

Anzualdo Castro v. Peru

ABSTRACT¹

On December 16, 1993, Mr. Kenneth Ney Anzualdo Castro, a university student, was riding the bus home from school. A light blue car intercepted the bus and three persons, who identified themselves as police officers, forced Mr. Anzualdo Castro into their car. That was the last time Mr. Anzualdo Castro was ever seen. The Court found violations of both the America Convention of Human Rights and the American Convention on Forced Disappearance of Persons.

I. FACTS

A. Chronology of Events

June 13, 1968: Mr. Kenneth Ney Anzualdo Castro is born in Peru.²

1992 - 1993: Following the State's 1992 coup d'état, a pattern of extrajudicial executions, including forced disappearances and massacres, linked to public security agencies of the State, take place in Peru.³ The disappearances are aimed at punishing people connected to dissident groups in order to discourage support of these groups.⁴

1991: Five Peruvian newspapers claim that Mr. Anzualdo Castro participated in terrorist acts, including murder, with the terrorist group Sendero Luminoso.⁵

1. Jennifer Toghian, Author; Amy Choe, Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶ 33 (Sep. 22, 2009).

3. Anzualdo Castro v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.385, ¶¶ 35-37, 40 (Jul. 11, 2008).

4. *Id.*

5. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 35.

October 8, 1991: State agents search Mr. Anzualdo Castro's home.⁶ They arrest Mr. Anzualdo Castro along with six of his fellow students on suspicion of terrorism in relation to the terrorist group Sendero Luminoso.⁷ National Office Against Terrorism ("DINCOTE") agents detain Mr. Anzualdo Castro and hold him in custody for fifteen days.⁸

August 17, 1993: Mr. Anzualdo Castro is a student of Economics at the National University of Callao (*Escuela Profesional de Economía, Universidad Nacional del Callao*).⁹ Mr. Anzualdo Castro and Martín Javier Roca Casas, who is a fellow member of the student union at the university, take part in a protest together.¹⁰

At the protest, the men note someone is filming them.¹¹ Mr. Anzualdo Castro and Mr. Roca Casas confront the cameraman, demand that he explain why he is filming them, and grab his videotape.¹² That night, the cameraman goes to Mr. Roca Casas' home and demands back the tape.¹³ The man identifies himself as Percy Tarazona Estevez, an officer in the Peruvian Navy.¹⁴ Mr. Roca Casas denies possession of the tape and the man leaves, but returns shortly with a group of Navy personnel.¹⁵ The group raids Mr. Roca Casas' home in search of the tape.¹⁶

August 18, 1993: The officer returns to Mr. Roca Casas' home.¹⁷ Mr. Roca Casas' father refuses to speak to the officer and calls the police.¹⁸ The police come to Mr. Roca Casas' home and take Officer Tarazona Estevez to the police station.¹⁹

A commanding Intelligence Officer confirms that Officer Tarazona Estevez is engaged in intelligence activities under his command.²⁰ The commander says they are only interested in recouping

6. Anzualdo Castro v. Peru, Petition to the Court, ¶ 62.

7. *Id.* ¶ 69.

8. *Id.* ¶ 62.

9. *Id.* ¶ 61.

10. *Id.*; Martín Javier Roca Casas v. Peru, Report on Merits, Report No. 39/97, Inter-Am. Comm'n H.R., Case No. 11.233, ¶ 2 (February 19, 1998).

11. Anzualdo Castro v. Peru, Petition to the Court, ¶ 61.

12. *Id.*

13. Martín Javier Roca Casas v. Peru, Report on Merits, ¶ 3.

14. *Id.*

15. *Id.* ¶ 3.

16. *Id.*

17. *Id.* ¶ 4.

18. *Id.*

19. *Id.*

20. *Id.*

the tape of the protest because it contains information regarding individuals suspected as terrorists.²¹ The commander states that they are not currently investigating Mr. Roca Casas.²² From this day on, Mr. Roca Casas' home is continuously under surveillance by persons presumably associated with Peru's Navy.²³

October 5, 1993: Mr. Roca Casas is detained and later reported missing.²⁴

December 1993: Mr. Anzualdo Castro goes to the offices of the Association for Human Rights ("APRODEH") to express his concern about Mr. Roca Casas' disappearance.²⁵ Mr. Anzualdo Castro says that he is prepared to testify about Mr. Martin Roca Casas' final days before his disappearance at the Office of the Third Provincial Prosecutor of the Judicial District of Callao to help aid the investigation into Mr. Roca Casas' disappearance.²⁶

December 16, 1993: After attending classes at the National University of Callao, Mr. Anzualdo Castro takes a bus to return home.²⁷ Soon after he boards, three people dressed in plain clothes stop the bus.²⁸ They identify themselves as member of the police department and order Mr. Anzualdo Castro and the two other passengers off the bus.²⁹ The men force Mr. Anzualdo Castro into their vehicle and quickly drive off.³⁰ Mr. Anzualdo Castro has not been seen or heard from since this date, nor does anyone have any information about his whereabouts.³¹

December 1993: Mr. Anzualdo Castro's family files multiple complaints to different agencies of the State in order to establish his whereabouts.³² His family goes to DINCOTE, the National Police, and

21. *Id.*

22. *Id.*

23. *Id.* ¶ 5.

24. Anzualdo Castro v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.385, ¶ 65 (Jul. 11, 2008).

25. *Id.*

26. *Id.*

27. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶¶ 33-34 (Sep. 22, 2009).

28. *Id.* ¶ 34.

29. *Id.*

30. *Id.*

31. *Id.*

32. Anzualdo Castro v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.385, ¶ 66 (Jul. 11, 2008).

the morgue, and speaks to members of APRODEH and Mr. Roca Casa's family.³⁵

December 28, 1993: Mr. Anzualdo Castro's family files a complaint with the Office of the Fifth Provincial Prosecutor for Criminal Matters of Callao³⁴ alleging that the State is responsible for Mr. Anzualdo Castro's disappearance, which was committed by members of the Army Intelligence Service.³⁵

January 14, 1994: The State denies responsibility for the disappearance of Mr. Anzualdo Castro.³⁶ They attribute his disappearance to the terrorist group of Peru.³⁷

February 8, 1994: Félix Vicente Anzualdo Vicuña, Mr. Anzualdo Castro's father, files a writ of habeas corpus for his son.³⁸

February 11, 1994: The court declares the habeas petition inadmissible.³⁹

February 22, 1994: Mr. Anzualdo Castro's father appeals the inadmissibility of his habeas petition.⁴⁰

February 23, 1994: Mr. Anzualdo Vicuna's appeal is rejected on the grounds that the time allowed for appeal has expired.⁴¹

June 3, 1994: The Office of the Fifth Provincial Prosecutor rejects the complaint Mr. Anzualdo Castro's family filed in December 1993 without prejudice.⁴² The Prosecutor's decision states that Mr. Anzualdo Castro is a sympathizer of the Communist Party of Peru.⁴³

June, 1995: The Congress of the Republic of Peru enacts Law N° 26.479 which pardons agents of the State and civilians accused of

33. *Id.*

34. *Id.* ¶ 69.

35. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 30.

36. *Id.* ¶ 35.

37. *Id.*

38. Anzualdo Castro v. Peru, Petition to the Court, ¶ 67.

39. *Id.*

40. *Id.* ¶ 68.

41. *Id.*

42. *Id.* ¶ 69.

43. *Id.*

violating human rights or serving time for human rights violations committed between 1980-1995.⁴⁴ Days after enacting the first law, the Peruvian Congress approves a second amnesty law, Law N° 26.492, which prohibits judges from passing judgment on the legality of the first amnesty law, Law N° 26.479.⁴⁵

1999: The Chief of the Police Department of the Office of the Prosecutor of Callao presents a report to the Office of the Attorney General stating that its investigation to locate Mr. Anzualdo Castro was unsuccessful.⁴⁶

October 10, 2002: Mr. Anzualdo Vicuna and Martin Roca Casas' father petition to reopen the investigation into the abduction and forced disappearances of their sons with the Office of the Special Provincial Prosecutor on Forced Disappearances, Extrajudicial Executions, and Clandestine Graves.⁴⁷

B. Other Relevant Facts

Mr. Anzualdo Castro's disappearance is consistent with the Armed Forces' practice of forced disappearances of university students.⁴⁸ The State's Truth and Reconciliation Commission ("CVR") reports that these disappearances are part of the procedure the State used to implement their counter-subversion plan between 1988 and 1993 after the Executive power decided that the Armed Forces would replace the Police forces in combating subversion.⁴⁹ The members of the Armed Forces are held responsible for most of the disappearances.⁵⁰ The forced disappearances follow a consistent pattern: the Armed Forces select a victim, arrest him or her, and imprison the victim at a detention site.⁵¹ Subsequently, the State subjects the victim to interrogation and torture and finally disposes of their bodies.⁵² Typically, the State completely denies the victim's arrest and suppresses any information regarding the victim's arrest or whereabouts.⁵³

44. *Id.* ¶ 44.

45. *Id.*

46. *Id.* ¶ 70.

47. *Id.* ¶ 77.

48. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶ 47 (Sep. 22, 2009).

49. *Id.* ¶ 48.

50. *Id.*

51. *Id.* ¶ 49.

52. *Id.*

53. *Id.*

II. PROCEDURAL HISTORY

A. *Before the Commission*

May 27, 1994: The Commission receives a petition on behalf of Mr. Anzulado Castro filed by APRODEH.⁵⁴

September 19, 1997: The State requests that the Commission hold a hearing on this case as well as nine other similar cases during the Commission's Ninth Regular Session.⁵⁵ The Commission denies this request.⁵⁶

February 25, 1998: The Commission recognizes the Center for Justice and International Law ("CEJIL") as co-petitioner in the case.⁵⁷

May 19, 2004: The Commission opens case No. 11.385.⁵⁸ Additionally, the Commission postpones an analysis of admissibility until the decision on Merits and requests that the parties submit addition observations on the Merits within two months.⁵⁹

October 16, 2007: The Commission approves Admissibility and Merits Report No. 85/07,⁶⁰ concludes that it has jurisdiction to hear the case, and declares the petition admissible.⁶¹ It concludes that the State violated Mr. Anzulado Castro's right to juridical personality, life, humane treatment, personal liberty, fair trial, and judicial protection as enshrined in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to Fair Trial), 25 (Right to Judicial Protection) of the American Convention, in connection with Articles 1(1) (Obligation of to Respect

54. *Id.* ¶ 1.

55. Anzulado Castro v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.385, ¶ 16 (Jul. 11, 2008).

56. *Id.*

57. *Id.* ¶ 19.

58. *Id.* ¶ 25.

59. *Id.*

60. *Id.* ¶ 29.

61. *Id.*

Rights) and 2 (Domestic Legal Effect) of the Convention and Article I (Obligation to Respect Rights) of the Convention on Forced Disappearance.⁶² It also concludes that the State violated the victim's next-of-kin's rights to humane treatment and fair judicial protection, under Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention in connection Article 1(1) (Obligation to Respect Rights) and Article 2 (Domestic Legal Effect) of the Convention.⁶³

As a result, the Commission recommends that the Court require the State to acknowledge international responsibility for their human rights violations, investigate Mr. Anzualdo Castro's disappearance, provide psychological care to Mr. Anzualdo Castro's family, and reimburse the costs and expenses Mr. Anzualdo Castro's immediate family incurred while pursuing this case.⁶⁴

B. Before the Court

July 11, 2008: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁶⁵

August 7, 2008: Judge Diego García-Sayán requests disqualification from hearing the instant case to preserve the impartiality of the Court.⁶⁶

September 22, 2008: The State appointed Víctor Oscar Shiyín García Toma as Judge *ad hoc*.⁶⁷

1. Violations Alleged by Commission⁶⁸

To the detriment of Mr. Anzualdo Castro:

Article 3 (Right to Juridical Personality)

62. *Id.*

63. *Id.*

64. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶ 3 (Sep. 22, 2009).

65. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 202 ¶ 1 (Sep. 22, 2009).

66. *Id.* at n.1

67. *Id.* at n.1

68. Anzualdo Castro v. Peru, Petition to the Court, ¶ 3. Mr. Jorge Abrego of the Association for Human Rights ("APRODEH"); and Mrs. Viviana Kristevic, Ariela Peralta, Alejandra Peralta, and Mr. Francisco Quintana of the Center for Justice and International Law ("CEJIL") represented the victims. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, ¶ 4.

Article 4 (Right to Life)
 Article 5 (Right to Humane Treatment)
 Article 7 (Right to Personal Liberty)
 Article 8 (Right to a Fair Trial)
 Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights);
 Article 2 (Domestic Legal Effects) of the American Convention.
 Article I (Obligation to Prevent Forced Disappearance) of the Inter-American Convention on Forced Disappearance of Persons.

To the detriment of Mr. Anzualdo Castro's next of kin.⁶⁹

Article 5 (Right to Humane Treatment)
 Article 8 (Right to a Fair Trial)
 Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights),
 Article 2 (Domestic Legal Effect) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁷⁰

To the detriment of Mr. Anzualdo Castro's next-of-kin:

Same violations alleged by the Commission, plus:

Article 13 (Freedom of Thought and Expression)
 Article 2 (Domestic Legal Effects) of the American Convention.
 Article I (d) (Obligation to Effectuate the Convention)
 Article II (Definition of Forced Disappearance)
 Article III (Obligation to Penalize Forced Disappearance) of the Inter-American Convention on Forced Disappearance of Persons.

December 22, 2008: The State submits one preliminary objection that petitioners failed to exhaust domestic remedies.⁷¹

The State contends that the petitioners have not exhausted domestic remedies because the Office of the Special Provincial

69. Anzualdo Castro v. Peru, Petition to the Court, ¶ 3.

70. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, ¶ 4.

71. *Id.* ¶ 5.

Attorney for Human Rights of Peru filed a criminal complaint which is still pending before the Third Supranational Public Prosecutor's Office in relation to this case.⁷²

The Commission notes that the criminal complaint the State referred to was filed after the approval of the Report on Admissibility and Merits.⁷³ The Commission alleges the State's complaint is exceptionally vague, especially given that the State had timely access to remedies and the chance to settle the case before it proceeded to the Inter-American system.⁷⁴ The Commission asserts that the State has the burden of proof regarding arguments on preliminary objections and the State failed to prove that the petitioners had suitable remedies to settle the case at the domestic level.⁷⁵

The Court notes that the State filed the complaint after the Commission approved the Report on Admissibility.⁷⁶ Consequently, the State's argument that a complaint was filed and an investigation started fifteen years after the forced disappearance of Mr. Anzualdo Castro confirms that the victim did not have access to suitable remedies.⁷⁷ Therefore, the Court dismissed the State's preliminary objection.⁷⁸

III. MERITS

A. *Composition of the Court*

Cecilia Medina Quiroga, President
Sergio García Ramírez, Judge
Manuel E. Ventura Robles, Judge
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
V́ctor Oscar Shiyin García Toma, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

72. *Id.* ¶ 12.

73. *Id.* ¶ 13.

74. *Id.*

75. *Id.* ¶ 17.

76. *Id.* ¶ 19.

77. *Id.*

78. *Id.*

September 22, 2009: The Court issues its Judgment on Merits, Reparations, and Costs.⁷⁹

The Court found unanimously that Peru had violated:

Article 7 (Right to Personal Liberty), 4(1) (Right to Life), 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane, or Degrading Treatment) and 3 (Right to Juridical Personality) in relation to Article 1(1) of the Convention and Article I of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Anzualdo Castro,⁸⁰ because:

Agents of the State abducted Mr. Anzualdo Castro on December 16, 1993.⁸¹ After his abduction, State agents confined Mr. Anzualdo Castro for an uncertain amount of time, and at the time of judgment his fate was still unknown.⁸²

The Court noted that the review of alleged forced disappearances should be done comprehensively, based on the set of facts in the case at hand, rather than analyzing each violation separately.⁸³ This holistic approach allowed the Court to also consider the context of the continuous nature of the forced disappearances in the State and the consequences of forced disappearance at the Inter-American and international level.⁸⁴

The Court deemed the remedy of habeas corpus the most suitable route to safeguard freedom in deprivation of liberty cases because it (1) ensures the victim is brought before a court to verify the legality of the detention, (2) avoids uncertainty about detention centers, and (3) protects the individual from torture.⁸⁵ Therefore, the habeas corpus remedy cannot be restricted or abolished, under Article 7(6) (Right to Have Recourse before a Competent Court) of the Convention.⁸⁶ In this case, the State ruled the writ of habeas corpus Mr. Anzualdo Castro's

79. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs. Judge Diego García Sayán was permitted to excuse himself from this case in order to preserve the impartiality of the Court.

80. *Id.* ¶ 103.

81. *Id.* ¶ 34.

82. *Id.* ¶ 50.

83. *Id.* ¶ 67.

84. *Id.*

85. *Id.* ¶ 72.

86. *Id.* ¶ 74.

family filed in order to help determine his whereabouts inadmissible.⁸⁷ The State's ruling directly violated Article 7(6) (Right to Have Recourse before a Competent Court) of the Convention.⁸⁸ The Court held that the State's refusal to acknowledge Mr. Anzualdo Castro's detention even though his next-of-kin turned to the authorities in many instances transformed his abduction and deprivation of liberty into a forced disappearance.⁸⁹ The Court held that the repeated disappearances of students at the hands of the State in 1993 was a blatant contradiction to the general rights offered by democratic societies, and constituted a violation of the right of personal liberty under Article 7(Right to Personal Liberty) of the American Convention.⁹⁰

The Court recognized that in forced disappearances cases, the victims are particularly susceptible to the violation of other rights, namely, Article 4(1) (Prohibition of Arbitrary Deprivation of Life) of the American Convention.⁹¹ The implementation and maintenance of detention centers, such as the one used in this case, constitute a *per se* breach of the State's legal duty to use reasonable efforts to prevent human rights violations that directly affects one's rights to personal liberty, humane integrity, and life.⁹² In order to protect these rights, States must conduct investigations if there is reason to believe that a person has been subjected to a forced disappearance.⁹³

The Court recognized that Mr. Anzualdo Castro's abduction fit within the systematic practice of forced disappearances by agents of the State.⁹⁴ The Court took past cases into consideration and reasoned that the manner of abduction, detention, as well as Mr. Anzualdo Castro's inability to communicate with his family caused him mental anguish.⁹⁵ Additionally, though there was no concrete proof, the Court found that it was reasonable to assume that State agents subjected Mr. Anzualdo Castro to torture and inhumane treatment.⁹⁶ Accordingly, the Court found that the State failed to fulfill its duty to ensure persons received humane treatment by taking reasonable efforts to prevent situations like

87. *Id.*

88. *See id.*

89. *Id.* ¶ 78.

90. *See id.* ¶ 81; *see generally* ¶ 48.

91. *Id.* ¶ 61.

92. *Id.* ¶ 63.

93. *Id.* ¶ 65.

94. *Id.* ¶ 86.

95. *Id.*

96. *Id.*

*Mr. Anzualdo Castro's.*⁹⁷ Therefore, the Court concluded that the State's unlawful forced imprisonment of Mr. Anzualdo Castro was a direct violation of his rights to humane treatment and physical integrity under Article 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane, or Degrading Treatment) of the American Convention.⁹⁸

The Court then turned to the Article 3 (Right to Juridical Personality) violation.⁹⁹ The Court explained that under Article 3 (Right to Juridical Personality), the State has the duty to provide the means necessary to guarantee citizens the right to be recognized as a person before the law.¹⁰⁰ However, the Court noted that in cases such as Mr. Anzualdo Castro's, where individuals are placed in vulnerable situations, the State has a broader duty under Article 3 (Right to Juridical Personality).¹⁰¹ In situations involving forced disappearances, the State has the duty to ensure these vulnerable individuals are legally recognized and acknowledged before the law.¹⁰²

Accordingly, the Court noted that forced disappearances constitute a specific, severe violation of this right, since a victim's disappearance essentially eliminates his or her right to juridical personality by a denial of the victim's existence.¹⁰³ This was in stark contrast to many of the Court's past judgments, where the Court had not considered this right to be violated, holding that the American Convention on Forced Disappearance of Persons did not expressly state that juridical personality was an element of the crime of forced disappearance of persons.¹⁰⁴ To justify this shift, the Court noted that there had been an evolution, and several international treaties recognized that a State's failure to acknowledge a victim's detention, combined with other factors of a forced disappearance, can violate Article 3 (Right to Juridical Personality).¹⁰⁵ Because the State refused to acknowledge Mr.

97. *Id.*

98. *Id.* ¶ 85.

99. *Id.* ¶ 87.

100. *Id.* ¶ 88.

101. *Id.* ¶ 89.

102. *Id.*

103. *Id.* ¶ 90.

104. Gabriella Citroni, *When is it Enough? Enforced Disappearance and the "Temporal Element"* (Dec. 13, 2013) available at http://www.droits-fondamentaux.org/IMG/pdf/df9_Enforced_Disappearance_Citroni.pdf

105. *Anzualdo Castro v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 92; BURGORGUE-LARSEN & AMAYA UBEDA DE TORRES, *INTER-AMERICAN COURT OF HUMAN RIGHTS: CASE LAW AND COMMENTARY* 303 (2011).

*Anzualdo Castro's detention and did not disclose his whereabouts, the Court concluded that the State violated Mr. Anzualdo Castro's rights under Article 3 (Right to Juridical Personality) of the American Convention.*¹⁰⁶

Article 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane, or Degrading Treatment), in relation to Articles 1(1) of the American Convention on Human Rights to the detriment of Félix Vicente Anzualdo Vicuña, Iris Isabel Castro Cachay de Anzualdo, Marly Arleny Anzualdo Castro, and Rommel Darwin Anzualdo Castro,¹⁰⁷ because:

*In cases of forced disappearance, the Court noted that the family members of the victims become victims themselves.*¹⁰⁸ *In past cases, the Court ruled that a State violates the moral and mental integrity of the victim's family members when the State commits, then fails to effectively investigate forced disappearances.*¹⁰⁹ *Additionally, in these cases, the Court regarded the lack of effective remedies available as an additional source of mental suffering for the family members of the victim.*¹¹⁰

*In this case, the State continuously deprived Mr. Anzualdo Castro's family of information and failed to effectively investigate his whereabouts, which impacted Mrs. Castro Cachay de Anzualdo and her children in such a traumatic manner that their mental and physical wellbeing deteriorated.*¹¹¹ *Expert evaluation verified that the State's ineffective response to Mr. Anzualdo Castro's disappearance caused his family irreparable damage to their health.*¹¹² *Accordingly, the Court concluded that Mr. Anzualdo Castro's next-of-kin suffered permanent mental, moral, and physical damage.*¹¹³ *As a result, the State violated the right to humane treatment under Article 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane, or Degrading Treatment) of the American Convention.*¹¹⁴

106. *Id.* ¶ 10.

107. *Id.* ¶ 114.

108. *Id.* ¶ 105.

109. *Id.* ¶ 113.

110. *Id.*

111. *Id.* ¶ 112.

112. *Id.* ¶ 111.

113. *Id.* ¶ 114.

114. *Id.*

Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection) in relation to Articles 1(1) and 2 of the American Convention on Human Rights and I(b) (Obligation to Punish Perpetrators of Forced Disappearances) and III (Obligation to Penalize Forced Disappearance) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Félix Vicente Anzualdo Vicuña, Iris Isabel Castro Cachay de Anzualdo, Marly Arleny Anzualdo Castro and Rommel Darwin Anzualdo Castro,¹¹⁵ because:

*Given the totality of the circumstances, it was unreasonable for the State's investigation into Mr. Anzualdo Castro's disappearance to take over fifteen years.*¹¹⁶

*The Court explained that there are three aspects to the forced disappearances of persons: the right to know the truth, the lack of effective investigation, and the existence of an appropriate method to investigate the details of the disappearance.*¹¹⁷

*The Court noted that in forced disappearance cases, the victim's next of kin is entitled to the right to the truth: the right to have the facts of the victim's disappearance investigated in order to prosecute and punish the responsible parties.*¹¹⁸ *The right to the truth is derived from right to access to justice, which is based on Articles 1(1) (Obligation to Respect Rights), 8 (Right to a Fair Trial), and 25 (Right to Juridical Protection) of the American Convention.*¹¹⁹ *A State violates the right to the truth of the victim's family when it fails to investigate, prosecute, and punish the persons responsible for the forced disappearance of an individual.*¹²⁰ *The Court found that the duty to investigate an individual's disappearance is a way to rectify the violation of the right to know the truth.*¹²¹ *Accordingly, the Court concluded that so long as Mr. Anzualdo Castro's fate remains uncertain, the State has failed to observe its duty to investigate, prosecute, and punish anyone responsible for the forced disappearance of Mr. Anzualdo Castro, in violation of the right to the*

115. *Id.* ¶ 169.

116. *Id.* ¶ 157.

117. *Id.* ¶ 115.

118. *Id.* ¶ 118; JO M. PASQUALUCCI, THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 225 (2012).

119. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 116.

120. *Id.*

121. *Id.*

truth of Mr. Anzualdo Castro's next-of-kin.¹²²

The Court explained that an effective investigation is one that is commenced objectively by the State, not the victim's family,¹²³ to determine the facts of the disappearance.¹²⁴ The investigation into a victim's disappearance is implied within the right to access justice,¹²⁵ and the State must use any means possible to investigate and identify the individuals responsible for the disappearances.¹²⁶ Therefore, a prolonged delay in these cases can constitute a violation of this right,¹²⁷ as it is vital to take immediate action in instances of forced disappearance to determine the whereabouts of the victim.¹²⁸

The Court deemed that the State's first investigation into Mr. Anzualdo Castro's disappearance was neither objective nor effective, because it was closed before exhausting all possible procedures of inspection.¹²⁹ The Court concluded that the State's lack of objectivity in deciding to close the investigation, their attitude towards the victim, and their lack of search for evidence or identification of the individuals responsible rendered the first investigation ineffective.¹³⁰ Likewise, the Court also found the second stage of the State's investigations ineffective, as the State lacked due diligence and coordination in its investigation.¹³¹ The Court noted that though the State conducted investigations to evaluate human rights violations that were committed at the time of Mr. Anzualdo Castro's disappearance, these investigations were never focused on determining the facts surrounding the disappearance of Mr. Anzualdo Castro.¹³²

In regards to the reasonable length of time of the proceedings, the Court examined four factors to determine whether the State had, in fact, violated Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) of the American Convention: (1) the complexity of the matter, (2) the procedural steps taken by the

122. *Id.*

123. *Id.* ¶ 123.

124. *Id.*

125. *Id.* ¶ 124.

126. *Id.* ¶ 135.

127. *Id.* ¶ 124.

128. *Id.* ¶ 134.

129. *Id.* ¶ 133.

130. *Id.* ¶ 140.

131. *Id.* ¶ 143.

132. *Id.* ¶ 153.

family of the victim, (3) the actions taken by the judicial authorities, and (4) the legal injury to the victim.¹³³ The Court noted that the circumstances of a case must be viewed in order to apply these factors to appropriately determine whether a proceeding took place in a reasonable timeframe.¹³⁴

In Mr. Anzualdo Castro's case, the Court recognized that the fact examination was complicated, as it was concerned with both a forced disappearance and the refusal to provide information regarding the situation.¹³⁵ Nevertheless, the Court concluded that because forced disappearance cases require prompt investigations¹³⁶ and since Mr. Anzualdo Castro's family regularly informed the authorities about all they knew to accelerate the proceedings, it was unreasonable for the investigations and proceedings to take over fifteen years.¹³⁷ The Court thus concluded that the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) and Article 25 (Right to Judicial Protection) to the detriment of Mr. Anzualdo Castro's immediate family.¹³⁸

The Court found unanimously that Peru had not violated:

Article 13 (Right to Freedom of Thought and Expression) of the American Convention on Human Rights to the detriment of Félix Vicente Anzualdo Vicuña, Iris Isabel Castro Cachay de Anzualdo, Marly Arleny Anzualdo Castro, and Rommel Darwin Anzualdo Castro¹³⁹ because:

The Court found that the elements in Mr. Anzualdo Castro's case were insufficient to prove the alleged violation of Article 13 (Right to Freedom of Thought and Expression) of the Convention.¹⁴⁰

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Sergio García Ramírez

133. *Id.* ¶ 156.

134. *Id.*

135. *Id.* ¶ 157.

136. *Id.* ¶ 134.

137. *Id.* ¶ 157.

138. *Id.* ¶ 169.

139. *Id.* ¶ 120.

140. *Id.*

In a separate opinion, Judge Sergio García Ramírez wrote to discuss the complex principle of forced disappearance and some of the questions that exist regarding forced disappearance.¹⁴¹ He explained that it is widely accepted that a forced disappearance constitutes a permanent violation of several human rights.¹⁴² He went on to note that there are many aspects to this concept that are not well established, including what rights it affects and what violations it entails.¹⁴³

Judge García Ramírez explained that the rights affected by a forced disappearance are the liberty of the victim and the lack of access to justice, as they are clearly described in international treaties.¹⁴⁴ He noted that certain conclusions that do not go beyond the circumstances of the case are reasonable to assume, such as the violation of the mental integrity of the victim.¹⁴⁵ Judge García Ramírez explained that following such logic adds an unproven fact to a disappearance: the chance that there could be a violation of the protection of life.¹⁴⁶ He proposed that the Court followed such reasoning when they found a violation of Article 3 (Right to Juridical Personality) in the Judgment.¹⁴⁷ He explained that a State cannot violate an individual's capacity to acquire rights.¹⁴⁸ Rather, a State can create obstacles without completely denying the exercise a right.¹⁴⁹ Therefore, a forced disappearance does not necessarily involve a State's violation of this right.¹⁵⁰

Judge García Ramírez noted that the Judgment found a link between forced disappearance and the violation of juridical personality by analyzing the impossibility of the victim's exercise of rights while they are disappeared.¹⁵¹ He explained that when an individual is absent he has not been deprived of all of his rights; including his juridical personality.¹⁵² This is a violation to the right of humane integrity, but according to the Judgment, this is also a violation of the right to juridical personality, even though others can still exercise some rights

141. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Sergio Garcia Ramirez, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶ 10 (Sep. 22, 2009).

142. *Id.* ¶¶ 9, 11.

143. *Id.* ¶ 13.

144. *Id.* ¶ 15.

145. *Id.*

146. *Id.*

147. *Id.* ¶ 22.

148. *Id.* ¶ 26.

149. *Id.*

150. *Id.*

151. *Id.* ¶¶ 28-29.

152. *Id.* ¶ 32.

on his behalf.¹⁵³ Judge García Ramírez concluded by noting that because the Court followed such logic, it is possible that all of the elements of a forced disappearance have not been met.¹⁵⁴

2. Partially Dissenting Opinion of *Ad Hoc* Judge Victor Oscar Shiyin García Toma

In a separate opinion, Judge Victor Oscar Shiyin García Toma, in his capacity as *ad hoc* judge appointed by the State, stated that the Court established the amount of damages under discretionary criteria, without specific technical grounds,¹⁵⁵ which caused a lack of symmetry in the area of reparations between the Court and the State.¹⁵⁶ Judge García Toma recommended that the Court use specialized experts to determine precise rules to establish reparations, taking the State's fiscal situation into consideration.¹⁵⁷

IV. REPARATIONS

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

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

1. Judgment as a Form of Reparation

The Court explained that the judgment constitutes a *per se* form of reparation.¹⁵⁸

2. Adequately Investigate, Identify, and Prosecute Those Responsible for Mr. Anzualdo Castro's Disappearance

The Court ordered the State to carry out a comprehensive investigation of Mr. Anzualdo Castro's disappearance, locate him or his

153. *Id.*

154. *Id.* ¶ 34.

155. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Victor Oscar Shiyin Garcia Toma, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶ 1 (Sep. 22, 2009).

156. *Id.* ¶ 2.

157. *Id.* ¶ 3.

158. Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 219.

remains, and punish those responsible for his disappearance.¹⁵⁹ Additionally, the State must ensure that Mr. Anzualdo Castro's family has full access to all stages to the investigation.¹⁶⁰

3. Amend Laws on the Crime of Forced Disappearances

The Court ordered the State to amend its criminal law on forced disappearances of persons to make it consistent with international standards.¹⁶¹

4. Train Justice Administrators in Human Rights

The Court ordered the State to implement permanent education programs regarding human rights for members of the State's intelligence services, the Armed Forces, judges, and prosecutors.¹⁶² Such programs must specifically mention Mr. Anzualdo Castro's judgment as well as international human rights treaties, primarily those regarding forced disappearances.¹⁶³

5. Publicly Acknowledge Responsibility

The Court ordered the State to publicize Mr. Anzualdo Castro's case.¹⁶⁴ Additionally, the Court ordered the State to organize a public act in order to accept responsibility for the forced disappearance of Mr. Anzualdo Castro and make amends to him and his family.¹⁶⁵ High-ranking public officials must take part in this public act in the presence of Mr. Anzualdo Castro's family.¹⁶⁶

6. Commemorate and Honor Mr. Anzualdo Castro

The Court ordered the State to erect a plaque in the Museum of Memory in Mr. Anzualdo Castro.¹⁶⁷

159. *Id.* ¶¶ 182, 184.

160. *Id.* ¶ 183.

161. *Id.* ¶ 190.

162. *Id.*

163. *Id.*

164. *Id.* ¶ 183.

165. *Id.* ¶ 200.

166. *Id.*

167. *Id.* ¶ 201.

7. Provide Services to the Victims

The Court ordered the State to provide medical, psychological, and psychiatric treatment to victims of Mr. Anzualdo Castro's disappearance for as long as deemed necessary.¹⁶⁸

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$15,000 in consequential damages for expenses Mr. Anzualdo Castro's next-of-kin incurred in order to attempt to locate him and for medical treatment.¹⁶⁹ Though the family did not present any documentation to attest to these damages, this was deemed reasonable because over fifteen years had passed since Mr. Anzualdo Castro's disappearance.¹⁷⁰ The court ordered the State to deliver the funds to Mr. Félix Anzualdo Vicuña to distribute amongst the members of his family.¹⁷¹

The Court also awarded \$14,000 for wages that Mr. Anzualdo Castro's family lost as a result to his forced disappearance.¹⁷²

2. Non-Pecuniary Damages

The court awarded \$80,000 in non-pecuniary damages to Mr. Anzualdo Castro.¹⁷³ The Court additionally awarded \$50,000 each to Félix Vicente Anzualdo Vicuña, Marly Arlene Anzualdo Castro, and Iris Isabel Castro Cachay de Anzualdo and \$20,000 to Rommel Darwin Anzualdo Castro.¹⁷⁴ The Court calculated this amount by viewing: (1) the compensation awarded in previous Court cases of forced disappearances, (2) seriousness of the human rights violations committed in this case, (3) the treatment the victims received, (4) the time that elapsed since Mr. Anzualdo Castro's disappearance, (5) the insufficiency of domestic investigations and remedies, and (6) the

168. *Id.* ¶ 203.

169. *Id.* ¶ 210.

170. *Id.*

171. *Id.*

172. *Id.* ¶ 214.

173. *Id.* ¶ 222.

174. *Id.*

change of life plans and suffering the victims endured from the lack of justice.¹⁷⁵

3. Costs and Expenses

The Court ordered the State to pay \$14,000 to both CEJIL and APRODEH for costs associated with pursuing the case at domestic and international levels.¹⁷⁶ These amounts should be distributed to Mr. Félix Anzualdo Vicuña to deliver the amounts to their corresponding representatives.¹⁷⁷ The Court also reserved the right to order the State to compensate the Anzualdo family and their representatives for any additional expense they may incur while monitoring compliance with this Judgment.¹⁷⁸

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

\$307,000

C. Deadlines

The State must directly compensate the beneficiaries for the pecuniary and non-pecuniary damages and reimburse them for costs and expenses within one year of this judgment.¹⁷⁹ Within a reasonable timeframe, the State must adopt all measures needed to amend its criminal law on forced disappearances of persons to make it consistent with international standards.¹⁸⁰ The State must hold a public ceremony acknowledging responsibility within six months of the notice of the Court's judgment.¹⁸¹ In addition, within two years of notice of the judgment the State must erect a plaque in the name of Mr. Anzualdo Castro at the Museum of Memory through a public act.¹⁸²

If the beneficiaries are deceased at the time of payment, damages

175. *Id.*

176. *Id.* ¶ 230.

177. *Id.*

178. *Id.*

179. *Id.* ¶ 231.

180. *Id.* ¶ 193.

181. *Id.* ¶ 200.

182. *Id.* ¶ 201.

should be paid directly to the heirs of said beneficiaries.¹⁸³ If both the beneficiaries and their heirs are unable to collect the damages within the period set for that purpose, the State will deposit the damages in a Peruvian financial account in the name of the beneficiaries.¹⁸⁴ If the compensation is not claimed within ten years it will be returned to the State.¹⁸⁵

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

August 21, 2013: In a Monitoring Compliance judgment, the Court recognized that the State performed an act to publically acknowledge responsibility.¹⁸⁶ The Court found that the State had partially complied with its obligation to create a system to identify the disappeared in Peru and to create human rights education programs.¹⁸⁷ The Court determined that the State had not: identified, prosecuted, or punished those responsible for the acts against Mr. Anzualdo Castro; located Mr. Anzualdo Castro; reformed its criminal laws regarding forced disappearance of persons; published pertinent portions of the Judgment on Preliminary Objections, Merits, Reparations, and Costs; erected a plaque in honor of Mr. Anzualdo Castro; provided medical and psychological treatment to Mr. Anzualdo Castro's next of kin; or provided compensation for pecuniary and non-pecuniary damages.¹⁸⁸ The Court stated that it would continue to monitor compliance, and requested that the State submit a compliance report to the Court by October 30, 2013.¹⁸⁹

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

183. *Id.* ¶ 234.

184. *Id.* ¶ 236.

185. *Id.*

186. *Anzualdo Castro v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Declares That" ¶ 1(a)* (Aug. 21, 2013).

187. *Id.* "Declares That" ¶¶ 2(a)-(b).

188. *Id.* "Declares That" ¶¶ 3(a)-(g).

189. *Id.* "Declares That" ¶¶ 2, 3, 5.

[Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 202 \(Sep. 22, 2009\).](#)

2. Decisions on Merits, Reparations, and Costs

[Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 202 \(Sep. 22, 2009\).](#)

[Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 202 \(Sep. 22, 2009\).](#)

[Anzualdo Castro v. Peru, Preliminary Objections, Merits, Reparations and Costs, Separate Opinion of Judge Victor Oscar Shiyin García Toma, Inter-Am. Ct. H.R. \(ser. C\) No. 202 \(Sep. 22, 2009\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Anzualdo Castro v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 21, 2013\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Not Available]

3. Precautionary Measures

[None]

4. Report on Merits

Martín Javier Roca Casas v. Peru, Report on Merits, Report No. 39/97, Inter-Am. Comm'n H.R., Case No. 11.233 (Feb. 19, 1998).

5. Application to the Court

[Anzualdo Castro v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.385 \(July 11, 2008\).](#)

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JO M. PASQUALUCCI, THE PRACTICE AND PROCEDURE OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS 225 (2012).