INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF GRIJALVA BUENO V. ECUADOR

JUDGMENT OF JUNE 3, 2021

(Preliminary Objection, Merits, Reparations and Costs)

In the *Case of Grijalva Bueno v. Ecuador,*

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

Elizabeth Odio Benito, President;
Eduardo Vio Grossi, Judge;
Humberto Antonio Sierra Porto, Judge;
Eduardo Ferrer Mac-Gregor Poisot, Judge;
Eugenio Raúl Zaffaroni, Judge, and
Ricardo Pérez Manrique, Judge,

also present,

Pablo Saavedra Alessandri, Secretary, and
Romina I. Sijniensky, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or "the Rules"), delivers this judgment, which is structured as follows:

[*] Judge L. Patricio Pazmiño Freire, Vice President of the Court and of Ecuadorian nationality, did not participate in the deliberation and signing of this judgment, pursuant to Articles 19(2) of the Statute and 19(1) of the Rules of Procedure of the Court.

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court*. On July 25, 2019, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court the case of Grijalva Bueno against the Republic of Ecuador (hereinafter "Ecuador" or "the State"). The Commission indicated that the case concerns the arbitrary dismissal of Vicente Aníbal Grijalva Bueno (hereinafter "Mr. Grijalva Bueno" or "Mr. Grijalva" or "the alleged victim") from his position as Port Captain of the Ecuadorian Navy in 1993, as well as the failure to ensure judicial guarantees in the disciplinary process of dismissal and the military criminal proceedings brought against him for "crimes against the military faith." In relation to the dismissal process, the Commission considered that "a military agent who had been denounced by the victim months earlier for having committed serious human rights violations was involved in preparing the reports that were used to dismiss Mr. Grijalva [Bueno]," which affected the guarantee of impartiality. The Commission also determined that Mr. Grijalva Bueno did not have an opportunity to know, participate and defend himself in the disciplinary process that resulted in his dismissal. With regard to the military criminal proceedings for "crimes against military faith," the Commission considered that the decision of the court that convicted him was exclusively based on a report that contained various irregularities, including the use of torture and coercion against various persons who testified against Mr. Grijalva. The Commission argued that the court had reversed the burden of proof by placing the onus on Mr. Grijalva to prove his innocence, and that the seven years and two months that elapsed from the start of the investigation to the confirmation of the sentence constituted an excessive period of time. It also concluded that the State violated the right to judicial protection inasmuch as the judgment ordering Mr. Grijalva's reinstatement in the Navy was not executed. Finally, it argued that Mr. Grijalva's dismissal and the criminal proceedings initiated against him constituted acts of retaliation in violation of his right to freedom of expression.

2. *Procedure before the Commission*. The procedure before the Commission was as follows:

a) *Petition*. On September 13, 2001, the Commission received the initial petition.[1]

b) *Report on Admissibility*. On October 10, 2002, the Inter-American Commission adopted Admissibility Report No. 68/02 (hereinafter "Admissibility Report").

c) *Merits Report*. On December 7, 2018, the Commission adopted Merits Report No. 152/18 (hereinafter "Merits Report" or "the Report"), in which reached a series of conclusions[2] and made various recommendations to the State.

3. *Notification to the State.* On January 25, 2019, the Inter-American Commission notified the Merits Report to the State, grating it a period of two months to report on its compliance with the recommendations. The Commission indicated that it granted

[1] The petition was presented by Francisco López Bermúdez of the Andean Democratic Audit.

[2] The Commission concluded that the State is responsible for the violation of judicial guarantees, freedom of expression and judicial protection, established in Articles 8(1), 8(2)(b), (c), (f), 13(1) and 25(1) and 25(2) of the American Convention, in relation to the obligations to respect and guarantee rights contained in Article 1(1) thereof, to the detriment of Vicente Aníbal Grijalva Bueno.

Ecuador a first extension of three months to report on compliance with the recommendations. However, in its report, the State did not provide updated and detailed information on its compliance with all the recommendations.

4. *Submission to the Court.* On July 25, 2019, the Commission[3] submitted to the Court all the facts and human rights violations described in the Merits Report, given "the need to obtain justice in this case."

5. *Requests of the Commission*. Based on the foregoing, the Inter-American Commission asked the Court to find and declare the international responsibility of the State for the violations contained in its Merits Report and to require Ecuador, as measures of reparation, to execute the measures included in said report. This Court notes, with concern, that between the presentation of the initial petition before the Commission and the submission of the case before the Court more than eighteen years have elapsed.

II
PROCEEDINGS BEFORE THE COURT

6. *Notification to the State and the representative*. The submission of the case was notified to the State on September 19, 2019,[4] and to the representative of the alleged victim on September 20, 2019[5].

7. *Untimely submission of the brief with pleadings, motions and evidence.* On December 3, 2019,[6] the alleged victim's representative submitted, extemporaneously, his brief of pleadings, motions and evidence (hereinafter "pleadings and motions brief"). Consequently, on February 6, 2020, following the instructions of the full Court, the said brief, together with its annexes, was deemed inadmissible.

8. *Answering brief and preliminary objection.* On June 8, 2020,[7] the State presented its brief in response to the submission of the case by the Commission (hereinafter "answering brief"). In that brief, it filed a preliminary objection and made a partial acknowledgement "of the facts and claims related to the administrative disciplinary process."

9. *Observations on the preliminary objection and the partial acknowledgement.* On July 31, and August 3, 2020, the Commission and the representative, respectively, submitted observations to the State's preliminary objection, requesting that it be dismissed, and to its partial acknowledgment of responsibility.

10. *Final written procedure*. After evaluating the Merits Report and the State's response, and in light of the provisions of Articles 15, 45 and 50(1) of the Rules of the

[3] The Commission appointed Commissioner Esmeralda Arosemena de Troitiño and then Executive Secretary Paulo Abrão as its delegates before the Court, and Erick Acuña Pereda as its legal adviser.

[4] On October 8, 2019, the State appointed María Fernanda Álvarez Alcivar as agent, and Carlos Alonso Espín Arias and Juan Carlos Álvarez León as deputy agents.

[5] The representative of the alleged victim is Mr. Francisco López-Bermúdez.

[6] On November 21, 2019, the representative requested an extension for the submission of the pleadings and motions brief owing to the situation in Ecuador. That same day, following the instructions of the President and in consultation with the full Court, an extension was granted to present the aforementioned brief on December 2, 2019.

[7] It should be noted that on March 17, 2020, by means of Decision 1/20, the Court decided to suspend, up to and including April 21, 2020, the computation of the procedural deadlines established, owing to the effects of the COVID-19 pandemic, a public and well known situation. On April 16, 2020, through Decision 2/20 of this Court, the suspension was extended up to and including May 20, 2020.

Court, the President decided that it was not necessary to convene a public hearing, considering the circumstances of the case and in the absence of a factual dispute. The decision was communicated in an Order of the President of October 20, 2020.[8] In that order, the President also required the statements of an ex officio declarant and an expert witness offered by the Commission to be rendered by affidavit.

11. *Final arguments and observations*. On January 4, 2021, the parties submitted their final written arguments; the representative included several annexes, and the Inter-American Commission presented its final written observations. On January 14, 2021, the State submitted its observations on the documents annexed to the written arguments of the representative. On January 13, 2021, the Commission informed the Court that it had no observations to make.

12. *Helpful evidence.* On March 5, 2021, the President of the Court asked the State to submit certain documentation as helpful evidence. The State submitted these documents on March 12, 2021. On March 22, 2021, the representative presented his observations to the documentation submitted as helpful evidence. On the same day the Commission indicated that it had no observations.

13. *Deliberation of this case*. The Court deliberated this judgment in a virtual session held on May 24, 25, and June 3, 2021.[9]

III
JURISDICTION

14. The Court has jurisdiction to hear this case, pursuant to Article 62(3) of the Convention, given that Ecuador has been a State Party to this instrument since December 28, 1977, and accepted the Court's contentious jurisdiction on July 24, 1984.

IV
PRELIMINARY OBJECTION

15. The State argued that the Court lacked jurisdiction to hear this case owing to the alleged use of the inter-American human rights system as a fourth instance in relation to the military criminal proceedings.

A. Arguments of the parties and of the Commission

16. The ***State*** argued that, in the specific case of Mr. Grijalva Bueno, it is evident that his intention was to use first the Inter-American Commission and now the Court as a higher a court with respect to the conviction handed down in a criminal trial by a domestic judicial authority. It held that from the initial petition and throughout the procedure before the Commission, both in the admissibility stage and in the merits

[8] *Cf. Case of Grijalva Bueno v. Ecuador*. Order of the President of the Court of October 20, 2020. Available at: http://www.corteidh.or.cr/docs/asuntos/grijalva_bueno.pdf.

[9] Owing to the exceptional circumstances caused by the COVID-19 pandemic, this judgment was deliberated and adopted during the Court's 142nd Regular Session, which was held virtually using technological resources, as established in the Court's Rules of Procedure.

stage, Mr. Grijalva Bueno presented a series of arguments that demonstrate his questioning of the assessment of the evidence by the domestic judicial authorities.[10]

17. The State argued that a review of the military criminal proceedings shows that, during the trial, Mr. Grijalva Bueno presented testimonial and documentary evidence, contradicted testimonies and other contrary evidence, and exercised the legal remedies provided by law. However, it considered that in the domestic proceedings he did not directly question the evidentiary ineffectiveness of the contents of the Naval Intelligence Service Report and "cannot now expect an international body to conduct an evidentiary assessment or determine the relevance of certain facts in the substantiation of the judgment within the domestic legal system, a task that is reserved for the domestic judge." It also argued that the alleged victim has disputed the judges' assessment of the application of domestic law in relation to the determination of the criminal offense, as well as the ruling of the Military Court of Justice that rejected the appeal, all of these issues relating to the assessment of evidence in the proceedings and the interpretation of domestic law by the judges who heard the case.

18. The State concluded that it is not up to the Court to assess the facts and evidence presented in each particular case owing to the alleged victim's disagreement with the judicial rulings that were not favorable to him, and that the Court should not constitute itself as a higher jurisdiction than the domestic courts, which generates the Court's lack of jurisdiction.

19. The ***representative*** argued that the fourth instance objection would not be applicable in this case, since the alleged victim is merely asking the Court to determine whether the military criminal proceedings as a whole, including the incorporation of evidence, complied with the Convention, since he considered that "there were several serious violations of the human rights contained in the Convention." He emphasized that the "initial flaws in the disciplinary process affected the entire military criminal proceeding, including the judgment." Consequently, he requested that the Court reject the State's preliminary objection and proceed to examine the merits of the case.

20. The ***Commission*** argued that the conventionality of all proceedings conducted at the domestic level, as State acts, can be analyzed by the organs of the inter-American system, an analysis that corresponds to substantive matters. Consequently, the Commission asked the Court to declare the inadmissibility of the State's argument, which is not of a preliminary nature.

B. Considerations of the Court

21. With respect to the preliminary objection of fourth instance presented by the State, the Court finds that it is not incompatible with the partial acknowledgment of

[10] For example, in his brief of June 2008, submitted to the Commission, Mr. Grijalva Bueno stated that: "[n]o previous evidence that clearly refuted the falsehoods concocted against Vicente Grijalva Bueno was taken into account. On the other hand, illegal evidence was collected at the appropriate procedural moments from influential actors. We attach official letter N° COGMAR-CDQ-005-R dated May 14, 1996, from the General Commander of the Navy […] this "report" was used by the judges of Captain Vicente Grijalva Bueno. […]
As will be observed, the judge did not bother to provide any reasoning on the factual and legal aspects of the case. Nor did he justify the relevance of the evidence or rule on its pertinence, that is, on the existence of the facts and the participation of the defendants. Therefore, he did not provide grounds or justify his judgment.
Instead, he validated all the unfair and illegal actions carried out during the disciplinary process and the military criminal proceedings […] making assumptions arising from previous processes […]". *Cf.* Communication from Mr. Grijalva Bueno to the Commission in June 2008 (evidence file, folios 509 to 545).

responsibility made by the State, since said acknowledgement refers to the administrative process of dismissal of Mr. Aníbal Vicente Grijalva Bueno, and not to the military criminal proceedings.

22. This Court has pointed out that the determination of whether the actions of judicial bodies violate the State's international obligations may lead it to examine the respective domestic proceedings to establish their compatibility with the American Convention.[11] Therefore, when analyzing the compatibility of domestic proceedings with the American Convention, the Court is only competent to decide on the content of judicial decisions that contravene it in a manifestly arbitrary manner.[12] Consequently, this Court is not a fourth instance of judicial review, inasmuch as it examines the conformity of domestic judicial decisions with the American Convention, and not with domestic law.

23. In the instant case, the Commission's claims are not limited to the review of the judgments of domestic courts for possible errors in the assessment of the evidence, in the determination of the facts or in the application of domestic law. On the contrary, it alleges the violation of various rights enshrined in the American Convention, in the context of the decisions made by the national authorities in judicial proceedings. Consequently, in order to determine whether such violations actually occurred, it is essential to analyze the decisions of the different jurisdictional authorities, in order to determine their compatibility with the State's international obligations, which, in the end, constitutes a substantive issue that cannot be resolved by means of a preliminary objection. Therefore, the Court considers that the preliminary objection presented by the State is not admissible.

V
ACKNOWLEDGMENT OF RESPONSIBILITY

A. Partial acknowledgment of responsibility by the State and observations of the representative and the Commission

24. In its answering brief, the ***State*** indicated its "partial acknowledgement of the facts and claims related to the disciplinary administrative process" and presented the following considerations:

> - [The State] accepts that in the reports used to dismiss Mr. Grijalva Bueno from the ranks of the Armed Forces, a military agent who had been denounced by the victim months earlier for having committed serious human rights violations was involved. [It] also accepts that other authorities who were denounced by Mr. Grijalva Bueno for the alleged commission of human rights violations and who formed part of the Council of Senior Officers that ordered his dismissal, had a direct interest in the outcome of the investigation, since they were involved in a dispute with the [alleged] victim. Therefore, the participation of these officers violated Mr. Grijalva Bueno's right to be heard by an impartial authority during the dismissal process.
>
> - Accepts that Mr. Grijalva Bueno did not have an opportunity to know, participate and defend himself in the disciplinary procedure that concluded with his dismissal. Mr.

[11] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222, and *Case of Urrutia Laubreaux v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2020. Series C No. 409, para. 31.

[12] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 222, and *Case of Cordero Bernal v. Peru. Preliminary objection and merits.* Judgment of February 16, 2021. Series C No. 421, para. 18.

Grijalva Bueno did not receive prior or detailed notification of the charges against him, nor did he have the adequate time and means to prepare his defense.

- Accepts that, in the case of Mr. Grijalva Bueno, the principle of presumption of innocence was not ensured and that the military authorities failed in their duty to provide grounds for their decisions.

- Accepts that Mr. Grijalva Bueno did not have access to an effective remedy to challenge the decision to dismiss him from the armed forces.

- Accepts that, despite a decision by the Court of Constitutional Guarantees ordering Mr. Grijalva Bueno's reinstatement in the armed forces, this order was not executed and therefore he has not been reinstated and has not received any payment in his favor.

25. The State also acknowledged its international responsibility for the violation of the rights set forth in Articles 8(1), 8(2), 8(2)(b) and 8(2)(c) of the American Convention, and for the violation of the right established in Articles 25(1) and 25(2)(c) of the same instrument, all in relation to Article 1(1), to the detriment of Mr. Grijalva Bueno, in the disciplinary process that concluded with his discharge. It emphasized that its acceptance of the facts and partial acknowledgement of the claims made in the submission of the case is consistent with principle of good faith established in international law. As a result of that acquiescence, the State pointed out that it waived the filing of preliminary objections, as established in Article 42 of the Rules of the Court, in relation to the administrative process of dismissal.

26. At the same time, the State acknowledged its obligation to provide redress to the alleged victim, but disagreed with the measures of reparation requested by the Commission in the submission of the case. It argued that it "has complied with certain actions of domestic reparation in good faith, and maintains [its] intention to satisfy and compensate the victim, to make reparation for the harm caused, and to ensure the non-repetition of such acts." It requested that any reparations ordered by the Court be granted solely for the facts for which it acknowledged its responsibility and within the standards of international human rights law.

27. Finally, the State asked the Court to accept its acknowledgement by virtue of the partial acquiescence in the terms indicated.

28. On the other hand, the State affirmed that it does not accept the facts that allegedly violate the rights established in the submission, which are related to the investigation and the military criminal proceedings against Mr. Grijalva Bueno, and are described in paragraphs 77 to 86; 87 to 89; 97 to 99; and 102 of Merits Report N° 152/18, considering that the international dispute in the instant case should focus on those facts. Consequently, the State argued that it did not violate the rights to judicial guarantees, judicial protection and to freedom of expression established in Articles 8(1), 8(2), 8(2)(b), 8(2)(c), 8(2)(g), 25(1), and 13(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Grijalva Bueno. Also, regarding the facts linked to the military criminal proceedings against Mr. Grijalva Bueno, it indicated that it would lodge a preliminary objection regarding the Court's lack of jurisdiction, due to the use of the inter-American human rights system as a fourth instance (*supra* paras. 16 to 18).

29. The ***representative*** appreciated the State's acknowledgement of international responsibility. However, it pointed out that it was incomplete because the State did not acknowledge: a) the context in which the facts of the case occurred; b) that Mr. Grijalva Bueno had denounced serious human rights violations within the Ecuadorian Navy; c)

the importance of the judgement in this case to ensure that similar acts are not repeated in Ecuador and in the region; d) the context of persecution, harassment, stigmatization, intimidation and disparagement suffered by the alleged victim and his family, which caused them deep anguish, suffering and fear; e) that evidence obtained through torture was used in the disciplinary process; f) the continued violation of human rights, impunity and stigmatization resulting from a failure to abide by the ruling of the then highest court for the defense and protection of human rights in Ecuador (Court of Constitutional Guarantees), and g) the reparations proposed by the State are incomplete and "do not fully honor the principle of good faith."

30. The ***Commission*** positively assessed the State's partial acknowledgment of responsibility. However, it stressed the importance of defining the factual basis for said responsibility, in order to determine its scope. The Commission considered that the determinations of fact and law and the measures of reparation related to the criminal proceedings against Mr. Grijalva Bueno remain in dispute. Therefore, it considered that the Court should make the corresponding determinations of all the facts, the legal consequences thereof and the reparations, in accordance with the magnitude and nature of the violations in this case. Finally, it asked the Court to determine the legal effects of Ecuador's partial acknowledgement of responsibility.

B. Considerations of the Court

31. Based on Articles 62 and 64 of the Rules, and in exercise of its international powers for the protection of human rights, a matter of international public order, it is incumbent upon this Court to ensure that acts of acknowledgement of responsibility are acceptable for the purposes sought by the inter-American system.[13] The Court will now analyze the situation raised in this specific case.

32. This Court recalls that the pleadings and motions brief was not admitted and that the submission of observations regarding the State's partial acquiescence did not constitute an opportunity for the alleged victim's representative to argue matters of fact or law and, if applicable, reparations. Consequently, when assessing the scope of State's partial acquiescence, the Court will not consider those facts that are outside the factual framework described by the Commission in its Merits Report, nor the legal arguments and requests for reparations made by the representative.

B.1 Regarding the facts

33. As is evident from the terms of its partial acquiescence, the State expressly acknowledged the following facts: a) that the reports which were used to dismiss Mr. Grijalva Bueno from the ranks of the armed forces involved a military agent who had been denounced months earlier by the alleged victim for having committed serious human rights violations; b) that other authorities who were denounced by Mr. Grijalva Bueno for allegedly committing human rights violations and who formed part of the Council of Senior Officers that ordered his dismissal, had a direct interest in the outcome of the investigation, since they were involved in a dispute with the alleged victim, c) that Mr. Grijalva Bueno did not have an opportunity to examine the evidence or participate and defend himself in the disciplinary procedure that ended with his discharge; d) that no grounds were provided for the decision to dismiss him or an

[13] *Cf. Case of Kimel v. Argentina. Merits, reparations and costs.* Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of Almeida v. Argentina. Merits, reparations and costs.* Judgment of November 17, 2020. Series C No. 416, para. 18.

effective remedy for him to challenge that ruling, and e) that the judgment of the Constitutional Court was not executed, and therefore Mr. Grijalva was not reinstated and did not receive any payment. Consequently, the Court considers that the dispute between the parties in relation to those facts has ceased.

34. The State also rejected the alleged violations of rights related to the military investigation and criminal proceedings against Mr. Grijalva Bueno, described in paragraphs 77 to 86; 87 to 89; 97 to 99; and 102 of Merits Report N° 152/18. The Court observes that the aforementioned paragraphs are found in section IV of the Report entitled "Analysis of the Law" and, more specifically, in the legal analysis of the case, where the Commission examined the facts in order to derive the corresponding legal consequences. Therefore, the Court considers that the dispute still exists regarding the facts referred to in the aforementioned paragraphs, as well as those related to the alleged violations of rights in the military criminal proceedings.

B.2 Regarding the legal claims

35. Taking into account the violations acknowledged by the State, as well as the observations of the representative and the Commission, the Court considers that the dispute has ceased regarding the violation of Mr. Grijalva Bueno's rights for: a) not being heard by an impartial authority during the dismissal procedure; b) not receiving prior and detailed notice of the accusation against him, nor the adequate time and means for the preparation of his defense in the dismissal process; c) failure to comply with the principle of presumption of innocence in the dismissal process; d) failure to comply with the duty to give reasons for the decision of dismissal, and e) failure to provide access to an effective remedy to review the decision of dismissal from the armed forces. Finally, despite a ruling of the Court of Constitutional Guarantees (*Tribunal de Garantías Constitucionales*–TGC) ordering Mr. Grijalva Bueno's reinstatement in the armed forces, this decision was not executed and therefore he has not been reinstated nor has any payment been made in his favor. Consequently, the State partially acknowledged its international responsibility for the violation of Articles 8(1), 8(2), 8(2)(b) and 8(2)(c) of the American Convention, as well as the violation of the right established in Articles 25(1) and 25(2)(c) of the Convention, all in relation to Article 1(1) of the same instrument, to the detriment of Mr. Grijalva Bueno, in the disciplinary process that concluded with his dismissal.

36. In light of the foregoing, the dispute continues in relation to the alleged violations of different judicial guarantees in the military criminal proceedings, as well as the right to judicial protection and the right to freedom of thought and expression, established in Articles 8(1), 8(2), 8(2)(b), 8(2)(c), 8(2)(f), 25(1), and 13(1) of the American Convention, all in relation to Article 1(1) of the same instrument, to the detriment of Mr. Grijalva Bueno. The Court notes that in its answering brief the State mentioned Article 8(2)(g) of the Convention; however, this provision was not referred to by the Commission in the proceedings before this Court, nor are there any arguments on record to support an alleged violation. Therefore, the Court considers that it is not appropriate to rule on the matter in this case.

B.3 Regarding the reparations

37. The dispute continues with regard to the appropriateness of the specific measures of reparation requested by the Commission, for which reason it will be the Court's responsibility to examine them. Notwithstanding the foregoing, the State has

accepted the duty to implement measures of reparation related to the dismissal procedure.

B.4 Assessment of the State's acknowledgment

38. As indicated previously, the State's acquiescence is partial (*supra* para. 24) and constitutes a positive contribution to the development of this process and to the reaffirmation of the principles that inspire the Convention, as well as to the victims' need for reparation.[14] Nevertheless, it also produces legal effects in the terms indicated. The Court will specify the scope of such effects in its substantive examination of the alleged violations of rights. As long as a dispute persists on these matters, the Court must issue a judgment in which it determines the facts that occurred, according to the evidence gathered during the proceedings before this Court and the acceptance of those facts, as well as their legal consequences. Furthermore, it will rule on the corresponding reparations. However, this Court does not consider it necessary, on this occasion, to open a discussion on all the points that were the subject of litigation, since some of the legal claims alleged were acknowledged by the State.

VI
EVIDENCE

A. Admission of the documentary evidence

39. The Court received the documents submitted as evidence by the Commission and the State together with their main briefs (*supra* paras. 4 and 8). In the instant case, as in others, this Court admits those documents presented in a timely manner by the State and the Commission or requested as helpful evidence by its Presidency,[15] which have neither been disputed nor challenged, and whose authenticity has not been questioned.[16] Because they are useful and public, the Court also incorporates two documents on domestic regulations, pursuant to Article 58(a) of the Rules.[17]

40. For his part, the ***representative*** presented a series of documents (15 sets of documents) together with a statement rendered by affidavit. The ***State*** questioned the submission of these documents, considering that they pertain to the merits of the case and the claims for reparation. The Court recalls that evidence submitted outside of the proper procedural opportunities is not admissible, except in the exceptions established

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[14] *Cf. Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs.* Judgment of June 19, 1998. Series C No. 38, para. 57, and *Case of Spoltore v. Argentina*, *Preliminary objection, merits, reparations and costs.* Judgment of June 9, 2020. Series C No. 404, para. 44.

[15] The following documents were included as helpful evidence: 1) Order to initiate an investigation issued on June 15, 1994, by the military criminal judge of the First Naval Zone, which ordered legal summary proceedings, as well as the official notification of the accused or their representatives; 2) Prosecutor's opinion of July 16, 1996 with the respective notifications for the accused or their representatives; 3) Statements of ER and of RG rendered in the military criminal proceedings, and 4) Military Criminal Code, Code of Military Criminal Procedure and the Ordinary Code of Criminal Procedure in force at the time of the facts (evidence file, folios 4823 to 5008). The "brief of August 11, 1994, presented by the accused in which they appear at the proceeding and appoint a defense attorney" is also included; this was presented by the State together with the documentation containing helpful evidence (evidence file, folios 4829 to 4830). In addition, it is made clear that in this judgment, persons are mentioned with initials, or through references to positions they held, who are not known to have been involved in the processing of the case at the international level, before the Inter-American Commission or the Inter-American Court.

[16] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Vicky Hernández et al. v. Honduras. Merits, reparations and costs.* Judgment of March 26, 2021. Series C No. 422, para. 16.

[17] Namely: the Armed Forces Personnel Law and the Social Security Law of the Armed Forces of Ecuador.

in the aforementioned article of the Rules, namely, *force majeure*, serious impediment, or if it concerns a fact that occurred after the cited procedural moments.[18] In this regard, the Court notes, on the one hand, that the representative did not justify the presentation of the documents attached to the alleged victim's statement and, on the other hand, that some of the documents attached to the statement concern the alleged victim's claims for reparation. This Court does not admit these documents[19] owing to their untimely submission.

41. In addition, the ***representative*** submitted four annexes together with his final written arguments, namely: again, Annexes 1 and 2,[20] which had already been declared inadmissible, as well as Annex 3 (*summary of the case scenario of Cap. Grijalva Bueno Vicente Aníbal) and Annex* 4 (*photograph of the certificate of accreditation as a "national hero" granted by the Council of Citizen Participation and Social Control*). The ***Commission*** did not submit any observations. For its part, the ***State*** argued in its observations that "it goes without saying that Annexes 1 and 2 are inadmissible," that Annex 3 is related to reparations, that it has been established that the procedural opportunity has expired and that Annex 4 refers to a fact that is outside the factual framework, and therefore should not be considered by the Court. Regarding the four documents whose admissibility was challenged by the State, the Court confirms that Annexes 1 and 2 had already been presented and declared inadmissible, a decision that is upheld. With respect to Annexes 3 and 4, this Court considers that these documents are not admissible because they relate to the alleged reparations in this case and, therefore, were presented extemporaneously.

B. Admission of the alleged victim's statement and expert evidence

42. In relation to the affidavit of Mr. Aníbal Vicente Grijalva Bueno, in its final arguments the State claimed that the alleged victim's statement exceeded its purpose, because in several parts of it he refers to facts and situations unrelated to the instant case, as well as to his claims for compensation. The State added that in the remainder of his statement, the alleged victim recounted, on the one hand, the administrative process of discharge that was conducted against him, regarding which the State has acknowledged its international responsibility, and on which there is no dispute, and on the other hand, the criminal proceeding conducted in the military jurisdiction, with

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[18] *Cf. Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C No. 234, para. 22, and *Case of Casa Nina v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2020. Series C No. 419, para. 37.

[19] Namely: 1) settlement for time of service in the Social Security Institute of the Armed Forces (ISSA); 2) letter requesting certification of contributions made to the ISSFA of July 21, 2010; 3) Official letter No. 100214-ISSFA-e1 of August 23, 2010; 4) Official letter No. PVPB-010 of May 13, 2010; 5) certificate of discounts to CPFG of the "National Navy" of November 15, 1995; 6) Income receipt N0. 85, Housing Cooperative "*Armada Nacional*" Housing Cooperative, June 2, 1992; 7) Ownership certificate, Ecuadorian Navy, "Punta Barabdua" Housing Program; 8) Circular No. PVPB-005-0 of August 23, 1990, Ecuadorian Navy, "Punta Barabdua" Housing Program; 9) Deed of purchase and sale, September 22, 1992, 25th Notary of the Canton of Guayaquil, and various documents of the Municipality of Guayaquil; 10) Details of loss of income from house rental at present value considering the annual inflation rate; 11) Birth certificates of Alex Vicente, Jennifer Zulay, Stefano Martín and Jamileth Adriana, all with the surnames Grijalva Ycaza, issued by the Civil Registry of Guayaquil, on December 19, 2019; 12) Details of operating expenses of Captain Vicente Aníbal Grijalva Bueno; 13) invoice from Cleveland Clinic Florida (19 documents), United States of America, October 18, 2019; 14) medical certificate issued by Dr. Mario Sandoval E., medical psychiatrist of October 28, 2019 for treatment provided to Mrs. María Dolores Ycaza Columbus, and 15) Photos of July 16, 2020, showing evidence of the removal of a plaque with a public apology.

[20] The representative submitted two annexes with the observations to the preliminary objection and partial acquiescence, namely: Annex 1, "Brief list of persons involved in human rights violations against Captain Vicente Grijalva Bueno," and Annex 2 referring to the "Table of compensation values in the cases of Mejía Idrovo v. Ecuador and Flor Freire v. Ecuador." These were not admitted on this occasion, pursuant to the communication of this Secretariat of August 7, 2021.

respect to which the State has refuted the allegations and has demonstrated that no violations of rights existed. In this regard, the Court deems it pertinent to admit the aforementioned statement, insofar as it is in keeping with the object defined in the Order that required it (*supra* para. 10) and with the purpose of this case.

43. In its final written arguments, the ***State*** also referred to the expert opinion of Michael J. Camilleri, arguing that "it is evident that the content of the expert opinion seeks to support the hypothesis of the [Commission] and the alleged victim, according to which the opening of criminal proceedings against Mr. Grijalva Bueno in the military jurisdiction was ordered because the alleged victim denounced the participation of military personnel in serious human rights violations [,] however, this assertion lacks veracity." In addition, the State referred to the expert witness's considerations regarding human rights defenders in relation to Mr. Grijalva Bueno's situation. The Court notes that the views expressed by the State regarding the expert opinion refer to its probative value, not to the admissibility of the evidence. Consequently, the Court admits the evidence and will take into account Ecuador's considerations in the assessment thereof.

VII
FACTS

44. In this chapter, the Court will establish the facts of the case based on the factual framework submitted to the Court by the Inter-American Commission, taking into account the facts recognized by the State, as well as those mentioned by the State in relation to the military criminal proceedings, on the following issues: A) Vicente Aníbal Grijalva Bueno; B) Administrative procedure for the dismissal of Mr. Grijalva Bueno; C) Appeal before the Court of Constitutional Guarantees, and D) Military criminal proceedings against Mr. Grijalva Bueno.

A. Vicente Aníbal Grijalva Bueno

45. Mr. Vicente Grijalva Bueno[21] was a member of the Ecuadorian Navy, with the rank of Lieutenant Commander attached to the General Directorate of the Merchant Navy. In the course of his duties, Mr. Grijalva became aware of illegal and arbitrary detentions, acts of torture, forced disappearances and the murders of three persons by Navy personnel, and reported these human rights violations to his hierarchical

[21] With regard to Mr. Grijalva's family, in his affidavit, Mr. Grijalva Bueno indicated that his wife is Mrs. María Dolores Ycaza Columbus and that he has four children: Alex Vicente, Jennifer Zulay, Stefano Martin and Jamileth Adriana, all with the surnames Grijalva Ycaza *Cf.* Affidavit of Vicente Aníbal Grijalva Bueno rendered on November 30, 2020 (evidence file, folios 4681 to 4761).

superior[22] in December 1991. In 1994, Mr. Grijalva Bueno publicly disclosed to the media the allegations he had made previously within the institution.[23]

B. Administrative process of dismissal of Mr. Grijalva Bueno

46. In February 1992, Mr. Grijalva Bueno was appointed Port Captain of Puerto Bolívar, in the province of El Oro.[24] According to a statement by the Navy contained in an official letter dated August 27, 2007, in July 1992, the Intelligence Service (hereinafter "SERINT") began to investigate Mr. Grijalva Bueno and other agents for: i) the publication of newspaper articles in which fishermen claimed to be victims of extortion by naval personnel in Puerto Bolívar; and ii) allegations made by the intelligence chief EG and others regarding fuel smuggling by naval personnel in Puerto Bolívar, and iii) charging sex workers money to allow them to board ships in that port.[25]

47. The Intelligence Service report, which is not dated and is marked "Confidential" on the header and footer, stated that Mr. Grijalva Bueno: i) illegally received the sum of $300,000.00 sucres for processing paperwork for a "post-larval" shrimp nursery, having submitted receipt No.0506 for only $5,260 sucres; ii) authorized the transportation of 2,000 gallons of contraband fuel to be sold in Tumbes, and iii) faced an accusation for abuse of authority and arrogance according to M.C. who, according to this report, also claimed that Mr. Grijalva Bueno had a verbal contract with LV for shrimp production. The report added that "the group of crew members involved in these anomalies had enough time to agree on the answers they would give in the interviews that would be conducted by SERINT. It also noted that they received good legal advice, since they all answered using the same phrases and terms."[26]

48. On October 2, 1992, the Intelligence Service prepared an extension of its report, which was also marked "Confidential" on the header and footer of the document. In said extension it was indicated that Corporal FCh had accused Mr. Grijalva Bueno of

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[22] In his affidavit, Mr. Grijalva Bueno stated that in August 1991 two officers, BF and FAB, "verbally denounced the atrocities committed by members of the Naval Intelligence Service, led by [FM]; these included the cases of Élito Véliz, Manuel Stalin Bolaños and Consuelo Benavides Ceballos. [… I] n December 1991, he reported these atrocities through regular channels to Admiral TL, head of the First Naval Zone [, who] said he would report these allegations to the Commander General of the Navy so that they [could] be investigated." *Cf.* Statement of Vicente Aníbal Grijalva Bueno rendered by affidavit for the Court, *supra*. (evidence file, folios 4681 to 4761). Also, in a communication addressed to the Minister of National Defense, Mr. Grijalva mentions the various occasions on which he internally informed his superiors of the "criminal conduct of CPCB –AD- [FM], and mentions, *inter alia*, that on October 7, 1992, "once the process that ended with [his] discharge without trial had begun, he testified before the INVESTIGATIVE Commission composed of [HC] , CPNV [DR] , CPNV [JL], CPNV [HM] with CPCB [ES] acting as Secretary, that Mr. CPCB –AD- [FMV], at that time SUB-DIRECTOR of NAVAL INTELLIGENCE and director of the Intelligence operation that investigated [his] supposed irregularities as PORT CAPTAIN of PUERTO BOLIVAR, was responsible for several deaths and disappearances" (capitalization of the original). *Cf.* Communication from Mr. Grijalva Bueno to the Minister of National Defense of February 24, 1994 (evidence file, folios 640 and 641).

[23] *Cf.* DVD Case of Vicente Grijalva Bueno, Annex 2 regarding the content of the DVD. List of press reports: "Death of Consuelo Benavides is clarified", *El Universo*, Friday August 19, 1994 (evidence file, folio 379); "AVC killed Consuelo Benavides, says Morales", *Diario* Universal, *Sucesos*, (evidence file, folio 380); "Between Truth and Fear" by José Gómez Izquierdo, *Vida y Palabra*, (evidence file, folio 381); "Let justice be done!" Opinion of September 27, 1997 (evidence file, folio 425); "Human Rights denounces flaws in the trial of Captain Vicente Grijalva," *Diario Universo* of March 18 (evidence file, folio 426); "Records of 456 victims announced in report", *El Universo*, *Actualidad*, Tuesday, June 8, 2020; "President apologized to the victims" (evidence file, folio 428); letter from the sister of Consuelo Benavides to Mr. Grijalva Bueno, and communication from JSR to the Minister of Defense of May 27, 1994 (evidence file, folios 653 to 657).

[24] *Cf.* Statement of Vicente Aníbal Grijalva Bueno rendered by affidavit for the Court, *supra*.

[25] *Cf.* Naval Force, Official letter No. COGMAR-JER-484-O of August 27, 2007 (evidence file, folios 6 to 19).

[26] *Cf.* Ecuadorian Navy, Naval Intelligence Service, "Final Report on the investigations conducted into anomalies detected in the Captaincy of Puerto Bolívar", Confidential, undated (evidence file, folios 21 to 22).

committing irregularities in Puerto Bolívar, such as ordering the protection of the shrimp boat of Admiral TL, where he allegedly saw him "counting a roll of dollar bills." It was reported that other sailors made similar allegations.[27]

49. According to a statement by the Head of the Operational Audit Department of the General Inspectorate of the Navy, made before the military criminal judge of the First Naval Zone, his boss – the Inspector General – ordered him to establish an investigative commission to verify the facts described in a report presented by SERINT in Puerto Bolívar. He added that the commission went to Puerto Bolívar and was instructed not to announce its visit to the Captain. He also stated that the work was coordinated with a SERINT agent under the command of FM, who was the head of SERINT. He indicated that they spoke with the people who were aware of the reported irregularities, who confirmed the facts.[28]

50. On October 19, 1992, the Inspector General forwarded the report of the Administrative Affairs Commission which "examined and analyzed the administrative failures" of Mr. Grijalva Bueno in his performance as Port Captain, concluding that he and other seamen participated in: illegal charges for paperwork; giving consent for sex workers to board ships; seafood theft; fuel or engine trafficking; and smuggling of luxury vehicles in Puerto Bolívar. In view of this, as indicated in Official Communication No. COGMAR-JER-484-O of August 27, 2007, the General Council of the Navy stated that the report concluded that Mr. Grijalva Bueno committed crimes, and therefore recommended that the Court of the First Naval Zone initiate legal action.[29]

51. On October 27, 1992, the Council of Senior Navy Officers issued a resolution ordering that Mr. Grijalva Bueno be "placed on paid leave for the good of the service," pursuant to Article 76 (i) of the Law on Armed Forces Personnel. The resolution accepted the recommendations of the investigative commission which confirmed Mr. Grijalva's guilt.[30] The decision was ratified on September 2, 1993, by the Supreme Council of the Armed Forces.[31]

52. On November 17, 1992, the President of the Republic issued Decree No. 264, ordering that Mr. Grijalva Bueno be "officially placed on leave." On May 18, 1993, the alleged victim was permanently discharged from the armed forces through Executive Decree No. 772.[32]

C. Appeal before the Court of Constitutional Guarantees

53. In response to this situation, on September 8, 1994, Mr. Grijalva and other persons filed an appeal of unconstitutionality before the Court of Constitutional

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[27] *Cf.* Ecuadorian Navy, Naval Intelligence Service, "Extension to the Report of the Investigative Commission," Confidential, of October 2, 1992 (evidence file, folios 24 to 28).

[28] *Cf.* Military Criminal Court of the First Naval Zone, statement of JL before the military criminal judge, Criminal Case 06-94, of November 27, 1995 (evidence file, folios 30 to 43).

[29] *Cf.* Naval Force, Official letter No. COGMAR-JER-484-O, *supra*.

[30] *Cf.* Supreme Council of the Armed Forces, "Extension of the Report of the Commission", undated (evidence file, folios 71 to 74) and Ecuadorian Navy, Council of Senior Officers, Official letter No. COSUPE–SEC–007-R, of October 27, 1992 (evidence file, folio 616). It should be noted that Article 74 of the Armed Forces Personnel Law of Ecuador states: "Being placed on paid leave (*disponibilidad*) is the transitory situation in which a member of the military is placed, without a command and without any active position, but without excluding him from the ranks of the Permanent Armed Forces, until his discharge is published." See: https://www.defensa.gob.ec/wpcontent/uploads/downloads/2017/08/LEY_PERSONAL_FUERZAS_ARMADAS.pdf

[31] *Cf.* Court of Constitutional Guarantees. Decision No. 181-95–CP, of September 12, 1995 (evidence file, folios 68 to 69).

[32] *Cf.* Court of Constitutional Guarantees. Decision No. 181-95–CP, *supra.*

Guarantees. On September 12, 1995, the Court issued Decision No. 181-95-CP in which it confirmed that Mr. Grijalva and other persons:

> […] were punished for misconduct, in an informal process in which the defendants' right of defense was restricted, not only because they were not notified in a timely manner of all the charges against them, but also because the corresponding case files were not presented, despite the insistence of the timely request made in this respect.[33]

54. The Court of Constitutional Guarantees established that the procedure for placing the petitioners on leave and discharging them violated the rules set forth in Article 19 (d) paragraph 17 of the Constitution. Therefore, it considered that Executive Decree No. 772 of May 18, 1993, was "unconstitutional, the final outcome of a complex act that was unconstitutionally born." Consequently, the Court of Constitutional Guarantees admitted the appeal and granted "a period of thirty days to reinstate [the petitioners] in the armed forces and restore all their rights."[34]

55. On September 28, 1995, the Ministry of National Defense sent a document to the President of the Court of Constitutional Guarantees arguing that the Supreme Council of the Armed Forces did not commit unconstitutional or illegal acts and that by "[…] ordering the reinstatement of undesirable elements [...] we would be deliberately fomenting indiscipline, disrespect for the military hierarchy and its organs."[35] In October 1995, the Commander General of the Navy asked the Constitutional Court to suspend compliance with the aforementioned decision until a final ruling from the Military Justice.[36] On March 12, 1996, the aforementioned Court rejected said request for the following reasons:

> […] 1. Because to accept that a criminal prosecution may suspend compliance with a resolution of the Court would be to violate the principle of constitutionality of the presumption of innocence; 2. Because it is not the Court that has to comply with the provisions that it issues, but in the present case, the President of the Republic, the Council of Crew Personnel, the Council of Senior Officers of the Navy, the Supreme Council of the Armed Forces and the Commander General of the Navy; and 3. Because the decisions of the Court are subject to the presumptions of legitimacy and enforceability, for which reason it is unacceptable that an administrative act that is binding should be subordinated to the eventuality of the results of a criminal trial.[37]

56. Subsequently, between June and October 1998, Mr. Grijalva Bueno sent a series of communications to the Anticorruption Commission, the Attorney General, the President of the Constitutional Court and the President of the Republic, protesting at the Navy's disregard for the rulings of the Court of Constitutional Guarantees and denouncing irregularities in the administrative procedure against him.[38]

57. On August 27, 2007, the Commander General of the Navy indicated to the Minister of National Defense that "because indications of criminal responsibility were found, the respective military criminal trial was initiated against CPCB Vicente Aníbal Grijalva Bueno and others" and requested the suspension of compliance with the ruling of September 12, 1995, since the Criminal Code states that "any prison sentence entails

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33 *Cf.* Court of Constitutional Guarantees. Decision No. 181-95–CP, *supra.*

34 *Cf.* Court of Constitutional Guarantees. Decision No. 181-95–CP, *supra*.

35 *Cf.* Ministry of National Defense, official letter sent by the Minister of National Defense to the President of the Constitutional Court (evidence file, folios 158 to 160).

36 *Cf.* General Commander of the Navy, request for suspension of compliance with Decision No. 181-95–CP (evidence file, folio 162).

37 *Cf.* Court of Constitutional Guarantees, case No. 83/93, of March 12, 1996 (evidence file, folios 68 to 69 and 164).

38 *Cf.* Communications sent between June and October 1998 by Mr. Grijalva Bueno (evidence file, folios 167 to 188).

removal from active service," and consequently it would not be possible to reinstate Mr. Grijalva in the armed forces.[39]

58. Subsequently, an action for non-compliance with the judgment of the Court of Constitutional Guarantees of September 12, 1995, and the Constitutional Opinion, was filed against the Commander General of the Ecuadorian Navy, by the defense of Messrs. HM, JS, FCh and MCh, in which Mr. Grijalva Bueno was not a plaintiff. On January 5, 2012, the Constitutional Court[40] issued Ruling No. 001-12-SIS-CC, declaring the failure of the Commander General of the Ecuadorian Navy to comply with Resolution No. 181-195-CP of September 12, 1995, and ordered him to proceed with the (financial) settlement or re-settlement to which the defendants were entitled.[41] On March 6, 2014, the Constitutional Court declared non-compliance with Ruling No. 001-12-SIS-CC of January 5, 2012, and instructed the parties to reach an agreement at the Mediation Center of the Attorney General's Office, to which they were summoned for the exclusive purpose of reaching an agreement on the amount of the pecuniary compensation due, within a period no greater than thirty days.[42] The plaintiffs submitted to the mediation procedure and each received monetary compensation. In addition, the following measures were agreed: a) a public apology; b) a ceremony in the First Naval Zone, where a plaque with a public apology would be placed in a military compound and c) in official letter No. ARE-DIGREH-AJU-2015-0196-O of April 16, 2015, the Officers and Crew Members' Departments were ordered to exclude from the General Order the term "discharge for misconduct and for the good of the service."

D. Military criminal proceedings against Mr. Grijalva Bueno

59. As a result of the investigation carried out by SERINT, on November 19, 1993, the Commander General of the Navy issued an official communication ordering the initiation of legal proceedings against Mr. Grijalva and ten other crew members, in compliance with the mandatory "Resolution of the Councils."[43] On November 29, 1993, the Commander of the First Naval Zone ordered the military criminal judge of the First Naval Zone to open a "summary inquiry for alleged extortion of civilians by members of the Captaincy of Puerto Bolívar."[44]

60. On November 30, 1993, the Military Criminal Court of the First Naval Zone summoned the accused to render their statements and undertake the necessary procedures, stating that the persons summoned had "committed irregularities in the performance of their duties, such as having used personnel from that (naval) division to work on a private shrimp farm, allowing charges to be made to merchants for paperwork […], authorizing the illegal transit of fuel to Peru, […] and allowing prostitutes […] to board ships, by paying [money]," *inter alia*.[45]

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39 *Cf.* Naval Force, Official letter No. COGMAR-JER-484-O, *supra*.

40 The current name of the Court of Constitutional Guarantees.

41 *Cf.* Constitutional Court for the Transition period, Judgment No. 001-12-SIS-CC of January 5, 2012 (evidence file, folios 190 to 197).

42 *Cf.* Constitutional Court of Ecuador, order of March 6, 2014 (evidence file, folios 202 to 212). The State indicated that Mr. Grijalva was not a party to the action of non-compliance, and therefore did not participate in the mediation process with the plaintiffs. On December 30, 2014, after signing an agreement with other military members, Mr. Grijalva began a mediation process to agree on compensation, but he has not attended since 2018, despite several invitations (merits file, folio 187).

43 *Cf.* Ecuadorian Navy, General Command of the Navy, Official letter No. COGMAR-JUR-251-0 of November 19, 1993 (evidence file, folio 76).

44 *Cf.* Ecuadorian Navy, First Naval Zone, Official letter No. PRIZON-JUZ-943-0, of November 29, 1993 (evidence file, folio 78).

45 *Cf.* Military Criminal Court of the First Naval Zone, initial order for summary inquiry of November 30, 1993 (evidence file, folios 80 to 81).

61. In December 1993, two naval messages were issued by the Commander General of the Navy (COGMAR) to the Commander of Naval Operations (COOPNA CDO), who was also the Judge Advocate of the First Naval Zone. The first message read: "URGENTLY ORDERS THE EXAMINING MAGISTRATE OF PRIZON TO FORWARD THE JUDGE'S DELIVERY-RECEPTION RECORDS AND CERTIFICATION DELIVERED TO EX. CPCB-IM VICENTE GRIJALVA" (capitalization of the original), where it states that "there are no grounds for initiating criminal proceedings" against Mr. Grijalva Bueno. The second message, in response, also sent in December 1993, states "ORDER EXECUTED – BT" (capitals in the original).[46]

62. The investigation stage lasted approximately six months, until June 13, 1994. The judge of the First Naval Zone decided to open a military criminal trial against Mr. Grijalva Bueno "for crimes against the military faith,"[47] agreeing with the criterion of the Resolution of the Council of Senior Officers to place him on paid leave.[48]

63. On June 15, 1994, the military criminal judge of the First Naval Zone issued an order to initiate proceedings and ordered the preliminary investigation to be opened against the aforementioned accused, summoning them for certain investigative procedures, such as the taking of statements from various persons.[49] In addition, the judge ordered the provisional detention of Mr. Grijalva Bueno based on Article 25 of the Code of Military Criminal Procedure.[50]

64. On August 19, 1994,[51] Mr. Grijalva Bueno and another defendant asked the military criminal judge to set the amount of bail in accordance with Article 180 of the ordinary Code of Criminal Procedure.[52] On November 29, 1994, the judge of the First Naval Zone "rescinded the detention order" against both defendants upon receipt of the surety.[53]

65. On July 5, 1995, Mr. Grijalva Bueno gave "investigative testimony" before the military court of the First Naval Zone in which he denied the charges made against him in the court order to initiate an investigation and presented evidence in his defense.[54]

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46 *Cf.* Naval messages December 1993 (evidence file, folios 636 to 637).

47 At the time of the facts, crimes against the military faith were defined in the Military Criminal Code, in Articles 147 to 158. *Cf.* Military Court of the First Naval Zone, brief of August 19, 1994, Mr. Grijalva Bueno and JS requesting bail (evidence file, folios 4370 to 4371).

48 *Cf.* Military Criminal Court of the First Naval Zone, order of June 13, 1994 (evidence file folios 4363 to 4368).

49 *Cf.* Preliminary order of the Military Court of the First Naval Zone issued on June 15, 1994 (evidence file, folios 4823 to 4825).

50 Code of Military Criminal Procedure, Official Register, Supplement 356 of November 6, 1961, Art. 25.- "Once the existence of the *corpus delicti* or of a fact that presents the characteristics of the offense under investigation is proven, or if there are indications or presumptions to consider someone as author, accomplice or accessory, his arrest shall be ordered." (evidence file, folios 4924 to 4946).

51 *Cf.* Military Court of the First Naval Zone, brief of Mr. Grijalva Bueno and JS requesting bail, dated August 19, 1994 (evidence file, folios 4370 to 4371).

52 Code of Criminal Procedure, Official Record 511 of June 10, 1983, Art. 180.- "In proceedings involving crimes punishable by imprisonment, a pretrial detention order shall not be issued, or the one issued shall be revoked, when the accused or the defendant provides a surety to the satisfaction of the competent judge, which may consist of a bond, pledge or mortgage." (evidence file, folios 4948 to 5008).

53 *Cf.* Court of law of the First Naval Zone, order of November 29, 1994 (evidence file, folio 4375).

54 *Cf.* Testimony of Aníbal Vicente Grijalva Bueno before the Military Court of the First Naval Zone of July 5, 1995 (evidence file, folios 4377 to 4385).

Subsequently, on several occasions, Mr. Grijalva Bueno asked the judge to order a series of evidentiary, testimonial and documentary procedures.[55]

66. On November 27, 1995, Captain JL, who was involved in the preparation of the report of the commission of the Inspectorate for Administrative Affairs, stated: "[W]hat we wrote in the report is based on what we were told by those we interviewed [; the] report is to verify what is stated in the complaints. It is not evidence that this actually happened."[56]

67. On May 14, 1996, Mr. Grijalva asked the military criminal judge to summon ER and RG, the persons who had initially reported the alleged unlawful acts attributed to him, to testify.[57] The investigating judge ordered evidence to be gathered and he went to Puerto Bolívar to receive those two statements.[58]

68. On July 2, 1996, the military criminal judge of the First Naval Zone declared the summary inquiry closed.[59] On July 5, 1996, the military criminal judge rejected Mr. Grijalva's request to continue with the case.[60]

69. On July 16, 1996, the Prosecutor of the First Naval Zone, in accordance with Article 65 of the Military Code of Criminal Procedure,[61] issued his report in which he accused Mr. Grijalva Bueno and another person - the former as the perpetrator and the latter as an accomplice - in the crime of abuse of authority. Regarding Mr. Grijalva Bueno he stated the following:

> […] I accuse him of being the author of the offenses defined in Art. 146, paragraphs four and eight, of the Military Criminal Code, since as the oldest [member] of "the Captaincy of Puerto Bolívar" Naval Division and as an authority, he abused his powers by exceeding his legal attributions, committed abuses of authority, extorted and allowed the extortion of citizens who are obliged to appear before the Maritime Authority […].[62]

70. The evidence file contains a brief filed by Mr. Grijalva Bueno in which he states that he was not notified of the prosecutor's opinion in a timely manner and that both the prosecutor and the judge ignored his request regarding the witness statements.[63] However, it is on record that the prosecutor's opinion was notified to him on July 23, 1996.[64]

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55 *Cf.* Military Court of the First Naval Zone, brief of Mr. Grijalva Bueno of July 17, 1994 (evidence file, folios 4387 to 4388), and Military Court of the First Naval Zone, order of February 29, 1996 (evidence file, folios 4396 to 4397).

56 *Cf.* Military Criminal Court of the First Naval Zone, statement of JL before the military criminal judge, Criminal Case 06-94, of November 26, 1995 (evidence file, folios 30 to 43).

57 *Cf.* Request submitted to the military criminal judge of the First Naval Zone by Mr. Grijalva Bueno's defense attorney, of May 14, 1996 (evidence file, folio 98).

58 *Cf.* Brief of Mr. Grijalva Bueno submitted to the Military Court of the First Naval Zone on July 16, 1996 (evidence file, folios 225 and 4451) and statements made by ER and RG of April 13 and October 5, 1994, in Puerto Bolívar (evidence file, folios 4870 to 4884).

59 *Cf.* Military Court of the First Naval Zone, order of July 2, 1996 (evidence file, folio 4408).

60 *Cf.* Court of law of the First Naval Zone, order of July 5, 1996 (evidence file, folio 4410).

61 *Cf.* Military Code of Criminal Procedure, Art. 65. "Once the summary has been received by the Superior, it shall be transferred to the prosecutor so that he may issue his opinion within the term granted. This term may be extended having regard to the importance, volume and complexity of the process". *Cf.* Prosecutor's opinion of July 16, 1996 (evidence file, folios 4413 to 4448).

62 *Cf.* Military Court of the First Naval Zone, prosecutor's opinion of July 16, 1996 (evidence file, folios 4413 to 4448).

63 *Cf.* Request submitted to the Military Criminal Judge of the First Naval Zone by Vicente Grijalva Bueno and JS, Military Trial No. 06-94, undated (evidence file, folio 112). Said document does not have a date, but is marked "July 15, 196" in ballpoint pen, suggesting that it was filed prior to the issuance of the prosecutor's opinion.

64 *Cf.* Notification of the prosecutor's opinion of July 23, 1996 (evidence files, folio 4868).

71. Furthermore, in July 1996,[65] Mr. Grijalva Bueno and another defendant submitted their written observations regarding the prosecutor's accusatory report against them, requesting that the judge of the First Naval Zone issue a final dismissal order. In this regard, they indicated, *inter alia*, that:

> […] the prosecutor merely mentions and repeats the only concrete charges that have been brought against [them]: the complaints made by [ER] and [RG]. […] [However,] all the investigations, inquiries and verifications are always reduced to the same thing: the accusations […without] being able to prove absolutely anything with respect to the charges made by [ER] and [RG] [… this being fundamental, since,] the law requires that the judge, in order to convict, must have found evidence of what the accusers claim […] [according to [Article] 124 of the ordinary Code of Criminal Procedure, applicable to military trials. [In addition,] the aforementioned [ER] and [RG] were repeatedly asked to personally appear in Guayaquil to testify before [them and their] attorney; but the examining judge, instead of requiring their appearance, and using the powers granted to him by law, preferred to go to Puerto Bolívar to receive their statements.[66]

72. According to a note from the priest JP, on July 9, 1996, he sent a communication to the Commander of the Navy informing him that RG had told him that he did not know Mr. Grijalva and that a military agent had given him money in exchange for using his name to file the complaint.[67]

73. On August 7, 1996, an order was issued calling for full trial against the defendants Vicente Aníbal Grijalva Bueno and JS, as alleged perpetrator and accomplice,[68] respectively, for the offense defined and punished in Article 146, paragraphs 4 and 8 of the Military Criminal Code.[69] On August 8, 1996, Mr. Grijalva and the other defendant appealed the order for a full trial.[70]

74. On September 2, 1996, the Military Court of the First Military Zone submitted the case files to the Court of Military Justice.[71]

75. On June 5, 1998, the Military Court of Justice dismissed the appeals filed by the defendants and confirmed the order calling for a trial.[72]

76. On September 10, 1998, the Zone Commander and Military Judge of the First Naval Zone, in accordance with the provisions of Article 73 of the Code of Military

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65 It is noted that the cited document is dated July 1996, but the exact date is not recorded. *Cf.* Response to the prosecutor's opinion, sent to the judge of the First Naval Zone by Vicente Grijalva Bueno and SR, Criminal Case No. 06-94, July 1996 (evidence file, folios 114 and 115).

66 *Cf.* Response to the prosecutor's opinion, July 1996, *supra*.

67 *Cf.* Letter from the priest JP to the Navy Commander, July 9, 1996 (evidence file, folio 100).

68 *Cf.* Summons to a full trial issued by the Military Court of the First Naval Zone of August 7, 1996 (evidence file, folios 4453 to 4482).

69 "Article. 146. The following are responsible for abuse of their powers and shall be punished with a prison term of three months to two years: [...]
4. Those who, in the exercise of their authority or command, exceed their legal powers or deviate from the instructions of their superiors;
8. Those who make requisitions, impose illegal war contributions, take booty or commit other abuses or extortion." *Cf.* Military Criminal Code in force at the time of the facts (evidence file, folio 4908).

70 *Cf.* Brief of Mr. Grijalva Bueno and another presented before the Military Court of the First Military Zone on August 8, 1996 (evidence file, folio 4485).

71 *Cf.* Order to refer the appeal to the Military Court of Justice issued on September 2, 1996 (evidence file, folio 4487).

72 *Cf.* Order of the Court of Military Justice of June 5, 1998 (evidence file, folios 4490 to 4493).

Criminal Procedure,[73] ordered that the statement of both defendants be received.[74] On October 19, 1998, the alleged victim made a statement in which he reiterated that his "legitimate right to defense" was not ensured on several occasions and that "[…they were] not provided with the presence of key witnesses."[75]

77. Once the statements were received, on October 26, 1998, the military judge of the First Naval Zone opened the case for a ten-day evidentiary hearing.[76]

78. On April 28, 1999, the Military Advocate General issued an opinion in which he stated:

> […] Consequently, having proven the existence of the offense defined and punished under Article 146, paragraphs 4 and 8 of the Military Criminal Code, from the evidence requested in court by the Zone Prosecutor, the guilt of the defendants is demonstrated […] in accordance with Arts. 84 of the Code of Military Criminal Procedure and 326 of the (ordinary) Code of Criminal Procedure, the Zone Commander must issue a conviction against the aforementioned defendants […].[77]

79. On March 13, 2000, the Zone Commander- Military Judge of the First Naval Zone handed down a conviction against Mr. Grijalva Bueno and the other defendant, based on the evidence gathered, particularly on the administrative reports containing references to cash receipts, the defendants' own testimonies and the testimonies of the injured parties and members of the Navy, related to crimes such as the extortion of merchants and the granting of transport permits for fraudulent purposes. The ruling stated:

> […] a) That the CPCB-IM VICENTE ANIBAL GRIJALBA BUENO, whose status and position are on file, is the author of the crime defined and punished under Art 146, paragraphs 4 and 8, of the Military Criminal Code, for which a penalty of TWO HUNDRED DAYS OF CORRECTIONAL PRISON is imposed, which he will serve in the San Eduardo Naval Prison of the Naval Infantry Corps in this city of Guayaquil […][78].

80. On March 15, 2000, the defendants filed an appeal against the first instance judgment,[79] pursuant to Article 167 of the Code of Military Criminal Procedure, on the grounds that the judgment violated the constitutional and legal norms prevailing in the country. As a result, the case was referred to the Court of Military Justice.

81. On March 13, 2001, the Court of Military Justice rejected the appeal filed and upheld the ruling issued by the judge of the First Naval Zone, confirming the guilt of

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[73] Ecuador's Military Criminal Law in force at the time of the facts used the term "confession" to refer to the statement of the accused. In this regard, Article 73 of the Military Code of Criminal Procedure states: "The confession of the accused shall be rendered without oath, and shall contain:
1. The name and surname of the confessant and,
2. His religion, age, place of birth and domicile, his status, rank, corps and the post to which he belongs. The Zone Commander shall interrogate him on the facts and the reasons for his presence in court; he shall ask the pertinent questions and counterclaims and shall require him to answer them, even referring to evidence that contradicts his statements in the case, or reading him the evidence that he deems pertinent." *Cf.* Military Code of Criminal Procedure in force at the time of the facts (evidence file, folio 4934).

[74] *Cf.* Military Criminal Court of the First Naval Zone, order of September 10, 1998 (evidence file, folio 122).

[75] *Cf.* Judge of the First Naval Zone, unsworn confession of Mr. Grijalva Bueno of October 19, 1998 (evidence file, folios 124 to 132).

[76] *Cf.* Military Court of the First Naval Zone, order of October 26, 1998 (evidence file 4495 to 4496).

[77] *Cf.* Military Court of the First Naval Zone, prosecutor's opinion of April 28, 1999 (evidence file, folios 148 to 151, folios 4507 to 4519).

[78] *Cf.* Military Court of the First Naval Zone, judgment of March 13, 2000 (evidence file, folios 148 to 151).

[79] *Cf.* Military Court of the First Naval Zone, appeal filed by Mr. Grijalva Bueno and another on March 15, 2000 (evidence file, folio 4527).

Mr. Grijalva Bueno and JS. The judgment stated that "the defense of the accused was limited to arguing matters unrelated to the trial, such as claiming that the revenge and hostility of several naval officers were intended to harm (the defendant), facts that turned out to be totally unconnected with the process."[80] It added that "the testimonies given in the trial are consistent as to form, circumstances and sequence of events, which are perfectly in line with the documentary evidence […]. In view of the accusations made, the defense of the accused does not succeed in dispelling the charges against them […].[81]"

82. On December 6, 2007, the judge of the First Naval Zone declared the statute of limitations on the sentence delivered and ordered the case file to be archived.[82] Mr. Grijalva Bueno did not serve the prison term.

VIII
MERITS

83. The instant case concerns the State's alleged responsibility for the absence of judicial guarantees in the military criminal proceedings followed against Mr. Vicente Aníbal Grijalva Bueno for "crimes against the military faith," as well as the violation of freedom of thought and expression.

84. The State made a partial acknowledgement of responsibility in relation to the considerations expressed by the Commission in its Merits Report regarding the disciplinary procedure of dismissal of Mr. Grijalva Bueno in the terms indicated (*supra* Chapter V). Therefore, this Court does not consider it necessary to conduct a detailed analysis of said violations, except for those that were not acknowledged by the State. Therefore, the Court will examine the disputes over the judicial actions taken in the military criminal proceedings in relation to the alleged violations of judicial guarantees, and the alleged violation of freedom of thought and expression.

VIII.1
JUDICIAL GUARANTEES[83]

85. In Chapter V, the Court indicated the scope of the State's partial acknowledgment of international responsibility with respect to the violation of judicial guarantees and judicial protection by the administrative authorities during the victim's

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80 "The offenses and responsibility of the defendants are legally and fully proven based on the decision of July 13, 1994 of Summary Inquiry N° 44- 93 of the Court of Law of the First Naval Zone (folios 2 to 5); the report of the commission verifying the information processed by the Naval Intelligence Service (folios 35 to 41); the report of the Administrative Affairs Inspection Commission of the "Case of the Captaincy of Puerto Bolívar" (folios 22 to 24); the Final Report of the Naval Intelligence Service (folios 11 to 15); the written complaint of [ER] (folios 16 and 17) regarding the documents that prove the declarants' statements; three permits to transport fuel (folios 28, 29 and 154); cash receipt N° 0506 of June 22,1992 (folio 19) and the testimonies of [ER] (folios 919, 320, 86, and 87); [RG] (folio 84); and [VR] (folio 89) […]. In his statement, CPCB Vicente Grijalva Bueno merely denies committing the acts that are the subject of this case, although he recognizes his signature on the documents that were shown to him by the Zone Prosecutor; in short, he attributes the facts to a set-up by the Naval Intelligence Service […]. The testimonies given in the proceeding are consistent as to form, circumstances and sequence of events, which are perfectly consistent with the documentary evidence in the bodies of evidence that comprise the present criminal trial […]". *Cf.* Court of Military Justice, Ruling on Appeal filed before the Military Criminal Trial No. 006-9 of March 13, 2001 (evidence file, folios 153 to 154).

81 *Cf.* Court of Military Justice, Ruling on Appeal in Military Criminal Trial No. 006-9 of March 13, 2001, *supra*.

82 *Cf.* Ecuadorian Navy, First Naval Zone Guayaquil, Official letter No. PRIZON-JUP-265-0, of December 6, 2007 (evidence file, folio 156).

83 Article 8 of the American Convention.

dismissal process. The Court understands that this acknowledgment implies an admission of the violation of the rights enshrined in Articles 8(1), 8(2), 8(2)(b) and 8(2)(c) of the American Convention, as well as the violation of the right established in Articles 25(1) and 25(2)(c) of the Convention, all in relation to Article 1(1) of the same instrument, to the detriment of Mr. Grijalva Bueno, based on: a) the fact that the reports used for Mr. Grijalva's dismissal involved a military agent and other authorities who formed part of the Council of Senior Officers that decided on his dismissal, in violation of his right to be heard by an impartial authority during the dismissal proceedings; b) the lack of prior and detailed notification of the charges against him, and the lack of adequate time and means for the preparation of his defense; c) failure to guarantee the principle of presumption of innocence; d) failure to provide grounds for the dismissal; e) lack of access to an effective remedy to examine the decision to discharge him from the armed forces, and f) failure to implement the ruling of the Court of Constitutional Guarantees which ordered Mr. Grijalva Bueno's reinstatement in the armed forces and the restitution of his rights, for which reason Mr. Grijalva has not been reinstated and has not received any payment.

86. In this chapter, the Court will examine the alleged violations of judicial guarantees against Mr. Grijalva Bueno in the military criminal proceedings with regard to the right of defense, the principle of presumption of innocence and the right to obtain a properly reasoned judicial decision, within a reasonable time, which have not been recognized by the State.

A. Military criminal proceedings

A.1. Arguments of the Commission and of the State[84]

A.1.1. Right to receive prior and detailed notification of the accusation

87. The ***Commission*** argued that Mr. Grijalva Bueno i) was not provided with complete and detailed information regarding the accusation against him and its grounds in order to fully exercise his right of defense; ii) he was not notified of the opinion of the Public Prosecutor, and iii) the alleged victim's statement was not accredited, even though it was taken immediately at the beginning of the investigation.

88. For its part, the ***State*** argued that in this case it has been demonstrated that Mr. Grijalva Bueno was heard by a military criminal court; that his participation in the proceedings was guaranteed through the technical defense of his choice; that he was not deprived at any time of his right to a defense; that he was able to submit evidence and challenge evidence against him; that he had access to and knowledge of the judicial proceedings and that he actively participated as a party to the proceedings throughout the trial. It added that the foregoing can be verified from the documentary evidence presented by the State and contained in the case file and from the acknowledgement made by Mr. Grijalva Bueno in his written statement before the Court.

89. The State indicated that during the summary stage of the investigation, the military criminal judge ordered a number of information gathering procedures, including the taking of statements from the defendant Grijalva Bueno and his subordinate personnel, the testimonies of agents of the Intelligence Agency of Puerto Bolívar and of the persons who, according to the record, had participated in one way or another. The

[84] Given that the pleadings and motions brief was not admitted, the arguments of the representative of the alleged victim are not included.

judge even went to Puerto Bolívar, the scene of the events. The State contradicted the Commission's assertions and insisted that Mr. Grijalva Bueno was legally and correctly notified of all the judicial proceedings through his defense attorney, which could be verified in the documentary evidence presented by the State. In addition, it denied that Mr. Grijalva Bueno testified only once in the course of the proceedings, since during the summary stage the investigating judge ordered various evidentiary procedures to be carried out, such as taking the preliminary statement of Mr. Grijalva Bueno, who also made a statement under oath during the trial stage. It concluded that the military criminal proceedings were conducted in accordance with pre-existing legal norms.

A.1.2. Right to examine witnesses

90. Regarding the right to examine witnesses, the ***Commission*** considered that the testimonies of GR and RG - who initially denounced the alleged unlawful acts committed by Mr. Grijalva Bueno - were given without the presence or participation of his defense attorney. It recalled that the right to examine witnesses may be restricted in exceptional circumstances, something that was not alleged by the State in this case. The State did not comment specifically, but merely indicated that statements had been taken in Puerto Bolívar, the location where the events took place.

A.1.3. Scope of the presumption of innocence and the duty to state the grounds for a decision

91. The ***Commission*** pointed out that, despite the presentation of evidentiary elements, mainly exculpatory, the court handed down a conviction against Mr. Grijalva Bueno without assessing said evidence in light of the principle of presumption of innocence. The conviction did not substantiate the reasons why such evidence should not be taken into account in order to acquit Mr. Grijalva Bueno.[85] The reasoning of the judgment is essential to understand whether the treatment of the evidence in the domestic jurisdiction was compatible with that principle. It also argued that the conviction "was based exclusively on the report of the commission of the General Inspectorate of the Navy, which was taken up by the prosecutor in the case, despite the fact that, […] one of its authors indicated that the facts were not verified" and mentioned several irregularities with respect to that document, "including […] acts of torture and coercion against various persons who testified against Mr. Grijalva [, which] were not examined by the court [and that] full validity was accorded to those statements, [nor] was any measure adopted in light of the standards related to the exclusionary rule."

92. The ***State*** argued that the documentary evidence presented by Ecuador shows that the decisions of the military jurisdiction contain a clear description of the facts and their connection with the evidence presented during the proceedings, and are consistent with the criminal law through a reasoned argument, which corresponds to the parameters established by the Court. Regarding the lack of reasoning, the State argued that the alleged victim expressed a subjective assessment by stating that the military justice system prevented the guilty from being tried and that, in this way, it encouraged impunity. It disputed the Commission's claim that Mr. Grijalva's conviction was based exclusively on the report of the commission of the Inspector General's Office of the

[85] The Commission noted that in the conviction the court considered that Mr. Grijalva Bueno "has made […] assertions about the facts investigated in this process, without bothering to demonstrate them in the current proceedings, in order to exclude or attenuate his responsibility." Therefore it considered that "the language used by the court inverts the burden of proof in the sense of placing the responsibility for proving his innocence on Mr. Grijalva Bueno, which also contravenes the principle of presumption of innocence."

Navy.[86]

A.1.4. Reasonable time

93. *The* ***Commission*** emphasized that in order to justify the complexity of the process, the State must provide specific information that directly links the elements of complexity invoked with the delays in the proceedings, which has not occurred in the instant case. Regarding the appeals filed by the defense of the alleged victim, the Commission argued that the filing of ordinary remedies to challenge possible violations of due process cannot be considered as a factor for the analysis of reasonable time. In addition, there are no elements in the file to indicate that Mr. Grijalva Bueno's defense counsel obstructed the process by filing various appeals. It added that the conduct of the authorities reveals prolonged, unjustified delays during the process and, in particular, affects the legal situation of the human rights defender and discourages the exercise of that right. In view of the foregoing, the Commission considered that the seven years and two months that elapsed from the beginning of the investigation until the ratification of the judgment constituted an unreasonable period of time.

94. With respect to the actions of the judicial authorities, the ***State*** argued that they proceeded in an *ex officio* manner due to the type of crime investigated, as reflected in the facts, receiving testimonies, gathering documentary and material evidence. Moreover, it pointed out that measures such as the pretrial detention of the defendants were ordered, that is to say, they carried out their duty to investigate with due diligence, observing the basic principles of due process and having regard to the competence and jurisdiction of the military judges and courts. With respect to the standard of reasonable time derived from the conduct of the jurisdictional authorities during the criminal proceedings, it argued that there is no evidence whatsoever to suggest any irregular action on the part of the judges who heard the case, since they acted in accordance with constitutional principles applicable to the proceedings and the legal norms in force at the time of the alleged facts. The State also noted that Mr. Grijalva Bueno, through his defense counsel, continually filed various briefs requesting the revocation of orders and other procedural incidents that contributed, to some degree, to prolong the duration of the proceedings. It concluded that the time taken to settle the instant case cannot be considered unreasonable nor can the State be held responsible for the violation of Article 8 of the American Convention.

A.2 Considerations of the Court

95. Based on the foregoing arguments, the ***Commission*** considers that the military criminal proceedings against Mr. Grijalva Bueno violated his rights to judicial guarantees, specifically the right to a defense, the right to examine witnesses, the principle of the presumption of innocence, the duty to state reasons for decisions, the exclusionary rule, the reasonable time limit and judicial protection in terms of access to an effective remedy. Consequently, the Commission requested that the Court declare the State's responsibility for the violation of Articles 8(1), 8(2), 8(2) b), 8(2) c), 8(2) f), and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Aníbal Vicente Grijalva Bueno. For its part, the ***State*** insisted that it did not violate those rights, as alleged by the Commission.

[86] It added that in this ruling "there is a written complaint from GR and other documents that prove the statements made by several declarants; authorizations to transport fuel; cash receipts; and the testimonies of [GR]; [RG]; [VR] [,] among others […]."

96. The Court considers that the procedural guarantees contemplated in Article 8 of the American Convention, including some of those set forth in Article 8(2), are part of the list of basic guarantees that should be respected within the framework of the military criminal proceedings conducted against the alleged victim in order to adopt a decision that is not arbitrary and is in keeping with due process.[87] Consequently, the aforementioned guarantees must be applied *mutatis mutandis* to the military criminal procedure, as the Court has done in previous cases, taking into account its punitive legal nature and the consequences it entailed.[88]

97. The Court observes that the process that concluded with the imposition of a sentence against Mr. Grijalva Bueno was decided by officials who were hierarchically subordinate to the Executive Branch and, therefore, were not independent judges. However, the Court will not elaborate on this consideration owing to the procedural irregularities that disqualify the process and the fact that the State has repealed the legislation that established these powers.[89]

98. The Court emphasizes that the military proceeding against Mr. Grijalva was initiated by order of the hierarchy of the Ecuadorian Navy. Thus, it forms part of the actions taken by the military command against the alleged victim and, in addition, it is based on facts alleged in the disciplinary process of dismissal, in violation of the American Convention, as the State has admitted in its acknowledgement of responsibility. These elements are essential for the analysis that follows below.

99. Based on the arguments put forward by the Commission and the State, the Court will now analyze the alleged violation of rights in the following order: 1) Right to obtain prior and detailed notification of the accusation; 2) Right to examine witnesses; 3) Scope of the presumption of innocence and the duty to state the reasons for a decision; 4) Reasonable time limit for the proceedings, and 5) Conclusion.

A.2.1. Right to prior and detailed notification of the accusation

100. The right to defense is a central component of due process that requires the State to treat the individual at all times as a true subject of the process, in the broadest sense of this concept, and not simply as the object thereof. The right to a defense must necessarily be exercised from the moment a person is identified as a possible perpetrator or participant in an punishable act and only ends when the process is completed, including - if applicable - the stage of execution of the sentence.[90] The right

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87 *Cf. Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of May 3, 2013. Series C No. 311, para. 79, *and Case of Urrutia Laubreaux v. Chile. Preliminary objections, merits, reparations and costs, supra*, para. 103.

88 *Cf. Case of Rosadio Villacencio v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of October 14, 2019. Series C No. 388, para. 126.

89 The Court has indicated that all State bodies that exercise functions which are materially jurisdictional have the duty to adopt fair decisions based on full respect for the guarantees of due process as enshrined in Article 8 of the American Convention. Furthermore, as regards the organic structure and composition of military courts, the Court has considered that they lack independence and impartiality since "they are made up of active-duty military members who are hierarchically subordinate to higher-ranked officers through the chain of command, that their designation does not depend on their professional skills and qualifications to exercise judicial functions, that they do not have sufficient guarantees that they will not be removed, and that they have not received the legal education required to sit as judges or serve as prosecutors." *Cf. Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 135, para. 155, and *Case of Argüelles et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2014. Series C No. 288, paras. 146 and 149.

90 *Cf. Case of Barreto Leiva v. Venezuela. Merits, reparations and costs.* Judgment of November 17, 2009. Series C No. 206, para. 29, and *Case of Ruano Torres et al. v. El Salvador. Merits, reparations and costs*. Judgment of October 5, 2015. Series C No. 303, para. 153.

of defense is expressed in two facets within the criminal proceeding: on the one hand, through the defendant's own actions, the central component of which is the possibility of making a free statement on the facts attributed to him and, on the other hand, through the technical defense exercised by a legal professional, who advises the accused on his rights and duties and who also exercises, *inter alia*, a critical and legal control in the production of evidence.[91]

101. The right to receive prior and detailed notification of a criminal accusation means that it is necessary to provide a full description of the conduct attributed to the defendant, including factual information regarding the charges, which constitutes an essential reference document for the defendant to be able to defend himself and for the judge to consider in his decision. Therefore, the defendant has the right to be informed of the facts of which he is accused, described in a clear, detailed and precise manner.[92] As part of the minimum guarantees established in Article 8(2) of the Convention, the right to prior and detailed notification of the charges applies both to criminal matters and to other matters indicated in Article 8(1) of the Convention, even though the information required in the other matters may be less and of a different nature.[93] Another fundamental right is the right to have adequate time and means to prepare a defense, as established in Article 8(2)(c) of the Convention. This requires the State to ensure the defendant's access to information in the case file against him. Furthermore, the State must respect the adversarial principle, which guarantees the defendant's involvement in the analysis of the evidence.[94]

102. The Commission indicated that the alleged victim did not receive complete and detailed information regarding the charges made against him, and their justification, to be able to fully exercise his right to defense, since he was not notified of the prosecutor's indictment. For its part, the State indicated in general terms that Mr. Grijalva was duly notified of all the judicial actions through his defense attorney. In addition, with respect to the prosecutor's report, the State argued that the alleged victim submitted several observations, as is evident in the brief of July 31, 1996.

103. It has been proven that on November 29, 1993, the Commander of the First Naval Zone ordered the opening of a summary inquiry against Mr. Grijalva Bueno and another person. On November 30, 1993, the court of the First Naval Zone opened the summary inquiry, indicated the acts committed by the accused and ordered a number of procedures, including the taking of statements from the defendants, for which purpose Mr. Grijalva was summoned and ordered to provide an unsworn statement. The order to initiate proceedings was issued on June 15, 1994, and Mr. Grijalva was notified on July 5, 1995. Subsequently, on July 16, 1996, the prosecutor's report was issued, regarding which the defendants requested its notification. Said report was notified to them on July 23, 1996, and on July 31, 1996, Mr. Grijalva Bueno and JS submitted their written observations (*supra* paras. 70 and 71).

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91 *Cf. Case of Barreto Leiva v. Venezuela. Merits, reparations and costs, supra*, para. 61, and *Case of Valenzuela Ávila. Merits, reparations and costs.* Judgment of October 11, 2019. Series C No. 386, para. 111.

92 *Cf. Case of Fermín Ramírez v. Guatemala. Merits, reparations and costs*. Judgment of June 20, 2005. Series C No. 126, para. 67, and *Case of Urrutia Laubreaux v. Chile, Preliminary objections, merits, reparations and costs, supra,* para. 113.

93 *Cf. Case of Maldonado Ordóñez v. Guatemala. Preliminary objection, merits, reparations and costs, supra*, para. 80, and *Case of Urrutia Laubreaux v. Chile. Preliminary objections, merits, reparations and costs, supra*, para. 113.

94 *Case of Palamara Iribarne v. Chile. Merits, reparations and costs, supra,* para. 170*, and Case of Álvarez Ramos v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 30, 2019. Series C No. 380, para. 153.

104. The Court has indicated that notification must be provided before the accused makes his first statement before a public authority.[95] The content of the notification "will vary according to the progress of the investigations […] and when the formal and definitive presentation of the charges takes place […] prior to this and at the very least, the person under investigation must know, in as much detail as possible, the facts that are attributed to him."[96] In the instant case, on July 5, 1995, Mr. Grijalva was notified of the order to investigate an alleged crime, and that same day, he rendered his "investigative testimony." However, this Court considers that the latter did not constitute a breach of Mr. Grijalva's right of defense, since at that time he was informed of the facts for which he was being investigated.

105. With regard to the failure to notify the defendant of the prosecutor's report, as alleged by the Commission, based on the evidence, this Court has confirmed that Mr. Grijalva requested its notification. This notification took place on July 23, 1996, after which, on July 31, 1996, he submitted his observations on it. Therefore, the Court does not find any violation in this regard.

106. Based on the foregoing, this Court considers that the State is not responsible for the violation of Articles 8(2)(b) and 8(2)(c) of the American Convention.

A.2.2. Right to examine witnesses

107. Article 8(2)(f) of the Convention establishes, as a "minimum guarantee", "the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may shed light on the facts," thereby protecting the principles of adversarial and procedural equality. The Court has indicated that, among the prerogatives that must be granted to someone who has been accused is the opportunity to examine witnesses against and in his favor, under the same conditions, for the purpose of exercising his defense.[97]

108. In the evidence provided during the military criminal proceedings regarding the witnesses ER and RG, who accused Mr. Grijalva of supposed irregularities committed in the performance of his duties in the Captaincy of Puerto Bolívar, it is recorded that they testified on two occasions: a) on April 13, 1994, Mr. ER and Mrs. RG testified in Puerto Bolívar before the military criminal judge of the First Naval Zone and, b) on October 5, 1994, Mr. ER gave his testimony in Huatalco before the military criminal judge of the First Naval Zone and Mrs. RG rendered her testimony in Puerto Bolívar before the same judge. These procedures were carried out without the participation of Mr. Grijalva's defense.

109. The Court has confirmed that on May 14, 1996, Mr. Grijalva asked the military judge of the First Naval Zone to summon the aforementioned persons to testify. On June 27, 1996, the Military Criminal Court of the First Naval Zone issued an order "requiring the testimonies of […] [ER] and RG (for Monday 01 July 1996 at […] 10H00 and 12H00." However, the State did not provide evidence that these procedures were

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95 *Cf. Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 7, 2004. Series C No. 114, para. 187, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of January 27, 2020. Series C No. 398, para. 190.

96 *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs, supra,* para. 31, and *Case of J v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of November 27, 2013. Series C No. 275, para. 199.

97 *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, reparations and costs.* Judgment of May 30, 1999. Series C No. 52, para. 154, and *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of April 25, 2018. Series C, No. 354, para. 449.

actually carried out, but merely pointed out that the testimonies had been received in Puerto Bolívar. Regarding the foregoing, Mr. Grijalva emphasized that the testimonies were given in Puerto Bolívar in the Port Captaincy, and that the procedure took place without the presence of his lawyer, or of the other defendant and his attorney.

110. This Court notes that, according to the facts, Mr. Grijalva's defense was not able to exercise its right to cross-examine the witnesses and, therefore, could not exercise the respective control over the content of their statements, which served as the basis for the conviction handed down in the military criminal proceedings. The Court has pointed out that among the prerogatives that must be granted to someone who has been accused is the opportunity to examine witnesses against and in his favor, under the same conditions, for the purpose of exercising his defense, which materializes the principles of adversarial and procedural equality.[98] The Court further notes that the mere presence of the defense lawyer in such proceedings is an indispensable guarantee for the exercise of the right of defense through the control of the content of the statements rendered.

111. Consequently, this Court considers that the State violated the right of the defense to cross-examine the witnesses and to control the content of their statements, which were decisive in determining the alleged victim's guilt, thereby violating the right of the defense to examine witnesses, enshrined in Article 8(2)(f) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Grijalva Bueno.

A.2.3. Scope of the presumption of innocence and the duty to state the grounds for a decision

112. Based on the Commission's allegations regarding the treatment and assessment of the evidence by the judge, it appears that: i) the conviction judgment did not assess the evidence in light of the principle of the presumption of innocence, given that it did not state the reasons why several elements of exculpatory evidence should not be taken into account, and ii) the conviction was based exclusively on the report of the commission of the Inspector General of the Navy; it did not analyze the use of torture and coercion against several persons who testified against Mr. Grijalva, and no measure was adopted according to the standards related to the exclusionary rule. For its part, the State argued that the rulings issued by the military jurisdiction contain a clear description of the facts and their relationship to the evidence presented during the proceedings, are consistent with the criminal law through a reasoned argument, and are in line with the parameters established by the Court.

113. Thus, in order to resolve the dispute, it is necessary to determine whether, in accordance with the standards of due process established in Article 8 of the American Convention, the principle of presumption of innocence and the duty to state reasons for judicial decisions issued against the alleged victim were violated. The Court will now analyze these matters.

114. This Court has indicated that under Article 8(2) of the Convention, the principle of presumption of innocence "requires that a person cannot be convicted unless there is clear evidence of his criminal liability. If the evidence presented is incomplete or insufficient, he must be acquitted, not convicted."[99] The Court recalls that "[a] lack of

[98] *Cf. Case of Castillo Petruzzi et al. v. Peru, Merits, reparations and costs*, *supra,* para. 154, and *Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs, supra*, para. 449.

[99] *Case of Cantoral Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 120, and *Case of Zegarra Marín v. Peru. Preliminary objections, merits, reparations and costs, supra,* para. 122.

clear evidence of responsibility in a conviction constitutes a violation of the principle of presumption of innocence."[100] In this regard, any doubt must be used in benefit of the accused.[101] The Court considers that the right to presumption of innocence is an essential element for the effective exercise of the right to defense which accompanies the defendant throughout the proceedings until the judgment determining his guilt is final. This means that the defendant does not have to prove that he has not committed the offense of which he is accused, because the *onus probandi* is on those who have made the accusation.[102]

115. With respect to the requirement to provide the grounds for a judgment, the Court has repeatedly indicated that the grounds "are the exteriorization of the reasoned justification that allows a conclusion to be reached,"[103] and that the duty to state the grounds for a decision is a guarantee derived from Article 8(1) of the Convention, associated with the proper administration of justice, which protects the right of citizens to be tried for the reasons provided by law, giving credibility to the legal decisions adopted in a democratic society.[104] Therefore, the decisions adopted by domestic bodies that could affect human rights must be duly justified; otherwise, they would be arbitrary decisions.[105]

116. The Court emphasizes the importance of such justification in order to guarantee the principle of presumption of innocence, mainly in a conviction, which must express the sufficiency of the prosecution's evidence to confirm the accusatory hypothesis; the observance of the rules of sound judgment in the assessment of the evidence, including those that could cast doubt on criminal responsibility; and the final judgment derived from this assessment. Judicial decisions must reflect the reasons why it was possible to obtain a conviction on the charges and the criminal liability, as well as the assessment of the evidence to disprove any presumption of innocence, and only then be able to confirm or refute the accusatory hypothesis. This would make it possible to refute the presumption of innocence and determine the criminal liability beyond all reasonable doubt. When in doubt, the presumption of innocence and the principle *in dubio pro reo*, operate as a decisive criterion at the time of issuing the judgment."[106]

117. The Court notes that on March 13, 2000, the Court of the First Military Zone issued the judgment "in accordance with the Military Prosecutor General and based on all the foregoing considerations." Said court declared Mr. Vicente Aníbal Grijalva Bueno responsible for the crime defined and punished under Article 146, paragraphs 4 and 6 of the Military Criminal Code, and sentenced him to two hundred days of correctional

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100 *Case of Cantoral Benavides v. Peru. Merits, supra,* para. 121*, and Case of Zegarra Marín v. Peru. Preliminary objections, merits, reparations and costs, supra,* para. 122.

101 *Cf. Case of Ruano Torres v. El Salvador. Merits, reparations and costs, supra,* para. 127, and *Case of Zegarra Marín v. Peru. Preliminary objections, merits, reparations and costs*, *supra*, para. 122.

102 *Cf. Case of Ricardo Canese v. Paraguay. Merits, reparations and costs.* Judgment of August 31, 2004. Series C No. 111, para. 154, and *Case of Zegarra Marín v. Peru. Preliminary objections, merits, reparations and costs*, *supra,* para. 138.

103 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 107*, and Case of Amrhein et al. v. Costa Rica. Preliminary objections, merits, reparations and costs, supra,* para. 268.

104 *Cf. Case of Apitz Barbera et al. ("First Contentious Administrative Court") v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of August 5, 2008. Series C No. 182, para. 77, and *Case of Cordero Bernal v. Peru. Preliminary objection and merits*, *supra*, para. 79.

105 *Cf. Case of Yatama v. Nicaragua, Preliminary objections, merits, reparations and costs.* Judgment of June 23, 2005. Series C No. 127, paras. 152 and 153, and *Case of Chocrón Chocrón v. Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of July 1, 2011. Series C No. 227, *supra*, para. 118.

106 *Cf. Case of Zegarra Marín v. Peru. Preliminary objections, merits, reparations and costs, supra,* para. 147, and *Case of Rodríguez Revolorio et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of October 14, 2019. Series C No. 387, para. 120.

imprisonment. The judgment cited the official notice PRIZON-JUZ-335-0 of June 14, 1994, and a certified copy of the decision issued in the summary inquiry of June 13, 1994 as background to the case; it then provided a description of the facts; it mentioned some of the orders issued in the criminal proceedings; it cited the regulations of the crimes for which the defendants had been summoned, and made a brief reference to their statements. With regard to Mr. Grijalva, it indicated that in his statement he made "various assertions about the facts under investigation, without having bothered to prove them in the present proceedings, in order to exclude or attenuate his responsibility." It further indicated that once the indictment of the Public Prosecutor's Office had been forwarded, and the defense counsel of the defendants had answered it, the case was received for examination of the evidence for ten days, as provided for in Article 75 of the Code of Military Criminal Procedure, during which time "no evidence was presented."

118. In the instant case, it has been corroborated that the judgment lacks reasoning on factual or legal aspects. In addition, there was no enunciation of the evidence, nor was there any evaluation of the testimonial, documentary, technical or other means of proof admitted or not admitted in the trial; that is to say, there was no analysis of the relevant evidence for and against. In this sense, the evidence was not articulated and the reasons why several exculpatory elements should not be taken into account were not explained. As for the assertion made in the judgment that the alleged victim "did not bother to demonstrate them (the exculpatory elements) in the present proceedings, in order to exclude or mitigate his responsibility," it is clear that this is contrary to the principle of presumption of innocence.

119. It should be noted that the Court has already pointed out that the burden of proof rests on the State organ, which has the duty to prove the hypothesis of the accusation and criminal liability; therefore, the accused is not required to prove his innocence or to provide exculpatory evidence.[107]

120. The Court finds that the judgment in the instant case lacks a proper justification or reasoning, an analysis of the facts and the law, and an assessment of the evidence that allowed the judge to establish the criminal liability of the accused and issue the final conviction. The judgment does not show the reasons why the judge considered that the facts attributed to Mr. Grijalva Bueno were subsumed in the criminal norms applied. That is to say, it contains no reasoning whatsoever regarding the legal considerations on the criminal nature of the offense, its relationship to the evidence and its assessment.[108]

121. Therefore, in relation to the judge's assessment of the exculpatory evidence referring to: i) two Naval Messages which stated that there were no merits to continue with the investigation; ii) the judicial statement of one of the persons who participated in the preparation of the report of the General Inspectorate of the Navy, admitting that the allegations established by SERINT were not verified, and iii) the statement of a civilian who admitted that he was given money in exchange for accusing Mr. Grijalva Bueno of committing unlawful acts, given the lack of reasoning in the judgment, it is not possible to determine whether the judge assessed that evidence and, if so, why he did not take it into account when he issued the conviction, all this in violation of the principle of presumption of innocence.

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107 *Cf. Case of Zegarra Marín v. Peru. Preliminary objections, merits, reparations and costs,* para. 140.

108 *Cf. Case of Norín Catrimán et al. v. Chile (Leaders, Members and Activist of the Mapuche Indigenous People*) *v. Chile. Merits, reparations and costs*. Judgment of May 29, 2014, para. 278, and *Case of Zegarra Marín v. Peru. Preliminary objections, merits, reparations and costs*, *supra*, para. 153.

122. For its part, the Commission alleged that "there are several irregularities [in the report of the commission of the General Inspectorate of the Navy], including the use of torture and coercion against various persons who testified against Mr. Grijalva [, which] was also not analyzed by the judge. Despite this […] full validity was given to these statements and no action was taken in light of the standards related to the exclusionary rule." The Commission also emphasized that "the conviction was based exclusively on the [aforementioned report], which was taken up by the prosecutor in the case, even though […] one of its authors pointed out that the facts were not proven." The foregoing was contradicted by the State, which specifically denied that the conviction was based exclusively on the report of the commission of the General Inspectorate of the Navy.

123. In view of these arguments, the Court must now determine whether the statements against Mr. Grijalva, which were taken into account in the reports of SERINT and later confirmed by the investigating commission of the General Inspectorate of the Navy, were taken into consideration in the conviction, and whether they constitute a violation of the presumption of innocence, the right to defense or the right to a fair trial.

124. For the Court, accepting or granting probative value to statements or confessions obtained by coercion, which affect the coerced person or a third party, constitutes a violation of the right to a fair trial. Similarly, the absolute nature of the exclusionary rule is reflected in the prohibition against granting probative value not only to evidence obtained directly by coercion, but also to evidence derived from such action.[109] Consequently, the Court considers that excluding evidence gathered or derived from information obtained by coercion adequately guarantees the right to a fair trial.[110]

125. In addition, the Court recalls that the rule of excluding all evidence obtained under torture or through cruel or inhumane treatment has been recognized by several international treaties and international bodies for the protection of human rights, which consider that the exclusionary rule is intrinsic to the prohibition of such acts. Therefore, the Court considers that this rule is absolute and irrevocable.[111] Accordingly, the Court has held that the annulment of procedural documents resulting from torture or cruel treatment is an effective measure to halt the consequences of a violation of judicial guarantees. The Court also deems it necessary to emphasize that the rule of exclusion does not apply solely to cases where acts of torture or cruel treatment have been committed.[112]

126. According to the CEV report entitled "Without Truth there is no Justice", in August 1991, two sergeants informed Mr. Grijalva of the possible responsibility of Captain FM and other members of the Navy for the illegal and arbitrary detentions, torture and murders of three persons. The CEV indicated that, in December 1991, Mr.

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109 *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of. Series C No. 220, para. 167, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs, supra,* para. 198.

110 *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs, supra,* para. 167.

111 *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs, supra,* para. 165, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs, supra,* para. 196.

112 *Cf. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs, supra,* para. 166, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs, supra,* para. 197.

Grijalva reported these facts to his immediate superior, Vice Admiral TL,[113] which led to a persecution against Mr. Grijalva, who was relieved of his duties in October 1992 (*supra* para. 51). A number of crew members were also relieved of their duties, following complaints of alleged irregularities committed by the group of sailors commanded by Mr. Grijalva Bueno. The CEV pointed out that none of these accusations were proven and in fact were denied by the alleged accusers.

127. The CEV also affirmed that between October 7 and 16, 1992, the sailors were summoned to the Naval Intelligence Service in Quito, where they were interrogated and tortured by the officers FM and DS, and the agents EG, MG, LP, SA, JS, AN and EP. The first to arrive at SERINT were JA, FA and HM, who were transferred to the Military Intelligence Academy (AEIM), near Quito, where they were subjected to interrogation under torture during the three days they remained there.[114]

128. In this regard, the State disputed the factual framework of the CEV report, arguing that the "acknowledgement of responsibility" arising from the Law for the Reparation of Victims only has domestic effects for the institutionalization of the national reparation mechanism; therefore it is not equivalent to an acknowledgement of international responsibility. The State specified that the few references found in the Final Report of the Truth Commission on the military criminal proceedings against Mr. Grijalva Bueno do not imply in any way an acknowledgement of the State's international responsibility for those facts.

129. The Court recalls that the establishment of a truth commission, depending on the object, procedure, structure and purpose of its mandate, may contribute to the construction and preservation of historical memory, the clarification of facts and the determination of institutional, social, and political responsibilities in certain historical periods of a society.[115] Similarly, the use of said report does not exempt this Court from assessing the entire body of evidence, in accordance with the rules of logic and based on experience.[116] Consequently, this Court will take into account the Report of the Truth Commission of Ecuador as a means of evidence to be assessed together with the rest of the body of evidence.

130. That said, in the instant case it has been demonstrated that in July 1992, SERINT opened an investigation against Mr. Grijalva and other members of the Ecuadorian Navy, and issued a confidential report in which it concluded that said persons had committed various unlawful acts in the course of their duties. The hierarchical superior at SERINT was Captain FM, who had been denounced by Mr. Grijalva. The General Inspectorate of the Navy, which created a commission to investigate these facts, also concluded that Mr. Grijalva and other sailors had allegedly participated in these illegal acts. Based on the aforementioned reports, and adopting their contents as its own, the Council of Senior Officers decided to dismiss Mr. Grijalva, a decision that became final

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113 *Cf.* Report of the Truth Commission, "Without Truth there is no Justice", Tome IV: Case reports (evidence file, folio 3559).

114 In addition, the statements provided by other seamen are transcribed, including DS, FCh, JS, LV, and JCh, who indicated that they were also subjected to such treatment. *Cf.* Report of the Truth Commission, "Without Truth there is no Justice," Tome IV: Case reports (evidence file, folios 3560 to 3562).

115 *Cf. Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, para. 128, and *Case of Vásquez Durand v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of February 15, 2015. Series C No. 332, para. 114.

116 *Cf. Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of January 28, 2009. Series C No. 194, para. 101, and *Case of Vásquez Durand v. Ecuador. Preliminary objections, merits, reparations and costs, supra*, para. 114.

on May 18, 1993. Subsequently, on June 15, 1994, an order was issued to initiate military criminal proceedings against Mr. Grijalva and another defendant.

131. The CEV's final report shows that Captain FM threatened and used coercive measures against several public agents and other persons in order to make them testify against Mr. Grijalva.

132. In this regard, one of the individuals who testified against Mr. Grijalva, Mr. FCh, subsequently made a voluntary statement, which was submitted to the Court of Law of the First Military Zone, in which he recounted that he appeared before the Naval Intelligence Service in Quito, where he was "subjected to severe investigations" and that "serious intimidation and irreversible psychological pressure" were "used" to force him to sign a previously prepared document against Mr. Grijalva Bueno. He recalled that he was asked in a threatening manner whether he "want[ed] this document [to be done] with blood or without blood" and, subsequently, they turned off the lights in the place where he was and began to knock on the walls, the door and the desk, warning him that he "was not getting out of there until [he] wrote the document." A few days later, he was taken to SERINT in Quito, where he remained for approximately two weeks and where he was again subjected to "indirect psychological pressure, since [he] was completely ignored and […] every day he was interrogated by Captain [FM] and [Lieutenant DS], who constantly referred to the document that [he] was made to write." He was also told to "prepare [himself] for when [he] was called to testify in Guayaquil and that in that statement [he] should remain firm with respect to the document and keep calm."[117] Finally, in his voluntary statement submitted to the judge of the First Naval Zone, FCh stated that he "retracted what [he] said in [his] initial statement drafted by the aforementioned members of Naval Intelligence Service, recognizing that [he] testified under severe coercive measures and irresistible psychological pressure applied by some negative elements among [his] superiors."[118]

133. In addition, Mr. JL made a statement before the criminal judge of the First Naval Zone, in which he stated that the Inspector General of the Navy ordered him to form a commission composed of him as head of the Operational Auditing Department of the Inspector General's Office of the Navy and two other chiefs, one from the Second and the other from the Third Department of COOPNA. The commission "had to comply with an instruction given by the Commander General of the Navy to travel to Puerto Bolívar in order to verify the facts described in a report presented by SERINT." He argued that the content of the commission's report "was the result of interviews conducted with crew members and civilian personnel and Lieutenant [T] as officer." Furthermore, he indicated in his statement that "in preparing the report with its conclusions and recommendations, they [did] so […] pointing out that as regards the commission of crimes, what they indicated were presumptions and they were particularly concerned that this should be stated [;] [their] task was clear: to verify whether there were indeed allegations of irregularities [and] they verifi[ed] those allegations with the persons they interview[ed]." That is to say, "they verified that these were real facts […] that there were PRESUMPTIONS OF RESPONSIBILITY" (capital letters in the original). He added that what they wrote in the report "is not proof that, in fact, this was done; that task corresponds to the level of the court, or to the exercise of justice." Finally, he said that the Inspectorate's Report was prepared on October 30, 1992, although he also stated that the Inspectorate of the investigative commission produced two reports. The first one, "related to Captain Grijalva, which went to Quito, was the exclusive decision and

[117] *Cf.* Voluntary statement of FCh presented to the law judge of the First Naval Zone, November 2, 1998 (evidence file, folios 51 to 52).

[118] *Cf.* Voluntary statement of FCh presented to the law judge of the First Naval Zone, *supra*.

responsibility of the Council that examined [the] case." The second report, which "concerned the crew members, requested that the First Naval Zone initiate the corresponding procedures given that there was a presumption of a crime, a matter that no longer corresponded to the Inspectorate." He also pointed out that he interviewed one of the crew members, FCh.

134. From the foregoing, the following can be inferred:

a) that the officers and crew members made statements to SERINT, which served as the basis for the reports prepared by the Administrative Affairs Inspection Commission, among them FCh was interviewed;
b) the names of the officers mentioned in that report coincide with the names of the crew members who, according to the CEV report, were interrogated and allegedly tortured by other officers so that they would testify against Mr. Grijalva;
c) among the statements of those officers is the statement of FCh, in which he originally denounced several irregularities and made accusations against Mr. Grijalva, which he later retracted, arguing that at the time of his interview, he was subjected to severe pressure to sign a document previously prepared against Mr. Grijalva, and
d) that the pressures and harassment denounced by FCh were never investigated, nor were the acts of torture to which the sailors who testified against Mr. Grijalva were allegedly subjected, as mentioned in the CEV report.

135. This Court also notes that in his statement made on July 5, 1995, before the military criminal judge of the First Naval Zone, Mr. Grijalva Bueno stated that he "submit[ted] a cassette to be added to the proceedings and as testimony of the statements made by Corporal [FCh], Sergeant [FB] and Sergeant [HM], which shows how the Intelligence Service directed, pressured and tortured the aforementioned crew members so that they would speak against [him]." Likewise, in his statement given on October 19, 1998, before the military criminal judge of the First Naval Zone, Mr. Grijalva stated that "[i]n the videos submitted as evidence in [the] proceedings, there is a statement made by a former agent of the Intelligence Service [FCh], in which he indicates that he was ordered to falsify documents against Captain Vicente Grijalva and the group of crew members who were punished for the reports that he was forced to make, and which formed the basis for the INSGAR reports." The foregoing account was reiterated in his statement before this Court, in which he stated that "[a]fter October 1992, they also began to torture the sergeants, among them HM, and the sergeants of the Intelligence Service: [FB], [FA], [FCh]." Therefore, the Court concludes that the judge became aware of the irregularities committed at the time of receiving the statements of some of the crew members, contained in the reports.

136. This Court finds that in the conviction issued on March 13, 2000, the court took into consideration the report of the commission of the General Inspectorate of the Navy, which contains various irregularities, including the fact that it took into account the statements of crewmen who were allegedly subjected to coercion or torture, contained in the SERINT reports. Furthermore, based on the statement of one of its authors, Mr. JL, the Court also finds that the facts contained in the report of the General Inspectorate of the Navy regarding Mr. Grijalva's alleged criminal conduct were not proven, but merely confirmed that the allegations made were real, and that there were presumptions of responsibility. Finally, the Court notes that the State itself acknowledged the irregularities in the SERINT reports, due to the involvement of various naval authorities who had a direct interest in Mr. Grijalva's dismissal.

137. Consequently, given that the court took into account evidence obtained under coercion and torture when it issued the conviction on March 13, 2000, it is clear that said conviction was based on unlawful evidence obtained in an irregular manner, which is not admissible.[119]

138. In this regard, Article 10 of the Inter-American Convention to Prevent and Punish Torture (IACPPT) states that "[n]o statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action taken against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means."

139. Accordingly, the Court concludes that in the conviction handed down against Mr. Grijalva Bueno in the military criminal proceedings, the judge considered unlawful evidence obtained under torture and coercion in violation of due process, and in violation of the essential judicial guarantees related to the right of defense, presumption of innocence, procedural equality and a fair trial, in breach of Articles 8(1) and 8(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Vicente Aníbal Grijalva Bueno. Consequently, this Court considers that the military criminal proceeding against the victim was an arbitrary process, absolutely contrary to the Convention.

A.2.4. Reasonable time

140. The Court has indicated that the right of access to justice entails an effective investigation of the facts and the determination of the corresponding criminal responsibilities, if applicable, within a reasonable time, since a prolonged delay may, in itself, constitute a violation of judicial guarantees.[120]

141. Although it is true that in order to analyze the reasonable time of an investigation or a proceeding the Court has indicated, in general terms, the need to consider the total duration of the process, from the first procedural act until the final judgment is handed down,[121] in certain situations a specific assessment of the different stages may be pertinent.[122] This Court has considered four elements to determine whether the

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[119] In that regard, the European Court of Human Rights has reiterated that "It is not, therefore, the role of the Court to determine, as a matter of principle, whether particular types of evidence – for example, evidence obtained unlawfully in terms of domestic law – may be admissible. The question which must be answered is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair. In determining whether the proceedings as a whole were fair, regard must also be had as to whether the rights of the defense have been respected and, in particular, whether the applicant was given an opportunity to challenge the authenticity of the evidence and to oppose its use. In addition, the quality of the evidence must be taken into consideration, as must the circumstances in which it was obtained and whether these circumstances cast doubts on its reliability or accuracy. While no problem of fairness necessarily arises where the evidence obtained was unsupported by other material, it may be noted that where the evidence is very strong and there is no risk of its being unreliable, the need for supporting evidence is correspondingly weaker." *Cf.* ECHR, *Case of Gäfgen v. Germany. No. 22978/05.* Judgment of June 1, 2010, para. 163 and 164; *Case of Khan v. United Kingdom*. *No. 35394/97.* Judgment of May 12, 2000, para. 34 and 35, and *Case of Allan v. United Kingdom. No. 48539/99.* Judgment of November 5, 2002, para. 42 and 43.

[120] *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. *Merits, reparations and costs.* Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Guzmán Albarracín et al. v. Ecuador. Merits, reparations and costs.* Judgment of June 24, 2020. Series C No. 405, para. 180.

[121] *Cf. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 71, and *Case of Guzmán Albarracín et al, v. Ecuador. Merits, reparations and costs, supra,* para. 181.

[122] *Cf. Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia*. *Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2013.

guarantee of reasonable time was met, namely: a) the complexity of the matter, b) the procedural activity of the interested party, c) the conduct of the judicial authorities, and d) the effect produced on the legal situation of the person involved in the process.[123]

142. In the instant case, the State did not invoke specific or substantive information to justify the prolongation of the proceedings. Furthermore, with regard to the procedural activity of the alleged victim, the State is reminded that this Court has stated "that the filing of appeals constitutes an objective factor which should not be attributed either to the alleged victim or to the respondent State, but should be taken as an objective element when determining whether the duration of the proceeding exceeded the reasonable time limit."[124]

143. For the corresponding analysis it should be noted that, according to Article 167 of the Code of Military Criminal Procedure, a criminal trial consists of two phases: summary and plenary. In this case, the first phase began with the order to investigate an alleged crime and ended with the judgment of the Zone Commander. The second phase began with the referral of the case to the Court of Military Justice by virtue of the remedies granted (appeal, annulment) or by reason of having been referred for consultation; there was also the possibility of appealing the summons to a full trial before the Court of Military Justice, in accordance with the supplementary rules of the criminal procedure.

144. Regarding the *complexity of the matter*, the instant case did not contain elements of complexity, since it involved only two defendants, both duly identified and localized. As for the *procedural activity of the interested parties*, the Court notes that there is no evidence that Mr. Grijalva or his representatives carried out actions that hindered the progress of the military criminal proceedings.

145. Regarding the *conduct of the judicial authorities*, in this case, the order to open an investigation was issued on June 15, 1994, and approximately two years later, on July 2, 1996, the criminal judge declared the plenary phase concluded and ordered the case files to be sent to the military judge of the First Naval Zone. On August 7, 1996, the military judge of the First Naval Zone issued a summons to a trial against Mr. Grijalva and another defendant who, on August 8 of the same year, filed an appeal against said decision. On September 2, 1996, the court referred the case to the Court of Military Justice and almost two years later, on June 5, 1998, the Military Court of Justice rejected the appeal and upheld the order of summons to a trial. Finally, two years later, on March 13, 2000, the military judge of the First Naval Zone issued a conviction, six years after the start of the military criminal proceedings. The defendants appealed this judgment on March 15 of the same year. One year later, on March 13, 2001, the Court of Military Justice issued a judgment in which it dismissed the appeal and confirmed all parts of the judgment of March 13, 2000. This Court considers that the State did not invoke substantive or acceptable reasons to justify the prolongation of the proceedings, nor did it act with due diligence to ensure justice. Thus, it is pertinent to consider that the time elapsed of seven years and two months constitutes a prolonged delay in the military criminal proceedings attributable to the State.

Series C No. 270, para. 403, and *Case of Guzmán Albarracín et al, v. Ecuador. Merits, reparations and costs, supra,* para. 181.

[123] *Cf. Case of Genie Lacayo v. Nicaragua. Merits, reparations and costs.* Judgment of January 29, 1997. Series C No. 30, para. 77, and *Case of Guzmán Albarracín et al. v. Ecuador. Merits, reparations and costs, supra,* para. 181.

[124] *Cf. Case of Memoli v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of August 22, 2013. Series C No. 265, para. 174, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs, supra,* para. 184.

146. Finally, with respect to the fourth element, which refers to the effect of the duration of the proceedings on the legal situation of the persons involved, the Court considers, as it has done previously, that it is not necessary to analyze this point in the instant case in order to determine the reasonableness of the time taken in these investigations.[125]

B. Conclusion

147. For all the foregoing reasons, in relation to the military criminal proceedings against Mr. Vicente Aníbal Grijalva Bueno, the Court concludes that the right to examine witnesses and to exercise control over the content of their statements was violated. Furthermore, the State violated the principle of presumption of innocence of Mr. Grijalva Bueno, and failed to provide a reasoned justification for the judicial ruling. The ruling lacks reasoning on factual or legal aspects, which affected his right to obtain a properly reasoned decision. Likewise, the State acknowledged that there were various irregularities in the preparation of the SERINT reports and the report of the commission of the General Inspectorate of the Navy, which formed part of the body of evidence assessed by the military judge who, when issuing his conviction, considered unlawful evidence obtained under torture and coercion. All of the above constitutes a violation of due process and of Mr. Grijalva's essential judicial guarantees related to the right to a defense, presumption of innocence, procedural equality and the right to a fair trial. Finally, the State did not act with due diligence and there was a prolonged delay in the military criminal proceedings.

148. Therefore, the Court considers that the State is responsible for the violation of Articles 8(1), 8(2) and 8(2)(f) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Vicente Aníbal Grijalva Bueno. In view of all the aforesaid violations of judicial guarantees, this Court concludes that the military criminal proceedings against Mr. Grijalva were arbitrary and absolutely contrary to the Convention.

VIII.2
RIGHT TO FREEDOM OF THOUGHT AND EXPRESSION[126]

A. Arguments of the Commission and of the parties

149. The ***Commission*** considered that the statements made by Mr. Grijalva to his institution and to the media are among the activities that may be undertaken by human rights defenders. The Commission noted that Mr. Grijalva's dismissal and the military criminal proceedings against him "constituted acts of retaliation," since both were initiated after Mr. Grijalva reported the involvement of military personnel in serious human rights violations. In addition, the Commission argued that the duration of the criminal proceedings of more than seven years was not reasonable, which is particularly relevant to the situation of a human rights defender, owing to the effect that the period of time has on his or her legal situation. The Commission concluded that the statements made by Mr. Grijalva correspond to the type of activities that may be undertaken by a human rights defender outside of his role as a member of the Navy. Consequently, it

[125] *Cf. Case of Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of September 23, 2009. Series C No. 203*,* para. 138, and *Case of Luna López v. Honduras. Merits, reparations and costs.* Judgment of October 10, 2013. Series C No. 269*,* para. 195.

[126] Article 13 of the American Convention.

considered that the statements made by Mr. Grijalva are protected under Article 13(1) of the American Convention and that Ecuador violated said article.

150. The ***State*** argued that the criminal proceedings against Mr. Grijalva Bueno were formally opened more than one year after his discharge from the naval ranks, and after factual and legal grounds were found regarding his participation in a criminal offense, established in the Military Criminal Code, while he was performing his duties in the Captaincy of Puerto Bolívar. Those elements arose from testimonial statements and documentary evidence that led to the presumption of a military offense and the consequent criminal responsibility for the facts.

151. The State insisted that the military criminal proceedings were in no way an act of reprisal against Mr. Grijalva Bueno. It maintained that in the instant case there was no fabrication of criminal charges, nor were there disproportionate sanctions and there was no arbitrary arrest or detention; rather, the due process established in the domestic judicial system was followed. Thus, any claims of retaliation are based solely on subjective criteria, with no real basis in fact and should therefore be discarded. The State emphasized that the initiation and substantiation of the proceedings and the subsequent conviction, ratified in double instance, can in no way be considered as a violation of the right to freedom of expression. Consequently, it requested that the Court declare that the State did not violate the right enshrined in Article 13(1) of the American Convention, to the detriment of Mr. Grijalva Bueno.

B. Considerations of the Court

152. With respect to the content of the right to freedom of thought and expression, the Court has indicated that those who are under the protection of the Convention have the right to seek, receive, and impart ideas and information of all kinds, as well as the right to receive and examine information and ideas disseminated by others.[127] For this reason, freedom of expression has both an individual dimension and a social dimension and the Court has understood that both dimensions are of equal importance and must be simultaneously guaranteed to ensure the full effectiveness of the right to freedom of thought and expression, in the terms established in Article 13 of the Convention.[128] Freedom of expression, particularly in matters of public interest, "is the cornerstone of the very existence of a democratic society."[129] According to the Convention, freedom of expression is not an absolute right.[130] The American Convention guarantees everyone the right to freedom of expression, regardless of any other consideration.[131]

153. According to the evidence, it was established that Mr. Grijalva Bueno was a member of the Ecuadorian Naval Force, with the rank of Lieutenant Commander attached to the General Directorate of the Merchant Navy, and that in February 1992

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127 *Cf. Case of Kimel v. Argentina. Merits, reparations and costs*, *supra*, para. 53, and *Case of Urrutia Laubreaux v. Chile. Preliminary objection, merits, reparations and costs, supra,* para. 76.

128 *Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.) v. Chile. Merits, reparations and costs.* Judgment of February 5, 2001. Series C No. 73, para. 67, and *Case of Urrutia Laubreaux v. Chile. Preliminary objections, merits, reparations and costs, supra*, para. 80.

129 *Cf. Case of Ríos et al. v. Venezuela. Preliminary objections, merits, reparations and costs, supra*, para. 105, and *Case of Carvajal Carvajal et al. v. Colombia. Merits, reparations and costs.* Judgment of March 13, 2018. Series C No. 352, para. 174.

130 *Cf. Case of Herrera Ulloa v. Costa Rica. Preliminary objections, merits, reparations and costs.* Judgment of July 2, 2004. Series C No. 107, para. 120, and *Case of Urrutia Laubreaux v. Chile, supra*, para. 81.

131 *Cf. Case of Tristán Donoso v. Panama. Preliminary objection, merits, reparations and costs.* Judgment of January 27, 2009. Series C No. 193, para. 114, and *Case of Urrutia Laubreaux v. Chile. Preliminary objections, merits, reparations and costs, supra*, para. 82.

he was appointed Port Captain of Puerto Bolívar. In the exercise of his duties he became aware of the illegal and arbitrary detentions, torture and murders of three persons by members of the Navy and, in December 1991 (*supra* footnote 22) he reported these human rights violations to his immediate superior in the institution. Subsequently, by decision of the Council of Senior Officers of the Navy, he remained in his position until October 27, 1992, and was officially placed on leave on November 17, 1992. Finally, on May 18, 1993, by means of Executive Decree No. 772 he was permanently discharged from the Navy (*supra* paras. 51 and 52).

154. In turn, on November 29, 1993, the Commander of the First Naval Zone ordered the opening of a summary inquiry before the military criminal court of the First Naval Zone for the alleged irregularities committed by Mr. Grijalva and his crew members in the performance of his duties as Port Captain of Puerto Bolívar. In this regard, a report of the Naval Intelligence Service which has no date and is marked "confidential" was used as background. The report concludes that "based on the investigations, it is presumed that all the anomalies committed in the jurisdiction of the Captaincy of Puerto Bolívar are carried out by naval personnel with the full knowledge and participation of CPCB IM Vicente GRIJALVA" (capitalization of the original). On June 15, 1994, an order was issued to commence proceedings against Mr. Grijalva Bueno and another person. The military criminal proceedings continued and on March 13, 2000, the military criminal judge of the First Naval Zone handed down a conviction against Mr. Grijalva, which was confirmed on March 13, 2001.

155. In 1994, Mr. Grijalva Bueno publicly denounced in the media the reports he had made previously within the institution (*supra* footnote 23). This information contributed to the clarification of the aforementioned deaths. In addition, the Truth Commission's report indicated that Mr. Grijalva was subjected to several acts of harassment.[132]

156. For the purposes of the corresponding analysis, it is necessary to examine whether the nature of the allegations of serious human rights violations made by Mr. Grijalva Bueno and the dismissal process and the military criminal proceedings to which he was subjected violated his freedom of expression. In this regard, it should be noted that the State insisted that the military criminal proceeding was in no way an act of retaliation against Mr. Grijalva.

157. From the different evidentiary elements this Court confirms that:

> a) coincidentally, following the complaint made by Mr. Grijalva in December 1991, regarding the human rights violations committed by members of the institution to which he belonged, an administrative process of dismissal was initiated in 1992;
> b) the administrative process of dismissal was initiated on the basis of confidential reports and decisions of which Mr. Grijalva had no knowledge, nor the possibility of participating and defending himself, which culminated with the decision to dismiss him without any justification; therefore, he did not have recourse to an effective remedy, as the State itself acknowledged;

[132] On December 15, 1994, the Commission granted precautionary measures in his favor and in favor of four other ex-members of the armed forces, based on information received by the Commission concerning threats made against their lives and the harassment of their families as a result of their statements about the facts and those responsible for the disappearance, torture and death of Consuelo Benavides. The Commission stated that in this case two witnesses died and another disappeared (evidence file, folios 572 to 573).

c) the reports used for Mr. Grijalva's dismissal involved a military agent whom the alleged victim had denounced months earlier for having committed serious human rights violations, as well as other authorities denounced by him, who were part of the Council of Senior Officers that ordered his dismissal, since they had a direct interest in the outcome of the investigation because they were involved in the dispute, as the State acknowledged;

d) the TGC (Court of Constitutional Guarantees) ordered Mr. Grijalva's reinstatement (in the Navy) and the restoration of his rights. The Ministry of Defense disagreed with that decision, stating that the Supreme Council of the Armed Forces did not commit unconstitutional or illegal acts and requesting the suspension of the TGC's decision until the military justice system issued a definitive ruling. This request was rejected, and the TGC asserted that "to accept that a criminal prosecution could suspend compliance with a decision of the Tribunal would be to violate the principle of constitutionality of the presumption of innocence;"

e) based on the reports used in the administrative process of dismissal, the order to commence proceedings was issued in June 1994 against Mr. Grijalva and another defendant, seven months after the Commander General of the Navy ordered (on November 19, 1993) the start of military criminal proceedings against him and ten other persons, and

f) in 1994, Mr. Grijalva publicly denounced in the media the serious human rights violations committed by members of the armed forces.

158. The Court notes that the allegations made by Mr. Grijalva and the various actions taken by the State in the administrative dismissal process and in the military criminal proceedings coincide in time. Both processes were initiated shortly after the alleged victim made allegations of military involvement in serious human rights violations. Thus, an arbitrary administrative process was opened which, as recognized by the State, resulted in Mr. Grijalva's dismissal. In addition, based on the same arguments, military criminal proceedings were instituted, in which the judicial guarantees were similarly violated, resulting in a conviction against the alleged victim. The proceedings were marred by various irregularities that violated Mr. Grijalva's procedural guarantees, including the use of reports containing the testimonies of officers who were allegedly coerced or tortured so that they would testify against Mr. Grijalva. This shows that there was a desire to retaliate against the alleged victim and the intent to silence him for having denounced serious human rights violations by members of the institution to which he belonged in order to safeguard it. The corporate response of the military institution was to exclude Mr. Grijalva from its ranks.

159. The Court also considers that, given the serious nature of the human rights violations denounced by Mr. Grijalva Bueno in the performance of his duties as a naval officer and as a public official, he was exercising his freedom of expression. Therefore, this Court considers that the unlawful acts committed by the military authorities and denounced by Mr. Grijalva, both in the institutional sphere and publicly, as well as the fact that the violations of judicial guarantees during the dismissal process were transferred to the military criminal proceedings, could have had an intimidating or inhibiting effect on the free and full exercise of his freedom of expression. At the same time, they could have had an intimidating effect with regard to denunciations of human rights violations by other members of the armed forces which, in turn, would have affected the social dimension of the right to freedom of expression. Consequently, the Court considers that the State violated Article 13(1) of the American Convention to the detriment of Mr. Grijalva Bueno.

160. With regard to the Commission's arguments that the denunciations made by Mr. Grijalva to his institution and to the media are among the activities that may be undertaken by human rights defenders, this Court considers that Mr. Grijalva Bueno, in his position as a member of the Ecuadorian Navy and as a public official, had the duty and the obligation to denounce serious human rights violations. In the instant case, Mr. Grijalva acted in defense of human rights by denouncing the torture, forced disappearance and deaths of three persons, of which he had knowledge by reason of his position. Public officials, including members of the armed forces, must denounce serious human rights violations whenever they have knowledge of them, as an obligation that should be constitutionally and legally enshrined. It is incumbent upon the State to adopt the necessary measures to ensure that public officials who make this type of complaint are not subject to reprisals and that they receive proper protection. Furthermore, it should be taken into account that public officials usually have early knowledge of such acts because of the functions they perform.

161. The State should ensure that appropriate conditions are in place so that public officials can freely denounce such matters without being subjected to threats or other types of harassment. Therefore, as the Court has pointed out with respect to human rights defenders, *mutatis mutandis*, reprisals produce a social effect of harassment and fear, resulting in intimidation, since they silence and inhibit the work of these persons.[133] In this sense, it is essential that the State does not misuse punitive or criminal proceedings - or military proceedings - such as in the instant case, to subject public officials to groundless trials and it must also safeguard judicial guarantees. Therefore, in the instant case, the State should have provided proper protection so that Mr. Grijalva could freely report the human rights violations of which he was aware without retaliation.

162. The Court concludes that the State violated the freedom of expression enshrined in Article 13(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Aníbal Vicente Grijalva Bueno.

IX
REPARATIONS

163. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[134] The Court has also established that the reparations must have a causal link with the facts of the case, the violations declared, the damage proven, and the measures requested to repair the respective harm. Therefore, the Court must examine the concurrence of these elements in order to rule appropriately and according to the law.[135]

164. Reparation for the harm caused by the breach of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of

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133 *Cf. Case of Escaleras Mejía et al. v. Honduras*. Judgment of September 26, 2018. Series C No. 361, paras. 69 to 70.

134 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs.* Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Guachalá Chimbó et al. v. Ecuador. Merits, reparations and costs.* Judgment of March 26, 2021. Series C No. 423, para. 222.

135 *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Guachalá Chimbó et al. v. Ecuador. Merits, reparations and costs, supra,* para. 222.

reestablishing the situation prior to the violation. If this is not feasible, as occurs in the majority of cases of human rights violations, the Court may order measures to protect the violated rights and repair the harm caused by the violations.[136] In view of this situation, the Court has considered the need to provide different types of reparation so as to fully redress the damage; therefore, in addition to pecuniary compensation, other measures such as satisfaction, restitution, rehabilitation, and guarantees of non-repetition have special relevance due to the severity of the harm caused.[137]

165. The Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the damage proven, and the measures requested to redress the respective harm. Therefore, the Court must analyze the concurrence of these factors in order to rule appropriately and according to the law.[138]

166. Taking into account the violations of the American Convention declared in the previous chapters, and in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to make reparation,[139]the Court will examine the claims presented by the Commission, together with the corresponding arguments of the State, in order to establish measures aimed at redressing those violations.[140]

A. Injured party

167. Pursuant to Article 63(1) of the Convention, this Court considers that anyone who has been declared a victim of the violation of any right recognized therein is an injured party. In this case, the Court considers that Mr. Vicente Aníbal Grijalva Bueno is the "injured party" and, as the victim of the violations declared in Chapter VIII, he will be the beneficiary of the reparations ordered by the Court.

B. Measures of restitution

168. The ***Commission*** requested Mr. Grijalva Bueno's reinstatement in a position of equal rank to the one that he would currently hold, had he not been discharged. If the victim should decide that he does not wish to be reinstated, or if there are objective reasons that prevent his reinstatement, the State must pay compensation in this regard, which should be separate from the reparations related to pecuniary and moral damage.

169. The ***State*** indicated that, regardless of Mr. Grijalva Bueno's wishes, in this case it would be materially impossible to reinstate him in the same position, since approximately 27 years have elapsed since his discharge from the Navy. In any case,

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136 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, para. 24, and *Case of Vicky Hernández et al. v. Honduras. Merits, reparations and costs*, *supra,* para. 145.

137 *Cf. Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Vicky Hernández v. Honduras. Merits, reparations and costs*, *supra,* para. 145.

138 *Cf. Case of Ticona Estrada v. Bolivia. Merits, reparations and costs*, *supra*, para. 110, and *Case of Martínez Esquivia v. Colombia. Preliminary objections, merits and reparations*. Judgment of October 6, 2020. Series C No. 412*,* para. 149.

139 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of Martínez Esquivia v. Colombia. Preliminary objections, merits and reparations, supra,* para. 150.

140 In this regard, the Court points out that although the representative of Mr. Grijalva Bueno presented a series of claims for reparations in his final written arguments, these claims are not admissible, since the proper procedural moment for submitting them was with the pleadings and motions brief, which was presented extemporaneously (*supra*, para. 7).

regardless of Mr. Grijalva Bueno's discharge in 1993, based on his professional standing, curriculum vitae and the legal norms, the maximum time he could have remained in that institution would have been until December 1998,[141] and therefore it considered his reinstatement would be inadmissible.

170. In consideration of the State's partial acknowledgment of responsibility, the Court decides that Mr. Grijalva Bueno's dismissal as a military officer of the Ecuadorian Navy was the outcome of a procedure that violated his right to judicial guarantees and judicial protection established in the American Convention. Furthermore, in Decision No. 181-95-CP, issued on September 12, 1995, the Court of Constitutional Guarantees decided to:

> 1. Accept the complaint filed by [the plaintiffs]; declare unconstitutional the acts that determined their placement on leave and discharge and duly notify [the decision] to the President of the Republic, the Council of Crew Personnel, the Council of Senior Officers of the Navy, the Supreme Council of the Armed Forces and the Commander General of the Navy."
>
> 2. Grant a period of thirty days to reinstate [the plaintiffs] in the armed forces and restore all their rights, except those that have already been reinstated and restored.[142]

171. The ruling of the Court of Constitutional Guarantees has the status of *res judicata* and, as established in this judgment, Ecuador has not complied with said decision with respect to Mr. Grijalva. In accordance with that ruling, the State should have reinstated Mr. Grijalva in the armed forces within 30 days, and should have restored all his rights, such as the payment of salaries and other benefits that he ceased to receive as a Lieutenant Commander, from the time he was discharged from the armed forces to which he belonged, until the date on which he was reinstated in his military activities.

172. In cases of arbitrary dismissal, the Court has considered that the immediate reinstatement of the victim in the position he would have held had he not been arbitrarily dismissed from the institution is, in principle, the appropriate measure of reparation that best satisfies the full restitution which is required to repair the harm caused. However, this Court has also recognized that there are objective circumstances in which this may not be possible.[143]

173. In the instant case, since more than 28 years have elapsed since Mr. Grijalva Bueno was discharged from the Navy, the Court will not order his reinstatement to active service as a measure of restitution; however, this matter will be taken into account when the Court determines the compensation due for pecuniary damage.

C. Measures of satisfaction

174. Although the ***Commission*** requested measures of satisfaction to adequately redress the human rights violations, it did not mention specific measures.

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[141] According to the State, the promotion 032 ARMA, to which Mr. Grijalva belonged, completed on December 19, 1998, the five years required for promotion from Frigate Captain (PFG-IM) to the higher rank, i.e. Navy Captain (CPNV-EM), even though his immediate promotion to the higher rank, Frigate Captain (PFG-IM), was scheduled for December 17, 1993. In addition, the Integrated Personnel System of the Armed Forces shows that Mr. Grijalva was suspended from duty for 30 days in 1977, and therefore he was ineligible for promotion to the rank of Navy Captain (CPNV-IM), had he not been discharged on April 27, 1993.

[142] *Cf.* Court of Constitutional Guarantees. Decision No. 181-95–CP, *supra*.

[143] *Cf. Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2016. Series C No. 315, para. 221.

175. In relation to the reparations related to its partial acknowledgement of responsibility, the ***State*** indicated that in mediation proceedings finalized with other military personnel, which were also extended to Mr. Grijalva, the following measures were agreed: a) apologies published on April 15, 2015, in *El Telégrafo*, a daily newspaper with national circulation; b) a ceremony in the First Naval Zone, organized by the Ministry of National Defense, held on April 24, 2015, during which a plaque with a public apology was placed in a military facility, and c) Official letter No. ARE-DIGREH-AJU-2015-0196-O was issued on April 16, 2015, instructing the Officers and Crew Departments to exclude from the General Order the term "discharge for misconduct and for the good of the service."

176. In this regard, the Court notes and appreciates the measures of reparation implemented by the State, within the framework of the agreements reached with other military personnel, in which Mr. Grijalva Bueno was included. Nevertheless, as a consequence of the violations declared in this judgment, the Court considers it pertinent to order the measures specified below.

177. As it has done in other cases,[144] the Court orders the State to publish, within six months of notification of this judgment, in a legible font of appropriate size, the following: a) the official summary of this judgment prepared by the Court , once, in the Official Gazette; b) the official summary of this judgment prepared by the Court, once, in a newspaper with widespread national circulation, and c) this judgment in its entirety, available for one year, on the official web site of the Ministry of National Defense. The State must advise the Court immediately when it has made each of the publications ordered, irrespective of the one-year timeframe for presenting its first report, as established in the tenth operative paragraph of this Judgment.

178. The Court considers that these measures of satisfaction are sufficient to remedy this aspect in the present case.

D. Other measures

179. The ***Commission*** requested that the State carry out the criminal, administrative or other types of investigations related to the human rights violations declared in its report in an impartial, effective manner and within a reasonable time, in order to clarify the facts and establish the respective responsibilities.

180. The ***State*** did not comment explicitly on this measure of reparation requested by the Commission; however, it indicated that if the Court should grant such measures of reparation, these should be related only to those facts for which it acknowledged its responsibility.

181. With regard to the request to investigate proposed by the Commission, the Court considers that this judgment and the reparations ordered in this chapter are sufficient and adequate to remedy the violations suffered by the victim.

E. Compensation

[144] *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs, supra,* para. 79, and *Case of Guachalá Chimbó et al. v. Ecuador. Merits, reparations and costs, supra*, para. 236.

E.1. Pecuniary damage

182. In general terms, the ***Commission*** requested full reparation for the human rights violations declared, including financial compensation for pecuniary and non-pecuniary damage. In addition, it requested that if Vicente Aníbal Grijalva Bueno is not reinstated in the Ecuadorian Navy, the State should pay compensation for this reason.

183. With regard to compensation for dismissal from the armed forces, the ***State*** considered that it would be appropriate to grant Mr. Grijalva Bueno an indemnity that includes the salaries, extra payments, incentives and bonuses that he ceased to receive from January 1993 to December 1998, during which time he should have been placed on paid leave and subsequently discharged for not meeting the requirements established by law for promotion to the next higher rank. The compensation would include all social security benefits due to him, both retroactive and future. The State would make the payment to the Social Security Institute of the Armed Forces (ISSFA), in accordance with the calculation made by that institution.

184. With regard to compensation for pecuniary damage related to the facts that were not accepted and were disputed in the context of the military criminal proceedings, the State argued that in order to establish its responsibility, the alleged damage must be linked to a cause attributable to the State, which does not apply in this case. Furthermore, the State pointed out that consequential damage and loss of profits were not proven in the proceedings, since there is no direct proof of such damage.

185. The ***Court*** has established in its case law that pecuniary damage encompasses the loss of or detriment to the income of the victim, the expenses incurred as a result of the facts and the consequences of a pecuniary nature that have a causal link with the case *sub judice*.[145] In those cases in which wrongful acts committed by the State result in dismissal and the consequent loss of the victim's employment, in the context of pecuniary damage, it is necessary to recognize the salaries and social benefits that the victim ceased to receive from the time of his arbitrary dismissal until the date on which the judgment is issued, including pertinent interest and other related items.[146]

186. This Court notes that Mr. Vicente Aníbal Grijalva Bueno has not been reinstated to active service, and therefore the amount to be set as compensation for pecuniary damage must also include compensation in this regard. Given the circumstances of this case, and the failure to execute the decision of the Constitutional Court of Guarantees, which ordered Mr. Grijalva Bueno's reinstatement and the restoration of his rights after his arbitrary discharge from the armed forces, as the State itself acknowledged, the Court orders the State to pay Mr. Grijalva Bueno the sum of USD $350,000 (three hundred and fifty thousand United States dollars) for pecuniary damage.

E.2 Non-pecuniary damage

187. As indicated previously (*supra* para. 182), the ***Commission*** requested reparations for non-pecuniary damage.

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145 *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Guachalá Chimbó et al. v. Ecuador. Merits, reparations and costs, supra*, para. 257.

146 *Cf. Case of Chocrón Chocrón v. Venezuela. Preliminary objection, merits, reparations and costs, supra*, para. 184, and *Case of Flor Freire v. Ecuador. Preliminary objection, merits, reparations and costs, supra,* para. 251.

188. The ***State*** pointed out that the Court cannot order a higher amount than that ordered in the case of *Flor Freire v. Ecuador*, in which the facts are similar to the instant case. On that occasion, the Court imposed the sum of USD$10,000.00 (ten thousand United States dollars).

189. As for the reparations related to the facts that were not accepted and were disputed, the State asked the Court to reject such claims. It argued that for this type of compensation, the damage must be assessed on the basis of the specific circumstances of each person and, in this case, it was not alleged in the proceedings that the harm caused to the alleged victim was of a particularly intense level.

190. In its case law, the ***Court*** has developed the concept of non-pecuniary damage and has established that this may include both the suffering and distress caused to the direct victims and their next of kin, the impairment of values that are very significant to them, as well as changes of a non-pecuniary nature in the living conditions of the victim or his family.[147]

191. However, since it is not possible to assign a precise monetary equivalent to non-pecuniary damage, this can only be compensated, for the purposes of comprehensive reparation to victims, through the payment of a sum of money or the delivery of goods or services that can be estimated in monetary terms, as prudently determined by the Court, applying judicial discretion and the principle of equity.[148]

192. Therefore, considering the circumstances of this case in which Mr. Grijalva Bueno was subjected to a process of arbitrary dismissal and to military criminal proceedings contrary to judicial guarantees, as well as the other violations declared (*supra* paras. 147, 148 and 162), this Court establishes in equity compensation for non-pecuniary damage in favor of the victim. Accordingly, the Court orders, in equity, the sum of USD$75,000.00 (seventy-five thousand United States dollars) as compensation for non-pecuniary damage in favor of Mr. Grijalva Bueno.

F. Costs and Expenses

193. The ***Commission*** and the ***State*** did not submit claims in this regard. The ***representative*** requested, in his observations to the preliminary objection and in his final written arguments, that the State be ordered to pay costs and expenses, in an amount set in equity.

194. The ***Court*** has indicated that the claims of the victims or their representatives for costs and expenses, and the evidence supporting these claims, must be submitted to the Court at the first procedural opportunity granted to them, that is, in the brief of pleadings, motions and evidence, without prejudice to those claims being updated subsequently with the new costs and expenses arising from the proceedings before this Court.[149] Therefore, the request of the representative is untimely and must be rejected.

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147 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Guachalá Chimbo v. Ecuador. Merits, reparations and costs, supra*, para. 261.

148 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs, supra*, para. 84, and *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and reparations.* Judgment of September 1, 2020. Series C No. 411, para. 137.

149 *Cf.* Article 40(d) of the Court's Rules of Procedure. See also, *Case of Garrido and Baigorria v. Argentina. Reparations and costs.* Judgment of August 27, 1998. Series C No. 39, paras. 79 and 82, and *Case of Valle Ambrosio et al. v. Argentina. Merits and reparations.* Judgment of July 20, 2020. Series C No. 408, para. 81.

195. In the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victim or his representative for reasonable expenses incurred during that procedural stage.[150]

G. Method of compliance with the payments ordered

196. The State shall pay compensation for pecuniary and non-pecuniary damage, as established in this judgment, directly to the person indicated herein, within one year of notification of this judgment, or it may bring forward full payment, pursuant to the following paragraphs.

197. If the beneficiary has died or dies before he receives the respective compensation, this shall be paid directly to his heirs in accordance with the applicable domestic law.

198. The State shall fulfill its monetary obligations through payment in United States dollars.

199. If, for reasons attributable to the beneficiary of the compensation or to his heirs, it is not possible to pay the compensation established within the time frame indicated, the State shall deposit these amounts in an account or certificate of deposit in his favor, in a solvent Ecuadorian financial institution, in United States dollars, and on the most favorable financial terms permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the accrued interest.

200. The amounts allocated as compensation for pecuniary and non-pecuniary damage shall be delivered in full to the person indicated, as established in this judgment, without any deductions arising from possible charges or taxes.

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

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150 *Cf. Case of the Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of August 24, 2010. Series C No. 214, para. 331, and *Case of Guachalá Chimbo v. Ecuador. Merits, reparations and costs, supra,* para. 271.

X
OPERATIVE PARAGRAPHS

202. Therefore,

THE COURT

DECIDES,

Unanimously:

1. To dismiss the preliminary objection of "fourth instance" in accordance with paragraphs 21 to 23 of this judgment.

2. To accept the State's acknowledgment of international responsibility, in the terms of paragraphs 31 to 38 of this judgment.

DECLARES,

Unanimously, that:

3. With regard to the dismissal proceedings against the victim, the State is responsible for the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1), 8(2), 8(2)(b), 8(2)(c) and 25(1) and 25(2) of the American Convention on Human Rights, in relation to the obligations set forth in Article 1(1) thereof, to the detriment of Vicente Aníbal Grijalva Bueno, pursuant to paragraphs 33, 35 and 85 of this judgment.

4. With regard to the military criminal proceedings against the victim, the State is responsible for the violation of the rights to judicial guarantees, recognized in Articles 8(1), 8(2) and 8(2)(f) of the American Convention on Human Rights, in relation to the obligations set forth in Article 1(1) of the same instrument, to the detriment of Vicente Aníbal Grijalva Bueno, pursuant to paragraphs 96 to 98, 108 to 111, 117 to 139 and 142 to 148 of this judgment.

5. The State is responsible for the violation of the right to freedom of thought and expression recognized in Article 13(1) of the American Convention on Human Rights, in relation to the obligations established in Article 1(1) thereof, to the detriment of Vicente Aníbal Grijalva Bueno, pursuant to paragraphs 153 to 162 of this judgment.

6. The State is not responsible for the violation of the right to judicial guarantees, recognized in Articles 8(2)(b) and 8(2)(c) of the American Convention on Human Rights, in relation to the obligations set forth in Article 1(1), pursuant to paragraphs 102 to 106 of this judgment.

AND ORDERS:

Unanimously, that:

7. This judgment constitutes, *per se*, a form of reparation.

8. The State shall issue the publications indicated in paragraph 177 of this judgment.

9. The State shall pay the amounts established in paragraphs 186 and 192 of this judgment as compensation for pecuniary and non-pecuniary damage, pursuant to paragraphs 185, 186 and 190 to 192 of this judgment.

10. The State, within one year from notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it, notwithstanding the provisions of paragraph 177 of this judgment.

11. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfilment of its duties under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with all its provisions.

DONE, at San José, Costa Rica, on June 3, 2021, in the Spanish language.

I/A Court HR *Case of Grijalva Bueno v. Ecuador*. Preliminary objection, Merits, Reparations and Costs. Judgment of June 3, 2021.

Elizabeth Odio Benito
President

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary