
December 11, 2014

Ref.: Case No. 12.743
Homero Flor Freire
Ecuador

Mr. Secretary:

I have the pleasure of addressing you on behalf of the Inter-American Commission on Human Rights in order to submit to the jurisdiction of the Honorable Inter-American Court of Human Rights case no. 12.743 – Homero Flor Freire, concerning the Republic of Ecuador (hereinafter “the State,” “the Ecuadorean State,” or “Ecuador”).

The case involves the international liability of the Ecuadorean State, stemming from decisions that led to the separation of Mr. Homero Flor Freire from the Ecuadorean Ground Forces, under then-applicable Rules of Military Discipline. Those Rules punished, with separation from service, sexual acts between persons of the same sex. The Commission found that, although “maintaining discipline within an armed force” is a legitimate purpose, punishing “homosexual acts” in the armed forces is not a valid means of protecting the military values in question, such as honor, dignity, discipline, and civility. The Commission stated that to say otherwise would be to ascribe a negative value to sexual activity *per se* between persons of the same sex, and would encourage stigmatization of lesbians, gays, bisexuals, or persons so perceived.

The Commission also found that the Rules then in force provided a less damaging punishment for “illicit sexual acts” than for acts characterized in those Rules as “homosexual acts.” On this point, the Commission found such difference in treatment to be discriminatory. The Commission also found that the specific proceedings, both in the presentation of evidence and in the court's explanation of its reasoning, were biased by discriminatory prejudices concerning a person's ability to carry out his or her functions within a military institution on the basis of his or her actual or perceived sexual orientation. Finally, the Commission found that the proceedings against Mr. Homero Flor Freire violated the guarantee of impartiality and that the petition for protection lodged did not constitute an effective recourse for protecting his rights.

Mr. Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
Apartado 6906-1000
San José, Costa Rica
Attachments

The Ecuadorean State ratified the American Convention on Human Rights on December 28, 1977, and accepted the contentious jurisdiction of the Court on July 24, 1984.

The Commission has designated Commission member Rose Marie B. Antoine and the Executive Secretary, Emilio Álvarez Icaza L., as its delegates. In addition, Elizabeth Abi-Mershed, the Assistant Executive Secretary, and Silvia Serrano Guzmán, Fanny Gómez Lugo, and Selene Soto Rodríguez, attorneys of the IACHR Executive Secretariat, will serve as legal advisers.

In keeping with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission attaches a copy of report 81/13 on the merits, prepared in observance of Article 50 of the Convention, as well as a copy of the entire file on the case before the Inter-American Commission (Appendix I) and the annexes used in preparing report 81/13 (Annexes). The Ecuadorean State was apprised of the report on the merits through a communication dated December 11, 2013, which gave it a period of two months to report on its compliance with the recommendations.

Between that point and now, the Commission granted a series of extensions to the Ecuadorean State. During those extension periods, a dialogue took place between the two parties; the Inter-American Commission participated, attempting mediation to achieve a possible agreement on compliance with the recommendations. Despite this, no agreement was reached between the parties on the scope, content, and manner of implementation of reparations to Mr. Homero Flor Freire. Although public apologies were issued on July 28, 2014, the Commission, considering the disagreement between the parties on the remaining reparations and the consequent lack of full reparations, decided to submit to the jurisdiction of the Court all of the facts and human rights violations described in report 81/13 on the merits, given the need to obtain justice for the victim in this case.

The Commission requests the Court, therefore, to conclude and declare that the Ecuadorean State is responsible for the violation of the rights enshrined in Articles 24, 8.1, and 25.1 of the American Convention with respect to Articles 1.1 and 2 of that instrument, to the detriment of Mr. Homero Flor Freire.

Accordingly, the Commission requests of the Inter-American Court that the reparatory measures it orders be consistent with the recommendations issued by the IACHR, as follows:

1. Issue full reparations to Mr. Homero Flor Freire, as indicated in the report, in both material and moral terms, including measures to indemnify him for the damage caused.
2. Recognize publicly that Mr. Homero Flor Freire was discharged from the Ecuadorean Ground Forces in a discriminatory manner.

3. Adopt the necessary state measures to ensure that persons working in the Ecuadorean Ground Forces or any component of the Ecuadorean Army are not subjected to discrimination on the basis of their sexual orientation, whether actual or perceived.
4. Take the necessary state measures so that personnel of the Ecuadorean Ground Forces or any component of the Ecuadorean Army, as well as courts of military law, are knowledgeable about inter-American standards, and about Ecuadorean domestic law, with respect to non-discrimination on the basis of sexual orientation, whether actual or perceived.
5. Take the necessary state measures to guarantee the right to due process when military members are judged by courts under disciplinary proceedings, including the right to an impartial judge or tribunal.

In addition to the need to obtain justice, the Commission finds that the case raises issues of inter-American law and order. This is the Inter-American Court's first opportunity to rule on punitive actions of states based on a person's sexual orientation, whether actual or perceived. Specifically, the Court is asked to rule on the compatibility with the principle of equality and non-discrimination of regulations and procedures that, with the stated purpose of maintaining discipline or order in a military institution, punish sexual acts between persons of the same sex, or have the effect of punishing its members for their sexual orientation, whether actual or perceived.

Because these questions have a significant effect on inter-American law and order, in keeping with Article 35.1.f of the Rules of Procedure of the Inter-American Court, the Commission wishes to offer the following expert testimony:

An expert, whose name will be given shortly, who will testify on the development of international human rights law and of comparative constitutional law as regards the use by states of punitive measures against a person for his or her sexual orientation, considering the principle of equality and non-discrimination. Specifically, the expert will refer to the punitive exercise of power, expressed in rules of military discipline that punish, or have the effect of punishing, sexual acts between persons of the same sex. The expert will also testify on the regulation and application of different punishments for sexual acts between persons of the same sex in comparison with other sexual acts. The expert will discuss stereotypes and discriminatory prejudices that are usually present in cases relating to punishments for a person's sexual orientation, whether actual or perceived, and will develop the specific content of the state's obligations to address them and prevent their perpetuation.

The curriculum vitae of the proposed expert will be included in the annexes to report 81/13 on the merits.

The Commission submits to the Court the following information and contact details on the persons who have acted as petitioners throughout the proceedings:

Alejandro Ponce Villacís



Homero Flor Freire



Very truly yours,

Signed in the original

Mario López-Garelli

By authority of the Executive Secretary