

De La Cruz Flores v. Peru

ABSTRACT¹

On March 27, 1990, Ms. María Teresa De La Cruz Flores, a doctor suspected for being a member of or materially aiding members of Peruvian Communist Party Sendero Luminoso, was detained, charged with terrorism and later prosecuted by a court composed of "faceless" judges and sentenced to twenty years imprisonment. On February 19, 2003, newly enacted Peruvian laws established that, within sixty working days from this legislation entering into force, the National Terrorism Chamber should annul the judgment and the oral proceeding and declare the absence of grounds for the charge in criminal trials for offenses of terrorism conducted before secret judges or prosecutors. However, at the date the Commission submitted its application to the Court, Ms. De La Cruz Flores remained in detention. The Court found that the State violated the American Convention on Human Rights.

I. FACTS

A. Chronology of Events

March 27, 1990: Rolando Estrada Yarlequé posts stickers (*pegatinas*) on a hospital restroom wall in the Cincha Polyclinic in Lima.² These stickers allegedly promote an armed strike led by the Peruvian Communist Party *Sendero Luminoso*.³

A fight breaks out between Mr. Estrada Yarlequé and another patient.⁴ María Teresa De La Cruz Flores, a physician in the Cincha Polyclinic, intervenes.⁵

1. Anna McDonald, Author; Monica Rodriguez, Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. *De La Cruz Flores v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 115, ¶ 50(a) (Nov. 18, 2004).

3. *Id.* ¶ 73(8).

4. *Id.* ¶ 50(a).

5. *Id.* ¶ 50(a).

A clinic guard accuses Mr. Estrada Yarlequé of posting *Sendero Luminoso* stickers.⁶ In an attempt to protect Mr. Estrada Yarlequé, Ms. De La Cruz Flores seizes a package of stickers he is holding, tells the security guard that the man is her patient, and claims the package is hers.⁷

The guard at the clinic arrests Ms. De La Cruz Flores and Mr. Estrada Yarlequé for terrorism.⁸ Ms. De La Cruz Flores is detained in the Castro Castro Prison for four months.⁹

July 26, 1990: The State releases Ms. De La Cruz Flores after she establishes her innocence.¹⁰

May 18, 1992: The National Corporative Superior Criminal Chamber for Terrorism Cases of the Lima Superior Court of Justice decides to re-issue orders for Ms. De La Cruz Flores' arrest.¹¹

September 16, 1995: The Titular Provincial Prosecutor of the Lima Fourteenth Provincial Criminal Prosecutor's Office files an expanded complaint for the crime of terrorism and acts of collaboration harmful to the State against Ms. De La Cruz Flores.¹² Simultaneously, the Fourteenth Criminal Court of Lima issues an order to open the pre-trial investigation against Ms. De La Cruz Flores because her acts constitute crimes penalized under Article Four of Decree Law No. 25, 475.¹³ Her alleged criminal acts include the following: being a member of the *Sendero Luminoso*, providing medical attention and treatment, performing operations, and supplying medicine and medical instruments for the care of criminal terrorists.¹⁴

March 27, 1996: Members of the National Counterterrorism Directorate (*Dirección Nacional Contra el Terrorismo*, "DINCOTE"), a State organization responsible for preventing, denouncing, and combating terrorist activities, detains Ms. De La Cruz Flores without a court

6. *Id.* ¶ 73(8).

7. *Id.*

8. *Id.*

9. *Id.* ¶ 73(9). The State later takes this detention into account in Ms. De La Cruz Flores' November 21, 1996 conviction. *Id.* ¶ 50(a).

10. *Id.* ¶ 73(9).

11. *Id.* ¶ 73(11).

12. *Id.* ¶ 73(19).

13. *Id.* ¶ 73(20).

14. *Id.* ¶ 73(20).

order.¹⁵

DINCOTE informs Ms. De La Cruz Flores that they seized various documents alleging a female pediatrician worked for *Sendero Luminoso* under the alias “Elíana.”¹⁶ Ms. Jacqueline Aroni Apcho and Ms. Elisa Mabel Mantilla Moreno also provide testimony that leads DINCOTE to conclude that Ms. De La Cruz Flores is “Elíana.”¹⁷ DINCOTE determines that Ms. De La Cruz Flores holds a high rank within *Sendero Luminoso*.¹⁸ DINCOTE also alleges Ms. De La Cruz Flores performed operations and supplied medication on behalf of the organization.¹⁹

According to Ms. De La Cruz Flores’s testimony, when Ms. De La Cruz Flores arrives in court, her case file cannot be found.²⁰ She waits for hours before the judge questions her.²¹ Following the questioning, State agents take her to the Chorrillos High-Security Women’s Prison.²² In prison, Ms. De La Cruz Flores is prohibited from speaking to or seeing anyone, including her lawyer and family members, for an entire month.²³ She suffers from various medical conditions including diarrhea and fever during her stay, yet receives very little treatment.²⁴

During the first year of her imprisonment, Ms. De La Cruz Flores demands to know more about her case, but her lawyer has difficulty accessing her file.²⁵ Thus, Ms. De La Cruz Flores knows very little of the charges against her, other than that the charges are related to allegedly providing medical care to terrorists or their next of kin.²⁶ She does not, however, know the identity of the terrorists she allegedly assisted.²⁷ Furthermore, legislation in force at this time prevents Ms. De La Cruz Flores from questioning the witnesses and police officers whose depositions are essential to the terrorism charges against her.²⁸

March 28, 1996: Ms. De La Cruz Flores makes a preliminary statement

15. *Id.* ¶¶ 73(12)-(13).

16. *Id.* ¶¶ 73(12)-(14).

17. *Id.* ¶¶ 73(15)-(16); *see also id.* ¶¶ 50(a), 57(b).

18. *Id.* ¶ 73(14).

19. *Id.*

20. *Id.* ¶ 50(a).

21. *Id.*

22. *Id.* ¶ 73(53).

23. *Id.* ¶ 50(a).

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* ¶ 73(17).

denying the charges against her.²⁹ During this time, she is informed that she is also implicated in another proceeding that is being processed before the National Corporative Superior Criminal Chamber for Terrorism Cases of the Lima Superior Court of Justice related to her first detention.³⁰ She is told, however, that this file has been misplaced.³¹

April 1, 1996: The Prosecutor of the Lima Fourteenth Provincial Prosecutor's Office issues a report stating that the criminal liability of Ms. De La Cruz Flores has not been proven.³² He also indicates that Ms. De la Cruz Flores was coerced into criminal behavior.³³

June 7, 1996: The Lima Superior Prosecutor issues a report in which he suggests to the Criminal Chamber that there are no grounds for a trial against Ms. De La Cruz Flores because her participation consisted of providing medical care to militants.³⁴

July 3, 1996: The Special Terrorism Chamber of the Lima Supreme Court submits the case records to the office of the Supreme Criminal Prosecutor.³⁵ The Special Terrorism Chamber does not inform the Supreme Criminal Prosecutor of either of the Lima Superior Prosecutor's reports.³⁶

October 16, 1996: A "faceless" Terrorism Chamber, composed of judges whose identity is not disclosed, tries Ms. De La Cruz Flores in hearings closed to the public.³⁷ Ms. De La Cruz Flores and her lawyers have very limited access to her case file, making it very difficult to know the details of what she has been accused of and why she has been accused.³⁸ Because of the lack of information about the charges against her, she has no opportunity to prepare her defense.³⁹ She is unable to question or confront witnesses who incriminated her.⁴⁰ Moreover, the judges trying her case are hidden behind a mirror; Ms. De La Cruz can

29. *Id.* ¶ 73(21).

30. *Id.* ¶ 73(30).

31. *Id.*

32. *Id.* ¶ 73(22).

33. *Id.*

34. *Id.* ¶ 73(23).

35. *Id.* ¶ 73(24).

36. *Id.*

37. *Id.* ¶¶ 50(a), 73(25), 73(26).

38. *Id.* ¶ 73(26).

39. *Id.* ¶ 50(a).

40. *Id.*

only hear their distorted voices.⁴¹

November 21, 1996: The Special Criminal Chamber of the Lima Superior Court of Justice convicts Ms. De La Cruz Flores of terrorism under Article 4 of Decree Law No. 25, 475, and sentences her to twenty years imprisonment.⁴² The Chamber considers documentation from Ms. De La Cruz Flores's first conviction in 1992, which include descriptions of talks she gave as a physician and allegations by Ms. Elisa Mabel Mantilla Moreno that Ms. De La Cruz Flores was providing treatment and performing skin-grafting operations for terrorists.⁴³

June 8, 1998: The National Corporative Criminal Chamber for Terrorism Cases of the Supreme Court of Justice affirms the judgment of November 2, 1996.⁴⁴

March 4, 1999: The National Corporative Criminal Chamber for Terrorism Cases of the Lima Superior Court of Justice sentences Ms. De La Cruz Flores to ten years imprisonment for the crime of terrorism related to unlawful association with *Sendero Luminoso*, separate from the twenty years she has already been sentenced to earlier.⁴⁵

June 15, 2000: The Criminal Chamber of the Supreme Court of Justice annuls Ms. De La Cruz Flores' March 4, 1999 judgment whereby Ms. De La Cruz was sentenced ten years' imprisonment.⁴⁶ The 1999 judgment was annulled because of Article 51 of the Peruvian Penal Code. Article 51 establishes if following a conviction, the person convicted previously committed another act meriting a more severe punishment than the one applied, then the current case will be dismissed, and the greater penalty shall be imposed.⁴⁷ In Ms. De La Cruz Flores' case, the concurrence of criminal proceedings where she was sentenced to twenty years imprisonment on November 21, 1996 meant that she now receives this greater penalty instead of the ten-year sentence.⁴⁸

41. *Id.*

42. *Id.* ¶ 73(27).

43. *Id.*

44. *Id.* ¶ 73(29).

45. *Id.* ¶¶ 73(10), 73(31).

46. *Id.* ¶ 73(33).

47. *Id.* ¶ 73(33), n.64.

48. *Id.* ¶¶ 73(10), 73(33).

June 20, 2003: The National Terrorism Chamber declares that all the previous proceedings are null and that the prosecutor's charge in Ms. De La Cruz Flores's trial relating to her second detention is unsubstantiated, yet she remains imprisoned.⁴⁹ This is a result of actions filed by more than 5,000 citizens asking the Constitutional Court of Peru to rule on the constitutionality of the crimes of terrorism and treason, which then results in the annulment of judgments for crimes of terrorism.⁵⁰ It also leads to the National Terrorism Chamber's declaration that all the previous proceedings are null and that the prosecutor's charge in Ms. De La Cruz Flores's trial was unsubstantiated.⁵¹

September 2, 2003: The Superior Prosecutor of the Office of the Second Special Superior Prosecutor for Terrorism issues an opinion asserting that the State had grounds to try Ms. De La Cruz Flores.⁵²

November 6, 2003: The National Terrorism Chamber issues a decision declaring that Ms. De La Cruz Flores' request for parole is inadmissible because parole was established for convicted prisoners to leave prison before completing their full term of imprisonment, as opposed to Ms. De La Cruz Flores who, "had not been convicted, but was merely being tried."⁵³

January 20, 2004: Ms. De La Cruz Flores's lawyer requests that the judge precisely define Ms. De La Cruz Flores's crime and identify the applicable legal norm at the time the alleged acts were supposedly committed.⁵⁴

March 9, 2004: The National Terrorism Chambers orders that the case be remitted to the Superior Criminal Prosecutor's Office in order for the judge to rule on the brief filed by Ms. De La Cruz Flores's defense lawyer.⁵⁵

May 6, 2004: The National Terrorism Chamber issues a decision and

49. *Id.* ¶ 73(39).

50. *Id.* ¶¶ 73(35), 73(37).

51. *Id.* ¶ 73(39).

52. *Id.* ¶ 73(40).

53. *Id.* ¶ 73(41).

54. *Id.* ¶ 73(42).

55. *Id.* ¶ 73(43).

extends the pre-trial investigation for fifteen days.⁵⁶

June 9, 2004: The Fourth Criminal Court Specializing in Crimes of Terrorism upholds Ms. De La Cruz Flores's arrest warrant and clarifies that Ms. De La Cruz Flores is charged with "being an 'activist'" with *Sendero Luminoso* and caring for terrorists between 1989 to 1992.⁵⁷

July 1, 2004: Ms. De La Cruz Flores's lawyer requests that the Court allow him to cross-examine three separate individuals who earlier identified Ms. De La Cruz Flores as "Elíana."⁵⁸ At the confrontation, all three individuals reveal they do not know or recognize Ms. De La Cruz Flores, nor do they remember the physical characteristics of "Elíana," as listed in their previous testimonial statements.⁵⁹

July 8, 2004: The Fourth Criminal Court for Terrorism declares Ms. De La Cruz Flores may be released from detention, given that she follow certain restrictions, including: not changing domicile; appearing in court at hearings; not visiting dwellings or public places linked to terrorist activities or propaganda related to such activities; reporting to court at the end of each month to report on her monthly activities; not visiting prisoners related to terrorism or contact them by any means; not speaking to the media whatsoever; and not leaving the country.⁶⁰

July 9, 2004: The State releases Ms. De La Cruz Flores from prison.⁶¹ In total, she has been imprisoned for eight years, three months and twelve days.⁶²

B. Other Relevant Facts

In May 1992, the Peruvian government classifies crimes constituting terrorism and collaboration with terrorism with the promulgation of Decree No. 25, 475.⁶³ The Decree vests military courts with the power to investigate and adjudicate acts of treason in "faceless

56. *Id.* ¶ 73(44).

57. *See id.* ¶ 73(45).

58. *Id.* ¶ 73(46).

59. *Id.*

60. *Id.* ¶ 73(47).

61. *Id.* ¶ 73(6).

62. *Id.*

63. Tim Curry, Nerina Cevra, and Erin Palmer, *Updates from the Regional Human Rights Systems*, 12 HUMAN RTS. BR. 23-27, 26 (2005).

courts,” in which masked, anonymous judges preside over the case.⁶⁴ Moreover, defendants charged with crimes of terrorism are placed in continuous solitary confinement for the first year of a prison sentence, and the State limits defense attorneys’ participation.⁶⁵

More than 5,000 citizens challenge the constitutionality of this practice, and, on January 3, 2003, the Constitutional Court of Peru rules Article 2 of Decree Law No. 25,475, the Crime of Terrorism, and No. 25,659, the Crime of Treason, are constitutional.⁶⁶ In response to this judgment, the Executive issued legislative decrees to regulate the judgment’s effects related to trials for crimes of terrorism.⁶⁷

On February 19, 2003, after new President Alejandro Toledo comes into power following Alberto Fujimori, the State decrees that the National Terrorism Chamber should gradually annul judgments and proceedings in criminal trials for offences of terrorism conducted before secret judges and prosecutors.⁶⁸

II. PROCEDURAL HISTORY

A. Before the Commission

September 1, 1998: The Secretariat of the Commission receives petition No. 12.138,⁶⁹ filed by Ms. Alcira De La Cruz Flores, representing Ms. De La Cruz Flores.⁷⁰ Ms. De La Cruz Flores is also represented by attorney Carolina Loayza Tamayo in the proceedings before the Inter-American system.⁷¹

January 26, 1999: Ms. De La Cruz Flores expands the original brief she filed with the Commission.⁷²

April 28, 1999: The Commission opens case No. 12.138 based on Ms. Alcira De La Cruz Flores’s petition filed on behalf of Ms. Teresa De La Cruz Flores.⁷³

64. *Id.* at 26; *Presumption of Guilt: Human Rights Violations and the Faceless Courts in Peru*, HUMAN RTS. WATCH (Aug. 1, 1996), available at <http://www.refworld.org/docid/3ae6a7dd0.html>.

65. *Id.*; *De La Cruz Flores v. Peru*, Merits, Reparations, and Costs, Judgment, ¶ 73(4).

66. *Id.* ¶ 73(35).

67. *Id.* ¶ 73(36).

68. *Id.* ¶ 3.

69. *Id.* ¶ 1.

70. *Id.* ¶ 5.

71. *Id.* ¶ 6.

72. *Id.* ¶ 5.

73. *Id.*

February 27, 2002: The Commission proposes to postpone dealing with admissibility until the discussion and decision on the merits, pursuant to Article 37(3) of the Commission's Rules of Procedure, takes place.⁷⁴

October 14, 2002: At the petitioners' request, a hearing is held at which the parties give their oral presentations of the case.⁷⁵ Ms. Loayza Tamayo presents Ms. De La Cruz Flores' case.

March 5, 2003: The Commission adopts Report No. 29/03 on the admissibility and merits of the case.⁷⁶ In the report, the Commission recommends that the State make comprehensive reparations for the violations of Ms. De La Cruz Flores's human rights, as well as offer a new proceeding with full respect for the principle of legality, due process and a fair trial.⁷⁷ The Commission also recommends that the State adopt the necessary measures to reform Decree Law 25,475 in order to make it compatible with the American Convention on Human Rights.⁷⁸

March 11, 2003: The Commission grants the State two months to comply with the Commission's recommendations and forwards the Report to the parties.⁷⁹

May 15, 2003: The State presents a brief indicating that Ms. De La Cruz Flores will have the right to a fair, impartial and rapid trial, and that significant changes have been made for a trial with new proceedings based on the principles of legality and due process.⁸⁰

June 11, 2003: The Inter-American Commission on Human Rights files an application with the Inter-American Court of Human Rights against the State based on petition No. 12,138.⁸¹ The Commission decides to submit the case to the Court because of Peru's failure to comply with the recommendations contained in the report on the merits.⁸²

74. *Id.* ¶ 6.

75. *Id.* ¶ 7.

76. *Id.* ¶ 8.

77. *Id.* The Merits Judgment does not indicate the violations alleged by the Commission in the Commission's Report on the Merits.

78. *Id.*

79. *Id.* ¶ 9.

80. *Id.* ¶ 10.

81. *Id.* ¶ 1.

82. *Id.* ¶ 11.

B. Before the Court

June 11, 2003: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁸³ The Commission appoints Ms. Marta Altolaguirre and Mr. Santiago A. Canton as delegates to the Court, and Mr. Ariel Dulitzky and Mr. Pedro E. Díaz as legal advisors.⁸⁴

August 6, 2003: The State appoints Mr. Sócrates Hernán Grillos Bockos and Ms. Doris M. Yalle Jorges as agent and deputy agent, and proposes Mr. César Rodrigo Landa Arroyo as *ad hoc* Judge.⁸⁵

February 20, 2004: Mr. Landa Arroyo recuses himself as, in the meantime, he has become Deputy Minister of Justice of Peru.⁸⁶

March 5, 2004: The President of the Court informs the State that it must appoint a new *ad hoc* judge within thirty days or waive its right to do so, pursuant to the Court's Article 18(1) that says the Court's judges may not be high-ranking officials in the government.⁸⁷ The State declines to appoint a new judge.⁸⁸

May 19, 2004: The President invites the Commission, Ms. De La Cruz Flores's representatives, and the State to a public hearing on July 2, 2004 to hear the final oral arguments on the merits and possible reparations and costs.⁸⁹

June 8, 2004: Mr. Héctor Faúndez Ledesma and Ms. Michelangela Scalabrino submit *amici curiae* briefs.⁹⁰

July 8, 2004: The State advises that the Fourth Criminal Court for Terrorism has changed the order of detention for an order of notice to appear with regard to Ms. De La Cruz Flores, resulting in her immediate release within a few hours of the announcement.⁹¹

83. *Id.* ¶¶ 11-12.

84. *Id.* ¶ 13.

85. *Id.* ¶ 16.

86. *Id.* ¶ 20.

87. *Id.* ¶ 22.

88. *Id.*

89. *Id.*

90. *Id.* ¶ 26.

91. *Id.* ¶ 30.

July 13, 2004: The Titular Provincial Prosecutor Specializing in Crimes of Terrorism files an appeal contesting the decision of July 8, 2004.⁹²

September 24, 2004: The National Terrorism Chamber confirms the decision of July 8, 2004 and orders the State to change Ms. De La Cruz Flores' detention order to one of conditional appearance.⁹³

November 4, 2004: The Center of Investigation and Legal Assistance in International Law presents an *amicus curiae* brief.⁹⁴

1. Violations Alleged by Commission⁹⁵

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 9 (Freedom From *Ex Post Facto* Laws)

Article 24 (Right to Equal Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victim⁹⁶

Same Violations Alleged by Commission, plus:

Article 5 (Right to Humane Treatment)

in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

III. MERITS

A. Composition of the Court⁹⁷

Sergio García Ramírez, President

92. *Id.* ¶ 73(49).

93. *Id.* ¶ 73(52).

94. *Id.* ¶ 39.

95. *Id.* ¶ 74.

96. *Id.* ¶ 75. Ms. Loayza Tamayo served as representative of Ms. De La Cruz Flores and her next of kin.

97. Judge Diego García-Sayán, a Peruvian national, excused himself from hearing the case. *Id.* at 1.

Alirio Abreu Burelli, Vice-President
Oliver Jackman, Judge
Antônio Augusto Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge
Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

November 18, 2004: The Court issues its Judgment on the Merits, Reparations, and Costs.⁹⁸

The Court found unanimously that the State had violated:

Articles 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 9 (Right to Freedom from *Ex Post Facto Laws*), in relation to Article 1(1) of the Convention, to the detriment of Ms. De La Cruz Flores,⁹⁹ because:

*The State's prosecution and conviction of Ms. De La Cruz Flores for acts of collaboration of terrorism under Article 4 of Decree Law No. 25,475 violated the principle of legality.*¹⁰⁰

*Article 9 (Right of Freedom from Ex Post Facto Laws) prohibits the State from retroactively punishing, increasing sanctions, or creating aggravating types of offenses.*¹⁰¹ *This article protects persons from being penalized for committing an act that was not an offense when it was committed.*¹⁰² *The Court observed that the November 21, 1996 judgment, although later declared null and void, affected Ms. De La Cruz Flores' right to freedom from ex post facto laws.*¹⁰³

*The Court noted that article 4 of Decree Law No. 25,475 did not define or specify that Ms. De La Cruz Flores actions were illegal.*¹⁰⁴ *Thus, under this law, State courts could not have found Ms. De La Cruz*

98. De La Cruz Flores v. Peru, Merits, Reparations, and Costs, Judgment, ¶ 77 (Nov. 18, 2004).

99. *Id.* ¶¶ 103, 109, 114.

100. *Id.* ¶ 113.

101. *Id.* ¶ 105.

102. *Id.*

103. *Id.* ¶ 83.

104. *Id.* ¶ 88.

Flores guilty of a crime.¹⁰⁵ The Court also observed that the judgment of the domestic tribunal failed to specify which of Ms. De La Cruz Flores' actions made her guilty of a crime.¹⁰⁶ Additionally, the Court observed that Ms. De La Cruz Flores allegedly committed crimes in 1988, 1989, and 1992, but the State charged her with crimes under Decree Law No. 25, 475, which entered into force on May 5, 1992.¹⁰⁷

The Court also found that it was inappropriate for the State to criminally punish Ms. De La Cruz Flores for performing and providing care to Sendero Luminoso members.¹⁰⁸ The Court observed that the State penalized Ms. De La Cruz Flores's lawful activity as a physician.¹⁰⁹ The Court observed that the State also inappropriately obligated Ms. De La Cruz Flores to report possible criminal behavior of her patients, which is protected under a physician's duty of confidentiality.¹¹⁰

In light of the above considerations, the Court held that the State violated Article 9 (Right to Freedom from Ex Post Facto Laws).¹¹¹

The Court found that the State's detention of Ms. De La Cruz Flores was unlawful and arbitrary, and thus violated Articles 7 (Right to Personal Liberty) and 8 (Right to a Fair Trial).¹¹² Under Article 7 (Right to Personal Liberty), states may not deprive individuals of liberty except for reasons previously established by law.¹¹³ Article 7 (Right to Personal Liberty) and Article 8 (Right to a Fair Trial) provide that anyone deprived of liberty has the right to be heard by a competent and independent tribunal.¹¹⁴ As discussed above, the proceedings leading to Ms. De La Cruz Flores' conviction were incompatible with the provisions of the American Convention.¹¹⁵ As a result, the Court determined that the State violated Ms. De La Cruz Flores' rights to personal liberty embodied in Article 7 (Right to Personal Liberty) and her right to a fair trial embodied in Article 8 (Right to a Fair Trial).¹¹⁶

105. *Id.*

106. *Id.* ¶ 89.

107. *Id.* ¶¶ 107, 108.

108. *Id.* ¶¶ 90-95.

109. *Id.*

110. *Id.*

111. *Id.* ¶¶ 103, 109.

112. *Id.* ¶¶ 112-14.

113. *Id.* ¶ 110.

114. *Id.* ¶¶ 110-111.

115. *Id.* ¶¶ 113-14.

116. *Id.* ¶ 114.

Article 5 (Right to Humane Treatment), in relation to Article 1(1) of the Convention, to the detriment of Ms. De La Cruz Flores and to her next of kin,¹¹⁷ because:

Ms. De La Cruz Flores was held incommunicado during the first month of her detention, in continuous solitary confinement for the first year, and received only extremely restricted visits.¹¹⁸ Article 5 proscribes that all persons shall be treated with dignity.¹¹⁹ The State is responsible for ensuring that prisoners are confined to conditions that respect their rights.¹²⁰ The Court previously held that the State must rarely imprison a person in solitary confinement or prohibit the person from speaking with anyone; solitary confinement may ultimately constitute an act against human dignity.¹²¹

In the present case, Ms. De La Cruz Flores was subjected to cruel, inhumane and degrading treatment because the State deprived her of all communication with the external world for a month.¹²² Furthermore, she was confined in unhealthy conditions.¹²³ The State did not allow her to change her clothes for a month, limited what she could read, only allowed her to exercise for thirty minutes a day, and did not provide adequate medical care.¹²⁴ These detention conditions caused Ms. De La Cruz Flores' next of kin severe mental anguish, ruptured their family structure, and forced them to abandon their personal plans.¹²⁵

The Court found unanimously that the State had not violated:

Article 24 (Right to Equal Protection), in relation to Article 1(1) of the Convention to the detriment of Ms. De La Cruz Flores,¹²⁶ because:

The State engaged in similar misconduct with other physicians convicted of similar crimes.¹²⁷ In Ms. De La Cruz Flores' case the

117. *Id.* ¶ 136.

118. *Id.* ¶ 126.

119. *Id.* ¶ 124.

120. *Id.*

121. *Id.* ¶¶ 126-27.

122. *Id.* ¶ 130.

123. *Id.* ¶¶ 130-31.

124. *Id.*

125. *Id.* ¶ 135.

126. *Id.* ¶ 115.

127. *Id.*

domestic courts may have convicted Ms. De La Cruz Flores despite doubts about her guilt.¹²⁸ However, the State engaged in similar conduct in the cases of four other physicians who were ultimately acquitted.¹²⁹ The Court did not have competence to determine whether or not the domestic courts treated Ms. De La Cruz Flores differently than the other physicians.¹³⁰ Therefore the Court did not find that the State violated Article 24 (Right to Equal Protection).¹³¹

C. Dissenting and Concurring Opinions

1. Separate Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez agreed with the Court's judgment as to the events that violated Ms. De La Cruz Flores's human rights, however, he took issue with the method the Court used to determine whether or not a criminal violation had occurred during the course of a physician's work within the medical profession.¹³²

Judge García Ramírez stated that the Court needed to re-examine the issue of criminally penalizing a doctor's conduct when that doctor provides care designed to protect the health and lives of other individuals.¹³³ He asserted that a clear distinction should be made between "medical acts," which are carried about in the exercise of a profession, and any other activity that is subject to its own type of regulations and legal consequences.¹³⁴ He proposed that the Court leave the investigation and identification of the facts to investigators, and have the judge or legislator assess the characteristics of each fact, act, or course of conduct.¹³⁵

Judge García Ramírez opined that the law must carefully protect medical professionals because of their special role in managing and protecting the health of other individuals.¹³⁶ As such, he viewed the task

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. De La Cruz Flores v. Peru, Merits, Reparations, and Costs, Judgment, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. (ser. C) No. 115, ¶ 2 (Nov. 18, 2004).

133. *Id.* ¶ 13.

134. *Id.* ¶ 2.

135. *Id.*

136. *Id.* ¶ 7.

of doctors and the corresponding protection they provide as having their own meaning totally independent from the political, religious, or philosophical ideas of either doctor or patient.¹³⁷ According to Judge García Ramírez, the State cannot dissuade a doctor from complying with her duty to equally assist those in need by threatening the doctor with penalties for treating certain patients or by forcing her to discriminate against patients with particular political or religious affiliations.¹³⁸ This, he claimed, is a violation of the doctor's responsibility to protect health and life.¹³⁹

Another important responsibility of doctors is confidentiality.¹⁴⁰ This is governed by the doctor-patient relationship that prevents consideration of the patient's moral or legal status, as highlighted in the Declaration of Geneva of the World Medical Association.¹⁴¹ Ultimately, Judge García Ramírez found that it was inappropriate to penalize the conduct of a doctor who provides care designed to protect the health and life of other individuals, notwithstanding their activities and beliefs or the nature of their illnesses or injuries.¹⁴² He claimed it necessary to prohibit incriminating a doctor for abstaining from providing information to the authorities about her patient's punishable conduct, when the doctor gained such knowledge during the course of her medical practice.¹⁴³

IV. REPARATIONS

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

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

1. Provide Medical and Psychological Treatment to Ms. De La Cruz Flores

The Court determined that Ms. De La Cruz Flores's physical and psychological problems still persist.¹⁴⁴ As a result, the State must

137. *Id.*

138. *Id.* ¶ 8.

139. *Id.*

140. *Id.* ¶¶ 10, 12.

141. *Id.*

142. *Id.* ¶ 13.

143. *Id.*

144. *Id.* ¶ 168.

provide medical and psychological care and medication to Ms. De La Cruz Flores at no cost through its health services.¹⁴⁵

2. Reincorporate Ms. De La Cruz Flores into her Profession

The State must reincorporate Ms. De La Cruz Flores into her role as a physician in a public institution.¹⁴⁶ At the very least, the State must hire Ms. De La Cruz Flores at the level she attained when she was detained.¹⁴⁷ The State must also award Ms. De La Cruz Flores a grant that will allow her to attend professional training of her choice.¹⁴⁸ The State must also re-enter Ms. De La Cruz Flores on the retirement register by retroactively placing her name back on the date on which she was taken off it, and ensure the full enjoyment of her right to retirement in the same conditions she had before her detention.¹⁴⁹

3. Release Ms. De La Cruz Flores

At the time of judgment, Ms. De La Cruz Flores had a new trial before domestic courts and thus was ordered to make a conditional appearance.¹⁵⁰ This meant that Ms. De La Cruz Flores would not remain in detention, but she was required to comply with the following certain restrictions ordered by the court: (1) not leave her place of residence or change the domicile indicated in her case file without the court's authorization; (2) appear when summoned by the court or the corresponding criminal chamber for hearings and pre-trial investigation; (3) not to visit places linked to terrorist activities; (4) to appear at the court each month; (5) not to visit any prisoners convicted for the crime of terrorism; and (6) not make public media declarations.¹⁵¹ As a result, Ms. De La Cruz Flores's legal status depended on the pending trial.¹⁵² The Court ordered the State to comply with due process and observe Ms. De La Cruz Flores' right to freedom of *ex post facto laws* in her new trial before domestic courts.¹⁵³

4. Publish the Judgment

145. *Id.*

146. *Id.* ¶ 169.

147. *Id.*

148. *Id.* ¶ 170.

149. *Id.* ¶ 171.

150. *Id.* ¶ 172.

151. *Id.* ¶ 73(47).

152. *Id.*

153. *Id.* ¶¶ 118, 172, "Decides," ¶ 1.

Within one year from the Judgment of November 18, 2004, the State must publish the section entitled, "Proven Facts," without the corresponding footnotes, and operative paragraphs one to three of this judgment, in at least once in the State's official gazette and in another nationally circulated daily newspaper.¹⁵⁴

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The State must pay Ms. De La Cruz Flores \$39,050 as compensation for loss of earnings for her professional activities at the time of her detention.¹⁵⁵

The State must also compensate Ms. Alcira Domitila Flores Rosas, Ms. De La Cruz Flores' mother, with \$5,000 as compensation for indirect damage, including the victim's monthly expenditure during her imprisonment for the acquisition of food and other personal expenses, as well as her next of kin's transportation expenses.¹⁵⁶

The State must also pay Ms. Alcira Isabel De La Cruz Flores, Ms. De La Cruz Flores' sister, \$5,000 as compensation for indirect damages for having to assume the role of mother for the Ms. De La Cruz Flores's children, give up her studies in Brazil, and assume responsibility for Ms. Teresa De La Cruz Flores's defense.¹⁵⁷

2. Non-Pecuniary Damages

The State must pay Ms. De La Cruz Flores \$80,000 for her subjection to cruel, inhumane, and degrading treatment during her detention; for her deprivation of her personal liberty for a long period of time; the improper proceeding; and for her inability to exercise her profession, which significantly affected her self-esteem.¹⁵⁸

The State must compensate Ms. De La Cruz Flores's next of kin

154. *Id.* ¶ 173.

155. *Id.* ¶ 152.

156. *Id.* ¶ 153.

157. *Id.* ¶ 154.

158. *Id.* ¶¶ 160-61.

for the suffering, anxiety, and pain caused by the trial and detention of Ms. De La Cruz Flores.¹⁵⁹ The State must compensate Ms. Flores Rosas with \$40,000 for suffering, anxiety, and pain.¹⁶⁰ The State must pay Ms. Alcira Isabel De La Cruz Flores \$30,000 for severely affecting her living conditions and impairing her way of life.¹⁶¹ The State must compensate Mr. Jorge Alfonso De La Cruz Flores and Mr. Celso Fernando De La Cruz Flores each with \$15,000 for affecting their living conditions and impairing their way of life.¹⁶² The State must compensate Mr. Danilo Blanco De La Cruz and Ms. Ana Teresa Blanco De La Cruz, Ms. De La Cruz Flores's children, each with \$30,000 for affecting their living conditions, for their efforts to secure their mother's release, and for the deprivation of the opportunity to grow up under the direction and care of their mother.¹⁶³

3. Costs and Expenses

The State must provide \$30,000 to Ms. De La Cruz Flores to cover the costs and expenses incurred by her lawyer, Ms. Carolina Loayza Tamayo, in the domestic and international proceedings before the Inter-American system for the protection of human rights.¹⁶⁴

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

\$319,050

C. Deadlines

The State shall pay the compensation, reimburse the costs and expenses, and adopt the measures previously discussed within one year of the notification of the Judgment.¹⁶⁵ The State shall deposit Mr. Danilo Alfredo Blanco De La Cruz's compensation in a reputable Peruvian institution of his choice within one year.¹⁶⁶ The State shall provide the Court with a first report on the measures taken to comply with the Judgment within one year of notification of the Judgment.¹⁶⁷

159. *Id.* ¶ 161.

160. *Id.*

161. *Id.* ¶¶ 162-63.

162. *Id.*

163. *Id.*

164. *Id.* ¶ 178.

165. *Id.* ¶ 179.

166. *Id.* ¶ 183.

167. *Id.* ¶ 187.

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 23, 2007: The Court declared that the State complied with its obligation to pay the amounts specified in the judgment as compensation for pecuniary and non-pecuniary damages.¹⁶⁸ The State also complied with its obligation to reimburse the costs and expenses to Ms. De La Cruz Flores and her next of kin, as specified in the Judgment.¹⁶⁹ The State complied with its obligation to reinstate Ms. De La Cruz Flores to her previous job.¹⁷⁰ The State complied with its obligation to publish the “Proven Facts” section and operative paragraphs of the Judgment in a nationally circulated newspaper.¹⁷¹

The Court declared that it would continue to monitor the State’s compliance with its obligation to: comply with the right to freedom from *ex post facto* laws and due process requirements in the new proceeding against Ms. De La Cruz Flores; provide medical and psychological care to Ms. De La Cruz Flores through the State’s health services; provide Ms. De La Cruz Flores with a grant for training and professional development; re-enter Ms. De La Cruz Flores on the retirement registry and; publish “Proven Facts” and the operative paragraphs of the Judgment in the official gazette.¹⁷²

January 19, 2009: The Court requested the State present the Court with a new report stating all the measures it has adopted to fulfill the reparations pending compliance.¹⁷³

April 13, 2009: The Court again requested the State present the Court with a new report stating all the measures it has adopted to fulfill the reparations pending compliance.¹⁷⁴

August 2, 2009: The Court once again requested the State present the

168. De La Cruz Flores v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. “Having Seen” ¶ A(2) (Sept. 1, 2010).

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* “Having Seen” ¶ 6.

174. *Id.*

Court with a new report stating all the measures it has adopted to fulfill the reparations pending compliance.¹⁷⁵

December 21, 2009: The Court called a private hearing to obtain information from the State regarding compliance of the Judgment issued, to listen to the Commission and Ms. De La Cruz Flores's representatives' observations, and to receive information regarding the request for the adoption of provisional measures in favor of Ms. De La Cruz Flores.¹⁷⁶

February 19, 2010: The Court requested the State to present information regarding the fulfillment of the Judgment, within a non-extendable deadline of March 19, 2010.¹⁷⁷ The State must present evidence indicating with specificity the relationship between the acts attributed to Ms. De La Cruz Flores and the respective rules and punishments related to each; what the State has done to guarantee the right against self-incrimination; Ms. De La Cruz Flores's specific non-medical acts which show affiliation with a terrorist organization; and any new facts and evidence considered linked to affiliation with a terrorist organization.¹⁷⁸

The Court found that the State has fully complied with the obligation to publish "Proven Facts" and the operative paragraphs of the judgment in the official gazette.¹⁷⁹

The Court awaits the State's fulfillment of the following obligations: to observe the principles of legality, freedom from *ex post facto* laws and due process in the new trial for Ms. De La Cruz Flores; to offer medical and psychological attention, along with free medication, to Ms. De La Cruz Flores; to offer Ms. De La Cruz Flores a scholarship for training and professional development; to re-register Ms. De La Cruz Flores in the registry of retired persons.¹⁸⁰

The State must report all the measures adopted in order to comply with the reparations ordered by the Court that are pending no later than February 15, 2011.¹⁸¹

March 1, 2010: Per the Court's Judgment, the State published the

175. *Id.*

176. *Id.* "Having Seen" ¶ 7.

177. *Id.* "Having Seen" ¶ 9.

178. *Id.*

179. *Id.* "Declares" ¶ 1.

180. *Id.*

181. *Id.*

pertinent portions of the Judgment in the Official Newspaper.¹⁸²

September 1, 2010: The Court declared that the State complied with its obligation to publish the pertinent portions of the Judgment in the Official Newspaper.¹⁸³ However, the Court further declared that it would continue to monitor the State's compliance with its obligations to observe *ex post facto* laws and provide Ms. De La Cruz Flores with due process in her renewed legal proceedings; provide her with medical and psychological attention; offer her a scholarship for training and professional development; and re-register her in the registry of retired persons.¹⁸⁴

The Court requested that the State provide the Court with a report evidencing its compliance with the aforementioned obligations no later than February 15, 2011, and that the representatives and Commission submit observations to the State's report in four and six week intervals after receipt of the report.¹⁸⁵

Finally, the Court declared that the representatives' request for provisional measures was inadmissible because the requested measures involved the legality of the new proceedings of Ms. De La Cruz, measures which the Court previously ordered in its Judgment.¹⁸⁶

February 25, 2011: Ms. De La Cruz Flores' representatives withdrew their request of provisional measures, so the Court closed the file on the request for provisional measures.¹⁸⁷ The Court reminded the State that despite this, it must continue to comply with the obligations imposed in the Judgment, which consist of observing the principle of legality and non-retroactivity established in Article 9 (Right to Freedom from *Ex Post Facto Laws*) of the American Convention and the requirements of due process in the new trial of Ms. De La Cruz Flores.¹⁸⁸ The Court will continue to monitor compliance with the Judgment in this sense.¹⁸⁹

182. De La Cruz Flores v. Peru, Monitoring Compliance, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Considering That" ¶ 67 (Sept. 1, 2010).

183. *Id.* "Declares" ¶ 1.

184. *Id.* "Declares" ¶ 2.

185. *Id.* "Decides" ¶¶ 2-3.

186. *Id.* "Request For the Adoption of Provisional Measures" ¶ 1.

187. De La Cruz Flores v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Having Seen" ¶ 3 (Feb. 25, 2011).

188. *Id.* "Decides" ¶ 1.

189. *Id.* "Considering That" ¶ 12.

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[De La Cruz Flores v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 115 \(Nov. 18, 2004\).](#)

[De La Cruz Flores v. Peru, Merits, Reparations, and Costs, Judgment, Separate Opinion of Judge Sergio García Ramírez, Inter-Am. Ct. H.R. \(ser. C\) No. 115 \(Nov. 18, 2004\).](#)

3. Provisional Measures

[De La Cruz Flores v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Feb. 29, 2012\).](#)

[De La Cruz Flores v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Feb. 25, 2011\).](#)

4. Compliance Monitoring

[De La Cruz Flores v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 1, 2010\).](#)

[De La Cruz Flores v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 23, 2007\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

De La Cruz Flores v. Peru, Petition No. 12.138, Inter-Am. Comm'n H.R., (Sept. 1, 1998).

2. Report on Admissibility

De La Cruz Flores v. Peru, Admissibility Report, Report No. 29/03, Inter-Am. Comm'n H.R., Case No. 12.138 (Mar. 5, 2003).

3. Provisional Measures

[None]

4. Report on Merits

De La Cruz Flores v. Peru, Report on Merits, Report No. 29/03, Inter-Am. Comm'n H.R., Case No. 12.138 (Mar. 5, 2003).

5. Application to the Court

De La Cruz Flores v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.138 (June 11, 2003).

VIII. BIBLIOGRAPHY

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