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REPORT No. 152/18
CASE 12.405
REPORT ON MERITS

VICENTE ANÍBAL GRIJALVA BUENO
ECUADOR

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I. SUMMARY

1. On September 13, 2001, the Inter-American Commission on Human Rights ("the Inter-American Commission," "the Commission," or "the IACHR") received a petition presented by the "Auditoría Democrática Andina" (hereinafter "the petitioner") in which international responsibility is alleged to the Republic of Ecuador (hereinafter "the Ecuadorian State," "the State," or "Ecuador") to the detriment of Vicente Aníbal Grijalva Bueno.

2. The IACHR approved the admissibility report No. 68/02 on October 10, 2002.¹ On October 29, 2002, the Commission informed the parties about the said report and was made available in order to attain a friendly settlement. On February 8, 2008, a hearing on the case was held during the 131 Regular Period of Sessions. The parties had the statutory terms to submit their additional observations about the merits. All of the received information was duly transferred between the parties.

3. The petitioner alleged the responsibility of the State for the illegal and arbitrary dismissal of Vicente Aníbal Grijalva Bueno as Captain of the Ecuadorian Port of the Naval Force in 1993. It indicated that the dismissal process started as a consequence of the public report blaming different people of the Armed Forces for the arbitrary arrests, torture acts, extra-judicial executions, and forced disappearances. It also alleged the international responsibility of the State due to the absence of the right to a fair trial in the military criminal action that was initiated against him after he was dismissed.

4. The State alleged that it was not its international responsibility; therefore, Mr. Grijalva's dismissal was carried out as stated by the domestic law provisions. It added that the presumed victim had the appropriate and effective resources in order to question the said decision. Regarding the military criminal action, Ecuador stated that the due process was also abided by according international standards.

5. After analyzing the available information, the Commission concluded that the State is responsible for violating the rights to a fair trial, freedom of expression, and legal protection, granted in Articles 8.1, 8.2 b), c), f), 13.1, 25.1, and 25.2 c) of the American Convention, in relation to the established obligations in Article 1.1 of the said document, to the detriment of Vicente Aníbal Grijalva Bueno.

II. POSITION OF THE PARTIES

A. Petitioner

6. The petitioner alleged the responsibility of the State of Ecuador for the illegal and arbitrary dismissal of Vicente Aníbal Grijalva Bueno as Captain of the Ecuadorian Port of the Naval Force in 1993. It indicated that the dismissal process started as a consequence of the public report blaming different people of the Armed Forces for the arbitrary arrests, torture acts, extra-judicial executions, and forced disappearances. It also alleged the international responsibility of the State due to the absence of the right to a fair trial in the military criminal action that was initiated against him after he was dismissed. The details of the internal events and processes will be referred to in the Established Facts section, based on the information provided by both parties.

¹ IACHR, Admissibility Report No. 68/02, Case 12,405, Vicente Aníbal Grijalva Bueno, Ecuador, October 10, 2002.

7. Regarding the alleged violation of the rights to a fair trial and legal protection, the petitioner alleged that the military authorities that knew about the dismissal process and the criminal action did not abide by the principle of presumption of innocence, since they established Mr. Grijalva's guilt before announcing the final decisions.

8. In relation to Mr. Grijalva's dismissal process, it alleged that the principles of independence and impartiality were violated, since some of the members of the Superior Officers Council, who were aware of the matter, were accused in the complaint filed by the presumed victim and a special court was involved. The petitioner also stated that Mr. Grijalva was not allowed to defend himself during the proceeding. It added that the dismissal decision was only based on perjuries or testimony given under torture. It said that the Constitutional Liberties Court pronounced a judgment, recognizing the unlawfulness of the dismissal and ordering a reinstatement. It indicated that the judgment was not complied with by the State, violating the right to legal protection. Regarding the military criminal action, it alleged that the right to a competent tribunal was violated, since Mr. Grijalva was prosecuted in the said jurisdiction in spite of having been dismissed. It indicated that the alleged victim did not have the chance to defend himself and that the judgment was based on the same testimony given under torture that was used during the dismissal process.

9. It indicated that the "Comisión de la Verdad" (Truth Commission, hereinafter "CEV") included Mr. Grijalva on its report "Sin verdad no hay justicia" (There is no justice without truth), stating that he was arbitrarily removed from office due to the filed complaints. It added that in 2015, the Ministry of National Defense exposed a nameplate offering their apologies to the presumed victim and other former members. It expressed that these events and the State's stance of not acknowledging its international responsibility "were legally incoherent."

10. At the merits stage, the petitioner additionally alleged: i) the violation of the duty of adopting domestic law provisions, since the military set of rules enforced during the proceedings against him was non-conventional; ii) the violation of the right to personal integrity, honor, and dignity, and the right to a family; iii) the violation of the right to equality before the law, since the regulations that governed during his dismissal process were applied in a discriminatory way because other members of the Naval Force were not punished in the same rigorous way as he was; iv) the violation of the right to private property due to the dismissal of Mr. Grijalva from the Naval Force and his corresponding loss of savings and labor benefits that he had as Captain; v) Articles 1, 6, 8, and 10 of the Inter-American Convention to Prevent and Punish Torture; and vi) different articles of the Protocol of San Salvador.

B. State

11. The State alleged that it is not internationally responsible, since Mr. Grijalva's dismissal was carried out according to the internal provisions and it was not based on the alleged complaints about human rights violations but on his military functions' performance. Regarding the action before the military jurisdiction, it indicated that it was also carried out according to its internal provisions and that it abided by due process and presumption of innocence. It added that it ensured the active participation of the presumed victim in the action, so he could provide evidence and challenge the supporting evidence against him. It alleged that it had access to the interventions and was aware of them during the proceeding before the military jurisdiction.* It argued that, during this proceeding initiated before the Superior Officers Council, the right to a competent tribunal was granted, since it was about crimes included in the Military Criminal Code presumably committed during the practice of the functions in the Armed Forces. It added that the imposed penalty was never executed.

12. Regarding the right to legal protection, the State indicated that the alleged victim had the opportunity to lodge remedies foreseen in the military criminal legislation, and that they were solved by the competent authorities. It added that Mr. Grijalva did not file a "complaint due to the unconstitutionality of the norms" in order to challenge the legal provisions used as the basis in both proceedings, including the military set of rules that it alleges as non-conventional. In relation to the absence of fulfillment of the Constitutional Liberties Court, the State indicated that Mr. Grijalva rejected the financial compensation proposals put

forward by the Armed Forces, stemming from an act of unfulfillment of the judgment presented by other former partners of the alleged victim.

13. In relation to CEV's creation and functioning, it expressed in the public hearing that its creation "was proof of its determination to do justice and that would bring about the clarification of the events of that time." On its communication from April 2011, the State declared that even though the report of "Comisión de la Verdad" was about a document that was "serious and important due to its methodology and objectives of non-repetition of human rights violations," this report was carried out so that "the domestic jurisdiction investigates and judges human rights violations perpetrators in a harsher way." It added that the said report's conclusions "did not disobey the alleged violations" by the petitioner but they rather "sought to prove that Mr. Grijalva had the ideal means in the domestic jurisdiction so as to soothe his situation."

14. Regarding the other pleadings submitted by the petitioner, the Ecuadorian State indicated that it will limit its observations to the admitted rights of the Admissibility Report.

III. FINDINGS OF FACT

A. On the complaints filed by Mr. Grijalva and his dismissal process

15. During the time of the events, Vicente Aníbal Grijalva Bueno was a member of the Ecuadorian Naval Force and was the Corvette Captain of the General Directorate of the Merchant Navy. Mr. Grijalva's relatives are: his wife, María Dolores Ycaza Columbus de Grijalva, and two children, the IACHR only has the name of his daughter Yanine.

16. According to CEV's report "Sin verdad no hay justicia," on August 1991, Mr. Grijalva received information from two sergeants about the eventual responsibility of Captain Fausto Morales Villota and other Naval Force's members in the illegal and arbitrary arrests, torture, and murders of Stalin Bolaños,² Consuelo Benavides,³ and Soldier Elito Veliz. The CEV indicated that in December 1991, Mr. Grijalva reported these events to his immediate superior, Vice-Admiral Tomás Leroux.⁴

17. In February 1992, Mr. Grijalva was appointed Port Captain in the city of Puerto Bolívar, province of El Oro.⁵ According to what was stated by the Naval Force incumbent since August 27, 2007, in July 1992, the Intelligence Agency conducted an investigation regarding him and other agents due to: i) the publication of news releases in which some fishers said they were being blackmailed by the naval staff in Puerto Bolívar; and ii) Chief of Intelligence Edgar Gaviláñez's and other people's complaints about alleged fuel trafficking carried out by naval staff in Puerto Bolívar and the charging fees to sex workers in order to enter the ships in the said place.⁶ The IACHR does not have the annexes of the referred news releases or complaints in this official letter.

18. In the Intelligence Agency's final report, which does not have a date and has the phrase "Reserved" written on it, it was indicated that Vicente Grijalva: i) illegally received the sum of \$300,000.00 sucres for the process of a larvae hatchery, having previously submitted bill No. 0506 for only \$5,260 sucres; ii) issued an authorization of fuel trafficking to Mr. Leoncio Vargas, who was presumably found on July 15, 1992 by Franz Toledo carrying 2,000 gallons that were to be sold in Tumbes; and iii) performed abuse of

² In 1995, the Commission submitted a merits report in which it declared that the Ecuadorian State was responsible for Stalin Bolaños' illegal and arbitrary arrest and his murder committed by Marines. IACHR, Merits report No. 10/95, Case 10,580, Manuel Stalin Bolaños, Ecuador, September 12, 1995, para. 29.

³ In 1998, the Inter-American Court delivered a judgment holding Ecuador responsible for Consuelo Benavides' illegal and arbitrary arrest, torture, and her murder committed by the Ecuadorian Navy. The State admitted its responsibility. IACHR Court. Case Benavides Cevallos vs. Ecuador. Judgment of June 19, 1998. Series C No. 38, para. 35.

⁴ Report of the "Comisión de la Verdad" "Sin verdad no hay justicia", Volume 4: Cases' accounts. Period 1989-2008, Ecuador, 2010, page 48.

⁵ Report of the "Comisión de la Verdad" "Sin verdad no hay justicia", Volume 4: Cases' accounts. Period 1989-2008, Ecuador, 2010, page 48.

⁶ Naval Force, Official letter No. COGMAR-JUR-484-O, Quito, D.M., August 27, 2007, pages 3 and 5. Annex to the petitioner's communication of June 27, 2008.

power and overbearingness, according to Mr. Marco Cervantes Rojas Córdova, who pursuant to this report also indicated that Vicente Grijalva had a verbal agreement with Leoncio Vargas Santos regarding shrimp exploitation. The report added that “the group of the crew members involved in these irregularities had enough time to agree on what they were going to say in the interviews conducted by the SERINT [Intelligence Agency,] plus it is notable that they received good legal advice, since they all answered with the same phrases and terms.”⁷

19. On October 2, 1992, the Intelligence Agency extended its report indicating that Corporal Freddy Chávez accused Mr. Grijalva of having carried out abnormal actions in Puerto Bolívar, such as ordering the protection of Admiral Tomás Leroux’s shrimper company, where he also found him with a roll of dollars. It was indicated that other marines filed complaints on the same matter.⁸

20. Pursuant to the statement of the Chief of the Operation Audit Department of the Navy’s General Inspectorate, its chief, Inspector General, ordered the creation of an “Investigation Commission”⁹ on these events. He indicated that this Commission had to comply with a provision given by Mr. Commandant General of the Navy with the aim of traveling to Puerto Bolívar to verify the events narrated in a report submitted by the SERINT. He added that they went to Puerto Bolívar after having received the order of not informing Puerto Bolívar’s Captain about the visit; and that the process was coordinated with a SERINT agent who was under the leadership of Fausto Morales, chief of SERINT.¹⁰

21. On October 19, 1992, the Investigation Commission sent its report to the Inspector General.¹¹ The IACHR does not have a copy of the said document. In other Naval Force’s documents, it is indicated that on that report it was concluded that Mr. Grijalva and other marines charged illegal fees in different processes, consent to allow sex workers to enter the ships, seafood theft, fuel or engines trafficking and luxury vehicles smuggling in Puerto Bolívar.¹² In a 2007 document, the Navy’s General Council indicates that the conclusion of the said report was as follows: “VICENTE GRIJALVA BUENO has committed crimes, so it is recommended that the First Naval Zone’s Court initiate legal action.”¹³

22. There is repeated information in the case files that indicates that the people who reported the alleged illegal activities by Mr. Grijalva and other marines in Puerto Bolívar were coerced.

23. Firstly, CEV’s report indicated as follows:

Between October 7 and 16, 1992, the marines (...) had to appear in court before the Naval Intelligence Agency in Quito, where they were questioned and tortured by officers Fausto Morales Villota and Diego Sánchez, and agents Édgar Gavilánez, Marcos González, Luis Proaño, Segundo Artieda, Jorge Saltos, Agustín Novillo, and Édgar Polanco. The first people to arrive at SERINT were José Ahtty, Freddy Chávez and Hugo Moreno, who were transferred to “Agrupamiento Escuela de Inteligencia Militar” (Training Grouping of Military Intelligence, AEIM), in the surrounding area of Quito, where they were questioned under torture during their three-day stay there.¹⁴

⁷ Ecuadorian Navy, Naval Intelligence Agency, “Final Report on the investigations conducted on the irregularities identified in Puerto Bolívar’s captaincy,” Reserved, dateless. Annex to the petitioner’s communication of June 27, 2008.

⁸ Ecuadorian Navy, Naval Intelligence Agency, Quito, Captaincy irregularities in Puerto Bolívar, Extension of the Investigation Commission’s Report, October 2, 1992. Annex to the petitioner’s communication of June 27, 2008.

⁹ The IACHR emphasizes that the name with which the Investigation Commission is referred to changes in the documents that make reference to it. In their communications, both Mr. Grijalva and the petitioner refer to it as “Investigation Commission.”

¹⁰ Military Criminal Court of the First Naval Zone. Statement of CPNV EMC Julio Antonio López Morales before Military Criminal Judge Shuber Barriga Chiriboga, Criminal Case 06-94, November 27, 1995. Annex to the petitioner’s communication of June 27, 2008.

¹¹ Naval Force, Official letter No. COGMAR-JUR-484-O, Quito, D.M., August 27, 2007, page 9. Annex to the petitioner’s communication of June 27, 2008.

¹² Ecuadorian Navy, Superior Officers Council, Official letter No. COSUPE-SEC-007-R, Press resolution, October 27, 1992. Annex to the petition of September 13, 2001 and the petitioner’s communication of June 27, 2008.

¹³ Naval Force, Official letter No. COGMAR-JUR-484-O, Quito, D.M., August 27, 2007, page 10. Annex to the petitioner’s communication of June 27, 2008.

¹⁴ Report of the “Comisión de la Verdad” “Sin verdad no hay justicia”, Volume 4: Cases’ accounts. Period 1989-2008, Ecuador, 2010, page 49.

24. Secondly, Corporal Freddy Chávez declared the following in 1993 and 1998:

(...) under coercive measures, under psychological pressure, I was unconsciously (*sic*) used to cause harm to the Crew Members of the Captaincy of Puerto Bolívar, I was subjected to dramatic and intense questioning, in order to satisfy unjustified revenge and cause damages to the Captaincy's staff under the leadership of Captain VICENTE GRIJALVA BUENO, which was all made up, based on lies and signature forgery, statements that were prepared and ordered by Mr. Corvette Captain Fausto MORALES Villota.¹⁵

(...)

[we went to] the INTELLIGENCE AGENCY where I was subjected to serious investigations conducted by agents of the Navy's Intelligence Agency; who made me sign a brief, which was previously written by them and AGAINST CAPTAIN GRIJALVA AND ALL HIS PEOPLE (...) those who were there carried out acts of intimidation, unbearable psychological pressure so that this crime is committed, and they warned me and asked me if I wanted this brief to be written with or without blood, then they turned off the lights of the place and started hitting the walls, the main door, and desk that was there; afterward, they turned on the light and told me (...) that I would not leave until I had written the brief, at that time I felt so bad, actually, I did not even know my name because I was very scared. That was when Lt. SANCHEZ mentioned as follows: "that agents of the Army's Intelligence Agency already had the necessary evidence in order to damage CAPTAIN GRIJALVA and all his people, and that they were allegedly doing me a favor in order to get me out of that trouble"(...) ¹⁶

25. Third, members of the Armed Forces and civil people declared that they were coerced to report Mr. Grijalva.¹⁷ The IACHR highlights that Florencio Briones declared having been called by Fausto Morales in his office to ask him about Vicente Grijalva and what happened in Puerto Bolívar "telling me that he had the superior order of conducting these investigations and explicit order of Mr. Commandant General of the Navy to kill somebody."¹⁸ Fausto Morales, who was reported by Mr. Grijalva, participated in the investigations conducted against him.

26. On October 27, 1992, the Superior Officers Council passed a resolution determining that Vicente Grijalva was no longer in active service for "misconduct," based on Article 76.i) of Armed Forces Staff Law in force throughout the cause. On the said resolution, the Council considered the Investigation Commission's report and concluded "to adopt the recommendations" of the said report, in which it was indicated that Mr. Grijalva "[committed] serious and threatening offenses, for which consent he adversely affected the reputation of the Institution".¹⁹

27. On November 17, 1992, the then-President of the Republic issued Decree No. 264, ordering that Mr. Grijalva is "officially made available."²⁰

¹⁵ First Civil Court of Guayaquil, Voluntary statement by CBOP Freddy Guillermo Chávez Cárdenas, May 28, 1993. Annex to the petition of September 13, 2001 and the petitioner's communication of June 27, 2008.

¹⁶ Statement of Freddy Guillermo Chávez Cárdenas before the First Naval Zone's Law Judge, November 2, 1998. Annex to the petition of September 13, 2001 and the petitioner's communication of June 27, 2008.

¹⁷ Statement of Priest Juan Bolívar Palomino Muñoz of April 29, 1994, Annex to the petitioner's communication of June 27, 2008; Statement of Germán Isaías Yépez Pesantez, province of El Oro, dateless. Annex to the petitioner's communication of June 27, 2008; Military Criminal Court of the First Naval Zone. Statement of CPTG EM. Jorge Luis Quiroz Castro before Military Criminal Judge Shuber Barriga Chiriboga, Criminal Case 06-94, November 28, 1995. Annex to the petitioner's communication of June 27, 2008; Military Criminal Court of the First Naval Zone. Statement of Leoncio Vargas Santos before Military Criminal Judge Shuber Barriga Chiriboga, Criminal Case 06-94, May 9, 1996. Annex to the petitioner's communication of June 27, 2008.

¹⁸ Ecuadorian Navy, Marine Corps, Official letter No. SGOS-IM-IN-FBC-01-0, "Informando Novedad", December 1, 1992. Annex to the petitioner's communication of June 27, 2008.

¹⁹ Ecuadorian Navy, Superior Officers Council, Record of the Special Session carried out on October 27, 1992 No. 008/92. Annex to the petitioner's communication of June 27, 2008.

²⁰ Constitutional Liberties Court. Resolution No. 181-95-CP, September 12, 1995. Annex to the petition of September 13, 2001 and the petitioner's communication of June 27, 2008.

28. Before a motion of appeal against the resolution of 1992 on the part of Mr. Grijalva, the Commission of Claims and Other Business of the Armed Forces supported that decision. The Supreme Council of the Armed Forces confirms the resolution and determined that the antecedents of the presumed victim's book of life showed a career "prone to indiscipline" and that the Investigation Commission's report confirmed his responsibility.²¹ On May 18, 1993, the Executive Decree No. 722 was issued, in which Mr. Grijalva was permanently dismissed.²²

B. On the criminal action

29. On November 19, 1993, Commandant General of the Navy Oswaldo Viteri Jerez issued an official letter ordering the initiation of legal actions against Vicente Grijalva Bueno and other ten crew members, pursuant to the resolution of the Superior Officers Council of October 1992.²³ Ten days later, the First Naval Zone's Commandant ordered the First Naval Zone's Military Criminal Judge to initiate a court record due to the alleged extortion to members of Puerto Bolívar's Captaincy.²⁴

30. On November 30, 1993, the Military Criminal Court of the First Naval Zone ordered the summoning of the victims to take statements and carry out the "necessary proceedings." In this ruling, it is indicated that "when Mr. CPCB IM VICENTE GRIJALVA BUENO was Captain (...) and the [crew] members of that Council of State committed irregularities in the performance of their functions."²⁵ The IACHR does not have the documentation about the fulfillment of the said proceedings. There are two Naval Messages in the case files that indicate the absence of merits to initiate criminal action.²⁶

38.

31. On June 13, 1994, the First Naval Zone's Law Judge ordered the initiation of a criminal military trial against Vicente Grijalva Bueno due to crimes against military faith. He added that his judgment agreed with the Superior Officers Council's Resolution, regarding the availability condition.²⁷

39.

32. In 1994, in the presence of the media, the alleged victim reported the arrests, acts of torture, and murders committed by members of the Ecuadorian Naval Force.²⁸ Likewise, on December 15 of the same year, the Commission granted precautionary measures in favor of Mr. Grijalva and other former members of the Armed Forces,²⁹ due to the information received about "threats to their lives" and constant harassment against their families because of the statements regarding the facts and people responsible for Consuelo Benavides' disappearance, torture, and murder. The Commission indicated that two witnesses of this case died and that another witness allegedly disappeared.³⁰

33. It consists in a draft decree of September 10, 1995 of the National Congress, in which it is indicated that "the real reason for which [Mr. Grijalva and other people] were excluded of the Navy (...) without following legal proceedings and without allowing the constitutional right to defense, was that these people decisively contributed to clarifying different disappearance and murder cases as a consequence of

²¹ Armed Forces Joint Command, Supreme Council of the Armed Forces, Commission of Claims and Other Business, Matter: Extension of the Commission's Report, without official letter number, dateless, page 4. Annex to the petitioner's communication of June 27, 2008.

²² Constitutional Liberties Court. Resolution No. 181-95-CP, September 12, 1995. Annex to the petition of September 13, 2001 and the petitioner's communication of June 27, 2008.

²³ Ecuadorian Navy, Command Headquarters of the Navy, Official letter No. COGMAR-JUR-251-0, November 19, 1993. Annex to the petitioner's communication of June 27, 2008.

²⁴ Ecuadorian Navy, First Naval Zone, Official letter No. PRIZON-JUZ-943-0, November 29, 1993. Annex to the petitioner's communication of June 27, 2008.

²⁵ Military Court of the First Naval Zone, Initial Ruling of Preliminary Proceedings Information, November 30, 1993. Annex to the petitioner's communication of June 27, 2008.

²⁶ COOPNA CDO. Naval Message, ARE - 135a, 1019552, December 1993. Annex to the petitioner's communication of June 27, 2008.

²⁷ Superior Officers Council's Court of the First Naval Zone, resolution relative to the Preliminary Proceedings Information 44_93, June 13, 1994. Annex to the petitioner's communication of June 27, 2008.

²⁸ Ministry of National Defense, Official letter No. 940260-10-7-1, submitted by the Ministry of National Defense to the President of the Supreme Court of Justice, August 17, 1994, Annex to the petitioner's communication of June 27, 2008.

²⁹ IACHR, Case 10,476, Protective Measures, December 15, 1994. Annex to the petitioner's communication of June 27, 2008.

³⁰ Ministry of National Defense, Official letter No. 940260-10-7-1, submitted by the Minister of National Defense to the President of the Supreme Court of Justice, August 17, 1994, Annex to the petitioner's communication of June 27, 2008.

having been victims of inhumane and degrading treatment, pursuant to what Human Rights organizations, their own family, and their brothers in arms reported before the public opinion.³¹

34. On November 27, 1995, Captain Julio Antonio López Morales, who participated in the drafting of the Investigation Commission's report, stated: "What we write (...) stems from what the interviewees told us. And, just to be clear, our report is precisely that, a verification report of the reports. It is not evidenced that the events actually happened."³²

35. On May 14, 1996, Mr. Grijalva requested Military Criminal Judge of the First Naval Zone to call on Exar Rogel and Rosa Granda to testify, who had initially reported the alleged crimes committed by the presumed victim.³³ Pursuant to the available documents, these people were not called on to testify. The IACHR observes that on July 9, 1996, Priest Juan Palomino Muñoz sent a letter to Navy Commandant, in which it was indicated that he met with Rosa Granda, who confessed that she did not know Mr. Grijalva and that a military agent gave her money so that she used his name to file a complaint against him.³⁴

36. On July 15, 1996, the presumed victim appealed a committal ruling at a plenary proceeding.³⁵ He stated that the judge changed, without cause, the legal classification of the crimes from "crimes against military faith" to "overstepping of powers."³⁶ He added that he was not duly informed about the Prosecutor's pronouncement and that the judge disregarded his request about the statements of witnesses Rogel and Granda.³⁷

37. Later, on his reply to said pronouncement, Vicente Grijalva stated that "because (...) those were the only accusation, we repeatedly requested that Rogel and Granda appear in court in Guayaquil so as to testify before us and our attorney; but Mr. Examining Judge, instead of demanding their appearing in court making use of the power granted by law, preferred to transfer to Puerto Bolívar so as to take statements;" besides repeating the request to consider the resolution of the Constitutional Liberties Court (hereinafter "the TGC") that refers to paragraph 51 of this report.³⁸ The Commission does not have information about the content of both people's statements.

38. On June 5, 1998, the Military Court of Justice rejected the motion of appeal and indicated that the events proved "the existence of the breach and the serious responsibility presumption."³⁹

39. On September 11, 1998, the alleged victim was notified about the fact that the First Naval Zone's Law Judge would take over the proceeding.⁴⁰ On October 19 of the same year, the alleged victim testified.⁴¹

³¹ National Congress, Decree of amnesty and reparations for members of the National Navy who were unfairly dismissed of their line, September 10, 1995, Quito, Ecuador. Annex to the petitioner's communication of June 27, 2008.

³² Military Criminal Court of the First Naval Zone. Statement of CPNV EMC Julio Antonio López Morales before Military Criminal Judge Shuber Barriga Chiriboga, Criminal Case 06-94, November 27, 1995. Annex to the petitioner's communication of June 27, 2008.

³³ Request before First Naval Zone's Military Criminal Judge by Cap. (r) Vicente Grijalva Bueno, at the Criminal Military Trial No. 06-96, May 14, 1996. Annex to the petitioner's communication of June 27, 2008.

³⁴ Letter from Priest Juan Palomino Muñoz to Navy Commandant Jorge Donoso Morán, July 9, 1996. Annex to the petitioner's communication of June 27, 2008.

³⁵ Military Court of Justice, Prosecutor's Office. Resolution passed for the President of the Military Court of Justice, June 4, 1997. Annex to the petitioner's communication of June 27, 2008.

³⁶ The mentioned criminal office is as follows:

"Art. 146.- Responsibility will be born for overstepping of powers and between three months to two years in prison will be Judgment to those who:

(...)

4. In exercise of their authority or leadership, exceed their legal powers or disregarded their superiors;

(...)

8. Made requisitions, impose illegal war contributions, loot, or commit other abuses or extortions."

³⁷ Request before First Naval Zone's Military Criminal Judge by Vicente Grijalva Bueno and Juan Simbala, Military Trial No. 06-94, July 15, 1996. Annex to the petitioner's communication of June 17, 2008.

³⁸ Pronouncement's plea of Mr. Government Attorney, Sent to Law Judge of the First Naval Zone by Vicente Grijalva Bueno and Juan Simbala Rugel, Criminal Trial No. 06-94, July 1996. Annex to the petitioner's communication of June 27, 2008.

³⁹ Military Court of Justice, Military Criminal Trial No. 06-94, June 5, 1998, certificate from June 18, 1998. Annex to the petitioner's communication of June 27, 2008.

40. On April 28, 1999, the Military Attorney General submitted a report concluding that they had proved “the existence of the classified breach (...) out of the same evidence, the defendant’s guilt was proved.”⁴² The Government Attorney indicated as follows: “[Based on documents] which (...) were known by [Mr. Grijalva] has taken actions and omissions, such as, among others: having been bribed (...) to carry out an allocation request in the beach area; having allowed staff, under his leadership, to blackmail civilians (...); having allowed the use of a port captaincy’s vehicle (...) [among others]. (...) To sum up, the defendants have not provided evidence undermining the evidence which serves as the basis for [the report].”⁴³

41. On March 13, 2000, the Law Court of the First Naval Zone sentenced Mr. Grijalva for “the crime classified and punished in Art. 146, numbers 4th and 8th of the Military Criminal Code [overstepping of powers] so a judgment of two-hundred days in correctional imprisonment [at] Naval Prison of San Eduardo of (...) Guayaquil’s Marine Corps.” The Judge considered the Attorney General’s resolution of April 28, 1999 and added that Mr. Grijalva “has made (...) statements on the investigated facts in this procedure, without being concerned about proving them at this stage, in order to exclude or mitigate his responsibility.”⁴⁴

42. The judgment was appealed by Vicente Grijalva. On March 13, 2001, the Military Court Justice confirmed the judgment indicating that “the testimonies of the procedure are pursuant to form, circumstances, and series of events, which complies with the documentary evidence (...). The defendants’ legal representation, considering the accused events, cannot drop the charges against him (...).”⁴⁵ On December 6, 2007, the Law Judge of the First Naval Zone applied statutory limitations to the ordered penalty and requested to archive the case files.⁴⁶

C. On Mr. Grijalva’s reinstatement requests

43. On September 12, 1995, the Constitutional Liberties Court delivered a judgment in the unconstitutionality report of the dismissal, imposed by Mr. Grijalva and other marines, declaring the said unconstitutionality and stating that they should be reinstated to the Armed Forces and their rights should be restored in thirty days. The TGC indicated that:

(...) during the availability and dismissal process (...) the regulations of paragraph d) number 17th of Article 19 of the Constitution were violated, since they were punished for misconduct, in an informal proceeding in which the defendant’s right to defense was restricted, not only because they were not timely notified about all the accusations made against them but also because the trial’s corresponding case files were not submitted, in spite of the persistence of the request timely carried out on this regard; That the restriction to the right to defense also is also present in the fact that the Navy refused on multiple times to provide copies of the accusations and the investigations’ results to which they were repeatedly subjected;

⁴⁰ Ecuadorian Navy, Military Criminal Court of the First Naval Zone, Court order of September 10, 1998. Annex to the petitioner’s communication of June 27, 2008.

⁴¹ First Naval Zone’s Law Judge, Unsworn confession by EX CPCB-IM Vicente Aníbal Grijalva Bueno, October 19, 1998. Annex to the petitioner’s communication of June 27, 2008.

⁴² Military Attorney General, appointed on General Order No. 135 of July, 1997, Military Criminal Proceedings No. 06/94, April 28, 1999. Annex to the petitioner’s communication of June 27, 2008.

⁴³ Military Attorney General, appointed on General Order No. 135 of July, 1997, Military Criminal Proceedings No. 06/94, April 28, 1999. Annex to the petitioner’s communication of June 27, 2008.

⁴⁴ Law Court of the First Naval Zone, criminal proceeding’s judgment 06-94, March 13, 2000. Annex to the petitioner’s communication of June 27, 2008.

⁴⁵ Military Court of Justice, resolution of the motion of appeal at the Military Criminal Trial No. 006-94, March 13, 2001, certificate from March 22, 2001. Annex to the petitioner’s communication of June 27, 2008.

⁴⁶ Ecuadorian Navy, First Naval Zone, Official letter No. PRIZON-JUP-265-0, from the Law Judge of the First Naval Zone to the Commandant General of the Navy, December 6, 2007. Annex to the petitioner’s communication of June 27, 2008.

That the executive decree through which CPCB Vicente Anibal Grijalva Bueno is dismissed (...) is unconstitutional as the final result of a complex act that started in an unconstitutional way.⁴⁷

44. On September 28, 1995, the Ministry of National Defense sent a document to the TGC's President indicating that the Supreme Council of the Armed Forces did not commit unconstitutional or illegal acts and that "carry out the reinstatement of unwanted elements (...) deliberately promotes indiscipline, disrespect toward military seniority, and its Bodies."⁴⁸ In October 1995, the Commandant General of the Navy requested the suspension of the fulfillment of the said resolution to the TGC.⁴⁹ On March 12, 1996, the TGC rejected the said request.⁵⁰

45. The alleged victim complained before different state stages due to the unfulfillment of TGC's decision.⁵¹ The said unfulfillment was acknowledged by the Presidency of the Anti-Corruption Commission and the Attorney General's Office of the State.⁵²

46. On August 27, 2007, the Commandant General of the Navy told the Ministry of National Defense that due to the criminal conviction of Mr. Grijalva, it was not possible to reinstate him to the Armed Forces, pursuant to Military Criminal Code that establishes that "all prison penalties imply the dismissal from active services; i.e. the removal from the Armed Forces' lines."⁵³

D. On the report of the "Comisión de la Verdad" "Sin verdad no hay justicia"

47. On May 3, 2007, CEV was created through the Executive Decree, with the aim of investigating human rights violations that took place "between 1984 and 1988 and other special cases." On June 6, 2010, CEV submitted its final report, whose Volume 4 includes the following about Mr. Grijalva, regarding the subject-matter of this case:

Case Vicente Grijalva and others. Marines tortured for having reported crimes committed by State troops.

The replacements (in 1992) were carried out as a result of a series of complaints filed due to alleged irregularities committed by the group of marines commanded by Captain Vicente

⁴⁷ Constitutional Liberties Court. Resolution No. 181-95-CP, September 12, 1995. Annex to the petition of September 13, 2001 and the petitioner's communication of June 27, 2008.

⁴⁸ Ministry of National Defense, official letter sent to the President of the Constitutional Liberties Court, September 28, 1995. Annex to the petitioner's communication of June 27, 2008.

⁴⁹ Command Headquarters of the Navy. Request for the Resolution's fulfillment suspension. October 17 or 27, 1995. Annex to the petitioner's communication of June 27, 2008.

⁵⁰ Constitutional Liberties Court, Presidency of the Constitutional Liberties Court, case 83/93, March 12, 1996. Annex to the petitioner's communication of June 27, 2008.

⁵¹ Letter sent from Vicente Grijalva Bueno to the President of the Anti-Corruption Commission, June 29, 1998. Annex to the petitioner's communication of June 27, 2008; Anti-Corruption Commission, Presidency, Official letter No. CAC.98.2966, July 22, 1998. Annex to the petitioner's communication of June 27, 2008; Letter sent to the Attorney General of the State from Vicente Grijalva Bueno, Juan Simbala Rugel, Hugo Moreno Pinto, and Daniel Sáenz Vargas, August 27, 1998. Annex to the petitioner's communication of June 27, 2008; Letter sent to the President of the Constitutional Court from Vicente Grijalva Bueno, Juan Simbala Rugel, Hugo Moreno Pinto, and Daniel Sáenz Vargas, August 27, 1998. Annex to the petitioner's communication of June 27, 2008; Letter sent to the Prosecutor of the State from Vicente Grijalva Bueno, Juan Simbala Rugel, Hugo Moreno Pinto, and Daniel Sáenz Vargas, August 27, 1998. Annex to the petitioner's communication of June 27, 2008; Letter sent to the Commandant General of the Navy, with reference to official letters COGMAR-JUR-297-0 y COGMAR-JUR-345-0, July 9, 2007. Annex to the petition of September 13, 2001 and the petitioner's communication of June 27, 2008; Letter sent to the Commandant General of the Navy, with reference to official letters COGMAR-JUR-297-0, COGMAR-JUR-345-0 y COGMAR-JUR-414-0, August 6, 2007. Annex to the petition of September 13, 2001 and the petitioner's communication of June 27, 2008.

⁵² Anti-Corruption Commission, Presidency, Official letter No. CAC.98.2966, July 22, 1998. Annex to the petitioner's communication of June 27, 2008; Attorney General's Office of the State, National Director of the State Sponsorship, court order sent to the Commandant General of the Navy, October 7, 1998. Annex to the petitioner's communication of June 27, 2008.

⁵³ Naval Force, Official letter No. COGMAR-JUR-484-0, sent to the Ministry of National Defense, Matter: Refuse the reinstatement of CPCB-IM (RT) V. Grijalva and crew members, August 27, 2007. Annex to the petitioner's communication of June 27, 2008.

Grijalva. (...) None of [the] accusations were proved and they were rather denied by the alleged claimants.⁵⁴

48. On January 5, 2012, the Constitutional Court passed a resolution stating the unfulfillment of TGC's judgment of September 1995 by the Commandant General of the Navy. The Court ordered to "provide the severance pay (...) to which they were entitled."⁵⁵ On March 6, 2014, the Constitutional Court declared the unfulfillment of the judgment of January 2012 and established proceedings pursuant to the Mediation Center of the Attorney General's Office of the State regarding the financial compensations.⁵⁶ On its communication of March 3, 2017, the Ecuadorian State indicated that the negotiation procedure with the alleged victim was still in progress.⁵⁷

49. In April 2015, the Ministry of National Defense carried out a public event at the War Room of the Naval Operations Command of Guayaquil, uncovering a nameplate that places on record "the apologies of the Ecuadorian State through the Ministry of National Defense to: (...) Aníbal Grijalva Bueno (...) for having been dismissed from the Ecuadorian Naval Force in 1993 in a discriminatory and unfounded way, violating his constitutional rights."⁵⁸ The IACHR acknowledges that Mr. Grijalva has not been reinstated and has not received any payment.

IV. LEGAL ANALYSIS

A. Rights to a fair trial, freedom of expression and legal protection (articles 8⁵⁹, 13⁶⁰, and 25⁶¹ of the American Convention, in relation to Article 1.1 of the same document)

1. On administrative proceedings

50. The Commission recalls that both bodies of the Inter-American system have indicated that the safeguards established in Article 8 of the American Convention are not restricted to criminal proceedings but they apply to proceedings of another nature.⁶² Particularly, regarding punitive processes, both system bodies have indicated that the safeguards established in Article 8.2 of the American Convention similarly

⁵⁴ Report of the "Comisión de la Verdad" "Sin verdad no hay justicia", Volume 3: Cases' accounts. Period 1984-1998, Ecuador, 2010, pages 46 to 52.

⁵⁵ Constitutional Court for the Transition Period, Judgment No. 001-12-SIS-CC, Case No. 002-09-IS, January 5, 2012.

⁵⁶ Constitutional Court of Ecuador, Verification stage of integral execution, Ruling within the case No. 0020-09-IS, judgment No. 0001-12-SIS-CC, March 6, 2014. Annex to the State's communication of March 3, 2017, Official letter No. 09647.

⁵⁷ State's communication of March 3, 2017, Official letter No. 09647.

⁵⁸ Press release "Navy apologized to marines dismissed in 1992" published in Diario El Universo, April 24, 2015, available at <http://www.eluniverso.com/noticias/2015/04/24/nota/4804231/armada-pidio-disculpas-marinos-que-expulso-1992> and Petitioner's communication of April 3, 2017.

⁵⁹ Article 8 of the American Convention establishes that: 1. Every person has the right to be heard, with the proper safeguards and within a reasonable term of time, by the competent judge or court, independent and impartial, previously established by the law, in the determination of any criminal accusation made against them, or for the determination of their rights and obligations of civil, fiscal or other nature. 2. Every person accused of a crime has the right to the presumption of innocence while their guilt is not legally established. During the proceedings, every person has the right, in full equality, to the following minimum safeguards: (...) b) previous and detailed communication to the person accused of the crime; c) concession of proper time and means for the defense's coordination to the defendant; (...) f) defense's right to question the witnesses present in court and to get the appearance, as witnesses or expert witnesses, of other people that could clarify the events (...).

⁶⁰ Article 13 of the American Convention establishes that: 1. Every person has the right to freedom of thought and expression. This right includes the freedom to find, receive, and promote information and ideas of any kind, without considering boundaries, whether orally, in written form, or printed or artistic format, or any other procedure of choice; (...)

⁶¹ Article 25 of the American Convention establishes that: 1. Every person has the right to a simple and fast remedy or to any other type of effective remedy before the competent judges or court, that protects them against acts violating their fundamental rights acknowledged by the Constitution, the law of the present Convention, even when the said violation is committed by people acting exercising their official functions; (...) 2 c) The State Parties commit themselves to grant the fulfillment, on the part of the competent authorities, of any decision estimated coming from the remedy.

⁶² IACHR, Report No. 65/11, Case 12,600, Merits, Hugo Quintana Coello and other "Judges of the Supreme Court of Justice," Ecuador, March 31, 2011, para. 102; IACHR Court. Case Baena Ricardo and others vs. Panama. Merits, Reparations and Indemnities. Judgment of February 2, 2001. Series C No. 72, para. 126-127; Case of the Constitutional Court vs. Peru. Merits, Reparations and Indemnities. Judgment of January 31, 2001. Series C No. 71, para. 69-70; and Case López Mendoza vs. Venezuela. Merits, Reparations and Indemnities. Judgment of September 1, 2011 Series C No. 233, para. 111.

apply.⁶³ Likewise, the European Court has indicated that due process safeguards must be respected and granted in the framework of administrative procedures that conclude in the dismissal of a civil servant.⁶⁴

1.1. Right to have impartial authority

51. The impartiality remedy implies that the members of the Trial's Jury "do not have a direct interest, a determined position, a preference for one of the parties and are not involved in controversy."⁶⁵ In order to evaluate impartiality, it is necessary to consider, from a subjective approach, the judge's personal certainty and behavior in a concrete case, as well as the objective perspective, if the process grants enough safeguards so as to exclude any legitimate doubt on that subject.⁶⁶

52. In this case, Mr. Grijalva filed a complaint against the commission due to serious human rights violations committed by Captain Fausto Morales Villota, member of SERINT. In July 1992, SERINT conducted an investigation against Mr. Grijalva and other members of the Ecuadorian Naval Force and submitted a confidential report concluding that said people had committed different illegal acts in their roles. In that same year, the Navy's General Inspectorate created a commission in order to investigate those events, and it also concluded that Mr. Grijalva and other marines participated in criminal acts. Said commission worked in a coordinated way with Mr. Monroy, SERINT's member, and whose superior officer was Captain Fausto Morales. Based on the said reports and assuming its content as its own, the Superior Officers Council dismissed Mr. Grijalva, which was a decision firmly established in May 1993. The case files and CEV's final report indicate that Captain Fausto Morales threatened and made use of coercive measures against different public agents and other people in order to force them to testify against Mr. Grijalva.

53. By virtue of the abovementioned, the IACHR considers that Captain Fausto Morales was involved in the reports that were used in Mr. Grijalva's dismissal, and the former was reported by the alleged victims some months before he committed the serious human rights violations. In this sense, the IACHR considers that Captain Morales' participation in the production of these reports affected the impartiality remedy, in the framework of the proceedings leading to his dismissal.

54. Additionally, the Commission takes cognizance that the petitioner's plea regarding the fact that some members of the Superior Officers Council—which passed the resolution in order to put Mr. Grijalva in availability condition—were also reported by the alleged victim to the human rights violations commission. The State did not dispute said statement. Regarding this, the Commission highlights that the authorities reported by Mr. Grijalva and that were part of the Superior Officers Council that carried out his dismissal had a direct interest in the investigation's result, since they were involved in a controversy with the alleged victim.

55. Due to the foregoing, the IACHR concludes that the State violated the right to have impartial authority established in Article 8.1 of the American Convention, in relation to Article 1.1 of this document, to the detriment of Vicente Aníbal Grijalva Bueno.

1.2. Right to defense, presumption of innocence principle, exclusionary rule, right to have duly motivated decisions

1.2.1. General considerations

⁶³ IACHR, Report No. 65/11, Case 12,600, Merits, Hugo Quintana Coello and other "Judges of the Supreme Court of Justice," Ecuador, March 31, 2011, para. 102; IAHR Court. Case Baena Ricardo and others vs. Panama. Merits, Reparations and Indemnities. Judgment of February 2, 2001. Series C No. 72, para. 126-127; Case of the Constitutional Court vs. Peru. Merits, Reparations and Indemnities. Judgment of January 31, 2001. Series C No. 71, para. 69-70; and Case López Mendoza vs. Venezuela. Merits, Reparations and Indemnities. Judgment of September 1, 2011 Series C No. 233, para. 111.

⁶⁴ TEDH, Cudak v. Luthania. Application No. 15869/025. Judgment of March 23, 2010, para. 42.

⁶⁵ IAHR Court, Palamara Iribarne vs. Chile. Judgment of November 22, 2005. Series C No. 135, para. 146.

⁶⁶ See Case Thomann vs. Switzerland, Judgment of June 10, 1996, Judgments and resolutions register 1996-III, page 815, § 30.

56. The Court has indicated that the right to defense has to necessarily be allowed to be exercised from the moment a person is indicated as potential author or participant of a punishable act and it terminates when the procedure is finished.⁶⁷ Regarding the relation between the evidence examined and defense right, the IACHR has highlighted the contradictory principle, which implies the intervention of the defendant in the evidence's reception and monitoring.⁶⁸ For its part, the Court has considered as a violation of the right to defense the fact that the legal defense was not allowed to be present in the attainment of a crucial process in the framework of the procedure.⁶⁹

57. Regarding Article 8.2 b) of the Convention, the Court has established that the State has to notify the applicant, in an explicit, clear, integral, and sufficiently detailed way, i) of the accusation's reason, i.e. the actions or omissions of which he or she is accused of; ii) the reasons that lead the State to the formulation of the accusation; iii) the evidence for the latter; and iv) the legal classification given to these facts; so that the defendant can completely exercise their right to defense and express their version of the events to the judge.⁷⁰ Likewise, the IACHR recalls that the transition between "investigated" and "accused," and sometimes even "convicted," can be carried out suddenly, so "it cannot be expected that the person be formally accused in order to provide them with the information regarding the timely exercise of the right to defense."⁷¹

58. Regarding Article 8.2 c) of the Convention, the IACHR emphasizes that the person subjected to proceedings has to be able to effectively defend their interests or rights and under "conditions of equality of arms, being fully informed about the accusations against them." The foregoing, so that the person subjected to the punishable power of the State can produce the answer to a charge, having all the necessary information. In this way, the State has to ensure that people can prepare their defense, formulate pleadings, and promote pertinent evidence.

59. The Inter-American Court has acknowledged that the exclusionary rule of the evidence obtained through torture or cruel and inhumane treatment has been acknowledged by different international treaties⁷² and bodies of human rights protection,⁷³ and that the said rules has an "absolute and irrevocable character."⁷⁴

60. In its Report about the *Human Rights Situation in Mexico (1998)*, the Commission has indicated as follows:

⁶⁷ IAHR Court. Case *Barreto Leiva vs. Venezuela*. Merits, Reparations and Indemnities. Judgment of November 17, 2009. Series C No. 206, para. 29.

⁶⁸ IACHR. Report No. 76/11. Case 11,769. Merits. J. Peru. July 20, 2011, para. 253 and Report No. 78/15. Case 12,831.

⁶⁹ IAHR Court. Case *Chaparro Álvarez and Lapo Íñiguez Vs. Ecuador*. Judgment of November 21, 2007, para. 154.

⁷⁰ IAHR Court. Case *Barreto Leiva vs. Venezuela*. Merits, Reparations and Indemnities. Judgment of November 17, 2009, para. 28.

⁷¹ IAHR Court. Case *J. vs Peru*. Preliminary exception, Merits, Reparations and Indemnities. Judgment of November 27, 2013. Series C No. 275, para. 197; and Case *Barreto Leiva vs. Venezuela*. Merits, Reparations and Indemnities. Judgment of November 17, 2009, para. 46.

⁷² In Article 15 of the Convention against Torture and Other Treatments, or Cruel, Inhumane, or Degrading Penalties establishes that "every State Party will ensure that none of the statements, which are proved to have been the result of torture, are appealed to as evidence for any proceeding, except in the case of a person accused of torture as evidence that the statement was produced." For its part, Article 10 of the Inter-American Convention to Prevent and Punish Torture indicates that "no statements which are proved to have been the result of torture will be admitted as an evidence means in a proceeding, except in the case of proceedings against the person or people accused of having had obtained them by means of acts of torture and they will only serve as evidence that the accused person obtained the said statements through torture acts."

⁷³ Regarding this, the Committee against Torture indicated that "the obligations included in Articles 2 (according to which 'exceptional circumstances might not be appealed to as justification for torture in any case'), 15 (which forbids to admit confessions obtained through torture as evidence, except against the torturer), and 16 (which forbids cruel, inhumane, or degrading treatment and penalties) must be respected at all times." Cf. United Nations. Committee against Torture. General Observation No. 2, "Implementation of Article 2 by States parties" of January 24, 2008 (CAT/C/GC/2), para. 6. For its part, the Human Rights Committee has indicated as follows: "Procedural safeguards shall never be the object of abrogative measures that dodge the protection of rights which are not susceptible to suspension. (...) no statement or confession or, initially, no pieces of evidence obtained from a violation of this provision shall be admitted in proceedings included in Article 14, even during an exception state, except when a statement or confession through the violation of Article 7 is used as evidence of torture or another treatment forbidden by this provision." United Nations. Human Rights Committee. General Observation No. 32, Right to an impartial trial and to equality before justice judges and courts (HRI/GEN/1/Rev. 9 (vol. I)), para. 6.

⁷⁴ IAHR Court. Case *Cabrera García and Montiel Flores vs. Mexico*. Monitoring of the Judgement's enforcement. Resolution of the Inter-American Court of Human Rights of August 21, 2013, para. 165.

Before a statement or testimony in which there is a hint or founded presumption that it was obtained by means of any kind of coercion, whether physical or psychological, the judicial bodies must [...] determine if said coercion existed. In the case of the admittance of a statement or testimony obtained under the said circumstances and of using it in the proceeding as evidence or proof, this could generate the State's international responsibility.⁷⁵

61. Likewise, in the Case *Cabrera García and Montiel Flores vs. Mexico*, the Inter-American Court indicated as follows:

This Court considers that the statements obtained through coercion are not usually veracious, since the person attempts to affirm what is necessary in order to terminate the cruel treatment or torture. Due to the foregoing, for the Court to accept or give evidentiary value to statements or confessions obtained by means of coercion, which affect the person or third party, constitutes, in turn, a violation of the right to a fair trial. Likewise, the absolute character of the exclusionary rule is present in the prohibition to grant evidentiary value, not only to the evidence directly obtained from coercion, but also to the evidence that comes from the said action. Consequently, the Court considers that to exclude the evidence that was found or comes from the information obtained through coercion, appropriately ensures the exclusionary rule.⁷⁶

62. Furthermore, another crucial element of due process is the principle of presumption of innocence, which is closely related to the right to have duly motivated decisions.

63. The principle of presumption of innocence implies that the defendant enjoys a legal state of innocence or non-guilt while their criminal responsibility is solved, so they shall be treated by the State according to their condition of non-convicted person.⁷⁷ The Court indicated that this implies that the person accused does not have to prove that he or she did not commit the crime of which he or she is accused, since *onus probandi* corresponds to the claimant.⁷⁸ In this way, the IACHR has highlighted that the reliable evidence of guilt constitutes an essential requirement for criminal punishment, so the evidence's burden falls on the claimant and not on the defendant.⁷⁹

64. Pursuant to the abovementioned, the human rights' international law establishes that nobody shall be convicted while there is no conclusive evidence of their penal responsibility. In the Court's words, "if there is incomplete or insufficient evidence against them, it is inadmissible to convict them, so they shall be absolved."⁸⁰ In this sense, the Commission considered that the absence of conclusive evidence of the penal responsibility in a conviction judgment constitutes a violation of the principle of presumption of innocence.⁸¹

65. In case *Zegarra Marín vs. Peru*, the Court referred to this motivation safeguard in relation to the principle of presumption of innocence, in the following terms:

(...) the motivation's relevance, in order to ensure the principle of presumption of innocence, mainly in a conviction judgment, which has to express the sufficiency of the incriminating evidence in order to confirm the accusing hypothesis; the observance of the rules of the

⁷⁵ IACHR, Report about the Human Rights Situation in Mexico, Chapter IV: The right to personal integrity, OEA/Ser.L/V/II.100, Doc. 7. rev. 1, September 24, 1998, para. 320.

⁷⁶ IAHR Court. *Case Cabrera García and Montiel Flores vs. Mexico*. Preliminary exception, Merits, Reparations and Indemnities. Judgment of November 26, 2010. Series C No. 220.

⁷⁷ IAHR Court. *Case Ruano Torres and others vs. El Salvador*. Merits, Reparations and Indemnities. Judgment of October 5, 2015. Series C No. 303, para. 126.

⁷⁸ IAHR Court. *Case Ricardo Canese vs. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 154.

⁷⁹ IACHR. Report No. 82/13. Case 12,679. Merits. José Agapito Ruano Torres and family. El Salvador. November 4, 2013, para. 118.

⁸⁰ IAHR Court. *Case Cantoral Benavides vs. Peru*. Judgment of August 18, 2000. Series C No. 69, para. 120; *Case Ricardo Canese vs. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 153.

⁸¹ IACHR. Report No. 82/13. Case 12,679. Merits. José Agapito Ruano Torres and family. El Salvador. November 4, 2013, para. 130.

competent analysis when appreciating the evidence, including those that could generate doubt regarding the penal responsibility; and the final trial that stems from this analysis. In this case, it must show the reasons why it was possible to reach a conclusion in the accusation and penal responsibility, as well as the evidence's appreciation in order to distort any innocence hypothesis and, only in this way, confirm or reject the accusing hypothesis. The foregoing allows to distort the presumption of innocence and determine the penal responsibility, beyond any reasonable doubt. When in doubt, the principles of presumption of innocence and *in dubio pro reo* function as deciding criteria when issuing the judgment.⁸²

1.2.2. Case analysis

66. In the present case, the State did not confirm the moment when Mr. Grijalva was notified of the investigation conducted against him. The commission highlights that the reports submitted by SERINT and the investigation commission of the Navy's General Inspectorate were confidential and reserved, and were submitted without Mr. Grijalva's having any knowledge of them, so that he could submit evidence for the defense.

67. The available documents indicate that Mr. Grijalva found out about the investigation conducted against him by means of the dismissal resolution of October 1992, passed by the Superior Officers Council. The IACHR takes cognizance that the said resolution, in spite of making reference to the previously mentioned reports, did not annex them. Likewise, the IACHR observes that in its motivation it only indicated that it accepted the recommendations of the General Inspectorate's commission, without explaining the reasons why the veracity of the said document was concluded.

68. In this way, Mr. Grijalva did not have the opportunity to get to know, participate in, and defend himself during the punitive proceeding that culminated in his dismissal. He also did not have access to the documentary evidence used to pass the said resolution. Anyway, due to the resolution's plain and insufficient motivation, they considered the possibility of Mr. Grijalva's formulation of an adequate defense, in the framework of the following resources to question his dismissal.

69. Additionally, and regarding the way in which the Superior Officers Council accepted the recommendations of the Navy's General Inspectorate, the IACHR observes that the said Inspectorate established the crime committed by Mr. Grijalva. However, the said alleged crimes, which constituted the dismissal's "generating fact," were not grounds for criminal conviction. This constitutes, in itself, a violation of the presumption of innocence. This violation is even more serious and evident considering the statements by one of the report's writers of the Inspectorate, who indicated that they only reproduced what was indicated by certain people, but the facts were not duly proved.

70. The provisions in this section coincide with the TGC's ruling, which in its judgment of September 1995 concluded that Mr. Grijalva's right to defense was violated due to the reasons indicated in the section of Findings of Fact. For its part, the "Comisión de la Verdad" considered that "none of the accusations" against Mr. Grijalva was duly proved.

71. Due to the foregoing, the Commission considers that Mr. Grijalva did not have a previous nor detailed communication regarding the accusation against him, or the appropriate time or means to prepare his defense. Likewise, the IACHR considers that Mr. Grijalva's innocence principle was not granted and that the military authorities did not comply with their motivation duty. Consequently, the IACHR concludes that the State violated the rights established in Articles 8.1, 8.2, 8.2 b), and 8.2 c) of the American Convention, in relation to Article 1.1 of the said document, to the detriment of Vicente Aníbal Grijalva Bueno.

72. Another aspect to take into account is that the statements included in reports of SERINT and the investigation commission of the Navy's General Inspectorate were carried out under torture or other

⁸² IAHR Court. Case Zegarra Marín vs. Peru. Preliminary Exceptions, Merits, Reparations And Indemnities. Judgment of February 15, 2017. Series C No. 331. Para. 147.

types of coercion. The IACHR takes cognizance that the statements by different members of the Ecuadorian Naval Force indicated that they were the victims of torture in order to testify against Mr. Grijalva. This adds to the fact that the “Comisión de la Verdad” also concluded that at least three marines were subjected to questioning under torture during three days, so that they testified against Mr. Grijalva. In spite of the foregoing, the Superior Officers Council granted full validity to the said statements and did not take any measures so as to comply with its obligations pursuant to the exclusionary rule, in the terms described in this report. This situation constituted a clear violation of the right to have proper safeguards, as well as to the right to defense and a fair trial, in the terms of Articles 8.1 and 8.2 of the Convention.

2. On the criminal action

2.1. Application of the military criminal jurisdiction

73. The Commission has referred to the American Convention’s incompatibility regarding the application of the criminal military jurisdiction to potential human rights violations, indicating how troublesome it was for the impartiality and independence remedies the fact that the armed forces were the ones “in charge of judging their own members.”⁸³ The IACHR recalls that the special jurisdiction, such as the military criminal justice, must have a restrictive and exceptional scope and be aimed at the protection of special legal interests, linked to the entity itself.⁸⁴

74. In this case, Mr. Grijalva was dismissed from his position as member of the Ecuadorian Naval Force and later, a criminal proceeding was initiated against him before the military jurisdiction due to alleged “crimes against military faith” committed while he was the leader of the Captaincy of Puerto Bolívar. The petitioner claimed that Mr. Grijalva should not have been prosecuted before the said jurisdiction, since he was not an active member of the Naval Force at that time.

75. Regarding this, the Court established on multiple occasions that it is inadmissible to judge retired soldiers before a military court, when the alleged crimes were committed after their dismissal.⁸⁵ In the present case, Mr. Grijalva was subjected to a proceeding before the military criminal jurisdiction, due to alleged crimes committed while he was an active member of the Ecuadorian Naval Force. Likewise, the Commission considers that the alleged crimes for which Mr. Grijalva was prosecuted were not human rights violations but presumed crimes of “overstepping of powers” and “crimes against military faith.”

76. By virtue of the abovementioned, the Commission considers that the application of the military criminal jurisdiction in this case did not violate the American Convention.

2.2. Right to defense, presumption of innocence principle, exclusionary rule, and right to have duly motivated decisions

77. The IACHR reiterates the standards indicated in this report’s previous section.

78. Moreover, another component of the right to defend him/herself is regulated in Article 8.2 f) of the Convention, relative to the defense’s right to question witnesses present in court and to secure the attendance, as witnesses or expert witnesses, of other people who might clarify the facts. The Court has indicated that, among the safeguards granted to those accused, there is the safeguard to examine witnesses against and in favor of them, under the same conditions, with the aim of conducting their defense.⁸⁶ The IACHR declared the violation of the right to defend him/herself, by means the admission of a written

⁸³ IACHR. Access to justice and social inclusion: The Road toward Strengthening Democracy in Bolivia. 2007, para. 167.

⁸⁴ IACHR. Report 53/01. Case 11,565. Merits. Ana, Beatriz and Cecilia González Pérez. Mexico. April 4, 2001, para. 81; and Report No. 40/15, Case 11,482. Merits. Noel Omeara Carrascal and others. July 28, 2015, para. 199.

⁸⁵ IAHR Court. Case Usón Ramírez vs. Venezuela. Preliminary Exception, Merits, Reparations and Indemnities. Judgment of November 20, 2009. Series C No. 207, para. 111; Case Palamara Iribarne vs. Chile. Merits, Reparations and Indemnities. Judgment of November 22, 2005. Series C No. 135, para. 139; and Case Cesti Hurtado vs. Peru. Merits. Judgment of September 29, 1999. Series C No. 56, para. 151.

⁸⁶ IAHR Court. Case Norín Catrimán and others (leaders, members, and activist of the Mapuche Indigenous Community) vs. Chile. Merits, Reparations and Indemnities. Judgment of May 29, 2014. Series C No. 279, para. 242.

statement considered as one of the crucial pieces of evidence for a conviction judgment, and the impossibility to question the said evidence throughout the proceeding.⁸⁷

79. As it was established, on November 29, 1993, the First Naval Zone's Commandant ordered to conduct an preliminary proceedings investigation against Mr. Grijalva and other marines, in view of the Superior Officers Council's resolution. On the next day, the military criminal judge in charge initiated the said investigation and ordered to take the defendants' statements and carry out "all the necessary proceedings." The State did not provide information about the taking of statements or the carrying out of proceedings. On the contrary, Mr. Grijalva informed that his statement was not taken and that he did not have complete information regarding his accusation and its reasons, so as to fully enforce his right to defense. This adds to the fact that Mr. Grijalva indicated that he also was not notified of the Prosecutor's pronouncement. The State did not dispute said information.

80. The IACHR recalls that it is essential to have the information indicated in the previous paragraph so that the accused person can appropriately enforce their right to defense. However, this did not happen in the present case. In this way, the Commission concludes that, in the framework of the criminal proceeding, the Ecuadorian State violated the rights established in Articles 8.2 b) and 8.2 c) of the American Convention, in relation to Article 1.1 of the said document, to the detriment of Mr. Grijalva.

81. Additionally, the Commission recalls that whenever a violation of the principle of presumption of innocence is claimed in a conviction judgment, the judgment's motivation is essential to understand if the evidence's internal treatment was compatible with the said principle. Regarding this, the IACHR takes cognizance that the following evidence was used during the proceeding:

- Two Naval Messages in which it was considered that there were no merits to continue with the investigation.
- The legal statement of one of the people who participated in the drafting of the Navy's General Inspectorate's report, confessing that the complaints filed by SERINT were not verified.
- The statement of a civilian who recognized having received money in return for reporting Mr. Grijalva to the crimes' commission.

82. In spite of this supporting evidence, which is mainly exculpatory, the Law Court of the First Naval Zone delivered a conviction judgment to the detriment of Mr. Grijalva without any assessment on this regard, in the light of the principle of presumption of innocence. . The Commission observes that the conviction judgment was exclusively based in the report of the Navy's General Inspectorate, which was considered by the case's Government Attorney, in spite of the fact that, as it was indicated, one of the writers said that the facts were not confirmed.

83. Moreover, there are different irregularities regarding the said document, including the application of torture and coercive acts against various people who declared against Mr. Grijalva. The foregoing was not analyzed by court. In spite of that, in this stage, the said statements were granted full validity and no measure was adopted, in the light of the standards relative to the exclusionary rule.

84. Likewise, the Commission highlights that during the conviction judgment, the court considered that Mr. Grijalva "has made (...) statements on the investigated facts in this procedure, without being concerned about proving them at this stage, in order to exclude or mitigate his responsibility." The IACHR considers that the language used by the court reverses the evidence's burden, in the way that it holds Mr. Grijalva responsible of proving his innocence, which is also contrary to the principle of presumption of innocence.

⁸⁷ IACHR. Report No. 82/13. Case 12,679. Merits. José Agapito Ruano Torres and family. El Salvador. November 4, 2013, para. 141.

85. Due to the foregoing, the Commission considers that the Ecuadorian State violated the rights established in Articles 8.1, 8.2, and 8.2 g), of the American Convention, in relation to Article 1.1 of the said document to the detriment of Vicente Aníbal Grijalva Bueno.

86. Regarding the right to question witnesses, the IACHR takes cognizance that the witness statements of Gonzalo Rogel and Rosa Granda, who initially reported alleged crimes committed by Mr. Grijalva, were given without the presence or participation of the presumed victim's defense. Even though it is true that, pursuant to the cited standards, the right to question witnesses might be restricted under exceptional circumstances, said limitation must be justified with sufficient grounds, such as the declarants' risk to life and personal integrity, and compensation measures shall be taken regarding the prosecuted person's right to defense. In this case, the State of Ecuador did not submit pleadings related to the taking of the said statements' exceptional nature. Due to what was indicated, the Commission considers that the said situation constituted a violation of the right established in Article 8.2 f) of the American Convention, in relation to Article 1.1 of this document, to the detriment of Vicente Aníbal Grijalva Bueno.

2.3 Reasonable term

87. In Article 8.1 of the American Convention, it is established that the fact that the judges decide on cases subjected to their acquaintance in a reasonable term is one of the due process' elements. It is the State's duty to present and prove the reason why more time than reasonable was required to deliver a definite judgment in a particular case.⁸⁸ In this sense, the term's reasonableness shall be appreciated in relation to the total length of the criminal proceeding⁸⁹ and in the light of the four elements taken by the Court in its case law, namely: i) the matter's complexity; ii) the interested party's procedural activity; iii) the legal authorities' conduct; and iv) the affectation produced in the legal situation of the person involved in the proceeding.⁹⁰

88. In relation to the complexity, the IACHR considers that, firstly, the case does not have special complexity that could justify the total delay of more than seven years and two months of the criminal proceeding. Likewise, the IACHR recall that, in order for a complexity argument to be appropriate, it is necessary that the State submits specific information that directly links the complexity elements appealed to with the delays in the proceeding. This has not happened in the present case. Regarding the interested parties' participation, the Commission highlights that one preliminary criterion is the fact that it is not the defendant's responsibility to ensure the proceeding's promptness. In the present case, the IACHR observes that there are no case files' elements indicating that Mr. Grijalva's defense was obstructed during the proceeding. In relation to the legal authorities' conduct, the Commission takes cognizance of extended delays during the proceeding, which were not justified by the State.

89. Due to the aforementioned, the Commission considers that the seven years and two months that elapsed since the beginning of the investigation until the judgment's confirmation constituted an excessive term unjustified by the State; consequently, the Commission considers that the State violated the reasonable term remedy, established in Article 8.1 of the American Convention, in relation to Article 1.1, to the detriment of Vicente Aníbal Grijalva Bueno.

3. Right to freedom of expression

90. The right to freedom of thought and expression, established in Article 13 of the American Convention has an individual and a social dimension.⁹¹ The individual dimension includes the right to use any appropriate means to spread opinions, ideas, and information so as to reach the largest number of recipients

⁸⁸ IAHR Court. Case Ricardo Canese vs. Paraguay. Judgment of August 31, 2004. Series C No. 111, para. 142.

⁸⁹ IACHR. Report No. 77/02. Case 11,506. Merits. Waldemar Gerónimo Pinheiro and José Víctor dos Santos. Paraguay. December 27, 2002, para. 76.

⁹⁰ IAHR Court. Case Santo Domingo Massacre vs. Colombia. Preliminary Exceptions, Merits, and Reparations. Judgment of November 30, 2012. Series C No. 259, para. 164.

⁹¹ IAHR Court. Case Norín Catrimán and others vs. Chile. Merits, Reparations and Indemnities. Judgment of May 29, 2014. Series C No. 279, para. 371.

possible. The restriction on dissemination entails the restriction on the right to freedom of expression.⁹² Furthermore, the social dimension implies everyone's right to get to know opinions, accounts, and news stated by third parties.⁹³ In the Court's words, the said right implies the following:

(...) freedom of expression requires, on the one hand, that nobody be arbitrarily diminished or prevented from express their own thought, thus, it represents the right of every individual, but it also implies, on the other hand, the collective right to receive any information and get to know other people's expression of thought.⁹⁴

91. Additionally, the Commission highlights that the identifying criterion regarding who shall be considered as a human rights defender is the activity carried out by the person, not other factors, such as obtaining a compensation for their work or whether they are members of a civil organization or not.⁹⁵ In this sense, the human rights defender's capacity is not static, since it might be activated through the fulfillment of different activities. The UN's Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms indicated that one of those activities is as follows:

Report policies and actions of the government officials and bodies in relation to human rights' and fundamental freedoms' violations, by means of petitions or other appropriate means to the legal, administrative, or domestic legislative authorities, or to any other competent authority foreseen in the State's legal system. The latter shall ratify their decision without any unjustified delay.⁹⁶

92. In the present case, in December 1991, Mr. Grijalva reported the information received regarding alleged arbitrary arrests, torture, and executions carried out by military agents, to his superiors of the Ecuadorian Naval Force. A couple of months ago, the administrative proceeding was initiated, which culminated in his dismissal. Likewise, in 1994, Mr. Grijalva repeated the previously indicated reports to the media. During this time, a criminal proceeding was initiated against Mr. Grijalva before the military criminal jurisdiction, which culminated in a conviction judgment against him.

93. The IACHR considers that Mr. Grijalva's statements are limited to one of the activities that can be carried out by human rights defenders. This, apart from his condition as a member of the Ecuadorian Naval Force. Likewise, the Commission considers that the said statements related to the alleged serious human rights violations carried out by state agents are protected under Article 13 of the American Convention. The IACHR indicated that in many countries of the region, defenders have faced criminal action for enforcing their right to freedom of expression, after having filed complaints alleging human rights violations.⁹⁷

94. Next, the IACHR will determine if the administrative proceeding and the criminal action, even though they were not based on the said reports, constituted an act of retaliation as a consequence of the reports.

95. Regarding this, in its report on Criminalization of human rights defenders, the IACHR indicated that:

⁹² IACHR Court. Case Acosta and others vs. Nicaragua. Preliminary exceptions, Merits, Reparations And Indemnities Judgment of March 25, 2017. Judgment of March 25, 2017. Series C No. 334, para. 136.

⁹³ IACHR Court. Case "La Última Tentación de Cristo" (Olmedo Bustos and others) vs. Chile. Merits, Reparations and Indemnities. Judgment of February 5, 2001. Series C No. 73, para. 66.

⁹⁴ IACHR Court. Case Acosta and others vs. Nicaragua. Preliminary exceptions, Merits, Reparations And Indemnities Judgment of March 25, 2017. Judgment of March 25, 2017. Series C No. 334, para. 136 and the Compulsory Association of Journalists (Arts. 13 and 29 of the American Convention on Human Rights.) Advisory Opinion OC-5/85, November 13, 1985. Series A No. 5, para. 30.

⁹⁵ IACHR, Second report on human rights defenders in the Americas, December 31, 2011, para. 9.

⁹⁶ UN, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, March 8, 1999. Article 9.3 a).

⁹⁷ IACHR. Criminalization of human rights defenders' work, December 31, 2015, para. 93.

In practice, many of the criminal actions initiated against defenders are delayed, or accelerated, in an unreasonable way, so as to obstruct their work during crucial moments of the causes they are fighting for and personally intimidate them. (...) In other cases, defenders are bound to actions for a long time, which are later dismissed.⁹⁸

96. In the present case, the IACHR emphasizes that, in relation to the administrative proceeding, the investigation was conducted only months after Mr. Grijalva had notified his superiors of the potential involvement of soldiers in serious human rights violations. Likewise, in the previous section, the IACHR identified that one of the soldiers reported by Mr. Grijalva was actively involved in this investigation. Said participation took place by means of the taking of statements under alleged acts of torture and the submission of reports that were used as essential evidence in order to dismiss Mr. Grijalva. Likewise, at domestic level, the TGC and the Ministry of National Defense considered that Mr. Grijalva's dismissal was unfounded.

97. The IACHR takes cognizance that after Mr. Grijalva had reported the soldiers' involvement in serious human rights violations in the media, it was ordered to initiate a proceeding before the military criminal jurisdiction. Moreover, Mr. Grijalva was threatened by unidentified people, so the Commission adopted precautionary measures in his favor, in order to protect his life and personal integrity. Likewise, in the framework of the criminal action, the National Congress of Ecuador issued a draft decree, in which it was considered that the proceedings against Mr. Grijalva were initiated since he "decisively contribut[ed] to clarify different cases of many people's disappearances and deaths." The Commission does not have information regarding whether the said project was delivered.

98. Finally, the IACHR indicated that the human rights defender's condition has special relevance in order to determine if the reasonable term remedy was respected during a proceeding, due to the affectation produced with the passing of time in the prosecuted defender's legal situation. This, since "the extended criminal actions especially affect the defender and have a dissuasive effect upon the enforcement of the right to defend human rights."⁹⁹ Just as it was indicated in the previous section, the length of the criminal proceeding, more than seven years, was unreasonable. Even though different bodies considered that there were no merits so as to initiate a criminal action, it culminated with a conviction judgment.

99. The Commission considers that all the elements described are jointly consistent and allow reaching the conclusion that Mr. Grijalva's dismissal and the criminal action initiated against him constituted acts of retaliation, due to the complaints filed regarding the involvement of soldiers in serious human rights violations. Consequently, the Commission concludes that the State of Ecuador violated the right established in Article 13.1 of the American Convention, in relation to Article 1.1 of this document, to the detriment of Vicente Aníbal Grijalva Bueno.

4. Legal protection and the principle of effective legal guardianship in the judgments' execution

100. In relation to the right to legal protection, established in Article 25.1 of the Convention, the Inter-American Court indicates that the said regulation "includes the States Parties' obligation to ensure, to all people under its jurisdiction, an effective judicial remedy against violations to their fundamental rights." Furthermore, the IACHR established that the said remedy shall be efficient, i.e. it must lead to the result or answers of the foreseen objective, which is to avoid the reinforcement of an unfair situation.¹⁰⁰ Likewise, it must be accessible and it shall not require the kind of complex formalities that turn this right into something illusory.¹⁰¹

101. In the present case, the IACHR takes cognizance that, after the decision to dismiss Mr. Grijalva, he presented a motion of appeal, which was rejected by the Commission of Claims and Other

⁹⁸ IACHR. Criminalization of human rights defenders' work, December 31, 2015, para. 173.

⁹⁹ IACHR. Criminalization of human rights defenders' work, December 31, 2015, para. 179.

¹⁰⁰ IACHR. Report No. 24/17, Case 12,254, Merits. Víctor Hugo Saldaño. United States March 18, 2017, para. 205.

¹⁰¹ IACHR. Report No. 79/15. Case 12,994. Merits (Publication) Bernardo Aban Tercero. United States October 28, 2015, para. 134.

Business of the Armed Forces and later by the Supreme Council of the Armed Forces. Regarding this, the Commission observes that it does not have the said resolutions. Likewise, after the conviction judgment in the criminal procedure, the Military Court of Justice rejected the presented motion of appeal.

102. The IACHR takes cognizance that the petitioner indicated that the stages of the presented motion of appeal did not consider the different arguments and pieces of evidence submitted by Mr. Grijalva, such as the taking of statements under torture and the different irregularities in the submission of the investigation's report. Said information was not disputed by the State. Consequently, the Commission concludes that the State did not provide an effective remedy to examine the dismissal decision and the conviction judgment of Mr. Grijalva, so the right established under Article 25.1 of the American Convention was violated, in relation to Article 1.1 of this document.

103. Additionally, the IACHR takes cognizance that, regarding the reinstatement request, the TGC delivered a judgment requesting Mr. Grijalva's reinstatement of the Ecuadorian Naval Force. The IACHR recalls that, pursuant to Article 25.2 c) of the American Convention, for the State to comply with the provisions of the said article, the remedies' formal existence is not sufficient, since they must be effective.¹⁰² This, since a judgment deemed *res judicata* ensures the right or controversy discussed in the concrete case, thus, the fulfillment's obligatory or necessary nature is one of its effects.¹⁰³

104. The available information indicates that the said judgment has not been executed, thus, Mr. Grijalva has not been reinstated or received any compensation in his favor. Consequently, the IACHR concludes that the State violated the right established in Article 25.2 c) of the American Convention, in relation to Article 1.1 of this document, to the detriment of Vicente Aníbal Grijalva Bueno.

V. CONCLUSIONS AND RECOMMENDATIONS

105. Based on the findings of fact and law, the Inter-American Commission on Human Rights concluded that the State of Ecuador is responsible for violating the rights to a fair trial, freedom of expression, and legal protection, granted in Articles 8.1, 8.2 b), c), f), 13.1, 25.1, and 25.2 c) of the American Convention, in relation to the established obligations in Article 1.1 of the said document, to the detriment of Vicente Aníbal Grijalva Bueno.

106. By virtue of the previous conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THE STATE OF ECUADOR TO:

1. Reinstatement Vicente Aníbal Grijalva Bueno in the Ecuadorian Naval Force, in a position of the same category that he would be included in if he had not been dismissed. If it is not the victim's will or there are objective reasons to impede his reinstatement, the State shall pay a compensation for that reason, which is apart from the reparations relative to pecuniary and moral damages included in recommendation number two.
2. Appropriately redress human rights violations stated in this report, including a financial compensation and satisfaction so as to redress pecuniary and moral damages.
3. Initiate the corresponding proceedings, criminal, administrative, or another kind, related to human rights violations stated in this report, in an impartial and effective way, within a reasonable term, with the aim of fully clarifying the facts and establishing the respective responsibilities.

¹⁰² IACHR. Report to the Inter-American Court of Human Rights. María Reverón Trujillo. Venezuela. November 9, 2007, para. 56.

¹⁰³ IACHR Court. Case Furlan and family vs. Argentina. Preliminary Exceptions, Merits, Reparations and Indemnities. Judgment of August 31, 2012. Series C No. 246, para. 209; and Case Mejía Idrovo vs. Ecuador. Preliminary Exceptions, Merits, Reparations and Indemnities. Judgment of July 5, 2011. Series C No. 228, para. 104.