Flor Freire v. Ecuador

ABSTRACT[1]

This case is about the discharge from duty of a Second Lieutenant of the Ecuadorian army who had been accused of engaging in homosexual conduct. The Court found violation of several articles of the American Convention. The violation of the prohibition of discrimination is the most significant one.

I. FACTS

A. Chronology of Events

August 7, 1992: Homero Flor Freire joins the Ecuadorian Army with the rank of Second Cavalry Lieutenant.[2]

November 18, 2000: Lieutenant Flor Freire and another unidentified military officer attend a party held near the Amazonas Military Fort (*Fuerte Militar Amazonas*) in the city of Shell, in the province of Pastaza.[3]

November 19, 2000: During the party, the other officer becomes intoxicated. Lieutenant Flor Freire takes the officer to his room at the fort.[4] Shortly after entering the officer's room, Major Jaime Suasnavas knocks on the door.[5] Lieutenant Flor Freire opens the door and Major Suasnavas informs Lieutenant Flor Freire that he is in trouble for engaging in homosexual acts, and asks Lieutenant Flor Freire to surrender his weapon.[6]

1. Raymond Chavez, Author; Shushan Khorozyan, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor
2. Flor Freire v. Ecuador, Report on Merits, Report No. 81/13, Inter-Am. Comm'n H.R., Case No. 12.743, ¶ 30 (Nov. 4, 2013).
3. *Id.* ¶ 13.
4. *Id.*
5. *Id.*
6. *Id*.

November 20, 2000: After eight years of service, Lieutenant Flor Freire is discharged from active military duty. He appears before the First Court of Investigation of the Fourth Military Zone (Amazonas Division) ("First Court").[7]

November 22, 2000: The First Court issues the Initial Order to begin "summary information proceedings", an investigative procedure.[8]

December 13, 2000: The Commander of Fourth Military Zone (Amazonas Division), Brigadier General Victor Zabala ("General Zabala") orders Lieutenant Flor Freire to vacate his residence at the fort, and to relinquish his duties.

January 17, 2001: The Military Prosecutor for the Fourth Military Zone issues a report.[9] Judge General Zabala approves the Military Prosecutor's report and finds that Lieutenant Flor Freire is disciplinary liable.[10]

January 23, 2001: Lieutenant Flor Freire files a constitutional *amparo* action before the Superior Court of Justice of Quito.[11]

January 24, 2001: Lieutenant Flor Freire's *amparo* action is assigned to the Sixth Court of Civil Matters of Pichincha ("Sixth Court") and is designated as case No. 74-2001.[12] Mr. Flor Freire alleges that the First Court of Investigation violated his rights to defense and due process.[13]

February 5, 2001: The Superior Court of Justice of Quito holds a hearing for Lieutenant Flor Freire's *amparo* action.[14] The representative for the State argues that the *amparo* action is inadmissible because: (1) the requirements for the action according to the Constitution are not met; (2) an *amparo* action is inappropriate to challenge an investigative procedure; and (3) the investigative procedure is still pending a decision from the Council of Subaltern Officers.[15]

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7. Flor Freire v. Ecuador, Report on Merits, ¶ 34.
8. *Id.*
9. *Id.* ¶ 37.
10. *Id.*
11. *Id.* ¶ 47.
12. *Id.*
13. Flor Freire v. Ecuador, Report on Merits, ¶ 50.
14. *Id.* ¶ 53.
15. *Id.*

February 6, 2001: Lieutenant Flor Freire files a brief with the Sixth Court requesting that it require the Commander of the Army to forward a certified copy of the record containing the summary information proceeding brought against him.[16]

February 15, 2001: Lieutenant Flor Freire reiterates his request to the Sixth Court.[17]

February 23, 2001: The Sixth Court accepts the arguments made during the February 5, 2001 hearing and orders that the case be filed under "files to be resolved."[18]

March 1, 2001: Lieutenant Flor Freire files a motion for reconsideration with the Sixth Court arguing that the Sixth Court needed to read the summary information proceeding before it could properly decide on the issue.[19]

March 25, 2001: The Sixth Court denies Lieutenant Flor Freire's request for reconsideration and states that he had the opportunity to submit independently relevant supplemental documents to the Sixth Court at an earlier date.[20]

May 3, 2001: The Council of Subaltern Officers accepts the Court of Law for the Fourth Military District's request to place Lieutenant Flor Freire on administrative leave before discharging him from military service.[21]

May 8, 2001: Lieutenant Flor Freire submits a request to the Commander of the Army to nullify the decision of the Council of Subaltern Officers because it violates several due process procedures.[22]

May 15, 2001: Lieutenant Flor Freire notifies the Sixth Court of the Council of Subaltern Officers' decision to place him on leave prior to discharge and asks the Sixth Court to suspend the decision.[23]

16. Flor Freire v. Ecuador, Report on Merits, ¶ 57.
17. *Id*.
18. *Id.* ¶ 58.
19. *Id.*
20. *Id*. ¶ 59.
21. Flor Freire v. Ecuador, Report on Merits, ¶ 43.
22. *Id*. ¶ 44.
23. *Id*. ¶ 60.

June 4, 2001: The Council of Subaltern Officers denies Lieutenant Flor Freire's request for reconsideration.[24]

June 5, 2001: Lieutenant Flor Freire files an appeal with the Council of Superior Officers of the Armed Forces.[25]

June 12, 2001: Lieutenant Flor Freire notifies the Sixth Court that the Council of Superior Officers has denied his motion, and once again asks that the Sixth Court to suspend the decision to have him placed on leave prior to his discharge.[26]

July 18, 2001: The Council of Superior Officers dismisses Lieutenant Flor Freire's appeal and choses instead to affirm the Council of Subaltern Officers' decision.[27] The Sixth Court denies Mr. Flor Freire's *amparo* motion[28] because it has not been made against an act the court could deem illegitimate, but rather against the summary information proceeding conducted by the First Court of the Fourth Military Zone.[29] The Sixth Court also notes Lieutenant Flor Freire has not satisfied the "grave and imminent harm" requirement for filing an *amparo* because the decision of the First Court has not yet been finalized, meaning he is not in immediate danger of losing his military rank or salary.[30]

July 20, 2001: Lieutenant Flor Freire appeals the Sixth Court's decision denying his *amparo* action. He argues that the Sixth Court failed to consider the decriminalization of homosexual acts in the State at the time of their decision. He also argues that said decriminalization should apply equally amongst both members of the civilian population Ecuador and active members of the military. Finally, Lieutenant Flor Freire argues that the *amparo* action is in fact appropriate because he has exhausted all possible courses of action necessary to appeal the First Court of Investigation's decision, which renders their decision final and effectively discharges him from military service.[31]

24. *Id.* ¶ 45.
25. Flor Freire v. Ecuador, Report on Merits, ¶ 45.
26. *Id.* ¶ 60.
27. *Id.* ¶ 61.
28. *Id*.
29. *Id*.
30. *Id.* ¶ 63.
31. Flor Freire v. Ecuador, Report on Merits, ¶ 64.

August 30, 2001: Lieutenant Flor Freire's appeal is admitted to the Constitutional Court.[32]

February 4, 2002: The Second Chamber of the Constitutional Court of Ecuador declares Lieutenant Flor Freire's *amparo* action as inadmissible.[33] The Court reasons that his constitutional rights have not been violated, making an *amparo* action inappropriate, and that he failed to satisfy the requirements for Constitutional Review.[34]

B. Other Relevant Facts

Since 1997, the State has progressed significantly in recognizing the rights of the homosexual community, which began when the Supreme Court decriminalized homosexual acts with their ruling in case No. 111-97-TC. Specifically, this decision declared Section 516(1) of the Penal Code, punishing homosexual acts with up to eight years in prison, unconstitutional.[35]

In 1998, the State recognized sexual orientation as protected under Article 23(3) of the Constitution.[36]

Lastly, in 2008, Article 68 of the new Constitution recognized homosexual couples have the same rights of heterosexual couples,[37] and Article 117 of the Military Code, which sanctioned homosexual acts among military personnel and had been used to discipline Lieutenant Flor Freire, was repealed.[38]

II. PROCEDURAL HISTORY

A. Before the Commission

August 30, 2002: Mr. Alejandro Ponce Villacís and Mr. Juan Manuel Marchán file a petition on behalf of Lieutenant Flor Freire with the

32. Flor Freire v. Ecuador, Report on Merits, ¶ 64.
33. *Id*. ¶ 65.
34. *Id*. ¶ 66.
35. Case No. 111-97-TC, Constitutional Tribunal of Ecuador (27 November 1997), Int'l Comm'n of Jurists, https://www.icj.org/sogicasebook/case-no-111-97-tc-constitutional-tribunal-of-ecuador-27-november-1997/ (last visited Sept. 15, 2017).
36. CONSTITUCIONES DE 1998 [CONSTITUTION] 1998, art. 23.3.
37. REPÚBLICA DE ECUADOR CONSTITUCIONES DE 2008 [CONSTITUTION] 2008, art. 68.
38. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) ¶ 107 (Aug. 31, 2016).

Inter-American Commission of Human Rights regarding his allegedly wrongful discharge from the army.[39]

March 15, 2010: The Commission finds the claim that the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 24 (Right to Equal Protection), and 25(1) (Right of Recourse Before a Competent Court) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) admissible. However, it finds the claim that the State violated Articles 9 (Freedom from *Ex Post Facto* Laws) and 11 (Right to Privacy) inadmissible.[40]

November 4, 2013: The Commission adopts its Report on Merits. The Commission finds that the State has violated articles 8(1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 24 (Right to Equal Protection), and 25(1) (Right of Recourse Before a Competent Court) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.[41]

The Commission recommends the following: (1) the State make full reparations to Lieutenant Flor Freire, including material and moral reparations to remunerate for the harm they caused him[42]; (2) the State publicly recognize that Lieutenant Flor Freire was wrongfully discharged from the military and fully acknowledge their mistake; [43] (3) the State adopt new measures to ensure members of all branches of the military are not persecuted as a result of their actual or perceived sexual orientation;[44] (4) the State inform military officers and the courts of military jurisdiction of the standards the Convention set forth for non-discrimination as well as the domestic law;[45] and (5) the State adopt necessary measures to ensure that the due process rights of military members undergoing disciplinary proceedings are protected.[46]

39. Flor Freire v. Ecuador, Admissibility Report, Report No. 1/10, Inter-Am. Comm'n H.R., Case No. 12.743, ¶ 1 (Mar. 15, 2010).
40. Flor Freire v. Ecuador, Admissibility Report, ¶ 3.
41. Flor Freire v. Ecuador, Report on Merits, ¶ 167.
42. *Id.* ¶ 168-1.
43. *Id.* ¶ 168-2.
44. *Id*. ¶ 168-3.
45. *Id.* ¶ 168-4.
46. *Id*. ¶ 168-5.

B. Before the Court

December 11, 2014: The Commission submits the case to the Court, after the State failed to adopt its recommendations.[47]

1. Violations Alleged by the Commission[48]

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)
Article 24 (Right to Equal Protection)
Article 25(1) (Right to Recourse Before a Competent Court)
all in relation to:
Article 1(1) (Obligation of Non-Discrimination) and
Article 2 (Obligation to Give Domestic Legal Effects to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victim[49]

Same violations as alleged by the Commission, plus:
Article 9 (Freedom from *Ex Post Facto* Laws)
Article 11(1) (Right to Honor and Dignity)
all in relation to:
Article 1(1) (Obligation of Non-Discrimination) and
Article 2 (Obligation to Give Domestic Legal Effects to Rights) of the American Convention.

III. MERITS

A. Composition of the Court[50]

Roberto F. Caldas, President
Eduardo Ferrer MacGregor Poisot, Vice President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge
Elizabeth Odio Benito, Judge

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47. Flor Freire v. Ecuador, Petition to the Court, Report No. 81/13, Inter-Am. Comm'n H.R., Case No. 12.743 (Dec. 11, 2014).
48. *Id.* at 2.
49. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶¶ 1, 142-143, 152.
50. *Id.* ¶ 1. Judge Patricio Pazmiño Freire, an Ecuadorian national, did not participate in the Court's deliberations or decision in this case, in accordance with Article 19.1 of the Rules of the Court.

Eugenio Raúl Zaffaroni, Judge
Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

August 31, 2016: The Court issues its Judgment on the merits.[51] The Court found unanimously that the State had violated:

Article 24 (Right to Equal Protection), in relation to Article 1(1) of the Convention, to the detriment of Mr. Flor Freire,[52] because:

The punishment for homosexual acts in the military was much wider in scope and more severe than the punishments for heterosexual acts.[53] *The Court recognized that equal protection is a* jus cogens *norm, and that this norm, in conjunction with Article 24 (Right to Equal Protection) of the Convention, establishes a duty for states to refrain from discriminating against their citizens and to dismantle existing systems of discrimination.*[54] *The Court then explained that to properly determine whether the State violated Lieutenant Flor Freire's right to equal protection, it must analyze the following factors: (1) whether Article 117 of the Military Code established a difference in treatment for homosexuals in contrast to heterosexuals; (2) whether the difference is related to a protected category as established by Article 1(1) of the Convention; and (3) whether the difference in treatment was discriminatory.*[55]

The Court examined two articles of the Military Code used to regulate inappropriate sexual conduct amongst military personnel, namely Article 67, the scope of which is general sexual activity, and Article 117, which specified homosexual activity.[56] *The Court ultimately found two key differences in the way that the acts were regulated.*[57] *First, the Court found that the sanctions were disproportionate as the Military Courts disciplined Article 67 violators with ten to thirty days of suspension from military duties, while simultaneously disciplining Article 117 violators*

51. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 1.
52. *Id.* ¶ 140.
53. *Id.* ¶ 138.
54. *Id.* ¶¶ 109-110.
55. *Id.* ¶ 114.
56. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 115.
57. *Id.* ¶ 117.

with complete discharge from military service.[58] *Second, the Court also found that the scope of when the two articles were used was significantly disproportionate.*[59] *The military only used Article 67 to regulate behavior of military personnel when on duty, while they utilized Article 117 to regulate the behavior of personnel even when not on active duty or on military grounds.*[60]

The Court also stated that its past jurisprudence clearly establishes sexual orientation as a protected under the Article 1(1) (Obligation of Non-Discrimination) of the Convention.[61] *The Court further elaborated that discrimination may be based on either perceived or actual sexual orientation, meaning that it was irrelevant whether Lieutenant Flor Freire actually engaged in homosexual activity as long as the State perceived him to do so. The Court explained that states discriminate against groups when there is no legitimate reason or purpose for the differences in treatment between the groups.*[62]

The Court concluded that though the regulation of sexual acts amongst on-duty military personnel is reasonable, the State failed to show that it had a reasonable justification for punishing homosexual activity more severely.[63] *In fact, the measure proved detrimental to the public as it discouraged homosexual individuals from enlisting in the military.*[64] *The Court also determined that Lieutenant Flor Freire's punishment would not have been as strict had he been accused of committing a heterosexual act.*[65] *For these reasons the Court found that the State violated Lieutenant Flor Freire's rights under Article 24 (Right to Equal Protection) by implementing disciplinary procedures against him, under Article 117 of the Military Code.*[66]

Article 11(1) (Right to Honor and Dignity), in relation to Article 1(1) of the Convention, to the detriment of Lieutenant Flor Freire,[67] because:

58. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 117.
59. *Id.*
60. *Id.*
61. *Id.* ¶¶ 118-119.
62. *Id.* ¶ 125.
63. *Id.* ¶¶ 126-127.
64. *Id.*
65. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 137.
66. *Id.* ¶ 140.
67. *Id.* ¶ 158.

The disciplinary proceedings against him and the circumstances surrounding the proceedings directly damaged his reputation, self-worth and self-esteem, and consequently violated his right to honor and dignity.[68] *Under Article 11 of the Convention, States must protect their citizens from any illegal attacks on their honor and dignity.*[69] *The Court interpreted honor as a combination of self-esteem and self-worth, and dignity to be based on a person's reputation.*[70]

The Court found that the State breached its duty by allowing the discharge of Lieutenant Flor Freire under the circumstances of the disciplinary proceedings brought against him, which negatively impacted his sense of self-worth and self-esteem.[71] *The Court also found that the State breached their duty when the State allowed false or discriminatory information about Lieutenant Flor Freire and his sexual orientation to spread, thereby damaging the public's opinion of him.*[72] *Accordingly, the Court determined that the State violated Article 11(1)* (*Right to Honor and Dignity*) *of the Convention to the detriment of Lieutenant. Flor Freire.*[73]

Article 8(1) (Right to a Hearing within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) of the Convention, to the detriment of Mr. Flor Freire,[74] because:

General Zabala, the Commander of the Fourth Garrison, was a prejudicial judge of the First Court.[75] *The Court stated that impartiality in a judicial proceeding requires both competence and subjectivity when reviewing the case.*[76] *Article 8(1) also requires States provide sufficient proof that their judicial processes are indeed impartial.*[77] *The Court also stated that the right to impartiality is applied equally in both administrative and judicial proceedings.*[78]

68. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 158.
69. *Id.* ¶ 153.
70. *Id.* ¶¶ 154-155.
71. *Id.* ¶ 156.
72. *Id.* ¶ 157.
73. *Id.* ¶ 158.
74. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 181.
75. *Id.* ¶ 179.
76. *Id.* ¶ 168.
77. *Id.*
78. *Id.* ¶ 169.

The Court explained that though it recognized that General Zabala's decision to have Lieutenant Flor Freire surrender his duties prior to the start of the investigative procedure was neither a disciplinary sanction nor an act regulated by summary information procedures. Rather, the decision was an indicator that the commander had already presumed Lieutenant Flor Freire's guilt.[79] *As the acting judge in the First Court, General Zabala had a duty to act impartially.*[80]

The Court determined that General Zabala acting simultaneously as Lieutenant Flor Freire's commanding officer and judge was not a per se *violation of the Convention, nor was it a violation to suspend an individual accused of breaking a military regulation from active duty pending a verdict.*[81] *Ultimately, the Court concluded that General Zabala was biased towards Lieutenant Flor Freire when he acted on the accusations levied against him, in his official capacity as his commanding officer, in a way that directly affected any subsequent notions of impartiality.*[82] *In doing so, the State violated Lieutenant Flor Freire's rights under Article 8(1) (Right to a Hearing within Reasonable Time by a Competent and Independent Tribunal).*[83]

The Court found unanimously that the State did not violate:

Article 9 (Freedom from *Ex Post Facto* Laws), in relation to Article 1(1) of the Convention, to the detriment of Mr. Flor Freire,[84] because:

The Court found that Article 117 of the Military Code was not a per se *violation of an international duty, and nothing prohibited the State from regulating the non-criminal behavior of its citizens.*[85] *The Court explained that the victims and their representatives can allege violations of rights other than the ones provided for by the Commission in the merits report, so long as they utilize only the facts established therein.*[86] *In the case at hand, Lieutenant Flor Freire and his representatives alleged a*

79. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶¶ 170-175.
80. *Id.* ¶ 176.
81. *Id.* ¶ 180.
82. *Id.* ¶ 179.
83. *Id.* ¶ 181.
84. *Id.* ¶ 151.
85. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶¶ 148, 150.
86. *Id.* ¶ 144.

violation of the principle of legality based off of two arguments: (1) the law used to prosecute him was illegal under Article 24(1) of the State's Constitution, and (2) the State should not have administratively sanctioned him for an act which was nationally decriminalized.[87] *The Court explained that the principle of legality standard varies depending on the type of proceedings.*[88] *The Court stated that the standard is lower in disciplinary proceedings, such as Lieutenant Flor Freire's, than in criminal proceedings.*[89]

The Court recognized that the State may clarify vague concepts in disciplinary matters to avoid confusion or improper disciplinary proceedings.[90] *It in turn viewed Article 117 of the Military Code as one of many specifications of the more generalized Article 87 of the Military Code, which simply prohibited misconduct of any kind amongst army personnel.*[91] *The Court determined that Lieutenant Flor Freire and his representatives failed to provide satisfactory evidence that Article 117 of the Military Code was illegal under Article 24(1) of the State's Constitution, but further elaborated that it was not the Court's role to decide on potential conflicts of a State's domestic laws.*[92]

Subsequently, the Court explained nothing prevents States from utilizing disciplinary administrative measures to punish non-criminal activity among its population.[93] *To the contrary, the Court stresses that the regulation of non-criminal activity is necessary to maintain order amongst public officials.*[94] *Therefore, the Court determined that the decriminalization of homosexuality did not support the argument that Lieutenant Flor Freire could not be administratively disciplined for engaging in homosexual activity.*[95]

For these reasons, the Court ultimately concluded that the State did not violate Lieutenant Flor Freire's rights under Article 9 (Freedom from Ex Post Facto *Laws) in its implementation of Article 117 of the Military Code.*[96] *The Court subsequently waived without prejudice the decision*

87. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 145.
88. *Id.* ¶ 146.
89. *Id.*
90. *Id.* ¶ 148.
91. *Id.* ¶ 148.
92. *Id.* ¶ 149.
93. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 150.
94. *Id.*
95. *Id.*
96. *Id.* ¶ 151.

regarding the discriminatory nature of the disproportionate punishments for homosexual acts compared to heterosexual ones under the Military Code.[97]

Article 8(1) (Right to a Hearing within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) of the Convention, to the detriment of Mr. Flor Freire,[98] because:

The Court ultimately found that when the Councils of Subaltern Officers and Superior Officers adopted the factual and legal reasoning of the First Court, they satisfied the requirement to explain the reasoning of their judicial decisions.[99] *Under Article 8(1) of the Convention, States must sufficiently explain the reasoning behind their judicial decisions.*[100] *The Court emphasized that these explanations are assurances to the parties involved that a court has properly considered their legal arguments and evidence when making its decision.*[101] *Furthermore, lack of a proper explanation may prevent an accused from adequately defending themselves on appeal.*[102] *The Court explained that this is analyzed by examining the proceedings as a whole, and that the scope of guarantees established by Article 8(1), includes, but is not limited to, the duty to explain the reasoning, which varies depending on the nature and matters of the proceedings.*[103] *The Court elaborated that Article 8(1) does not require courts to reply to every argument the parties make; however, courts must respond to the principal arguments surrounding the issue in dispute.*[104]

Both the Commission and Lieutenant Flore Freire's representatives alleged that the Council of Subaltern Officers and Council of Superior Officers failed to provide sufficient reasoning explaining their decision to uphold the First Court's decision.[105] *The Commission argued that the State failed to provide its reasoning by only giving Lieutenant Flor Freire a memorandum referring him to certain paragraphs in the official*

97. Flor Freire v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 150-151.
98. *Id.* ¶ 193.
99. *Id.* ¶ 192.
100. *Id.* ¶ 182.
101. *Id.*
102. *Id.* ¶ 185.
103. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 186.
104. *Id.*
105. *Id.* ¶ 183.

decision record explaining the First Court's reasoning.[106] *The State's courts, however, never provided him with an actual copy of the record or reasoning; nevertheless those records were available to Lieutenant Flor Freire upon request and the State records showed no indication that he ever made such a request.*[107]

The Court ultimately concluded that because the Council of Subaltern Officers and Council of Superior Officers did not conduct a new factual or legal analysis of the case, and instead chose to adopt the analyses of the First Court, in essence they adopted the reasoning of the First Court, which was available to Lieutenant Flor Freire.[108] *The Court holds that regarding the duty to state sufficient reasoning, the State did not violate Lieutenant Flor Freire's rights under Article 8(1) (Right to a Hearing within Reasonable Time by a Competent and Independent Tribunal).*[109]

Article 25(1) (Right to Recourse Before a Competent Court), in relation to Articles 1(1) and 2 of the Convention, to the detriment of Mr. Flor Freire,[110] because:

The State provided sufficient evidence demonstrating that the remedy of an administrative appeal was available to Lieutenant Flor Freire, and that such a remedy could have been sufficiently effective to protect his rights.[111] *Article 25(1) establishes a duty for States to provide their citizens with an adequate and effective legal remedy before a competent judicial body.*[112] *The Court elaborated that states are responsible for two specific duties under Article 25(1): (1) to pass legislation safeguarding the rights of citizens and (2) to ensure that there is an effective method of enforcement to implement the decisions of a competent judiciary.*[113]

To determine whether the State violated Lieutenant Flor Freire's right, the Court analyzed three issues: (1) whether he had access to legal remedies; (2) whether those remedies were sufficiently effective; and (3) whether an amparo *action was an effective remedy in the case.*[114]

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106. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 189.
107. *Id.*
108. *Id.* ¶ 192.
109. *Id.* ¶ 193.
110. *Id.* ¶ 211.
111. *Id.* ¶ 208.
112. *Id.* ¶ 198.
113. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 199.
114. *Id.* ¶ 200.

Regarding the first issue, the State provided sufficient evidence for the Court to conclude that both an amparo *action and an administrative appeal to the Supreme Court were remedies available to Lieutenant Flor Freire.*[115] *Similarly, the Court concluded that Lieutenant Flor Freire and his representatives failed to demonstrate that the interpretation of the State's Constitution at the time prohibited Lieutenant Flor Freire from filing an appeal with the Supreme Court.*[116]

Regarding the second and third issues, the Court ultimately decided to forego their analyses for several reasons.[117] *First, since Lieutenant Flor Freire did not in fact file an administrative appeal with the Supreme Court, the Court decided that any attempt to analyze the effectiveness of such an appeal in the current case would require the Court to speculate.*[118] *Similarly, the Court also waived analyzing the effectiveness of the* amparo *action, stating that it would be inappropriate to do so because, even if the* amparo *action was deemed to be ineffective, the existence of an alternative and accessible remedy at law meant that the State could not be held liable for failing to provide a suitable legal remedy to the victim.*[119] *As such, the Court found that the State did not violate Article 25(1) (Right to Recourse Before a Competent Court), in relation to Article 1(1) of the Convention, to the detriment of Lieutenant Flor Freire.*[120]

C. Dissenting and Concurring Opinions

[None]

III. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

115. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶¶ 208-209.
116. *Id.* ¶ 207.
117. *Id.* ¶¶ 209-210.
118. *Id.* ¶ 209.
119. *Id.* ¶ 210.
120. *Id.* ¶ 211.

1. Reinstate Military Rank

The Court ordered that the State give Lieutenant Flor Freire the military rank which he would have attained had his service not been interrupted, as well as grant him the status and benefits of a retired military officer of that rank. [121]

2. Pay Social Security and Other Retirement Benefits

The Court ordered the State to pay Lieutenant Flor Freire the social security benefits he would have received had his service not been interrupted. [122]

3. Reform Domestic Law

The Court ordered the State to adopt new domestic legislation to prevent further discrimination in the State's administrative processes. [123]

4. Publish the Judgment

The Court ordered the State to publish certain portions of the Court's judgment in a nationally circulated newspaper of its choice. [124]

5. Train Military Personnel

The Court ordered the State to train its military personnel to prevent further discrimination against people who identify as, or are perceived to be, homosexual.[125]

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

121. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 227.
122. *Id.* ¶ 228.
123. *Id.* ¶ 229.
124. *Id.* ¶¶ 231-232.
125. *Id.* ¶¶ 238-239.

The Court awarded $385,000 to Lieutenant Flor Freire for his lost wages after the State discharged him from the military.[126]

2. Non-Pecuniary Damages

The Court awarded $10,000 to Lieutenant Flor Freire for to moral damages and damage to his honor and reputation.[127]

3. Costs and Expenses

The Court awarded $5,000 to Lieutenant Flor Freire for the costs and expenses his representatives incurred, which he could distribute amongst his representatives at his own discretion.[128] The Court also awarded $10,000 related to the costs and expenses incurred in litigating in the Inter-American system.[129] Lastly, the Court awarded $4,788.25 to the Victim's Legal Assistance Fund regarding expenses incurred.[130]

4. Total Compensation (including Costs and Expenses ordered):

$414,788.25

C. Deadlines

The State must grant Lieutenant Flor Freire his new rank and status as a retired military officer within one year of notice of the judgment.[131]

The State must provide Lieutenant Flor Freire with appropriate social security benefits within one year of notice of the judgment.[132]

The State must adopt new legislation to prevent further administrative discrimination within one year of notice of the judgment.[133]

The State must publish the Court's judgment within six months of notice of the judgment.[134]

126. Flor Freire v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, ¶ 252.
127. *Id.* ¶ 258.
128. *Id.* ¶ 264.
129. *Id*.
130. *Id.* ¶ 267.
131. *Id.* ¶ 227.
132. *Id.* ¶ 228.
133. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 229.
134. *Id.* ¶ 231.

The State must train its military personnel to prevent further discrimination within a reasonable time after notice of the judgment.[135]

IV. INTERPRETATION AND REVISION OF JUDGMENT

[None]

V. COMPLIANCE AND FOLLOW-UP

[None]

VI. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) (Aug. 31, 2016).

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

135. Flor Freire v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, ¶ 238.

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

Flor Freire v. Ecuador, Admissibility Report, Report No. 1/10, Inter-Am. Comm'n H.R., Case No. 12.743 (Mar. 15, 2010).

3. Provisional Measures

[None]

4. Report on Merits

Flor Freire v. Ecuador, Report on Merits, Report No. 81/13, Inter-Am. Comm'n H.R., Case No. 12.743 (Nov. 4, 2013).

5. Application to the Court

Flor Freire v. Ecuador, Petition to the Court, Report No. 81/13, Inter-Am. Comm'n H.R., Case No. 12.743 (Dec. 11, 2014).

VII. BIBLIOGRAPHY

Case No. 111-97-TC, Constitutional Tribunal of Ecuador (27 November 1997), Int'l Comm'n of Jurists, https://www.icj.org/sogicasebook/case-no-111-97-tc-constitutional-tribunal-of-ecuador-27-november-1997/ (last visited Sept. 15, 2017)