ramírez, by continuing to classify contempt as a criminal offense, by prosecuting and convicting him of the crime of insult in order to protect the reputation of the institution of the Armed Forces, and by imposing on him prohibitions from expressing himself. The aforesaid restrictions are patently incompatible with Article 13(2) of the Convention.

B. Right to personal liberty (Article 7 of the American Convention) and breach of the obligation to ensure human rights (Article 1(1) of the Convention)

152. Article 7 of the Convention provides:

1. Every person has the right to personal liberty and security.

[...]

3. No one shall be subject to arbitrary arrest or imprisonment.

[...]

153. Article 7(1) of the Convention provides that every person has the right to personal liberty and security. Such restrictions must be consistent with the human rights obligations of the State and for an incarceration measure to be compatible with Article 7(3) of the Convention it must conform to “the principles of *nullum crimen nulla poena sine lege praevia*, presumption of innocence, necessity, and proportionality, which are essential to any democratic society.”¹⁵⁸

154. Mr. Usón Ramírez was convicted and served three years and seven months in confinement at the National Center for Military Defendants at Ramo Verde, Los Teques, State of Miranda. His sentence was reduced by two months and 15 days for work and studies, and, on December 24, 2007, the domestic courts decided to grant Mr. Usón the benefit of release on probation. The conditions of Mr. Usón’s release include restrictions on the exercise of political

¹⁵⁶ See, in that connection, I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 75.

¹⁵⁷ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 88.

¹⁵⁸ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 197; and *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114. par. 106.

rights, the prohibition of speaking about his case in public, and periodic psychiatric evaluations, among others.

155. In this chapter, the Commission must analyze if Mr. Usón Ramírez's deprivation of liberty for five years and six months from May 22, 2004 to December 24, 2007 (which included a period of pre-trial detention of one year and eight days, subsequently under a final conviction until December 24, 2007, and, since then, release on probation), meets the requirements of the American Convention.

156. To that end, the Commission will consider aspects in two areas. The first, examined in this chapter, has to do with the prison sentence and the considerations applied in this specific case and analyzed in the chapter on violation of Article 13 of the Convention. The second, which is examined in the next chapter, concerns the pre-trial detention to which Mr. Usón was subjected before his conviction became final.

157. The Court has indicated that the restriction of personal liberty is a consequence or collateral effect of the deprivation of liberty, but must be kept to an absolute minimum; no restriction of a human right is justifiable in a democratic society unless necessary for the general welfare.¹⁵⁹

158. As explained in the chapter on violation of Article 13 of the Convention, the criminalization of contempt, the military criminal proceeding, and the ensuing prison conviction are incompatible with Article 13 of the Convention, since they are illegitimate, disproportionate and unnecessary measures in a democratic society established to stifle criticism and dissent. It is also necessary to recall the observations made with regard to the *última ratio* nature of criminal law in a democratic society and that to keep such rules on the law books constitutes a breach of Article 2 of said treaty.

159. The behavior for which Mr. Usón Ramírez was convicted clearly did not endanger the legally protected interests connected with the statutory functions of the armed forces, bearing in mind, moreover, that he should be regarded as a civilian. As the Court has ruled, only military members should be tried for the commission of criminal offenses or breaches which, due to their nature, constitute an attack on military legal interests. In democratic states the military criminal jurisdiction should be restricted to a minimum and inspired by the principles and guarantees that govern modern criminal law.¹⁶⁰ Criminalization of conduct and imprisonment should be the last resort used only once all other measures have been exhausted or shown to be inefficient at punishing the most serious infringements of legally protected higher interests. As the Commission has found, criminalization can only apply in those exceptional circumstances where there is an obvious and direct threat of lawless violence¹⁶¹

160. Moreover, the IACHR also finds that, given the *ultima ratio* nature of military criminal law, the imposition of a prison sentence on Mr. Usón Ramírez was not the least restrictive means available to the State to protect the interests of the armed forces. The Commission considers that the State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions that are in accordance with

¹⁵⁹ I/A Court H.R., *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, par. 154 and *Case of the "Five Pensioners"*. Judgment of February 28, 2003. Series C No. 98, par. 116.

¹⁶⁰ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 124.

¹⁶¹ IACHR, Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights, par.38.

international standards and by implementing laws that guarantee the right of reply. In this sense, the State guarantees protection of all individual's privacy without abusing its coercive powers to repress individual freedom to form opinions and express them.¹⁶²

161. The Commission has determined in the instant case that the restrictions imposed by Article 505 of the Organic Code of Military Justice are incompatible with the standards set forth in the Convention. In light of the foregoing, deprivation of liberty under this provision for the legitimate exercise of the right to freedom of expression, as well as the victim's current status of release on probation are unnecessary, disproportionate, and arbitrary, and, therefore, also constitute a violation of Article 7 of the Convention.

162. Based on the foregoing, the Commission concludes that the prison term of five years and six months imposed on Mr. Usón Ramírez for exercising his right to freedom of thought and expression, which he partly served under pre-trial detention and is serving at present under a final conviction to be completed under release on probation, violated his right to personal liberty recognized at Article 7(1) and (3) of the American Convention.

C. Right to personal liberty (Article 7(1) and (3) of the American Convention) in connection with the right to be presumed innocent (Article 8(2) of the Convention) and breach of the obligation to ensure human rights (Article 1(1) of the Convention)

163. Article 7 of the Convention provides:

1. Every person has the right to personal liberty and security.

[...]

3. No one shall be subject to arbitrary arrest or imprisonment.

[...]

164. Article 8(2) of the Convention provides that:

[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.

165. As the record shows, since the first decision of May 21, 2004, adopted by the Permanent Military Tribunal of First Instance of La Guaira at the request of the Military Prosecutor, the grounds given in the different orders issued during the proceeding, as well as the grounds given for the denial of less onerous alternative measures, were based on the presumption that he had committed the crime of which he stood charged, as well as on the presumption that Mr. Usón Ramírez would evade military justice due to the existence of a "flight risk", for which reason the IACHR will analyze this risk. Furthermore, the record before the Commission shows that Mr. Usón's attorneys requested his release and the imposition of a less onerous precautionary measure on a number of occasions, and suggested other alternatives to ensure that Mr. Usón Ramírez would appear before the military courts.

166. Following this, the Commission will decide whether, in light of international standards on pre-trial detention, the domestic provisions that govern such matters in Venezuela, and the facts in the record, the State fulfilled its duty to observe and ensure the right of Mr. Usón Ramírez to personal liberty as well as his right to be presumed innocent.

¹⁶² *Ibid.* See, also, Principle 10 of the Declaration of Principles on Freedom of Expression of the IACHR which concerns offenses against reputation and honor.

167. Accordingly, this chapter includes the following sections: 1) general considerations on pre-trial detention applicable to the case; 2) accreditation of flight risk in this particular case: insufficient grounds for pre-trial detention; and 3) presumption of flight risk based on the offense charged and the penalty provided by domestic law.

1. General considerations on pre-trial detention applicable to the case

168. In keeping with the principle of innocence in criminal proceedings, as a general rule, the accused should remain at liberty.

169. In exceptional cases, the State may order preventive detention provided that the necessary requirements to restrict the right to personal liberty are met, that there are sufficient indicia to reasonably believe that the defendant is guilty and that such detention is strictly necessary to ensure that the accused will not impede the effective development of the investigations or evade justice,¹⁶³ *inter alia*, through flight. Accordingly, in order to ensure respect for the right, enshrined in Article 8(2) of the Convention, to be presumed innocent until a final judgement determines otherwise, when issuing measures that restrict personal liberty, it is necessary for the State to provide grounds thereof and evidence that the applicable requirements under the Convention are met in each specific case.¹⁶⁴

170. In this sense, preventive detention is a cautionary measure and not a punitive one."¹⁶⁵ When a precautionary measure exceeds the limits of legality, necessity, and proportionality, it can become a form of advance punishment, in violation of the presumption of innocence. Therefore, "[t]he rule must be the defendant's liberty while a decision is made regarding his criminal responsibility."¹⁶⁶

171. As the record in the instant case shows, from his arrest on May 22, 2004, until his final conviction on June 2, 2005, Mr. Usón Ramírez was held in pre-trial detention for one year and eight days. Accordingly, Mr. Usón Ramírez was deprived of liberty for the whole of his criminal trial by a military court for the offense of insult to the armed forces until he was found guilty in a final conviction.

2. Accreditation of flight risk in this particular case: insufficient grounds for pre-trial detention

172. In a previous case, the Commission held that several factors have to be considered in order to determine if a flight risk genuinely exists. Thus, it found that "the courts must determine if the various conditions provided by law are in place. They include the moral values demonstrated by the subject; his occupation; the assets he owns; family ties; and any other considerations that would keep him from leaving the country, in addition to the possibility of a prolonged sentence. As a result, unless the judges hearing the case can show that there is sufficient evidence of a possible

¹⁶³ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 198; *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, par. 111; and *Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, par. 153.

¹⁶⁴ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 198.

¹⁶⁵ I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114. par. 120.

¹⁶⁶ I/A Court H.R., *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141. par. 67; *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 196; *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129. par. 74; and *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114. par. 106.

attempt at flight or hiding, preventive detention is not justified.”¹⁶⁷ Hence, it is up to the court and not the accused or their counsel to accredit the existence of said factors.

173. In one case, the Inter-American Court had occasion to state its opinion on the failure of the courts to respond to petitions requesting the annulment of an order of preventive custody in favor of the victims.¹⁶⁸ In that regard, it found that “when a request is received for the release of those detained, the judge must explain the grounds, even if very briefly, on which he considers that preventive detention should be maintained.”¹⁶⁹

174. With respect to grounds, the Court found that it is the national authorities who are responsible for assessing the pertinence of maintaining the precautionary measures they issue pursuant to their own laws. When carrying out this task, the national authorities should provide *sufficient* grounds to permit the interested parties to know the reasons why the restriction of their liberty is being maintained.¹⁷⁰

175. The reasoning offered by the judge must show clearly that the arguments of the parties have been duly taken into account and the body of evidence examined rigorously, particularly in cases in which important rights such as the liberty of the accused is involved. A judge’s failure to state the grounds for their decision prevents the defense lawyers from knowing the reasons why the victims remained deprived of their liberty and hampers their task of presenting new evidence or arguments in order to achieve the victims’ release or to contest crucial evidence against them in the best way possible.¹⁷¹

176. In the order of May 21, 2004, which led to the pre-trial detention, the court merely mentioned the “existence of a flight risk” without making any reference to any of the factors required by domestic law so that it might correctly order Mr. Usón Ramírez to be placed in pre-trial detention. Furthermore, it did not properly justify the alleged flight risk; it simply mentioned the domestic rule without providing reasons or accrediting facts in the particular case that might constitute the circumstances that the law required. This situation was repeated in the decisions of May 24, 2004; May 27, 2004, and June 15, 2004.

177. It is worth noting that during the military criminal trial, it was Mr. Usón Ramírez’s defense counsel who provided documents to the court to accredit the existence of circumstances which, by law, would exempt Mr. Usón Ramírez from imposition of the measure, such as the existence of ties to the country, given his occupation and the presence of his family, Mr. Usón’s cooperation in the proceeding and good conduct, and the absence of a criminal record; his counsel also suggested alternative measures to ensure the appearance of Mr. Usón Ramírez in court.

178. However, in its decision of June 15, 2004, the Court of Military Appeals took the view that the penalty that might ultimately be imposed on the accused was grounds to believe that

¹⁶⁷ IACHR, Report 2/97, Cases 11.205, 11.236, 11.238, 11.239, 11.242, 11.243, 11.244, 11.247, 11.248, 11.249, 11.251, 11.254, 11.255, 11.257, 11.258, 11.261, 11.263, 11.305, 11.320, 11.326, 11.330, 11.499, and 11.504, Argentina; March 11, 1997, par. 29.

¹⁶⁸ I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez*. Judgment of November 21, 2007. Series C No. 170, par. 116

¹⁶⁹ I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez*. Judgment of November 21, 2007. Series C No. 170, par. 117

¹⁷⁰ I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez*. Judgment of November 21, 2007. Series C No. 170, par. 107

¹⁷¹ I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez*. Judgment of November 21, 2007. Series C No. 170, par. 118.

he might attempt to evade justice; therefore, it presumed that the accused would escape. In this connection it is important to underline that at no time did the Venezuelan military judicial authorities provide reasonable arguments to accredit the existence of factors from which to conclude that Mr. Usón would take flight in order to evade justice. Accordingly, the burden of proof of those factors was placed on the defense.

179. The Commission concludes that in failing properly to justify the decisions to impose pre-trial detention on the basis of flight risk, the Venezuelan authorities arbitrarily restricted Mr. Usón's right to personal liberty, in violation of Article 7 of the Convention, since they were unable to demonstrate the proportionality of the measure or its necessity in order to safeguard the integrity of the criminal process in the instant case. Any deprivation of liberty for the expression of an opinion, even as a precautionary measure, is disproportionate and incompatible with the Convention.

3. Presumption of flight risk based on the offense charged and the penalty provided by domestic law

180. The Commission notes that in the prosecution's brief, the decision of the court of May 21, 2004, and the decision of the Court of Military Appeals of May 27, 2007, the Venezuelan authorities considered that the risk of flight was demonstrated both by the seriousness and classification of the offense allegedly committed, and by the length of the sentence provided for the offense.

181. The Commission observes that the second paragraph of Article 251 of the Organic Code of Criminal Procedure provides that a flight risk is presumed to exist when the offenses under consideration by the authorities are punishable by a term of imprisonment for which the maximum penalty is 10 years or more and there is a concurrence of the circumstances provided in Article 250. This presumption was applied in the instant case.

182. In this regard, Article 505 of the Organic Code of Military Justice, which recognizes the offense for which Mr. Usón was on trial, imposes a prison term of a minimum of three and a maximum of eight years. Clearly, then, the imposition of pre-trial detention on the grounds of the "presumption" of a flight risk flight based on the onerousness of the penalty was not applicable in this case, particularly bearing in mind that the court should not have enforced the provision that criminalizes contempt [*desacato*].

183. Furthermore, the Inter-American Court has ruled that "in no case shall the application of [a] precautionary measure be determined by the crime with which the individual is being charged."¹⁷²

184. Based on the foregoing, the Commission finds that in taking into consideration the classification of the offense and the possible penalty to be imposed as elements to accredit the existence of a flight risk, the State violated the right to personal liberty and to be presumed innocent enshrined in Articles 7 and 8(2) of the American Convention, to the detriment of Mr. Usón Ramírez.

¹⁷² I/A Court H.R. Case of López Álvarez. Judgment of February 1, 2006. Series C No. 141, par. 81

D. Rights to a fair trial and judicial protection (Articles 8 and 25(1) of the Convention) and breach of the obligation to ensure human rights (Article 1(1) of the Convention)

185. Article 8 of the American Convention provides that:

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.

186. Article 25 of the Convention states that:

1. 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 remedy; and

c) to ensure that the competent authorities shall enforce such remedies when granted.

187. The Commission must now determine if the Venezuelan State discharged its obligation to ensure Mr. Usón Ramírez's right to a fair trial and judicial protection in the criminal proceeding instituted against him for the offense of insult to the armed forces.

188. The right to trial by a competent, independent and impartial tribunal previously established by law has been interpreted by the Commission and the Inter-American Court as entailing certain conditions and standards that must be satisfied by tribunals charged with judging the substantiation of any accusation of a criminal nature or with the determination of a person's right and obligations of a civil, fiscal, labor or other nature.¹⁷³

189. The principle of legality must prevail during the criminal process. In that sense, "[t]he right to be judged by civil courts under legally established procedures constitutes a basic principle of due process of law."¹⁷⁴ Therefore, the right to be tried by a competent tribunal is not enforced for the mere fact that it be established by law which court is to hear a particular case and jurisdiction thereof be recognized.¹⁷⁵

190. The Inter-American Court has reiterated in its jurisprudence that "[i]n a democratic constitutional State the military criminal jurisdiction should have a restricted and exceptional scope and should be aimed at the protection of special legal interests related to the duties the law assigns to the military. Therefore, only military members should be tried for the commission of criminal offenses or breaches which, due to their own nature, constitute an attack on military legal interests."¹⁷⁶ These courts may not, however, be used to try crimes that are not related to the

¹⁷³ IACHR, Report on Terrorism and Human Rights 2002, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2002; CHAPTER III; D.1.b, par. 228.

¹⁷⁴ I/A Court H.R., *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119, par. 143, y I/A Court H.R., *Case of Castillo Petruzzi et al.*. Judgment of May 30, 1999. Series C No. 52. par. 129.

¹⁷⁵ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 125.

¹⁷⁶ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 124; See also *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134 par. 202; *Case of Lori*

functions that the law assigns to military forces and that should therefore be heard by the regular courts.¹⁷⁷

191. As regards *ratione materiae* jurisdiction, “military criminal regulations must clearly set forth without any ambiguities [...] which criminal offenses fall within the specific military scope, and the illegal nature of criminal offenses by means of a description of the injury to or endangerment of military legal interests which have been seriously attacked, which may justify the exercise of punitive military power, as well as establish the appropriate sanction.”¹⁷⁸

192. As regards *ratione personae* jurisdiction, the military tribunals have authority to try “military members [for crimes committed] during the performance of specific duties related to the defense and external security of a State.”¹⁷⁹ From the foregoing it follows that not all offenses committed by the armed services personnel of a State are subject to the jurisdiction of the military courts; indeed, that is only the case when the offense impinges on a legally protected military interest.

193. The Commission now proceeds to apply the preceding precepts to the instant case. First, it will analyze the competence of the military tribunals in light of the principle of legality and by reason of *ratione materiae* and *ratione personae*, and how this point relates to a possible violation of Article 7(5) of the Convention. Second, it will analyze the composition of the military tribunals in order to assess their independence and impartiality in keeping with the above standards.

1. *Ratione materiae* and *ratione personae*

194. The proven facts in the case show that Mr. Usón became a member of the armed forces of Venezuela on July 7, 1977, and that on May 30, 2003, he was discharged by compulsory retirement order No. DG-21141 issued by the then-Minister of Defense. In previous cases, both the Commission¹⁸⁰ and Inter-American Court¹⁸¹ have determined that retired members of the armed forces cannot be tried by military courts but must be considered civilians. The IACHR finds that Mr. Usón Ramírez is not an active-duty member of the Venezuelan Armed Forces, does not perform military duties, and, as mentioned, must exercise his rights and obligations as a civilian, including the right to a competent, impartial, and independent tribunal.¹⁸²

195. In the instant case, the Commission notes that the State has not disputed Mr. Usón Ramírez’s position as a retired member of the armed services at the time that he was submitted for trial by the military courts. The State, however, argues that the military tribunals have *ratione materiae* and *ratione personae* to hear Mr. Usón Ramírez’s case. His status, as recognized by the military judicial authorities, was always that of a retired military officer and, therefore, as both the

...continuation

Berenson Mejía. Judgment of November 25, 2004. Series C No. 119, par. 142; and *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, par. 165.

¹⁷⁷ IACHR, Report on Terrorism and Human Rights 2002, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2002; CHAPTER III; D.1.b, par. 232.

¹⁷⁸ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 126.

¹⁷⁹ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 132.

¹⁸⁰ IACHR, Report 20/99, Case 11.317, Rodolfo Robles and sons (Peru). February 23, 1999, par. 102; IACHR, Report 124/06, Case 11.500, Tomás Eduardo Cirio (Uruguay) October 29, 2006, par. 134.

¹⁸¹ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par.128 and *Case of Cesti Hurtado*. Judgment of September 29, 1999. Series C No. 56. par. 151.

¹⁸²I/A Court H.R., *Case of Cesti Hurtado*. Judgment of September 29, 1999. Series C No. 56. par. 151.

Commission and the Court have previously held, he should have been considered a civilian for the purposes of determining the competent tribunal.

196. Article 123(3) of the Organic Code of Military Justice of Venezuela, provides, *inter alia*, that the military criminal jurisdiction covers military violations committed by military or civilian personnel, jointly or individually; Article 128 provides that “in the cases to which Article 123(3) refers, if the common crime has been committed by military personnel and civilians, as principals or accomplices, all of the parties involved shall be submitted to the military jurisdiction.”

197. Article 384 of the aforesaid Code states that “[a] military offense is any act or omission declared as such by this Code.”

198. The Commission considers that the provisions which define military criminal jurisdiction in Venezuela, do not restrict trials by military courts to criminal offenses which, due to the nature of the military, criminal legal interests protected are strictly military and constitute serious offenses committed by members of the military who endanger such legal interests. In this regard, it should be recalled that the Inter-American Court found that such offenses “can only be committed by military members during the performance of specific duties related to the defense and external security of a State”¹⁸³.

199. The Commission also draws attention to what the Court found in the Palamara Iribarne case, in the sense that “in democratic States the jurisdiction of military criminal courts in peacetime has tended to be restricted, if not to disappear, whereby, where it has not, it should be reduced to the minimum and be inspired in the principles and guarantees prevailing in modern criminal law.”¹⁸⁴

200. Therefore, the Commission concludes that Mr. Usón was tried for crimes which, by definition, do not constitute violations of legally protected military interests subject to criminal-law protection.

201. The crime of insult to the armed forces as classified in the Organic Code of Military Justice does not identify possible perpetrators of the offense, but says simply that this may be any person, without distinction, who insults, offends, or disparages the armed forces or any of its units. It should also be mentioned that these latter terms are highly ambiguous and subjective, which inevitably leaves open the possibility of arbitrary interpretation.

202. In its respective reports on Venezuela for the years 2004 and 2005, the Commission has already noted the practice of private citizens being tried by military courts. According to the Venezuelan Program of Education-Action in Human Rights (PROVEA), more than 100 civilians have been subjected to military trial since October 2003.¹⁸⁵ In this connection, the Commission recommended that the Venezuelan State adopt expeditiously the measures needed to transfer to the

¹⁸³I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 132.

¹⁸⁴I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 132.

¹⁸⁵PROVEA, Situation of human rights in Venezuela. Annual Report October 2003 to September 2004, Caracas, 2004, p.391, as cited by the Commission in Annual Report of the Inter-American Commission on Human Rights 2004; Chapter IV Human Rights Developments in the Region. Follow-Up Report on Compliance by the State of Venezuela with the Recommendations Made by the IACHR in its Report on the Situation of Human Rights in Venezuela (2003), par. 194.

regular jurisdiction all those cases heard by the military courts in which the exceptional characteristics determined by the Inter-American Court do not strictly apply¹⁸⁶

203. For military tribunals to have such broad jurisdiction as they do in Venezuela, where they are granted powers to rule on cases that belong in the civilian courts and where conduct that can constitute a military offense is defined in broad and vague terms, is incompatible with Article 8(1) of the American Convention. On that basis, Mr. Usón Ramírez was tried by courts that were not competent.

204. Based on the foregoing, the IACHR concludes that the State violated Article 8(1) of the Convention, to the detriment of Mr. Francisco Usón, due to the fact that he was tried by courts that were not competent to do so and because the State violated the general duty to observe and ensure rights and freedoms set forth in Article 1(1) of the Convention.

2. Right to a hearing by an independent and impartial judge or tribunal

205. The Commission will now proceed to examine Mr. Usón's right to be heard by an impartial and independent judge or tribunal. To that end, the Commission must give particular consideration to the structure and composition of military courts in Venezuelan in peacetime.

206. Article 261 of the Constitution of the Bolivarian Republic of Venezuela provides that the military criminal jurisdiction is an integral part of the judicial branch, and its judges shall be selected by a competitive process. Its sphere of competence, organization and modes of operation shall be governed by the accusatory system and in accordance with the Organic Code of Military Justice. The commission of common crimes, human rights violations, and crimes against humanity shall be judged by the courts of the regular jurisdiction. The jurisdiction of military courts is limited to offenses of a military nature. Insofar as not provided for in the Constitution, special jurisdiction and the competence, organization and functioning of the courts shall be regulated by law.

207. According to Article 1 of the Venezuelan Organic Code of Military Justice, "military justice in the Republic is administered by the competent tribunals and authorities in the name of the Republic of Venezuela and by authority of the law."

208. The Code shows that the organic structure of the military system of justice in Venezuela in time of peace is composed of judges, auditors, prosecutors, defenders and clerks, all of whom must have Venezuelan nationality, have majority of age, not be on active duty, or retired by judicial decision or by disciplinary measure.¹⁸⁷ Positions in the military justice system are compulsory for members of the armed services, who shall only be excused in the circumstances expressly recognized by law.¹⁸⁸ Military jurisdiction is exercised, in peacetime, by the Supreme Court of Justice; the Court of Military Appeals; permanent courts-martial; and permanent military courts of first instance.¹⁸⁹

¹⁸⁶ IACHR, Annual Report of the Inter-American Commission on Human Rights 2004; Chapter IV Human Rights Developments in the Region. Follow-Up Report on Compliance by the State of Venezuela with the Recommendations Made by the IACHR in its Report on the Situation of Human Rights in Venezuela (2003), OEA/Ser.L/V/II.122 Doc. 5 rev. 1. February 23, 2005, pars. 174, 194 and 196; and Annual Report of the Inter-American Commission on Human Rights 2005, Chapter IV on Human Rights Developments in the Region, Venezuela, II. The Administration of Justice, The use of military courts for trying civilians, pars. 304-306. IACHR, OEA/Ser.L/V/II.124 Doc. 7 27 febrero 2006; pars. 304-306.

¹⁸⁷ Art. 23 Organic Code of Military Justice of Venezuela.

¹⁸⁸ Art. 24 Organic Code of Military Justice of Venezuela.

¹⁸⁹ Art. 27 Organic Code of Military Justice of Venezuela.

209. The latter shall function anywhere that, in the opinion of the President of the Republic, the good service of military justice might be required, as well as in their respective territorial jurisdictions.¹⁹⁰ They must be composed of serving military officers or lawyers assimilated into the armed forces who hold a minimum rank of captain or naval lieutenant. They shall serve for the entire period stipulated by the Constitution and be elected by the permanent court-martial at the beginning of each term or within eight days following promulgation of the decree creating the courts of first instance. Lawyers assimilated into the armed services shall be confirmed as such upon taking up their duties.¹⁹¹

210. The permanent court-martial, which is common to all the armed forces, has jurisdiction over all functions not accorded to military judges of first instance.¹⁹² The permanent court-martial is comprised of three members: two shall be officers with the minimum rank of major and, if possible, one of these shall be a naval officer. The third member may be a lawyer assimilated into the armed forces or an officer with the minimum rank of major.¹⁹³ They are elected by the Court of Military Appeals from a list of six officers and eight lawyers submitted by the Minister of Defense.¹⁹⁴

211. The Court of Military Appeals constitutes the second instance. It is composed of five regular and ten alternate members, who serve for the entire period stipulated by the Constitution. The requirements to sit on the Court of Military Appeals are to have Venezuelan nationality and be at least a field officer in the armed forces. Lawyers who have three years experience of legal practice may also serve on the Court of Military Appeals. The members of the court are selected by the Supreme Court of Justice from a list of 15 individuals (12 officers and three lawyers) submitted by the Minister of Defense.¹⁹⁵

212. The court of last resort in the military jurisdiction is the Supreme Court of Justice through its Criminal Cassation Chamber.¹⁹⁶

213. In the military criminal jurisdiction the position of the Attorney General is exercised by the Military Prosecutor General and other military prosecutors. They must be serving officers and be appointed by the President of the Republic for a term of one year, whereupon they may be reappointed. The positions of prosecutors shall be held by both army and naval officers.

214. The Organic Code of Military Justice provides that both the President of the Republic¹⁹⁷ and the Minister of Defense¹⁹⁸ are military judicial officials. Accordingly, they have powers to order the prosecution of generals and admirals in the armed forces.¹⁹⁹ The Minister of

¹⁹⁰ Art. 48 Organic Code of Military Justice of Venezuela.

¹⁹¹ Art. 49 Organic Code of Military Justice of Venezuela.

¹⁹² Art. 40 Organic Code of Military Justice of Venezuela.

¹⁹³ Art. 41 Organic Code of Military Justice of Venezuela.

¹⁹⁴ Art. 42 Organic Code of Military Justice of Venezuela.

¹⁹⁵ Arts. 31- 33 Organic Code of Military Justice of Venezuela.

¹⁹⁶ Art. 593 Organic Code of Military Justice of Venezuela.

¹⁹⁷ Art. 54 Organic Code of Military Justice of Venezuela.

¹⁹⁸ Art. 55 Organic Code of Military Justice of Venezuela.

¹⁹⁹ Arts. 54.1 and 55.2 Organic Code of Military Justice of Venezuela.

Defense may give the same order for all military officers unless this power has been granted to another judicial official.²⁰⁰

215. The Commission notes that the organic structure and composition of the military tribunals described in the preceding paragraphs result that, broadly speaking, their members are serving military personnel. The Code does not require that judges hold a law degree.

216. The Inter-American Court has held that the independence of any judge presumes that his appointment is the result of the appropriate process, that his position has a fixed term during which he will not be removed, and that there are guarantees against external pressures.²⁰¹ This has also been endorsed by the UN Basic Principles on the Independence of Judges.

217. With respect to impartiality, the Court has said that it is a fundamental guarantee of due process. In other words, the person on trial must have the guarantee that the judge or court presiding over his case brings to it the utmost objectivity. This way, courts inspire the necessary trust and confidence in the parties to the case and in the citizens of a democratic society.²⁰²

218. The Commission has determined previously that the requirement of impartiality "require[s] that a judge or tribunal not harbor any actual bias in a particular case, and that the judge or tribunal not reasonably be perceived as being tainted with any bias."²⁰³ In that same regard, the Inter-American Court has held that "[t]he impartiality of a tribunal requires that its members not have a direct interest, preset opinion, preference for any of the parties, or involvement in the dispute."²⁰⁴ This should be understood in the sense that members of courts of justice should have no preferences, sympathies, or inclinations that might cast doubt on the objectiveness of their decision in a given case.

219. The judge or court must withdraw from a case being heard thereby where there is some reason or doubt which is in detriment to the integrity of the court as an impartial body. For the sake of safeguarding the administration of justice, it must be ensured that the judge is free from any prejudices and that no doubts whatsoever may be cast on the exercise of jurisdictional functions.²⁰⁵

220. In the instant case, Mr. Usón Ramírez was tried and convicted in the military jurisdiction for the crime of gross insult to the armed forces. This means that the armed forces were, at once, the victims of the crime and judges with the task of determining the criminal liability of the alleged victim in the instant case. Given that the court that tried Mr. Usón Ramírez belonged to the armed forces, which institution considered itself the injured party in the crime with which he was charged, clearly the members of the courts had a direct interest when it came to making a decision in this case. Therefore, the military jurisdiction does not meet the requirement of objective impartiality imposed by international standards on human rights.

²⁰⁰ Art. 55.1 Organic Code of Military Justice of Venezuela.

²⁰¹ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 156.

²⁰² I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, par. 171.

²⁰³ IACHR, Report on Terrorism and Human Rights 2002, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2002; CHAPTER III; D.1.b, par. 229.

²⁰⁴ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par.146.

²⁰⁵ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 147.

221. Based on the foregoing, the Commission concludes that the State violated Article 8(1) of the Convention to the detriment of Mr. Francisco Usón Ramírez by reason of the fact that he was tried by courts that lacked the competence, impartiality, and independence to do so, and that it has breached the general obligation to observe and ensure rights and freedoms set forth in Article 1(1) of the Convention.

3. Due process guarantees in the military criminal proceeding instituted against Mr. Usón

222. Article 8(2)(c) of the Convention provides that:

Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

[...]

c) adequate time and means for the preparation of his defense.

223. Article 8(5) of the Convention provides that:

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

224. All the organs that exercise functions of a substantially jurisdictional nature have the obligation to adopt just decisions based on full respect for the guarantee of due process established in Article 8 of the American Convention.²⁰⁶

225. In addition to the broad powers that the military courts have to try civilians and examine offenses that are not of a military nature, as well as their lack of impartiality and independence, the Commission must also analyze the criminal proceeding to which Mr. Usón was subjected in order to determine if the guarantee of publicity was observed in the trial, as required by Article 8 of the Convention.

226. The Commission reiterates the Inter-American Court's position in the sense that one of the principal requirements that a criminal proceeding must meet is that it be public. The right to a public proceeding is protected by various international instruments as an essential element of the right to a fair trial.²⁰⁷ In the American Convention Article 8(5) provides that "[c]riminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice."

227. The right to a public trial as enshrined in Article 8(5) of the Convention is an essential element of accusatory criminal procedural systems in democratic states and is guaranteed by the oral stage of the proceedings, which is governed by the immediacy principle whereby the

²⁰⁶ I/A Court H.R., *Case of Yatama*. Judgment of June 23, 2005. Series C No. 127. par. 149; *Case of Ivcher Bronstein*, Judgment of February 6, 2001. Series C No. 74, par. 104; and I/A Court H.R., *Constitutional Court Case*. Judgment of January 31, 2001. Series C No. 71. par. 71.

²⁰⁷ Articles 10 and 11.1 of the Universal Declaration of Human Rights; Article 14.1 of the International Covenant on Civil and Political Rights; Article 6.1 of the European Convention on Human Rights; Article 21.2 of the Statute of the International Criminal Tribunal for the Former Yugoslavia; Article 20.2 of the Statute of the International Criminal Tribunal for Rwanda; and Articles 67.1 and 64.7 of the Rome Statute of the International Criminal Court.

accused may have immediacy with both the judge and the evidence, and which facilitates access to the proceedings by the public.²⁰⁸

228. The function of publicity in proceedings is to prevent the administration of justice in secret and expose it to the scrutiny of the public and the litigants. It also has to do with the need to ensure transparency and impartiality in decisions and is one of the means whereby confidence in the courts can be maintained²⁰⁹. Publicity specifically concerns access to information on the proceeding in the possession of the litigants as well as third parties.²¹⁰

229. It is a proven fact that the oral hearings held during Mr. Usón's criminal trial on October 6, 7, 8, and 11, 2004, took place behind closed doors. According to the decision of the Second Court of First Instance of Caracas, the exception to the publicity rule was in keeping with the provisions of Article 333 of the Organic Code of Criminal Procedure, for cases in which "good customs [could be] seriously disturbed, and official secrets put at risk". The decision was also justified with the argument that the regular courts were investigating the events that occurred at Fort Mara.

230. The record also shows that Mr. Usón's defense counsel objected to this measure. However, the objection was denied by the Permanent Court Martial. The measure was only lifted on the afternoon of October 11, by which time the oral stage of the oral hearings in the trial had concluded and the tribunal was preparing to deliver a verdict.

231. The Commission notes that by the time the hearings in Mr. Usón's trial were held the events at Fort Mara were already public knowledge. So much so, that they were being openly debated by various government and civil society representatives in the media. There is nothing in the record before the IACHR to indicate how the oral hearings would have revealed an official secret, disturbed good customs, or impaired the investigation into the fire.

232. The Commission believes it necessary to recall that oversight of criminal proceedings both by the litigants and by civil society through the publicity rule is a mechanism designed to prevent arbitrary acts and irregularities therein. Unless imperative reasons can be shown for suppressing this rule, everyone should be afforded the possibility of the monitoring and control by civil society that a public hearing guarantees. The Commission has already determined that in order to preserve public confidence in the courts and to protect litigants against the administration of justice in secret and without public scrutiny, due process standards require the trial process and the pronouncement of judgment to take place in public, save in exceptional circumstances in which the interests of justice strictly require otherwise.²¹¹

233. The Commission has found, with respect to publicity, that this right might conceivably be subject to suspension where limitations on public access to proceedings are demonstrated to be strictly necessary in the interests of justice. Considerations in this regard might include matters of security, public order, the interests of juveniles, or where publicity might

²⁰⁸ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 167, *Case of Lori Berenson Mejía*. Judgment of November 25, 2004. Series C No. 119; pars. 198-200; *Case of Cantoral Benavides*. Judgment of August 18, 2000. Series C No. 69; pars. 146 and 147; *Case of Castillo Petruzzi et al.*. Judgment of May 30, 1999. Series C No. 52, par. 172.

²⁰⁹ Eur. C.H.R., *Osinger v. Austria*, no. 54645/00, § 44, 24 March 2005; *Riepan v. Austria*, no. 35115/97, § 40, ECHR 2000-XII; and *Tierce and Others v. San Marino*, nos. 24954/94, 24971/94 and 24972/94, § 88, ECHR 2000-IX.

²¹⁰ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 168.

²¹¹ IACHR, Report on Terrorism and Human Rights of 2002, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2002; CHAPTER III; D.1.b, par. 238.

prejudice the interests of justice. Any such restrictions must, however, be strictly justified by the state concerned on a case by case basis and be subject to on-going judicial supervision.²¹²

234. The Commission notes that the Venezuelan authorities did not demonstrate the need, in this particular case, to restrict Mr. Usón's right to a public trial.

235. Furthermore, from May 22, 2004, until June 22, 2004, Mr. Usón and his attorneys were unable to access the proceedings carried out in the framework of the investigation opened against him because it was decided that "the proceedings should be conducted in complete secret" to prevent them from being "tainted, denied, or disproved by him; accordingly, their disclosure would result in obstruction of the investigation and object of the process."

236. From the start of the first proceedings in a criminal process, fair trial guarantees must be observed to the greatest extent possible in order to safeguard the right of a person charged with a crime to defend themselves throughout the process, in accordance with Article 8(2)(c) of the Convention. Therefore, to deny the possibility of being acquainted with all of the proceedings that comprise that procedural stage violates the right of defense of the accused recognized in Article 8 of the Convention.

237. In light of the above considerations, the Commission concludes that the State violated Article 8(5) of the Convention to the detriment of Mr. Francisco Usón and has breached the general duty to observe and ensure rights and freedoms provided by Article 1(1) of the Convention.

238. The case law of the inter-American system has established that protection of the individual against arbitrary exercise of public authority is a fundamental objective of international human rights protection.²¹³ In this regard, non-existence of effective domestic remedies places the individual in a state of defenselessness. Article 25(1) of the Convention sets forth, in broad terms, the obligation of the States to offer all persons under their jurisdiction an effective judicial remedy against acts that violate their basic rights.²¹⁴

239. The Commission has mentioned in an earlier part of the instant report that the State failed to ensure for Mr. Usón his right to a hearing by competent, independent, and impartial tribunals and disregarded certain fair-trial guarantees in the proceedings against him. Mr. Usón was removed from the jurisdiction of the regular courts and denied a hearing by a competent judge, as a result of which all of the motions that he filed against the military decisions that were ruled against him and impaired his rights were decided by military courts which did not offer the necessary guarantees of impartiality and independence and lacked jurisdiction.

240. The judicial authorities failed effectively to correct the procedural irregularities that affected the exercise of the right to a fair trial enshrined in Article 8 of the Convention by reiterating that the military courts had jurisdiction to try a civilian and failing to refer the proceedings to the

²¹² IACHR, Report on Terrorism and Human Rights of 2002, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2002; CHAPTER III; D.1.b, par. 250.

²¹³ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 183; *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, par. 130; *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, par. 239; and *Case of Baena Ricardo et al.*. Judgment of November 28, 2003. Series C No. 104, par. 78.

²¹⁴ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 184; *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, par. 195; *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, par. 92; *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, par. 130.

competent tribunals. The Commission notes that the Court of Cassation, a tribunal in the regular jurisdiction, had the opportunity to declare that it was competent to take up Mr. Usón's case and observe the right to a competent judge, but it confirmed the jurisdiction of the military courts.

241. Therefore, the Commission considers that the State has violated Mr. Usón Ramírez's right to judicial protection enshrined in Article 25 of the Convention.

242. Based on the foregoing, the Commission concludes that the State violated the due process guarantees recognized in Article 8 of the Convention at paragraphs 1, 2(c) and 5, as well as the right to judicial protection established by Article 25 of the aforesaid treaty, to the detriment of Mr. Francisco Usón and, furthermore, has breached the general duty to observe and ensure rights and freedoms contained in Article 1(1) of the Convention.

E. Duty to adopt Domestic legal effects (Article 2 of the Convention)

243. Article 2 of the Convention provides that

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

244. Pursuant to Article 2 of the Convention, the duty of the State to adapt its domestic laws to the Convention implies the adoption of measures following two main guidelines, to wit: i) the annulment of laws and practices of any kind whatsoever that may imply the violation of the rights protected by the Convention, and ii) the passing of laws and the development of practices tending to achieve an effective observance of such guarantees.²¹⁵

245. Bearing in mind the contents of the preceding chapters, it remains for the IACHR to analyze the duty of the State to comply with the obligations set forth in Article 2 of the Convention with respect to the military laws applied to Mr. Usón Ramírez. The Commission will examine this aspect insofar as the Code of Military Justice is concerned, in connection both with the crime with which the victim was charged and with the jurisdiction of the military courts.

1. The crime of contempt [*desacato*] in Venezuela

246. The Commission believes that the criminal-law provisions contained in the Organic Code of Military Justice that were applied in the military judicial proceeding pursued against Mr. Usón Ramírez lack a legitimate purpose and unnecessarily and disproportionately restrict freedom of thought and expression on the grounds of protecting the reputation of the armed forces.²¹⁶ Their mere existence deters individuals from expressing opinions critical of the authorities, given the threat of criminal penalties of up to eight years of imprisonment.²¹⁷

²¹⁵ I/A Court H.R., *Case of Almonacid Arellano*. Judgment of September 26, 2006 Series C No. 154, par. 118; *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, par. 83; *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par. 91; and *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, par. 109.

²¹⁶ See in this regard IACHR, Annual Report of the Inter-American Commission on Human Rights 1994, OEA/Ser.L/V/II.88 Doc. 9 rev., February 17, 1995, Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights.

²¹⁷ The Commission has sustained this in several reports. See IACHR, Annual Report of the Inter-American Commission on Human Rights 1994. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights. OEA/Ser.L/V/II.88 Doc. 9 rev., February 17, 1995. See also IACHR, Annual Report of the

247. The Commission notes with concern that despite consensus among American States with regard to the need to repeal contempt laws, in recent years the State of Venezuela has amended its laws to increase the severity of penalties for these offenses and widen the protection against them to include public officials not previously specifically protected in the Criminal Code.²¹⁸ The Law on Partial Reform of the Criminal Code of Venezuela entered into force on March 16, 2005.²¹⁹

248. In this connection, the IACHR and various agencies for protection of human rights and freedom of expression²²⁰ expressed their concern at the excessively broad range of possible victims of the offense recognized in these articles and their incompatibility with the right to freedom of expression.²²¹

249. As mentioned, in the Palamara Iribarne case, the Inter-American Court, in ruling on the laws that criminalize criticism of the state and its officials, ordered the State of Chile to amend provisions on contempt contained in the Code of Military Justice that had not been enforced in the case in question. Thus, based on the facts in a particular case in which contempt rules contained in the Criminal Code were enforced, the Court examined all Chilean legislation that criminalized any conduct, regardless of its different names, that constituted contempt [*desacato*], and instructed the State to amend any laws that criminalized it, regardless of whether or not they had been applied in the case in question.

250. The Commission has held since 1995 that laws that punish criticism of public officials are not compatible with the American Convention and it has consistently recommended their abolition to OAS member states.²²² In that same regard, the IACHR has previously recommended to Venezuela that it make its laws consistent with the recommendations contained in the case law of the inter-American system and in the Declaration of Principles on Freedom of Expression that set the standards for interpretation of Article 13 of the American Convention.²²³

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Inter-American Commission on Human Rights 1998. Volume III: Annual Report of the Special Rapporteur for Freedom of Expression, Chapter IV: Laws on Contempt, Compulsory Membership, and Murder of Journalists. OEA/Ser.L/V/II.102 Doc. 6 rev. April 16, 1999; Annual Report of the Inter-American Commission on Human Rights 2000. Annual Report of the Office of the Special Rapporteur for Freedom of Expression 2000. Chapter III: Legislation and Freedom of Expression: Overview of the Legislation of Member States, 2. Desacato, or Contempt, Laws. OEA/Ser.L/V/II.111 doc. 20 rev., April 16, 2001.

²¹⁸ The IACHR expressed its concern at this situation in Annual Report of the Inter-American Commission on Human Rights 2005; Volume II Annual Report of the Office of the Special Rapporteur for Freedom of Expression; OEA/Ser.L/V/II.124 Doc. 7, February 27, 2006. par. 227.

²¹⁹ Official Gazette of the Bolivarian Republic of Venezuela, Caracas, Wednesday, March 16, 2005; No. 5763, Special Supplement; pp. 1-4.

²²⁰ According to Annual Report of the IACHR 2003, PROVEA filed five amparo actions so that the Ombudsman. Press release of the Inter-American Press Association (IAPA) of February 2, 2005, available at <http://www.sipiapa.com/espanol/pressreleases/srchcountrydetail.cfm?PressReleaseID=1299>; and press release of Human Rights Watch of March 24, 2005, available at <http://hrw.org/spanish/press/2005/venezuela.html>.

²²¹ Press Release 118/05 of March 28, 2005 of the IACHR Office of the Special Rapporteur for Freedom of Expression. Annual Report of the Inter-American Commission on Human Rights 2005; Volume II Annual Report of the Office of the Special Rapporteur for Freedom of Expression, par. 227.

²²² IACHR, Annual Report of the Inter-American Commission on Human Rights, 2004. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights. In this connection see also IACHR, Report 90/05. Case 12.142. Alejandra Marcela Matus. Chile. October 24, 2005, par. 42; Report 124/06, Case 11.500, Tomás Eduardo Cirio (Uruguay) October 29, 2006, par. 74.

²²³ IACHR, Annual Report of the Inter-American Commission on Human Rights 2006; Chapter IV Human Rights Developments in the Region. Report on follow-up on implementation by the State of the Bolivarian Republic of Venezuela of

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251. Based on those same considerations, in the instant case the Commission believes that the State should abolish all contempt laws so as not to restrict freely expressed criticism about the activities of government bodies and their members. The criminal conviction imposed on the victim in the instant case shows that the law does not ensure the right to free expression of criticism of the actions of government authorities, without fear of reprisal, and actually results in the deprivation of liberty of individuals.²²⁴

252. The Commission notes that Article 5 of the Organic Code of Military Justice establishes an excessively open criminal classification that permits a broad and vague interpretation of what it might constitute. The reason for this is that conduct classed as “insult[ing], disparag[ing], and offen[sive]” to the institution of the armed forces is not properly described and it is impossible to determine its scope and limits with any precision. It is also cause for concern that, considering its ambiguity and vagueness, this provision imposes a prison sentence of eight years.

253. In this connection, “the human rights organs of the inter-American system have [...] interpreted the principle of legality as requiring crimes to be defined in unambiguous terms. According to this requirement, crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offense. This in turn requires a clear definition of the criminalized conduct, establishing its elements and the factors that distinguish it from behaviors that are either not punishable offenses or are punishable by other penalties. As the Inter-American Court has observed, ‘[a]mbiguity in describing crimes creates doubts and the opportunity for abuse of power, particularly when it comes to ascertaining the criminal responsibility of individuals and punishing their criminal behavior with penalties that exact their toll on the things that are most precious, such as life and liberty.’”²²⁵

254. The Commission is forced to admit concern at the observations of the Second Court of First Instance –which were ratified by superior instances– that

“[State institutions] cannot be left defenseless against this abuse of freedom of expression, which signifies - at least in the case of Venezuela - that reality prevents the abolition of “contempt [*desacato*] laws,” which, to some extent, act as a barrier against abusive and disrespectful exercise of freedom of expression and against this situation which places the State and, we might even say, the independence of the country, at risk. The recommendations to that effect [of the Inter-American Commission on Human Rights on contempt laws] cannot be binding for Venezuela [...]. Any comment that seeks to weaken the Armed Forces and the Citizen Security Bodies, national security factors, may also incur liability under the law [...]”²²⁶

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the recommendations of the IACHR in the report on the situation of human rights in Venezuela of 2006, OEA/Ser.L/V/II.127Doc. 4 rev., March 13, 2007, par. 252.

²²⁴ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 92. In fact, the Court adopted this decision in spite of the fact that at the time the judgment was issued the State had already repealed and amended the criminal laws on contempt that had been enforced in Mr. Palamara Iribarne’s case. In this regard, the reformed Chilean Criminal Code continued to recognize the crime of intimidation [*amenaza*] such that its classification, even though it went by a different name, permitted repression of conduct that was previously banned under the concept of contempt. Consequently, the Inter-American Court also ordered modification of the crime of intimidation which had been left on the Chilean law books even after the Criminal Code was amended.

²²⁵ IACHR; Report on Terrorism and Human Rights 2002, OEA/Ser.L/V/II.116 Doc. 5 rev. 1 corr. October 22, 2002, par. 225. See also I/A Court H.R.; *Case of Ricardo Canese*. Judgment of August 31, 2004. Series C No. 111, par. 174; and *Case of Baena Ricardo et al.*. Judgment of February 2, 2001. Series C No. 72. par. 108.

²²⁶ *Supra*, par. 109.

255. The Commission must draw attention to the fact that Venezuela signed and ratified the American Convention on Human Rights. Consequently, it accepted the treaty obligations set forth in the Convention with respect to all persons subject to its jurisdiction without any discrimination. Like the other States Parties to the Convention, it accepted the obligations precisely in the exercise of its sovereignty. Therefore it obligated itself, also in the exercise of its sovereignty, to participate in proceedings before the Commission and the Court and to assume the obligations that derive from them and from the general application of the Convention.²²⁷

256. Both in the *Robles* Case and the *Cirio* Case, the Commission has found that the Armed Forces have frequently made use of the military justice system and instituted proceedings for “insults” or slander to cover up crimes committed by their members, holding that allegations of criminal acts constitute “slandorous phrases” or “insults”. In this way, the Military Justice system has been used to repress criticism, opinions and denunciations about the actions of its officers and the crimes they have committed. To this end, the Military Justice system has made particular use of the crimes of undermining the Armed Forces and of insulting a superior.²²⁸

257. Accordingly, the IACHR believes it is up to lawmakers to avoid the criminalization of conduct that is lawful and entails the legitimate exercise of a right, and that it is up to the courts to avoid interpreting criminal classifications in such a way that results in the penalization of lawful behavior.

258. By keeping in its domestic legal code laws that run counter to the rights protected in Article 13 of the Convention, Venezuela has violated the general obligation to adapt domestic legal effects under Article 2 of the Convention.

2. Military Jurisdiction

259. In preparing the instant report, the Commission concluded that various articles in the Organic Code of Military Justice grant excessively broad powers to military tribunals, even enabling them to try civilians and to take up crimes that are not strictly military in nature. By the same token, in its analysis in connection with Article 8 in the instant report, the Commission found that the power granted to the military tribunals in this respect runs contrary to obligations set forth in the American Convention.

260. As to the need to bring domestic law in line with international standards on military criminal jurisdiction, as determined by the case law of the Inter-American Court in the *Palamara Iribarne* case, the IACHR believes that should the State consider that having military criminal courts is necessary, their jurisdiction should be restricted only to crimes committed by active-service military personnel in the course of their functions. Therefore, through its own domestic laws, the State is required to set limits to the *ratione materiae* and *ratione personae* competence of military courts, so that under no circumstance may a civilian be subjected to the jurisdiction of military courts.²²⁹

261. Furthermore, within the military criminal jurisdiction, court members shall meet the competence, impartiality and independence requirements stated in paragraphs 215 to 241 of this

²²⁷ See, in this respect, I/A Court H.R., *Case of Cesti Hurtado*. Judgment of September 29, 1999. Series C No. 56, par. 169.

²²⁸ IACHR, Report 20/99, Case 11.317, Rodolfo Robles and sons (Peru). February 23, 1999, par.151; Report 124/06, Case 11.500, Tomás Eduardo Cirio (Uruguay) October 29, 2006, par. 72.

²²⁹ I/A Court H.R., *Case of Palamara Iribarne*. Judgment of November 22, 2005. Series C No. 135, par. 256.

report. Moreover, the State is to guarantee due process of law before the military criminal courts and judicial protection in the context of proceedings before military authorities, as mentioned hereinabove.

262. By keeping on its statute books laws that run counter to the rights protected in Article 8(1) of the Convention, Venezuela has violated the general obligation to adapt domestic legal provisions under Article 2 of the Convention.

263. Furthermore, the Commission should mention that when the legislative branch fails to set aside -or adopts- laws which are contrary to the American Convention, the judicial branch is bound to honor the obligation to respect rights as stated in Article 1(1) of said Convention and, consequently, must refrain from enforcing any laws contrary thereto.²³⁰

264. The implementation by state agents or officials of any law that violates the Convention engages the international responsibility of the State, and it is a basic principle of the law on the international responsibility of states, recognized in international human rights law, that states bear international responsibility for the acts or omissions of any of their branches of government or bodies that violate recognized international rights, in accordance with Article 1(1) of the American Convention.²³¹

265. In the instant case, the Venezuelan military authorities should have refrained, in keeping with the obligation to ensure rights, from enforcing the criminal provisions on insult to the Armed Forces as they are classified at present, in order to punish the expression of opinions or dissemination of information concerning a state institution.

266. By the same token, the military courts should also have refrained from taking up the criminal action against Mr. Usón and referred it to the regular courts. Failing that, the Court of Cassation should have annulled the criminal proceeding due to the fact that its pursuit was in violation of standards contained in the American Convention.

267. Based on the foregoing, the Commission concludes that Venezuela has breached its duty to adapt its domestic laws to the object and purpose of the American Convention by keeping in its law books domestic provisions that unreasonably restrict the free circulation of opinions about state institutions and officials, as well as rules that contravene the right to a hearing by a competent, impartial, and independent judge, in contravention of Article 2 of the aforesaid treaty and in breach of its obligation to ensure the exercise of the rights to freedom of expression and a fair trial under the terms of Article 1(1) of the Convention.

VIII. REPARATIONS AND COSTS

268. Based on the facts alleged in the instant application and on the consistent case law of the Inter-American Court, which holds that "it is a principle of International Law that all violations to an international obligation that have caused harm generate an obligation to adequately redress said harm,"²³² the IACHR presents to the Court its submissions on the reparations and costs

²³⁰ See in this regard, I/A Court H.R., *Case of Almonacid Arellano et al.*. Judgment of September 26, 2006. Series C No. 154, par. 123.

²³¹ I/A Court H.R., I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149. par. 172; and *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, par. 140.

²³² I/A Court H.R. *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C, No. 162, par. 199; I/A Court H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, par. 413; I/A Court H.R. *Case of Dismissed Congressional Employees (Aguado - Alfaro et al.)* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C, No. 158, par. 141.

imputable the Venezuelan State as a consequence of its responsibility for the violations committed to the detriment of the victim.

269. In view of the Rules of Procedure of the Honorable Court, which provide for the possibility of autonomous representation, the Commission will only address here general criteria regarding reparations and costs that it believes it would be appropriate for the Honorable Court to apply in the instant case. The Commission understands that it is up to the victims and their representatives to specify their claims under Article 63 of the Convention and Article 23 and related provisions of the Rules of Procedure of the Court.

A. Obligation to make reparation

270. An essential function of justice is to remedy the harm caused to the victim. This function should be expressed through rectification or restitution and not simply through compensation, which does not restore the moral balance or return what was taken.

271. Article 63(1) of the American Convention provides that,

[i]f 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.

272. As the Court has consistently found,

Article 63(1) of the American Convention contains a rule of customary law that is one of the fundamental principles of contemporary international law as regards State responsibility. Thus, when an unlawful act is imputed to a State, that State immediately incurs responsibility for violation of the international norm in question and the consequent duty to make reparations and put an end to the consequences of that violation.²³³

273. Reparation is critical to ensure that justice is served in an individual case and is the mechanism by which the decision of the Court is raised beyond the sphere of moral condemnation. Reparations are those measures that tend to make the effects of past violations disappear. Reparation of the damage caused by infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which entails reestablishing the previous situation.

274. This obligation to provide reparation is regulated in all its aspects by international law (scope, nature, manner, and determination of beneficiaries) and cannot be modified by the State nor can it refuse to comply by invoking domestic legal provisions.²³⁴

²³³ I/A Court H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006 Series C No. 162, par. 200; I/A Court H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 414; I/A Court H.R., *Case of Montero-Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, par. 116.

²³⁴ I/A Court H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006 Series C No. 162, par. 200; I/A Court H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 415; I/A Court H.R. *Case of Dismissed Congressional Employees (Aguado - Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, par. 143.

275. In the instant case, the Inter-American Commission has shown that the State incurred its international responsibility by violating the victim's rights to personal liberty, a fair trial, freedom of expression, and judicial protection, as well as through its failure to meet its obligation to respect and ensure human rights and adopt domestic legal provisions, as a result of his trial by a military tribunal that sentenced him to five years and six months of imprisonment for the offense of insult to the national armed forces, due to statements made by the victim concerning a matter of public interest and debate.

B. Reparation measures

276. The UN Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms has divided the components of that right into four general categories: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²³⁵ In the opinion of the United Nations Special Rapporteur on the impunity of perpetrators of human rights violations, these measures include: the cessation of continuing violations; verification of the facts and full and public disclosure of the truth; an official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim; an apology, including public acknowledgement of the facts and acceptance of responsibility, judicial or administrative sanctions against persons responsible for the violations; the prevention of further violations, etc.

277. For its part, the Court has noted that reparation measures are intended to eliminate the effects of the violations that were committed.²³⁶ Such measures cover the various ways a State can redress the international responsibility it has incurred, which, according to international law consist of restitution, compensation, rehabilitation, satisfaction, and guarantees that the violations will not be repeated.²³⁷

278. Furthermore, the UN Commission on Human Rights has found that,

[i]n accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²³⁸

²³⁵ Basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to decision 1995/117 of the Sub-Commission on Human Rights. E/CN.4/ sub.2/1997/17.

²³⁶ I/A Court H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C, No. 162, par. 202; I/A Court H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, par. 416; I/A Court H.R. *Case of Dismissed Congressional Employees (Aguado - Alfaro et al.)*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C, No. 158, par. 144.

²³⁷ See United Nations, *Final report submitted by Theo Van Boven, Special Rapporteur for Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Humanitarian Law, E/CN.4/Sub.2/1990/10, July 26, 1990*. See also, I/A Court H.R., *Blake Case. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of January 22, 1999, Series C No. 48, par. 31; *Suárez Rosero Case, Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of January 20, 1999, Series C No. 44, par. 41.

²³⁸ United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees: Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117 of May 24, 1996, par. 7.

279. In consideration of the criteria established by inter-American and universal jurisprudence, the Commission presents its conclusions and claims regarding the measures of redress for the material and nonmaterial damages and other forms of redress and satisfaction applicable in the case at hand.

1. Compensation measures

280. The Court has established basic guidelines on just compensation designed to provide adequate and effective financial reparation for injuries suffered as a result of human rights violations. Furthermore, the Court has found that the payment of damages is merely compensatory in nature and should be provided to the extent and in the measure necessary to make good both the material and the non-pecuniary losses caused.²³⁹

1.1. Material damages

281. In its case law on reparations, the Court has consistently held that material damages include consequential damages and lost earnings, as well as any non-pecuniary damages or moral injury to the victims and to their family in certain cases.²⁴⁰

282. Consequential damages have been defined as the direct and immediate financial consequences of violations. This category includes immediate and direct capital impairment caused by such violations.²⁴¹ For their part, lost earnings are defined as financial income or benefits that cease to accrue as a result of a particular act and which may be quantified based on certain measurable and objective indicators.²⁴²

283. As the evidence in the case shows, the victim made financial efforts to obtain justice at the domestic level and to surmount the physical, moral and professional consequences that the facts in the instant case caused him, which include loss of income on account of his imprisonment. The harm caused to the victim justifies the Commission's request that the Court, in consideration of the nature of the case, order payment of compensation for material damages.

1.2. Non-pecuniary damages

284. In the instant case, the existence of moral injuries is an inevitable consequence of the nature of the violations that were perpetrated against the victim, who has had his rights restricted and reputation tarnished, as well as being indicted, convicted, and imprisoned, as a consequence of exercising his freedom of expression. Furthermore, in spite of the fact that Mr.

²³⁹ I/A Court H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006 Series C No. 162, par. 210; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.* Judgment of June 21, 2002. Series C No. 94, par. 204; I/A Court H.R., *Case of Garrido and Baigorria*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of August 27, 1998, Series C No. 39, par. 41.

²⁴⁰ I/A Court H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006 Series C No. 162, pars. 213 and 214; I/A Court H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, par. 423; I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114.

²⁴¹ I/A Court H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006 Series C No. 162, par. 215; I/A Court H.R., *Case of Loayza Tamayo*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, par. 147; and I/A Court H.R., *Case of Aloeboetoe et al.* Reparations (Art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, par. 50.

²⁴² See, for example, I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C, No. 117, par. 105 *et seq.*; I/A Court H.R., *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C, No. 115, pars. 151 and 152.

Usón recently regained his liberty, this is subject to a series of conditions, one of which is a prohibition from exercising his right to express himself. All of the foregoing has had consequences for Mr. Usón's personal and professional life, in view of which the Commission requests that the Court, in consideration of the nature of the case, order payment of compensation for non-pecuniary damages.

2. Cessation, satisfaction and guarantees of non-repetition

285. Satisfaction is understood as those measures that the perpetrator of a violation must adopt in accordance with international instruments or customary law in order to acknowledge the commission of a wrongdoing.²⁴³ Satisfaction occurs when three actions are carried out, generally in an accumulative manner: apologies, or any other gesture that shows recognition of the authorship of the act in question; the prosecution and punishment of those responsible; and the adoption of measures to avoid repetition of the damage.²⁴⁴

286. The IACHR will now establish its position with respect to cessation, satisfaction and guarantees of non-repetition required in the instant case, without prejudice to subsequent expansion of its arguments on this subject.

287. First, Venezuela should adopt measures to ensure the cessation of the violations. Said measures should include all those necessary to prevent the continuation or repetition of the undue restrictions or direct or indirect obstructions of the exercise of the right to freedom of expression examined in this case. The Commission believes that the State should take all the necessary measures so that Mr. Francisco Usón might enjoy his personal freedom without undue conditions as soon as possible. It should also adopt all such judicial, administrative, and other measures as may be necessary to completely vacate all military criminal proceedings instituted against the victim, together with any decisions adopted therein; strike the criminal record from the appropriate registry, and remove any implications thereof, irrespective of their nature.

288. Finally, the Commission considers that the State has the obligation to prevent the recurrence of human rights violations such as the ones in this instance. Consequently, the Commission request the Court to order the Venezuelan State to adapt its system of laws in order to make it consistent with the rights recognized at Articles 13, 7, 8, and 25 of the American Convention.

C. Beneficiaries

289. Article 63(1) of the American Convention requires reparation of the consequences of a violation and "that fair compensation be paid to the injured party." The persons who are entitled to said compensation are usually those directly injured by the events of the violation in question. In the instant case, in the opinion of the Commission, the injured parties and, therefore, beneficiaries of the redress to be ordered by the Court are the victim, Mr. Francisco Usón Ramírez; his wife, María Eugenia Borges de Usón; and their daughter, María José Usón Borges.

D. Costs and expenses

290. Based on the consistent case law of the Court, it should be understood that costs and expenses are included in the concept of reparation embodied in Article 63(1) of the American

²⁴³ Brownlie, *State Responsibility*, Part 1. Clarendon Press, Oxford, 1983, p. 208.

²⁴⁴ *Idem.*

Convention, because the activities carried out by the victims, their successors or their representatives to access international justice imply disbursements and commitments of a financial nature that should be compensated.²⁴⁵ The Court has also considered that the costs referred to in Article 55(1)(h) of the Rules of Procedure include the necessary and reasonable expenses that the victim or victims incur in order to have access to the supervisory bodies of the American Convention, and among such expenses are the fees of those who provide legal assistance. In the instant case the IACHR requests the Court, once it has heard the victims' representatives, to order the Venezuelan State to pay the costs and fees duly substantiated.

IX. CONCLUSION

291. Based on the foregoing considerations of fact and law, the Inter-American Commission concludes that the Venezuelan State is responsible for violation of the rights to freedom of thought and expression, personal liberty, a fair trial, and judicial protection provided in Articles 13, 7, 8, and 25 of the American Convention, in connection with Articles 1(1) and 2 thereof, to the detriment of Mr. Francisco Usón Ramírez.

X. PETITIONS

292. In light of the foregoing, the Inter-American Commission requests that the Court order that the Venezuelan State:

- a. Adopt all such judicial, administrative, and other measures as may be necessary to completely vacate all military criminal proceedings instituted against the victim, together with any decisions adopted therein; strike the criminal record from the appropriate registry, and remove any implications thereof, irrespective of their nature.
- b. Adopt all such measures as may be necessary for Mr. Francisco Usón Ramírez immediately to be granted permanent and unconditional release.
- c. Adapt its system of laws in order to make it consistent with Articles 13, 7, 8 and 25 of the American Convention, in keeping with the findings in the instant case.
- d. Adopt all necessary measures for the adequate reparation and mitigation of the emotional and material harm caused to the injured party.
- e. Pay the court costs and legal expenses incurred by the victim and his representatives in pursuing this case, both at the domestic level and in the inter-American jurisdiction.

²⁴⁵ I/A Court H.R. *Case of La Cantuta*. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C, No. 162, par. 243; I/A Court H.R. *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C, No. 160, par. 455; I/A Court H.R. *Case of Dismissed Congressional Employees (Aguado - Alfaro et al.)*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2006. Series C, No. 158, par. 152.

XI. SUPPORTING EVIDENCE

A. Documentary evidence

293. The IACHR encloses a list of the documentary evidence available in the instant case.

Annex 1. Communication of April 10, 2007, from María Eugenia Usón to the IACHR.

Annex 2. Service Record of Francisco Usón Ramírez provided by the Army Personnel Office (Case No. FM-005/2004, Vol. 2).

Annex 3. Newspaper article entitled "Ensañamiento contra el General" [General victimized], published in El Universal of October 24, 2004, available at: <http://infovenezuela.org/attachments-spanish/T5%20ST04b%20N1%20Caso%20Francisco%20Usón.pdf>.

Annex 4. Testimony of Mr. Usón at the hearing held on October 7, 2004 (Case No. FM-005/2004, Vol. 4).

Annex 5. Certificate of residence of July 16, 2004 (Case No. FM-005/2004, Vol. 3).

Annex 6. Purchase agreement (Case No. FM-005/2004, Vol. 2).

Annex 7. Copy of marriage certificate (Case No. FM-005/2004, Vol. 3).

Annex 8. Birth certificate of María José Usón Borges (Case No. FM-005/2004, Vol. 3).

Annex 9. Presidential Decree 1731, by which General Francisco Usón was appointed Alternate Governor to the International Monetary Fund, published in Official Gazette of the Bolivarian Republic of Venezuela No. 3.7414 of April 2, 2002, available at: <http://www.tsj.gov.ve/gaceta/abril/020402/020402-37414-01.html>.

Annex 10. Presidential Decree 1732, by which General Francisco Usón was appointed Alternate Governor to the World Bank, published in Official Gazette of the Bolivarian Republic of Venezuela No. 3.7414 of April 2, 2002, available at: <http://www.tsj.gov.ve/gaceta/abril/020402/020402-37414-01.html>.

Annex 11. Presidential Decree 1733, by which General Francisco Usón was appointed Alternate Governor to the Inter-American Development Bank, published in Official Gazette of the Bolivarian Republic of Venezuela No. 3.7414 of April 2, 2002, available at: <http://www.tsj.gov.ve/gaceta/abril/020402/020402-37414-01.html>.

Annex 12. Presidential Decree 1690, by which General Francisco Usón was appointed Minister of Finance, published in Official Gazette of the Bolivarian Republic of Venezuela No. 37.392 of February 26, 2002, available at: <http://www.tsj.gov.ve/gaceta/febrero/260202/260202-37392-01.html>.

Annex 13. Letter of December 2, 2002, from Mr. Usón Ramírez to the Minister of Defense (Case No. FM-005/2004, Vol. 4).

Annex 14. Newspaper article entitled "La Revolución Pacífica se cerró con sangre y dolor" [Peaceful Revolution ends in bloodshed and anguish], published in El País of April 12, 2002, available at <http://www.ultimasnoticias.com.ve/ediciones/2002/04/12/p2n1.htm>.

Annex 15. Newspaper article entitled "Chávez renunció después de un día de caos y violencia en Venezuela" [Chávez resigns after a day of chaos and violence in Venezuela], published in La Jornada of April 12, 2002, available at <http://www.jornada.unam.mx/2002/04/12/036n1mun.php?origen=mundo.html>.

Annex 16. Newspaper article entitled "Al menos 14 personas han muerto, entre ellas un español, en una jornada sangrienta" [Bloody day leaves at least 14 dead, including one Spaniard], published in La Razón of April 12, 2002.

Annex 17. Human Rights Foundation; "Francisco Usón: A Political Prisoner and a Prisoner of Conscience of the Venezuela Government since May 22, 2004". Report published on December 11, 2006.

Annex 18. Certificate of good conduct issued by the Municipality of Sucre (Case No. FM-005/2004, Vol. 3).

Annex 19. Letter of January 27, 2003, from Mr. Usón Ramírez to the Minister of Defense (Case No. FM-005/2004, Vol. 4).

Annex 20. Resolution of May 22, 2004, of the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas (Case No. FM-005/2004, Vol. 1).

Annex 21. Resolution of the Ministry of Defense of May 30, 2003 (Case No. FM-005/2004, Vol. 4).

Annex 22. Judgment No. 01574 of October 15, 2003, of the Political and Administrative Chamber of the Supreme Court of Justice on the motion for annulment, constitutional relief, and suspension of resolution No. DG-21141 of May 30, 2003 (Case No. FM-005/2004, Vol. 3).

Annex 23. Judgment No. 02856 of December 12, 2006, of the Political and Administrative Chamber of the Supreme Court of Justice on the motion for annulment of resolution No. DG-21141 of May 30, 2003. Attached to the petitioners' brief of June 14, 2007.

Annex 24. On-site inspection of the Maracaibo Fire Department of March 31, 2004 (Case No. FM-005/2004, Vol. 1).

Annex 25. Newspaper article entitled "Fiscalía no ha dictado acto conclusivo sobre Fort Mara" [Prosecutor's office yet to reach final decision on Fort Mara] published on August 30, 2004 in El Nacional newspaper (Case No. FM-005/2004, Vol. 4).

Annex 26. Newspaper article entitled "Soldado Pedreñaz habló y desata polémica sobre el caso de Fort Mara" [Private Pedreñaz speaks and sparks controversy about the Fort Mara case] (Case No. FM-005/2004, Vol. 1).

Annex 27. Newspaper article entitled "Factores de Poder" [Power Factors], published in El Universal newspaper of April 15, 2004 (Case No. FM-005/2004, Vol. 3).

Annex 28. CONATEL certificate of August 10, 2004 (Case No. FM-005/2004, Vol. 3) enclosing a DVD labeled "Entrevista".

Annex 29. Transcript of the program La Entrevista of April 16, 2004 (Case No. FM-005/2004, Vol. 4).

- Annex 30.** Video of the program La Entrevista of May 10, 2004.
- Annex 31.** Order No. MD-SG-2204/222 of May 10, 2004 (Case No. FM-005/2004, Vol. 1).
- Annex 32.** Resolution of May 11, 2004 of the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas (Case No. FM-005/2004, Vol. 1).
- Annex 33.** Request for pre-trial detention of May 21, 2004, from the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas (Case No. FM-005/2004, section on "Applicability of pre-trial detention, Vol. 1).
- Annex 34.** Warrant of Arrest of May 21, 2004, issued by the Permanent Military Tribunal of First Instance of La Guaira (Case No. FM-005/2004, Vol. 1).
- Annex 35.** Official Letter No. DGIM-005-1923 of May 22, 2004 and Official Letter No. 057.04 of May 22, 2004 (Case No. FM-005/2004, Vol. 1).
- Annex 36.** Communication No. GN-CR8-EM-DO-DS- 1396 of May 22, 2004 from Regional Commander No. 8 and Police Record No. GN-CR-8-1395 (Case No. FM-005/2004, Vol. 1).
- Annex 37.** Newspaper article entitled "Perseguidos" [Persecuted], published in El Nacional newspaper of June 6, 2004.
- Annex 38.** Testimony of Mr. Usón to the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 1).
- Annex 39.** Newspaper articles entitled "Detuvieron en Puerto Ordaz al General Francisco Usón" [General Francisco Usón arrested in Puerto Ordaz] and "La captura ocurrió en el aeropuerto de Puerto Ordaz. Detenido y trasladado a la DIM general Francisco Usón Ramírez" [Arrested at airport in Puerto Ordaz. General Francisco Usón detained and taken to the DIM], and "Detenido en el Puerto Ordaz el general Francisco Usón" [General Francisco Usón arrested in Puerto Ordaz]: published in El País (Case No. FM-005/2004, Vol. 1).
- Annex 40.** Newspaper article entitled "Cinco años por opinar" [Five years for an opinion], published in El Universal of October 24, 2004.
- Annex 41.** Newspaper article entitled "Ensañamiento contra el General" [General victimized], published in El Universal of October 24, 2004.
- Annex 42.** Press article entitled "Venezolano encarcelado por expresar su opinión; dos atentados" [Venezuelan jailed for expressing opinion; two attacks], published in Venezuela Real, December 14, 2006.
- Annex 43.** Form signed by Mr. Usón on May 22, 2004 (Case No. FM-005/2004, Vol. 1).
- Annex 44.** Case history of Military Hospital in Puerto Ordaz (Case No. FM-005/2004, Vol. 1).
- Annex 45.** Newspaper article entitled "Detenido y Traslado a la DIM el General Francisco Usón Ramírez" [General Francisco Usón detained and taken to the DIM], published in El Universal of May 23, 2004, available at http://buscador.eluniversal.com/2004/05/23/pol_art_23106D.shtml.

Annex 46. Official Letter No. 287 to Army Colonel Director of the Bureau of Intelligence and Prevention Services (DISIP) of May 23, 2004 (Case No. FM-005/2004, Vol. 1).

Annex 47. Resolution of the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas of May 22, 2004 (Case No. FM-005/2004, Vol. 1).

Annex 48. Resolution of the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas of June 6, 2004 (Case No. FM-005/2004, Vol. 1).

Annex 49. Motion to vacate of July 29, 2004 (Case No. FM-005/2004, Vol. 3).

Annex 50. Record of the hearing of May 23, 2004 before the First Permanent Military Tribunal of First Instance of La Guaira (Case No. FM-005/2004, Vol. 1).

Annex 51. Brief presented to the Court of Appeals on May 23, 2004 (Case No. FM-005/2004, Vol. 1).

Annex 52. Brief presented to the Second Permanent Military Tribunal of First Instance of Caracas on May 24, 2004 (Case No. FM-005/2004, Vol. 1).

Annex 53. Record of the hearing of May 24, 2004 before the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 1).

Annex 54. Appeal filed with the Second Permanent Military Tribunal of First Instance of Caracas on May 29, 2004 (Case No. FM-005/2004, Vol. 1).

Annex 55. Appeal filed with the Second Permanent Military Tribunal of First Instance of Caracas on May 31, 2004 (Case No. FM-005/2004, Vol. 2).

Annex 56. Record of hearing on motion for extension before the Second Military Tribunal of First Instance of Caracas of June 22, 2004 (Case No. FM-005/2004, Vol. 2).

Annex 57. Appeal filed with the Second Permanent Military Tribunal of First Instance of Caracas on June 28, 2004 (Case No. FM-005/2004, Vol. 2).

Annex 58. Statement of Mr. Francisco Usón to the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas on July 8, 2004 (Case No. FM-005/2004, Vol. 2).

Annex 59. Ruling of May 27, 2004 of the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 1).

Annex 60. Ruling of the Second Military Tribunal of First Instance of Caracas of June 22, 2004 (Case No. FM-005/2004, pieza 2).

Annex 61. Decision of June 15, 2004, of the Court of Military Appeals (Case No. FM-005/2004, Vol. 2).

Annex 62. Decision of August 9, 2004, of the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 3) and Record of the preliminary hearing of August 12, 2006, before the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 3).

- Annex 63.** Record of the hearing held on October 11, 2004 (Case No. FM-005/2004, Vol. 4).
- Annex 64.** Judgment of the First Military Trial Court of Caracas, issued on October 11, 2004 and published on November 8, 2004, operative part (Case No. FM-005/2004, Vol. 5).
- Annex 65.** Decision of June 2, 2005, of the Criminal Cassation Chamber of the Supreme Court of Justice (Case No. FM-005/2004, Vol. 7).
- Annex 66.** Transfer order of May 23, 2004 of the First Permanent Military Tribunal of First Instance of La Guaira (Case No. FM-005/2004, Vol. 1).
- Annex 67.** Decision of May 23, 2004, of the First Permanent Military Tribunal of First Instance of La Guaira and Notice of declination of jurisdiction of May 23, 2004, of the First Permanent Military Tribunal of First Instance of La Guaira (Case No. FM-005/2004, Vol. 1).
- Annex 68.** Decision of the Court of Military Appeals of May 24, 2004 (Case No. FM-005/2004, Vol. 1).
- Annex 69.** Notification Receipt of the Court of Military Appeals of May 24, 2004 (Case No. FM-005/2004, Vol. 1).
- Annex 70.** Record of the interview of June 23, 2004, before the Office of the Military Prosecutor for the Jurisdiction of the Permanent Court-Martial of Caracas (Case No. FM-005/2004, Vol. 2).
- Annex 71.** Motion of July 22, 2004, presented by Mr. Usón's attorneys (Case No. FM-005/2004, Vol. 3).
- Annex 72.** Motion of September 29, 2004, Doctor from "Dr. Carlos Arévalo" Military Hospital (Case No. FM-005/2004, Vol. 4).
- Annex 73.** Ruling of July 29, 2004, of the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 3).
- Annex 74.** Decision of October 4, 2004, of the Court-Martial (Case No. FM-005/2004, Vol. 4).
- Annex 75.** Ruling of August 16, 2004, before the Second Permanent Military Tribunal of First Instance of Caracas (Case No. FM-005/2004, Vol. 3).
- Annex 76.** Record of the hearing held on October 6, 2004 (Case No. FM-005/2004, Vol. 4).
- Annex 77.** Record of the hearing held on October 7, 2004 (Case No. FM-005/2004, Vol. 4).
- Annex 78.** Record of the hearing held on October 8, 2004 (Case No. FM-005/2004, Vol. 4).
- Annex 79.** Record of the hearing held on October 5, 2004 (Case No. FM-005/2004, Vol. 4).
- Annex 80.** Record of the hearing held on October 11, 2004 (Case No. FM-005/2004, Vol. 4).
- Annex 81.** Appeal filed on November 23, 2004, with the Court of Military Appeals acting as Court of Appeals in the Military Criminal Justice Circuit of the Metropolitan Area of Caracas (Case No. FM-005/2004, Vol. 5).

Annex 82. Decision of the Court of Military Appeals of the Military Justice Circuit of Caracas of January 27, 2005, operative part (Case No. FM-005/2004, Vol. 5).

Annex 83. Cassation Appeal of February 28, 2005 (Case No. FM-005/2004, Vol. 7).

Annex 84. Special motion to review of September 17, 2006, annex forwarded together with the record of Case No. FM-005/2004.

Annex 85. Writ of enforcement issued by the First Military Court of Enforcement of Caracas on July 4, 2005 (Case No. FM-005/2004, Vol. 7).

Annex 86. Newspaper article entitled "Gobierno estudiará la posibilidad de un perdón al general Francisco Usón Ramírez" [Government to examine possible pardon for General Francisco Usón Ramírez], dated December 5, 2006, available at the website of Globovisión.com: <http://www.globovision.com/news.php?nid=44558>.

Annex 87. Letter from Mr. Usón to President Hugo Chávez Frías (Case No. FM-005/2004, Vol. 8).

Annex 88. Résumés of experts.

Annex 89. Judicial record submitted by the petitioners.

B. Witness testimony

294. The Commission requests the Court to hear the testimony of Mr. Francisco Usón Ramírez, the victim in this case, who will testify about the restrictions on his freedom of expression; his trial and the prison sentence imposed on him by a Venezuelan military tribunal as a result of statements made in connection with a fire at a military facility; as well as the consequences of these events on his personal and professional life, among other aspects related to the subject matter and purpose of the instant application.

C. Expert testimony

295. The Commission requests the Court to hear the expert opinions of the following:

a) Federico Andreu, attorney at law, who will offer his expert opinion on compulsory retirement as a disciplinary penalty in the armed forces and its effects as regards military jurisdiction; the military jurisdiction in Venezuela; Mr. Usón's trial and the appropriateness of the penalty suffered by the victim; the offense "insult to the armed forces;" protection of the honor or reputation of the State and its institutions by criminal law; and other aspects related to the subject matter and purpose of the application.

b) Nicolás Espejo Yaksic, attorney at law, who will offer his expert opinion on the subsequent liability imposed on Mr. Usón Ramírez for remarks on matters of public interest, the grounds given by the State for doing so, and the compatibility thereof with the right to freedom of expression; the offenses of contempt and "insult to the armed forces", protection of the honor or reputation of the state and its institutions by criminal law and the compatibility thereof with the rights to freedom of expression; and other aspects related to the subject matter and purpose of the application.

XII. PARTICULARS OF THE ORIGINAL PETITIONERS AND THE VICTIMS

296. In accordance with Article 33 of the Rules of Procedure of the Court, the Inter-American Commission informs the Court that the original petition was lodged by Héctor Faundez Ledesma.

297. The victim has granted powers of attorney to Messrs. Héctor Faundez Ledesma, Claudio Grossman, and Agustina Del Campo. The joint domicile of the victims' representatives is:

[REDACTED]

Washington, D.C.
July 25, 2008

Appendix 1. IACHR, Report on Merits N° 24/08, Case 12.554, Franciso Usón Ramírez, March 14, 2008.

Appendix 2. IACHR, Report 36/06 (admissibility), Petition, 577-05, Francisco Usón Ramírez, March 15, 2006.

Appendix 3. Record of the proceeding before the Inter-American Commission on Human Rights.