

# García Asto and Ramírez Rojas v. Peru

## ABSTRACT<sup>1</sup>

*In 1995 and 1991, two Peruvian university students suspected of being affiliated with Sendero Luminoso were arrested, tried by a faceless tribunal, and detained in inhuman, cruel, and degrading conditions. They were sentenced to twenty and twenty-five years imprisonment as alleged perpetrators of the crime of terrorism. The Court found that the State had violated the American Convention on Human Rights.*

## I. FACTS

### A. Chronology of Events

#### A. Events Pertaining to Mr. Wilson García Asto

**June 30, 1995:** Mr. García Asto, a twenty-five year old student in his last year of college, is detained by the Peruvian National Police (“PNP”) without an arrest warrant at a bus station in Peru.<sup>2</sup> At the same time, State officials also detain Mr. Nicéforo Bartolomé Melitón Cárdenas and Ms. María Beatriz Azcarate Vidalón,<sup>3</sup> two leading members of *Sendero Luminoso* (“Shining Path”).<sup>4</sup>

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

2. García Asto and Ramírez Rojas v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 137, ¶¶ 3, 97(10)-97(11) (Nov. 25, 2005).

3. *Id.* ¶ 97(11).

4. *Noticias Seleccionadas del 11 de Marzo de 1996*, HIGHER INTELLECT (March 11, 1996), <http://cdn.preterhuman.net/texts/computing/gopher-archive/gopher.rcp.net.pe/noticias/andina/1996/marzo/11>. *Sendero Luminoso* is a Peruvian guerilla group that sought to overthrow the Peruvian government beginning in the 1980s. The group conducted armed attacks on polling places, public development projects, police stations, government offices, and public infrastructure, among other symbols of government power. As a result, the State faced an internal crisis with the Shining Path’s expanding geographical reach and surge of supporters. In order to combat the Shining Path’s rising influence, the State military employed various counterinsurgency strategies, which lead to multiple human rights abuses. See G. McCormick, *THE SHINING PATH AND THE*

The PNP search Mr. García Asto and record finding “three subversive leaflets” on him.<sup>5</sup> He claims the leaflets are not his and refuses to sign the search record.<sup>6</sup> He is taken to the National Counter-Terrorism Department (*Dirección Nacional Contra el Terrorismo*; “DINCOTE”)<sup>7</sup> facilities and held there in solitary confinement.<sup>8</sup>

**July 1, 1995:** The PNP search the home of Mr. García Asto, where his parents and siblings also live, without a warrant and without the presence of a representative from the Office of the Public Prosecutor.<sup>9</sup> The PNP seizes a computer; alleged “subversive literature, including manuscripts, newspapers, leaflets, pamphlets, and other documents;” and ninety-nine diskettes, the contents of which the authorities do not examine.<sup>10</sup> The PNP forces Mr. García Asto’s family to sign the record of the search and informs Mr. García Asto that if he doesn’t sign the search record without reading it, his family will be detained.<sup>11</sup>

**July 11, 1995:** Mr. Melitón Cárdenas informs the police that he knows Mr. García Asto.<sup>12</sup>

**July 12, 1995:** Authorities remove Mr. García Asto from solitary confinement and informs the police that the leaflets “listed in the record of personal search had not been seized from him and were not his.”<sup>13</sup> Ms. Azcarate Vidalón informs the police that she does not know Mr. García Asto.<sup>14</sup>

**July 13, 1995:** The PNP issues police report No. 071, which charges Mr. García Asto with terrorism, and states that he is a proven member of the Shining Path.<sup>15</sup> The report also notes that when Mr. García Asto was detained, he allegedly possessed “terrorist propaganda documents.” Some of the documents are allegedly stored in the computer seized from

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FUTURE OF PERU 1-3, 15-16, 17 (1990) available at <http://www.rand.org/pubs/reports/R3781.html>.

5. García Asto and Ramírez Rojas v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 97(12).

6. *Id.* ¶ 97(12).

7. *Id.* ¶ 68.

8. *Id.* ¶ 97(13).

9. *Id.* ¶ 97(14).

10. *Id.*

11. *Id.*

12. *Id.* ¶ 97(15).

13. *Id.* ¶ 97(16).

14. *Id.* ¶ 97(17).

15. *Id.* ¶ 97(18).

Mr. García Asto's home and are solely for use by Shining Path members.<sup>16</sup> The PNP notes that the "encrypted documents" allegedly stored on the computer will be analyzed at a later date.<sup>17</sup>

**July 17, 1995:** The Deputy Provincial Criminal Prosecutor commanding the *ad hoc* Forty-Third Provincial Criminal Public Prosecutor's Office for Terrorism of Lima brings criminal charges against Mr. García Asto alleging the crime of terrorism against the State.<sup>18</sup> Based on the criminal charges and police report No. 071, the judge presiding over the Forty-Third Criminal Court of Lima issues an order commencing pre-trial investigations against Mr. García Asto.<sup>19</sup> The judge also issues an arrest warrant.<sup>20</sup>

**July 20, 1995:** During the pre-trial investigation proceedings, Mr. García Asto makes a statement before his counsel and the judge presiding over the Forty-Third Criminal Court of Lima.<sup>21</sup> He confirms that the documents seized during the searches of his person and home were not his.<sup>22</sup> He further confirms that he has never been a member of the Shining Path, that he did not use his computer to create documents for the organization, and that he did not deliver supplies to its members.<sup>23</sup> From this date until July 20, 1999, Mr. García Asto is imprisoned at Casto-Casto Prison in Lima.<sup>24</sup> For the first year the State keeps him in solitary confinement, only allows him a half an hour in the prison yard, and only permits his family to visit.<sup>25</sup>

**September 18, 1995:** Ms. Azcarate Vidalón testifies and confirms that she does not know Mr. García Asto.<sup>26</sup> Mr. Melitón Cárdenas testifies, but does not confirm his previous statement that he knows Mr. García Asto.<sup>27</sup> He states, however, that he does not know Mr. García Asto and

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16. *Id.*

17. *Id.*

18. *Id.* ¶ 97(19).

19. *Id.* ¶ 97(20).

20. *Id.*

21. *Id.* ¶ 97(21).

22. *Id.*

23. *Id.*

24. *Id.* ¶ 97(54).

25. *Id.* The Merits does not indicate if Mr. García Asto is only allowed in the prison yard for half an hour for the entire year, or if he was allowed use of the yard on a daily or weekly basis.

26. *Id.* ¶ 97(22).

27. *Id.*

that Mr. García Asto is not a member of the Shining Path.<sup>28</sup> DINCOTE forwards a 163-page report to the Forty-Third Criminal Court of Lima containing information allegedly recovered from the hard disk of the computer seized during the search of Mr. García Asto's home.<sup>29</sup> From "preliminary analysis" of the information, the DINCOTE deduced that it belongs to the Shining Path.<sup>30</sup>

**February 2, 1996:** An anonymous prosecutor brings charges against Mr. García Asto.<sup>31</sup> The Prosecutor alleges that he committed "the crime of terrorism" and requests he be sentenced to twenty years in prison.<sup>32</sup>

**April 8 and 12, 1996:** Special hearings for Mr. García Asto's case are conducted at Casto-Casto Prison by the Special Chamber which is appointed by the Superior Court of Justice of Lima.<sup>33</sup> Both the Superior Court and Special Chamber consist of "faceless" judges that concealed their identities throughout the proceedings.<sup>34</sup>

**April 12, 1996:** Mr. García Asto's defense counsel submits a brief of its closing arguments to the Special Chamber.<sup>35</sup> The brief challenges the validity of the prosecution's use of police report No.071 as evidence, claiming that the seized documents were not analyzed by an expert witness and that the PNP did not provide the judge with an analysis of the alleged encrypted data on the computer taken from his home.<sup>36</sup>

**April 18, 1996:** The "faceless" judges of the Special Criminal Chamber of the Superior Court of Justice of Lima convict Mr. García Asto of terrorism against the State.<sup>37</sup> The court finds that the documents allegedly seized from his home "proved that he 'was an active member

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28. *Id.*

29. *Id.* ¶ 97(23).

30. *Id.*

31. *Id.* ¶ 97(24).

32. *Id.*

33. *Id.* ¶ 97(25).

34. *Id.* ¶¶ 86.2-86.4, 97(25), 145(a); *Presumption of Guilt: Human Rights Violations and the Faceless Courts in Peru*, HUMAN RIGHTS WATCH (Aug. 1, 1996), available at <http://www.refworld.org/docid/3ae6a7dd0.html>. During faceless proceedings, defendants were often blindfolded before entering the courtroom or judges wore hoods to conceal their identities. See Castillo Petruzzi v. Peru, Preliminary Objections, Judgment, Inter-Am Ct. H.R. (ser. C) No. 41, ¶ 5 (Sep. 4, 1998).

35. García Asto and Ramírez Rojas v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 97(26).

36. *Id.*

37. *Id.* ¶ 97(27).

of the terrorist organization Shining Path.”<sup>38</sup> Mr. García Asto is sentenced to twenty years in prison and civil reparation.<sup>39</sup> After the sentencing hearing, Mr. García Asto submits an appeal for annulment of the judgment that the Special Criminal Chamber deems admissible.<sup>40</sup>

**July 14, 1997:** Mr. García Asto’s appeal for annulment of the April 18, 1996, judgment is dismissed by the Supreme Court of Justice of Peru, which is also comprised of “faceless” judges.<sup>41</sup>

**November 20, 1997:** Mr. García Asto’s mother files a writ of *habeas corpus* on behalf of Mr. García Asto contending that the Mr. García Asto’s judicial guarantees were violated by the Superior Court of Justice’s judgment and the Supreme Court of Justice of Lima’s judgment.<sup>42</sup>

**July 20, 1999:** Mr. García Asto is transferred from Casto-Casto Prison to Yanamayo Prison in Puno.<sup>43</sup> He is confined here until September 21, 2001.<sup>44</sup> The prison gives him inadequate medical care, little food, no access to work material or printed media, and restricted visits.<sup>45</sup> The prison is not adequately heated, so Mr. García Asto must also bear extremely low temperatures.<sup>46</sup>

**September 21, 2001:** Mr. García Asto is transferred from Yanamayo Prison to Challapalca Prison in Tucana, which is over 4,600 meters above sea level.<sup>47</sup> He is incarcerated here until August 21, 2002.<sup>48</sup> The average temperature in this area for most of the year is 8° or 9° Celsius during the day and as low as -20° Celsius at night.<sup>49</sup> For five months, prison guards do not allow Mr. García Asto in the prison yard.<sup>50</sup> He is not given “clothes heavy enough to endure” the temperatures and the prison cells and halls are not heated.<sup>51</sup> Drinking water, proper medical

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38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* ¶ 97(28).

42. *Id.* ¶ 97(29).

43. *Id.* ¶ 97(55).

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.* ¶ 97(56).

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

care, and exercise facilities are unavailable, and the prison's location prevents regular contact with his family or emergency medical care.<sup>52</sup>

**April 4, 2002:** The Inter-American Commission adopts precautionary measures for Mr. García Asto so as to avoid permanent medical damage because he has prostate issues, has not been treated, and his condition has declined while at Challapalca Prison.<sup>53</sup>

**August 21, 2002:** Mr. García Asto is moved to La Capilla Prison in Juliaca, where he is given medical treatment.<sup>54</sup>

**November 27, 2002:** The Forty-Third Special Criminal Court of the Superior Court of Justice of Lima rules that Mr. García Asto's writ of *habeas corpus* is groundless.<sup>55</sup>

**December 17, 2002:** Mr. García Asto is moved to Casto Casto Prison, where he stays until he is released.

**January 15, 2003:** The Third Criminal Chamber of the Superior Court of Justice of Lima repeals the November 27, 2002, judgment.<sup>56</sup> The Chamber recognizes that Mr. García Asto's judicial proceedings violated fundamental rights including due process, the right to be tried by a competent judge, and "the right to know whether the judge hearing the case was competent."<sup>57</sup> The Chamber finds that the criminal proceedings brought against Mr. García Asto for terrorism are invalid.<sup>58</sup> It then orders the case to be forwarded to competent authorities "within forty-eight hours" so the appropriate legal steps can be taken.<sup>59</sup>

**March 10, 2003:** The First Special Criminal Court for Terrorism issues an order commencing pre-trial criminal investigation proceedings against Mr. García Asto for being a member of and affiliating with a terrorist organization as described in Article 5 of Decree-Law No. 25.475 based on the charges brought against Mr. García Asto from July 17, 1995.<sup>60</sup> The judge dismisses the order for commencing pre-trial

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52. *Id.*

53. *Id.* ¶ 97(57).

54. *Id.*

55. *Id.* ¶ 97(30).

56. *Id.* ¶ 97(31).

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* ¶ 97(32).

investigation proceedings against Mr. García Asto “for the crime of collaboration with terrorism as described in Article 4 of Decree-Law No. 25.475,” because an individual’s conduct cannot be linked to both Articles 4 and 5.<sup>61</sup> The Court issues an arrest warrant for Mr. García Asto based on police report No. 071 and Article 135 of the Criminal Procedural Code, which provides for such orders when the evidence available is “sufficient to prove the possible commission of the crime charged;” the likelihood of a sentence exceeding four years in prison; and the risk that if released, the individual “would tr[y] to escape justice or thwart the evidentiary procedures.”<sup>62</sup>

**September 5, 2003:** The First Special Criminal Court for Terrorism places on the record that Mr. Melitón Cárdenas’s testimony cannot be heard because he has died.<sup>63</sup>

**September 9, 2003:** Ms. Azcárate Vidalón testifies again that she does not know Mr. García Asto.<sup>64</sup>

**October 21, 2003:** The PNP informs the First Special Criminal Court for Terrorism that it cannot retrieve the documents allegedly on the computer hard disk taken from Mr. García Asto’s home.<sup>65</sup>

**November 21, 2003:** The National Chamber for Terrorism finds Mr. García Asto’s motion for release inadmissible because his detention had exceeded the term set forth by law.<sup>66</sup> The Chamber determines that Article 137 of the Criminal Procedural Code permits the current duration.<sup>67</sup>

**April 6, 13, and 20, 2004:** The National Chamber for Terrorism requests the DINCOTE provide the computer seized from Mr. García Asto’s home.<sup>68</sup>

**April 27, 2004:** The DINCOTE informs the National Chamber of Terrorism that it cannot locate the documents and information allegedly seized from Mr. García Asto and it has requested the Seized Property

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61. *Id.*

62. *Id.*

63. *Id.* ¶ 97(37).

64. *Id.* ¶ 97(38).

65. *Id.* ¶ 97(39).

66. *Id.* ¶ 97(40).

67. *Id.*

68. *Id.* ¶ 97(42).

Management Unit to forward the computer to the Chamber.<sup>69</sup>

**May 10, 2004:** The DINCOTE informs the National Chamber for Terrorism that the computer was inspected and that it is no longer operational.<sup>70</sup>

**May 10, 2004:** The National Chamber for Terrorism requests the DINCOTE forward it the analysis of the documents allegedly seized from Mr. García Asto's home and of the encrypted documents allegedly stored on the computer's hard disk.<sup>71</sup>

**May 13, 2004:** The DINCOTE informs the National Chamber for Terrorism that it does not have analysis of the encrypted documents.<sup>72</sup>

**August 5, 2004:** The National Chamber for Terrorism acquits Mr. García Asto and orders his release.<sup>73</sup> The Chamber notes that although the PNP was repeatedly asked to forward analysis of the documents allegedly on the computer seized from Mr. García Asto's home, it failed to do so.<sup>74</sup> It additionally points out that expert witnesses concluded that the information stored in the hard disk "could not pos[sibly] be determined" and that there was a risk it could have been manipulated.<sup>75</sup>

**August 6, 2004:** Mr. García Asto is released.<sup>76</sup> After being released, he resumes his college studies.<sup>77</sup> As a result of his extended detention, he developed "astigmatism, prostate syndrome, and sleep disturbances"<sup>78</sup> and his family members are severely impacted.<sup>79</sup> Community members suspect that Mr. García Asto and his family members are terrorists and insult and mistreat them.<sup>80</sup> As a consequence of Mr. García Asto's extended detention, his father suffers from "deep depression and high blood pressure;" his brother drops out of college because he suffers from "anxiety, emotional instability, and lack of social confidence;" his sister suffers from depression, and poor self-confidence; and both his

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69. *Id.* ¶ 97(43).

70. *Id.* ¶ 97(44).

71. *Id.* ¶ 97(45).

72. *Id.* ¶ 97(46).

73. *Id.* ¶ 97(47).

74. *Id.*

75. *Id.*

76. *Id.* ¶ 97(48).

77. *Id.* ¶ 97(64).

78. *Id.* ¶ 97(61).

79. *Id.* ¶¶ 97(62) – 97(65).

80. *Id.* ¶ 97(62).



mother and sister suffered humiliation at the hands of the prison wardens.<sup>81</sup> Furthermore, his family has incurred expenses including that for medical treatment for Mr. García Asto, payment to his college, travel to prisons where he was detained, and attorney's fees.<sup>82</sup>

**August 18 and October 28, 2004:** The Special Office of the Public Prosecutor for Terrorism of the Ministry of the Interior and the Second Supreme Office of the Public Prosecutor in Criminal Matters of Lima respectively file appeals for the judgment acquitting Mr. García Asto with the Supreme Court of Justice of the Republic.<sup>83</sup>

**February 9, 2005:** The Supreme Court of Justice of the Republic dismisses the appeals filed by the Special Office of the Public Prosecutor for Terrorism of the Ministry of the Interior and the Second Supreme Office of the Public Prosecutor in Criminal Matters of Lima.<sup>84</sup>

## 2. Events Pertaining to Mr. Urcesino Ramírez Rojas

**June 1991:** Mr. Ramírez Rojas retires, at forty-six years old, from the Ministry of Economy and Finance of the Republic of Peru and from being Parliamentary Advisor to the Congress of the Republic of Peru.<sup>85</sup> He plans to create a consulting agency and do research after retirement, so for several years has been collecting "economic, financial, and other information" about Peru.<sup>86</sup> He is a supporter of the National Revolutionary United Left political party (*Unidad Nacional de Izquierda Revolucionaria*).<sup>87</sup> He lives with and provides for his mother, sister, and nephew<sup>88</sup> and has a three-year-old son.<sup>89</sup>

**July 27, 1991:** Mr. Ramírez Rojas is at home sick with a friend from college, Ms. Isabel Cristina Moreno Tarazona.<sup>90</sup> Members of DINCOTE come into Mr. Ramírez Rojas's home.<sup>91</sup> They arrest Mr. Ramírez Rojas and Ms. Moreno Tarazona without an arrest warrant or the presence of a

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81. *Id.* ¶ 97(63).

82. *Id.* ¶ 97(65).

83. *Id.* ¶ 97(49).

84. *Id.* ¶ 97(51).

85. *Id.* ¶¶ 97(67) - 97(68).

86. *Id.* ¶ 97(69).

87. *Id.* ¶ 97(68).

88. *Id.* ¶¶ 97(132), 97(134).

89. *Id.* ¶ 97(137).

90. *Id.* ¶¶ 1, 97(70).

91. *Id.* ¶ 97(70).

Prosecutor.<sup>92</sup> Near Mr. Ramírez Rojas's home, Mr. Héctor Aponte Sinarahua, who is under investigation for being the military leader of the Shining Path, is also arrested.<sup>93</sup>

DINCOTE members take Mr. Ramírez Rojas to the basement of DINCOTE facilities and place him in solitary confinement a dark cell without blankets.<sup>94</sup> After three days he is allowed to consult with an attorney.<sup>95</sup>

**July 27, 1991:** DINCOTE searches Mr. Ramírez Rojas's home.<sup>96</sup> The search report notes the seizure of documents referring to an alleged rebellious group, "several cassettes containing conferences on the history, economy and politics of Peru," a computer, and a typewriter.<sup>97</sup>

**August 2, 1991:** Mr. Aponte Sinarahua makes a police statement claiming that he went to Mr. Ramírez Rojas's home because a taxi driver told him he could buy homemade bread there.<sup>98</sup>

**August 2 and 5, 1991:** Mr. Ramírez Rojas, accompanied by his attorney, states that he initially met Mr. Aponte Sinarahua when the police brought him into Mr. Ramírez Rojas's home; that he has not been involved in any terrorist activities or with any rebellion group; and that he does not own a cassette of Shining Path support songs.<sup>99</sup> He further claims that the documents seized from his home are part of an academic database of research on political parties in Peru that he had collected for his work advising Congress and for an article he is currently working on.<sup>100</sup>

**August 8, 1991:** The DINCOTE issues police report No.153 claiming that Mr. Ramírez Rojas, Mr. Aponte Sinarahua, and Ms. Moreno Tarazona were all arrested at Mr. Ramírez Rojas's home where they were holding a "coordination meeting" to strategize actions to support the Shining Path.<sup>101</sup> It includes a description of the items allegedly seized from the home, noting that the computer hard disk contains

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92. *Id.*

93. *Id.* ¶ 97(71).

94. *Id.* ¶¶ 97(73), 97(120).

95. *Id.* ¶ 97(120).

96. *Id.* ¶ 97(72).

97. *Id.*

98. *Id.* ¶ 97(75).

99. *Id.* ¶ 97(74).

100. *Id.*

101. *Id.* ¶ 97(76).

financial and economic information about Peru.<sup>102</sup> The report claims that this evidence “fully prove[s]” Mr. Ramírez Rojas’s alleged affiliation with the Shining Path and charges him with the crime of terrorism.<sup>103</sup>

**August 9, 1991:** The Special Provincial Public Prosecutor’s Office for Terrorism of Lima files a complaint against Mr. Ramírez Rojas, Mr. Aponte Sinarahua, and Ms. Moreno Tarazona for terrorism and theft.<sup>104</sup> The Forty-Sixth Magistrate’s Court of Lima orders commencement of a criminal investigation on the matter and an arrest warrant for Mr. Ramírez Rojas, who is still being held at the police station.<sup>105</sup>

**August 13, 1991:** Mr. Ramírez Rojas is transferred to Castro-Castro Prison where he is confined until September 30, 1994.<sup>106</sup> During the first year here, he is locked in a cell with only has a small opening to pass in food, for twenty-three and a half hours a day.<sup>107</sup> Until 1992, he lives with six fellow prisoners.<sup>108</sup> State officials permit Mr. Ramírez Rojas’s family to visit him only once per week.<sup>109</sup> In 1992, prison guards transfer him into a cell with two other inmates and his family visits are restricted to thirty minutes every thirty days.<sup>110</sup>

**December 26, 1991, and February 15, 1992:** Mr. Ramírez Rojas requests that the Forty-Sixth Magistrate’s Court of Lima release him on bail, pursuant to Article 201 of the Criminal Procedural Code and on the grounds that he is innocent and the charges based on insufficient legal grounds.<sup>111</sup>

**June 17, 1992:** The Forty-Third Magistrate’s Court of Lima holds that it was proven that Mr. Ramírez Rojas committed the crime of terrorism and that he is criminally liable.<sup>112</sup>

**January 22, 1993:** The Public Prosecutor’s Office brings criminal

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102. *Id.*

103. *Id.*

104. *Id.* ¶ 97(77).

105. *Id.* ¶ 97(78).

106. *Id.* ¶ 97(122).

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* ¶ 97(79).

112. *Id.* ¶ 97(81).

charges against Mr. Ramírez Rojas for committing the crime of terrorism against the State and recommends a prison sentence of thirty years.<sup>113</sup> It, however, does not charge Mr. Ramírez Rojas with theft due to insufficient evidence.<sup>114</sup>

**September 30, 1994:** The “faceless” judges of the Special Criminal Chamber for Terrorism of the Superior Court of Justice of Lima sentence Mr. Ramírez Rojas to twenty-five years in prison for the crime of terrorism and numerous individual crimes pursuant to Article 320 of the Criminal Code, “for a series of illegal acts committed” from 1987 to 1990. The court finds that Mr. Ramírez Rojas is not innocent because of insufficient evidence.<sup>115</sup> Mr. Ramírez Rojas’s counsel files a petition for annulment of the judgment.<sup>116</sup>

**October 1, 1994:** Mr. Ramírez Rojas is transferred to Huacariz Prison in Cajamarca, which is too far from his home for his family to visit.<sup>117</sup> Later, in 1998, while imprisoned here, he undergoes prostate surgery.<sup>118</sup>

**August 8, 1995:** The “faceless” judges of the Supreme Court of Justice of Peru reject Mr. Ramírez Rojas’s petition for annulment of the September 30, 1994, judgment.<sup>119</sup>

**March 8, 1996:** Mr. Ramírez Rojas’s mother dies.<sup>120</sup> He is not permitted to attend her funeral.<sup>121</sup>

**February 1999:** Mr. Ramírez Rojas is diagnosed with testicular issues and is hospitalized.<sup>122</sup>

**November 6, 2000:** Mr. Ramírez Rojas is transferred to El Milagro de Trujillo Prison.<sup>123</sup> In this same month, he is diagnosed with “hyperecsterilemia and atherosclerosis” and put on a strict diet.<sup>124</sup> Then in 2002, the Health Board of the prison diagnoses him severe

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113. *Id.* ¶ 97(82).

114. *Id.* ¶ 97(72).

115. *Id.* ¶ 97(83).

116. *Id.* ¶ 97(76).

117. *Id.* ¶ 97(123).

118. *Id.* ¶ 97(125).

119. *Id.* ¶ 97(85).

120. *Id.* ¶¶ 97(131), 97(139).

121. *Id.* ¶ 97(139).

122. *Id.* ¶ 97(125).

123. *Id.* ¶ 97(126).

124. *Id.* ¶ 97(128).

“bronchial asthma, hypertension, and chronic gastritis” and recommends that he be moved somewhere warmer to recover.<sup>125</sup> This recommendation is disregarded and Mr. Ramírez Rojas is kept in El Milagro de Trujillo Prison until February 2004.<sup>126</sup>

**September 19, 2002:** The Seventh Criminal Court of Lima rules on the writ of *habeas corpus* filed on behalf of Mr. Ramírez Rojas, finding that the proceedings executed against Mr. Ramírez Rojas violated his individual freedom because his right to be heard by a competent judge was violated.<sup>127</sup>

**October 24, 2002:** The First Criminal Corporate Chamber for Ordinary Proceedings Involving Non-detained Defendants of the Supreme Court of Justice of Lima rules on a petition for appeal submitted by the Attorney General’s Office, revoking the judgment made on September 19, 2002, by the Seventh Criminal Court of Lima.<sup>128</sup>

**March 27, 2003:** The Constitutional Court reverses and amends the judgment made on October 24, 2002, by the First Criminal Corporate Chamber for Ordinary Proceedings Involving Non-detained Defendants of the Supreme Court of Justice of Lima.<sup>129</sup> The court orders “that the procedural effects of the condemnatory judgment be annulled” but the court rejects Mr. Ramírez Rojas’s request for release because the annulment did not affect that part of the order.<sup>130</sup>

**May 13, 2003:** The National Chamber for Terrorism vacates the proceedings executed against Mr. Ramírez Rojas and dismisses the Prosecutor’s charges against him.<sup>131</sup> The case is ordered to the appropriate Criminal Court for further proceedings.<sup>132</sup>

**December 6, 2003:** The First Special Criminal Court for Terrorism orders that “an attachment be levied on [Ramírez Rojas’s] assets in a manner sufficient to guarantee the eventual payment of civil damage.”<sup>133</sup>

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125. *Id.* ¶ 97(127).

126. *Id.*

127. *Id.* ¶ 97(87).

128. *Id.* ¶ 97(88).

129. *Id.* ¶ 97(89).

130. *Id.*

131. *Id.* ¶ 97(90).

132. *Id.*

133. *Id.* ¶ 97(96).

**March 1, 2004:** Mr. Ramírez Rojas is transferred to Castro-Castro Prison where he remains.<sup>134</sup> As a result of his prolonged detention, Mr. Ramírez Rojas's family members are stigmatized and are physically, mentally, and emotionally impacted.<sup>135</sup> His sister, Ms. Filomena Ramírez Rojas, who assumes custody of his son, suffers from nervousness and insomnia;<sup>136</sup> his other sister, Ms. Marcelina Ramírez Rojas, is arrested while attempting to visit him in prison, "under the allegation that they were planning his escape."<sup>137</sup> His son develops a number of mental disorders and performs so poorly in school that he is unable to move up a grade level for three consecutive years;<sup>138</sup> and his brother is laid off.<sup>139</sup>

**August 19, 2004:** The First Special Provincial Prosecutor's Office for Terrorism files a supplemental criminal complaint against Mr. Ramírez Rojas, referring to Article 322 of the Criminal Code of 1991.<sup>140</sup>

**September 13, 2004:** The First Special Court grants Mr. Ramírez Rojas's motion for appeal of the judgment of September 1, 2004.<sup>141</sup> After new evidence is filed, the proceedings are forwarded to the National Chamber for Terrorism.<sup>142</sup>

**November 2, 2004:** The Second Special Superior Prosecutor's Office for Terrorism brings charges against Mr. Ramírez Rojas for perpetrating the crime of terrorism and requests he be sentenced to twenty-five years in prison, "in accordance with Article 320 (1), (2), and (4) and Article 322 of the Criminal Code of 1991," which was effective when the alleged crime was perpetrated.<sup>143</sup>

**November 19, 2004:** The National Criminal Chamber confirms the First Special Criminal Court for Terrorism's judgment, made on September 1, 2004, and denies Mr. Ramírez Rojas's motion to convert the arrest warrant.<sup>144</sup>

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134. *Id.* ¶ 97(129).

135. *Id.* ¶¶ 97(133) – 97(134).

136. *Id.* ¶ 97(135).

137. *Id.* ¶ 97(136).

138. *Id.* ¶ 97(137).

139. *Id.* ¶ 97(138).

140. *Id.* ¶ 97(107).

141. *Id.* ¶ 97(111).

142. *Id.*

143. *Id.* ¶ 97(113).

144. *Id.* ¶ 97(114).

**September 1, 2005:** The National Criminal Chamber rejects Mr. Ramírez Rojas's second request to be released on bail because the request was based on assumptions of innocence, and that the request did not comply with Article 182 of the Criminal Procedural Code of 1991.<sup>145</sup>

### B. Other Relevant Facts

Article 4 of Decree-Law No. 25.475 criminalizes “collaboration with terrorism.”<sup>146</sup> The Article defines the crime as voluntarily obtaining, collecting, assembling, or facilitating any type of property or device, or aiding “the commission of the crimes” listed in Decree-Law 25.475, or achieving a goal of a terrorist group.<sup>147</sup> Article 5 of Decree-Law No. 25.475 criminalizes “membership in and affiliation with terrorist organizations.”<sup>148</sup> The Article states that being a member of a terrorist group is punishable by at least twenty years in prison.<sup>149</sup>

Article 6 of Decree-Law No. 25.659 of 1992, in force when the proceedings against the victims begin, denies individuals charged with terrorism-related crimes and high treason the ability to file protective remedies.<sup>150</sup> The law is amended by Decree-Law No. 26.248, which is enacted on November 25, 1993.<sup>151</sup> The new decree-law allows individuals accused of terrorism to file protective remedies.<sup>152</sup> However, the provision provides that writs of *habeas corpus* are not admissible if they involve the same facts or grounds as pending proceedings or proceedings which have already been adjudicated.<sup>153</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

#### 1. Events Pertaining to Mr. Wilson García Asto

**November 9, 1998:** Ms. Celia Asto Urbano files a petition on behalf of her son, Mr. García Asto, with the Inter-American Commission against

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145. *Id.* ¶ 97(118).

146. *Id.* ¶ 185.

147. *Id.*

148. *Id.* ¶ 186.

149. *Id.*

150. *Id.* ¶ 111.

151. *Id.*

152. *Id.*

153. *Id.*

the State of Peru.<sup>154</sup>

**April 4, 2002:** The Commission adopts precautionary measures to maintain the health of Mr. García Asto.<sup>155</sup> It requests that the State take measures to ensure he receives a medical examination and be provided treatment, if necessary.<sup>156</sup>

2. Events Pertaining to Mr. Urcesino Ramírez Rojas

**November 12, 1998:** Mr. Pedro Ramírez Rojas files a petition on behalf of his brother, Mr. Urcesino Ramírez Rojas, with the Inter-American Commission against the State of Peru.<sup>157</sup>

3. Events Pertaining to Mr. Wilson García Asto and Mr. Urcesino Ramírez Rojas

**August 14, 2003:** The Commission joins Mr. García Asto and Mr. Ramírez Rojas's cases.<sup>158</sup>

**March 11, 2004:** The Commission approves the Report on Admissibility and Merits No. 27/04.<sup>159</sup> The Commission claims jurisdiction over the case and concludes that the petition is admissible.<sup>160</sup> The Commission recommends that the State (1) adopt measures necessary to fully rectify the human rights violations of both Mr. García Asto and Mr. Ramírez Rojas, including releasing a new judgment that complies with the rules of freedom from *ex post facto* law, due process, and fair trial; and (2) amend Decree-Law No. 25,475 to bring it into alignment with the American Convention on Human Rights.<sup>161</sup>

*B. Before the Court*

**June 22, 2004:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>162</sup>

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154. *Id.* ¶ 7.

155. *Id.* ¶ 9.

156. *Id.*

157. *Id.* ¶ 8.

158. *Id.* ¶ 12.

159. *Id.* ¶ 13. The Commission's Report on the Merits was not available at the time of publication, and the Merits Judgment did not indicate violations found by the Commission.

160. *Id.*

161. *Id.*

162. *Id.* ¶ 1.



### 1. Violations Alleged by Commission<sup>163</sup>

Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law)

Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment)

Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges)

Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time)

Article 7(6) (Right to Have Recourse Before a Competent Court)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 8(2) (Right to Be Presumed Innocent)

Article 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them)

Article 8(5) (Right to Fair Trial)

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

*all in relation to:*

Article 1(1) (Obligation to Respect Rights)

Article 2 (Duty to Adopt Domestic Provisions) of the American Convention.

### 2. Violations Alleged by Representatives of the Victims<sup>164</sup>

Same Violations Alleged by Commission, plus:

Article 5 (Right to Humane Treatment)

Article 11 (Right to Privacy)

Article 13 (Freedom of Thought and Expression)

Article 17 (Rights of the Family)

Article 24 (Right to Equal Protection)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) of the American Convention

Article 1 (Obligation to Prevent and Punish Torture)

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163. *Id.* ¶ 2.

164. *Id.* ¶ 19. Ms. Carolina Loayza-Tamayo and Ms. Rosalía Uzátegui of the International Law Research and Legal Counseling Center (*Centro de Investigación y Asistencia Legal en Derecho Internacional*, "IALDI") served as representatives of Mr. García Asto and Mr. Ramírez Rojas.

Article 2 (Definition of Torture)

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) of the Inter-American Convention to Prevent and Punish Torture.

**May 10, 2005:** At the first public hearing, the State submits a preliminary objection that petitioners have not exhausted domestic remedies.<sup>165</sup> The Court dismisses the State's preliminary objections because the State failed to contest exhaustion of local remedies at the correct procedural stage and thus waived its right to do so.<sup>166</sup>

**June 29, 2005:** Judge Diego García Sayán, a Peruvian national, disqualifies himself from hearing the case and the State is notified that it may appoint a judge *ad hoc*.<sup>167</sup>

**August 19, 2005:** The State appoints Jorge Santistevan de Noriega as judge *ad hoc*.<sup>168</sup>

### III. MERITS

#### A. *Composition of the Court*<sup>169</sup>

Sergio García Ramírez, President  
Alirio Abreu Burelli, Vice-President  
Oliver H. Jackman, Judge  
Antônio Augusto Cançado Trindade, Judge  
Cecilia Medina Quiroga, Judge  
Manuel E. Ventura Robles, Judge  
Jorge Santistevan de Noriega, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

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165. *Id.* ¶¶ 33, 45.

166. *Id.* ¶ 50.

167. *Id.* ¶ 35.

168. *Id.* ¶ 39.

169. *Id.* ¶ 35. Judge Diego García Sayán, a Peruvian national, disqualified himself from hearing the case.

*B. Decision on the Merits*<sup>170</sup>

**November 25, 2005:** The Court issues its Judgment on Preliminary Objection, Merits, Reparations, and Costs.<sup>171</sup>

The Court found unanimously that Peru had violated:

Articles 7(1) (Right to Personal Liberty and Security), 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), 7(4) (Right to Be Informed of Reasons of Arrest and Charges), 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), and 7(6) (Right to Have Recourse Before a Competent Court), in relation to Article 1(1) of the Convention, to the detriment of Mr. García Asto and Mr. Ramírez Rojas,<sup>172</sup> because:

*The State illegally detained Mr. García Asto and Mr. Ramírez Rojas.*<sup>173</sup> *Article 7(1) (Right to Personal Liberty and Security) safeguards the individuals' physical liberty and personal safety in circumstances where there is otherwise a lack of guarantee of the minimum forms of legal protection for detainees.*<sup>174</sup> *Articles 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law) and 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), prohibit illegal or arbitrary detention or arrest.*<sup>175</sup> *Preventative detention is the most serious action that can be taken against an*

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170. Though the victims' representatives alleged the violation of Articles 1 (Obligation to Prevent and Punish Torture), 2 (Definition of Torture), and 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) of the Inter-American Convention to Prevent and Punish Torture, the Court did not discuss these allegations in its decision on the Merits. *See id.* ¶ 19; García Asto and Ramírez Rojas v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 137 (Nov. 25, 2005).

171. García Asto and Ramírez Rojas v. Peru, Preliminary Objection, Merits, Reparations and Costs.

172. *Id.* ¶ 297(2). The Court found a violation of Article 7(1) (Right to Personal Liberty and Security) though the Commission and the representatives did not allege that the State violated Article 7(1). *See id.* ¶¶ 2, 19, "Declares" ¶ 2.

173. *Id.* ¶¶ 108, 132.

174. *Id.* ¶ 104.

175. *Id.* ¶ 105.

*individual accused of a crime, thus its application is limited by the principles of nullum crimen nulla poena sine lege praevia.*<sup>176</sup> These principles require presumption of innocence, need, and proportionality.<sup>177</sup> The Court noted that these principles are essential in a democratic society.<sup>178</sup> Moreover, preventative detention is meant to be a precautionary measure, not a punitive one.<sup>179</sup>

*The Court found that the State's arrest of Mr. García Asto was illegal because it was executed without an arrest warrant and was not under circumstances of flagrante delicto as required by the Peruvian Constitution.*<sup>180</sup> Additionally, Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) requires that a detainee promptly be brought to appear before a judge and be allowed to make a statement.<sup>181</sup> The judge's role is to guarantee the rights of the detainee, authorize precautionary or coercive measures only when strictly necessary, and ensure that the detainee is entitled to the presumption of innocence.<sup>182</sup>

*Mr. García Asto was brought before the competent judicial authority seventeen days after his arrest.*<sup>183</sup> Additionally, the State arbitrarily deprived Mr. García Asto of his freedom during the month and a half between January 15, 2003, when the criminal proceedings against Mr. García Asto were annulled, and March 10, 2003, when the investigation proceedings in the new trial was ordered to commence.<sup>184</sup> During this time, the State detained Mr. García Asto without prosecuting or sentencing him.<sup>185</sup> Based on these actions, the Court held that the State violated Articles 7(1) (Right to Personal Liberty and Security), 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), and 7(6) (Right to Have Recourse Before a Competent Court) of the Convention to the detriment of Mr. García

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176. *Id.* ¶ 106.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.* ¶ 108.

181. *Id.* ¶ 109.

182. *Id.*

183. *Id.* ¶ 110.

184. *Id.* ¶¶ 124-25.

185. *Id.*

Asto.<sup>186</sup>

*The detention of Mr. Ramírez Rojas was illegal because arrest was not made in flagrante delicto and was not made following a written arrest warrant.<sup>187</sup> Mr. Ramírez Rojas was brought before a competent judicial authority thirteen days after his detention.<sup>188</sup> Based on the partial acknowledgement of facts by the State, the absence of facts to establish flagrante delicto, the lack of an arrest warrant, and not being brought before a competent judicial authority until thirteen days after his detention, the Court held that the State violated the rights enshrined in Article 7 (Right to Personal Liberty) to the detriment of Mr. Ramírez Rojas.<sup>189</sup>*

Article 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Mr. García Asto and Mr. Ramírez Rojas,<sup>190</sup> because:

*The State prohibited Mr. García Asto and Mr. Ramírez from filing writ of habeas corpus.<sup>191</sup> Article 25(1) (Right of Recourse Before a Competent Court) obligates states to “provide all individuals under their jurisdiction an effective legal remedy against acts which violate their fundamental rights.”<sup>192</sup> At the time Mr. García Asto and Mr. Ramírez Rojas were arrested and during the first proceedings against them, Article 6 of Decree-Law No. 25.659 legally prohibited them from filing a writ of habeas corpus.<sup>193</sup> Furthermore, the amendment of the Decree-Law did not benefit them because their cases were still pending.<sup>194</sup> Writs of habeas corpus are essential judicial protections.<sup>195</sup> Mr. García Asto and Mr. Ramírez Rojas were not afforded this essential judicial protection; thus, the State violated Article 25 (Right to Judicial Protection).<sup>196</sup>*

Articles 8(1) (Right to a Hearing Within Reasonable Time by a

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186. *Id.* ¶ 115.

187. *Id.* ¶ 132.

188. *Id.*

189. *Id.* ¶ 134.

190. *Id.* ¶ 297(2).

191. *Id.* ¶ 115.

192. *Id.* ¶ 113.

193. *Id.* ¶¶ 114, 133.

194. *Id.*

195. *Id.* ¶¶ 112, 133.

196. *Id.* ¶ 115.

Competent and Independent Tribunal), Article 8(2) (Right to Be Presumed Innocent), 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them), and 8(5) (Criminal Proceedings Must Be Public), in relation to Article 1(1) of the Convention, to the detriment of Mr. García Asto and Mr. Ramírez Rojas,<sup>197</sup> because:

*During the first criminal proceedings against Mr. García Asto and Mr. Ramírez Rojas, the State violated the right to a due process of law, the right to be tried by a competent, independent and impartial judge, and the right to the publicity of the criminal proceedings, under Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), Article 8(2) (Right to Be Presumed Innocent), and 8(5) (Criminal Proceedings Must Be Public).<sup>198</sup>*

*Both victims were tried by “faceless” courts, which concealed the identity of the judges and made it impossible for the victims to assess the capacity of the judges, to know if they had grounds for objection, and to exercise proper defenses before an independent and unbiased court.<sup>199</sup> Neither of their trials were made public.<sup>200</sup> Article 13(c) of Decree-Law No. 25.475 prevents examining witnesses whose testimonies support the charges against the alleged victim.<sup>201</sup> In addition, Mr. García Asto and Mr. Ramírez Rojas were examined by the police officers that created the police reports used to bring forth the charges against them.<sup>202</sup>*

*Contrary to Article 8(2) (Right to Be Presumed Innocent), in the first instance judgment of September 30, 1994 against Mr. Ramírez Rojas, the State presumed his guilt and required him to prove his innocence.<sup>203</sup>*

*As a result, the Court found that the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), Article 8(2) (Right to Be Presumed Innocent), 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them), and 8(5) (Criminal Proceedings Must Be Public).<sup>204</sup>*

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197. *Id.* ¶ 297(2).

198. *Id.* ¶¶ 151, 158.

199. *Id.* ¶¶ 149-50, 157.

200. *Id.* ¶¶ 149, 157.

201. *Id.* ¶ 154.

202. *Id.* ¶¶ 153-54, 161.

203. *Id.*

204. *Id.* ¶ 297(2).

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), in relation to Article 1(1) of the Convention, to the detriment of Mr. García Asto,<sup>205</sup> because:

*Article 8(1) and 8(2)(c) provide for the right to defense and the right to be heard, with the due guarantees, by a competent judge or court.<sup>206</sup> During the second proceedings against Mr. García Asto, Mr. García Asto's representatives were not served notice of the judgment acquitting him.<sup>207</sup> Thus, his counsel was unable to refer to it in their arguments before the Supreme Court, in relation to the appeal for annulment filed by the Prosecutor's Office against the acquittal.<sup>208</sup>*

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. Ramírez Rojas,<sup>209</sup> because:

*Article 8(1) provides for the right to be heard and tried within a reasonable time.<sup>210</sup> More than thirty-eight months went by from the arrest of Mr. Ramírez Rojas until he was convicted in the first instance; more than forty-eight months from the arrest until the confirmation of the judgment in the second instance; and more than eight years in the aggregate from the arrest until the dismissal of the motion for review filed before the Supreme Court of Justice.<sup>211</sup> This constitutes a delay per se.<sup>212</sup> In assessing the reasonable delay of the second proceeding against Mr. Ramírez Rojas, three elements are taken into account: (1) the complexity of the matter; (2) the procedural activity of the interested party; and (3) the conduct of the judicial authorities.<sup>213</sup> Despite the complexity of the second proceedings, the Court determined that the State's proceeding was not reasonably timely.<sup>214</sup> The Court, therefore, found that the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) to the*

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205. *Id.* ¶ 297(4).

206. *Id.* ¶ 155.

207. *Id.*

208. *Id.*

209. *Id.* ¶ 297(5).

210. *Id.* ¶ 162.

211. *Id.*

212. *Id.*

213. *Id.* ¶ 166.

214. *Id.* ¶ 171.

detriment of Mr. Ramírez Rojas.<sup>215</sup>

Article 9 (Freedom from *Ex Post Facto* Laws), in relation to Article 1(1) of the Convention, to the detriment of Mr. García Asto and Mr. Ramírez Rojas,<sup>216</sup> because:

*The principle of freedom from ex post facto laws governs the actions of all State agencies.<sup>217</sup> Definitions of crimes must “clearly describe the criminalized conduct, establishing its elements, and the factors that distinguish it from other forms of conduct that are either not punishable or punishable with non-criminal measures.”<sup>218</sup>*

*In the first proceedings against Mr. García Asto, the crimes of collaboration with terrorism and membership in and affiliation with terrorist organizations provided the grounds for the judgment against him on April 18, 1996.<sup>219</sup> Although the conviction and proceedings were annulled on January 15, 2003, the judgment resulted in the violation of Mr. García Asto’s human rights, which was not remedied by the annulment.<sup>220</sup> The crimes of collaboration with terrorism and membership in and affiliation with terrorist organizations are applicable to the same conduct.<sup>221</sup> In its judgment, the Court failed to specify which forms of conduct were imputable to Mr. García Asto to hold him responsible for the crime of collaboration with terrorism.<sup>222</sup>*

*In the first proceedings against Mr. Ramírez Rojas, he was found guilty of the crime of aggravated terrorism as defined in Article 320 of the Criminal Code of 1991, for a series of criminal acts which occurred from 1987 to 1990.<sup>223</sup> Some of the acts he was charged with occurred before they became crimes in 1991.<sup>224</sup> In retroactively applying the Criminal Code of 1991 to Mr. Ramírez Rojas’s acts, the Court held that the State violated the non-retroactivity principle of Article 9 (Freedom*

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215. *Id.* ¶ 297(5).

216. *Id.* ¶ 297(6).

217. *Id.* ¶ 187.

218. *Id.* ¶ 188.

219. *Id.* ¶ 197.

220. *Id.*

221. *Id.* ¶ 200.

222. *Id.* ¶ 201.

223. *Id.* ¶ 205.

224. *Id.* ¶ 207.



from *Ex Post Facto Laws*).<sup>225</sup>

*The Court dismissed, however, by six votes to one, the claims that the State had violated Article 9 (Freedom from Ex Post Facto Laws) because the State's definitions of the crime of terrorism, the crime of aggravated terrorism, the crime of collaboration with terrorism, and the crime of membership in or affiliation with a terrorist organization do not infringe on the provisions of Article 9.<sup>226</sup> There was not sufficient evidence to prove the claim of violation of Article 9 (Rule of Freedom from Ex Post Facto Laws) during the second proceedings against Mr. García Asto.<sup>227</sup>*

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 Article 1(1) of the Convention, to the detriment of Mr. García Asto and Mr. Ramírez Rojas,<sup>228</sup> because:

*Article 5 (Right to Humane Treatment) provides that "all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person."<sup>229</sup> International Human Rights Law forbids torture and cruel, inhuman or degrading punishment or treatment.<sup>230</sup> Article 5(2) specifically states that "[t]he injuries, pain, or physical damage suffered by persons while deprived of their freedom may constitute a form of cruel treatment or punishment when, due to the detention conditions, there is a detriment of the physical, mental or moral integrity."<sup>231</sup> Pursuant to Article 5, the State must provide detainees with regular medical examinations, assistance, and adequate treatment whenever necessary.<sup>232</sup>*

*Mr. García Asto did not receive timely, adequate medical assistance for his prostate problems while detained in Yanamayo and Challapaca Penitentiaries.<sup>233</sup> The State's failure to provide medical attention to Mr. García Asto caused severe detriment to his health.<sup>234</sup> Furthermore,*

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225. *Id.* ¶ 208.

226. *Id.* ¶¶ 194-195.

227. *Id.* ¶¶ 203-04, 297(7).

228. *Id.* ¶ 297(8).

229. *Id.* ¶ 221.

230. *Id.* ¶ 222.

231. *Id.* ¶ 223.

232. *Id.* ¶ 227.

233. *Id.* ¶ 228.

234. *Id.*

*the detention conditions imposed on Mr. García Asto and Mr. Ramírez Rojas, their lack of communication, the cell isolation regimes, and the restriction of family visits, amounted to cruel, inhuman, and degrading treatment.*<sup>235</sup> *Based on the foregoing, the Court determined that the State violated Mr. García Asto's and Mr. Ramírez Rojas's right under Article 5 (Right to Humane Treatment).*<sup>236</sup>

Article 5(1) (Right to Humane Treatment), in relation to Article 1(1) of the Convention, to the detriment of Mr. Napoleón García Tuesta, Ms. Celia Asto Urbano, Ms. Elisa García Asto, Mr. Gustavo García, Ms. María Alejandra Rojas, Mr. Marcos Ramírez Álvarez and Santa, Pedro, Filomena, Julio, Obdulia, Marcelino, and Adela Ramírez Rojas,<sup>237</sup> because:

*The mental and moral integrity of Mr. García Asto's family members (Mr. Napoleón García Tuesta, Ms. Celia Asto Urbano, Ms. Elisa García Asto, and Mr. Gustavo García) was violated as a result of the great pain and suffering and the constant worry caused from Mr. García Asto's detention conditions, his isolation, and the distance and inaccessibility of the detention facilities he was placed in.*<sup>238</sup>

*Similarly, the mental and moral integrity of Mr. Ramírez Rojas's family members (Ms. María Alejandra Rojas, Mr. Marcos Ramírez Álvarez and Santa, Pedro, Filomena, Julio, Obdulia, Marcelino, and Ms. Adela Ramírez Rojas) was violated as a result of the detention conditions imposed on Mr. Ramírez Rojas and the humiliating treatment to which they were subject to when visiting him.*<sup>239</sup> *For the foregoing reasons, the Court determined that the State violated Article 5 (Right to Humane Treatment) to the detriment of Mr. García Asto's and Mr. Ramírez Rojas's next of kin.*<sup>240</sup>

The Court found, by six votes to one, that the State had violated:

Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), in relation to Article 1(1) of the Convention, to the detriment of Mr. García Asto and Mr. Ramírez Rojas during the second proceedings

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235. *Id.* ¶¶ 229, 233.

236. *Id.*

237. *Id.* ¶ 297(9).

238. *Id.* ¶ 230.

239. *Id.* ¶ 235.

240. *Id.*

against them,<sup>241</sup> because:

*In the second proceedings against Mr. García Asto and Mr. Ramírez Rojas, the First Criminal Court Specialized in the Crime of Terrorism did not provide sufficient arguments to maintain their preventative detention.*<sup>242</sup>

The Court did not rule on:

Article 11 (Right to Privacy), Article 13 (Freedom of Thought and Expression), and Article 17 (Rights of the Family), in relation to Article 1(1) of the Convention,<sup>243</sup> because:

*The legal consequences of the facts alleged in the violation of Article 11 (Right to Privacy) have already been examined in relation to Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), and 8 (Right to a Fair Trial); therefore it is not necessary to make a decision in respect to Article 11. The facts of the case are not contemplated within the scope of Article 11 and Article 13 (Freedom of Thought and Expression).<sup>244</sup> The facts alleged in the violation of Article 17 (Rights of the Family) were examined in relation to Article 5 (Right to Humane Treatment); therefore it is not necessary to make a decision in respect to Article 17.*<sup>245</sup>

### C. Dissenting and Concurring Opinions

#### 1. Partially Dissenting Opinion of *Ad Hoc* Judge Jorge Santistevan de Noriega

*Ad hoc* Judge Santistevan de Noriega first discussed his efforts to explain to the Court the role of the State's Constitutional Court and the binding authority that the court has, not only on the judiciary system, but also on all other State authorities.<sup>246</sup> *Ad hoc* Judge Santistevan de Noriega emphasized that the State's Constitutional Court's interpretation of law has been recognized by human rights experts as

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241. *Id.* ¶ 297(3).

242. *Id.* ¶¶ 127-28, 143-44.

243. *Id.* ¶¶ 242-45.

244. *Id.* ¶ 243.

245. *Id.* ¶¶ 244-45.

246. García Asto and Ramírez Rojas v. Peru, Preliminary Objection, Merits, Reparations and Costs, Separate Opinion of Judge Santistevan de Noriega, Inter-Am. Ct. H.R. (ser. C) No. 137, ¶¶ 3-5 (Nov. 25, 2005).

achieving a significant progress in its exercise of the *ius puniendi*.<sup>247</sup> He further noted that Carlos Martín Rivera-Paz, a Peruvian attorney who testified in case of De la Cruz-Flores and in the present case, evidenced that there has been a significant change in the recent proceedings.<sup>248</sup> At the time of judgment, Mr. García Asto has been acquitted and Mr. Ramírez Rojas's acquittal is pending.<sup>249</sup>

*Ad hoc* Judge Santistevan de Noriega then expressed his concurrence with the Court's analysis regarding Article 9 (Freedom from Ex Post Facto Laws).<sup>250</sup> *Ad hoc* Judge Santistevan de Noriega, however, would have preferred a more detailed description of the content of the Constitutional Court's January 3, 2003 decision.<sup>251</sup>

Finally, *ad hoc* Judge Santistevan de Noriega disagreed with the Court's decision 7(3) (Prohibition of Arbitrary Arrest or Imprisonment).<sup>252</sup> The Court found that the State violated Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment) during June 24, 2003, with the Order to Commence the Pre-trial Investigation in the second proceedings against Mr. Ramírez Rojas, until the Judgment was made.<sup>253</sup> Contrary to the majority's opinion, *ad hoc* Judge Santistevan de Noriega opined that because the State had a valid arrest warrant for Mr. Ramírez Rojas, the State had not violated Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment).<sup>254</sup>

## 2. Dissenting Opinion of Judge Cecilia Medina Quiroga

In a separate opinion, Judge Medina Quiroga stated that the Court should have found that the State violated Article 9 (Freedom from Ex Post Facto Laws), in relation to Article 1(1) of the Convention.<sup>255</sup> The majority used Article 2 of the Decree-Law No. 24.575's definition of terrorism and held that pursuant to this definition, Article 9 of the Convention was not violated.<sup>256</sup> She disagreed with the majority's holding that the definitions of the crime of terrorism, the crime of collaboration with terrorism, and the crime of membership in and

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247. *Id.* ¶ 8.

248. *Id.* ¶ 10.

249. *Id.*

250. *Id.*

251. *Id.* ¶ 13.

252. *Id.* ¶ 15.

253. *Id.* ¶¶ 15-16.

254. *Id.*

255. García Asto and Ramírez Rojas v. Peru, Preliminary Objection, Merits, Reparations and Costs, Separate Opinion of Judge Medina Quiroga, Inter-Am. Ct. H.R. (ser. C) No. 137, ¶ 1 (Nov. 25, 2005).

256. *Id.* ¶ 4.

affiliation with terrorist organizations did not violate Article 9.<sup>257</sup> In her opinion, Judge Medina Quiroga concluded that the definitions fail to distinguish the conduct described therein from other crimes that carry a lesser criminal sanction and thus violate the *nullum crimen nulla poena sine lege praevia* principle required by Article 9.<sup>258</sup> The *nullum crimen nulla poena sine lege praevia* principle requires that the punishable conduct be clearly specified, especially in cases concerning terrorism.<sup>259</sup> This is important for two reasons.<sup>260</sup> First, it informs the citizen of what behavior is prohibited in order to avoid prosecution or punishment.<sup>261</sup> Second, it limits the authority of the court to interpret the law where there is a sense of strong social condemnation.<sup>262</sup>

Judge Medina Quiroga analyzed the language of Article 2 Decree-Law No. 24.575 and noted that the definition fails to assert that the conduct must be voluntary.<sup>263</sup> Furthermore, the Articles of Decree-Law No. 24.575 defining the crimes do not to establish the maximum penalties for committing the crime.<sup>264</sup> In her view, this alone would be sufficient to render this law in violation of the *nullum crimen nulla poena sine lege praevia* principle.<sup>265</sup> The Constitutional Court, however, when analyzing this law for its constitutionality, did not reach this conclusion.<sup>266</sup>

Additionally, Judge Medina Quiroga noted that *nullum crimen nulla poena sine lege praevia* principle not only requires a specific description of criminal conduct, but also requires that the punishment be within the statutory range.<sup>267</sup> The fact that the Decree-Law describing the maximum penalties was subsequently enacted indicates that the situation violated the *nullum crimen nulla poena sine lege praevia* principle in relation to proportionality of punishment.<sup>268</sup>

In addition, Judge Medina emphasized that because the majority found that the State was in violation of Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment) of the Convention and was still arbitrarily depriving Mr. Ramírez Rojas of his liberty, the State should

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257. *Id.*

258. *Id.* ¶¶ 4,10.

259. *Id.* ¶ 6.

260. *Id.*

261. *Id.*

262. *Id.*

263. *Id.* ¶ 9.

264. *Id.*

265. *Id.* ¶ 10.

266. *Id.* ¶¶ 11-12.

267. *Id.* ¶ 17.

268. *Id.*

be ordered to immediately release Mr. Ramírez Rojas.<sup>269</sup> Moreover, after his release, the State may not arrest him again unless he is arrested and convicted to serve his sentence or the State shows his arrest is justified and that the time during which he has been confined conforms to the reasonability standard in Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) of the Convention.<sup>270</sup> He further found that as a means of reparation, each day Mr. Ramírez Rojas spends in prison should be computed as two days.<sup>271</sup>

#### IV. REPARATIONS

The Court ruled unanimously 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 noted that the judgment in favor of the victims was a form of reparation.<sup>272</sup>

###### 2. Provide Medical and Psychological Treatment to Mr. García Asto

The Court noted that Mr. García Asto's physical and psychological ailments continued and ordered the State to provide him with psychological and medical treatment, including the delivery of medicines without any cost to him.<sup>273</sup>

###### 3. Provide Scholarships for Training and Professional Development

The Court ordered the State to offer Mr. García Asto the option of receiving professional training by granting him a scholarship to

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269. *Id.* "Regarding Reparations to Urcesino Ramírez Rojas" ¶ 2.

270. *Id.*

271. *Id.* ¶ 6.

272. *García Asto and Ramírez Rojas v. Peru, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 137, ¶ 297(10) (Nov. 25, 2005).*

273. *Id.* ¶ 280.

complete his studies and to receive professional training for two years after graduating from university.<sup>274</sup> The Court similarly ordered the State to offer Mr. Ramírez Rojas the option of receiving professional training by granting him a scholarship to for two years in a program of his choosing.<sup>275</sup>

#### 4. Publish Facts and Judgment in Nationwide Newspapers

The Court held that the State must publish the operative paragraphs of the Judgment and the section entitled “Proven Facts” in the Official Gazette and another nationwide newspaper.<sup>276</sup> The articles are to be published once.<sup>277</sup>

#### 5. Ensure Violations Do Not Recur

The Court held that the State is obligated to ensure that violations, such as those that have been declared in the Judgment, do not recur.<sup>278</sup> In that regard, the State must ensure the new proceedings against Mr. Ramírez comply with the requirements for due process, with full guarantees of a hearing and defense.<sup>279</sup>

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded \$35,000 to Mr. García Asto and \$30,000 to Mr. Ramírez Rojas for loss of income.<sup>280</sup> The Court awarded \$10,000 each to Mr. García Asto and Mr. Ramírez Rojas as compensation for consequential damages.<sup>281</sup>

#### 2. Non-Pecuniary Damages

The Court awarded \$40,000 to Mr. García Asto and \$50,000 to

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274. *Id.* ¶ 281.

275. *Id.*

276. *Id.* ¶ 297(16).

277. *Id.*

278. *Id.* ¶¶ 174-175.

279. *Id.*

280. *Id.* ¶¶ 261-262.

281. *Id.* ¶ 263.

Mr. Ramírez Rojas as compensation for non-pecuniary damages.<sup>282</sup> The Court also awarded \$25,000 each to Ms. Celia Asto Urbano, Mr. Napoleón García Tuesta, Mr. Pedro Ramírez Rojas, and Mr. Marcos Ramírez Álvarez; \$15,000 each to Ms. Elisa García Asto and Mr. Gustavo García Asto for non-pecuniary damages; \$10,000 each to Santa, Juilo, Obdulia, Marcelino, and Adela Ramírez Rojas; and \$5,000 to Ms. María Alejandra Rojas.<sup>283</sup> The compensation awarded to Ms. María Alejandra Rojas should be distributed equally to her children.<sup>284</sup>

### 3. Costs and Expenses

The Court awarded \$20,000 each to Mr. García Asto and Mr. Ramírez Rojas for the costs and expenses to be used to make the corresponding payments to their representatives, both at the local and international levels.<sup>285</sup>

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

\$400,000

### C. Deadlines

The State must pay all pecuniary and non-pecuniary damages and all costs and expenses awarded within one year of the Judgment.<sup>286</sup> The State must publish the Judgment and Proven Facts in the Official Gazette and another nationwide newspaper within six months.<sup>287</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

**July 12, 2007:** The Court found that the State has only partially complied with each of the orders in the judgment and therefore none of

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282. *Id.* ¶¶ 270-71.

283. *Id.* ¶¶ 273, 275.

284. *Id.* ¶ 290.

285. *Id.* ¶ 287.

286. *Id.* ¶¶ 297(13)-(15).

287. *Id.* ¶ 297(16).



them are completely fulfilled.<sup>288</sup> The State provided Mr. García Asto with free medical and psychological care; however, the State is requiring him to pay for medications, which the State is obliged to provide under the judgment.<sup>289</sup> The State has taken steps toward implementation of professional training for Mr. García Asto and Mr. Ramírez Rojas; however, compliance is still pending.<sup>290</sup> The State paid the monetary reparations ordered to the victims; but still owes \$7,400 to Mr. Ramírez Rojas and \$25,000 to Mr. Marcos Ramírez.<sup>291</sup> The State published the Judgment in the Official Gazette, but not in another nation-wide newspaper.<sup>292</sup>

The parties dispute whether the Court is competent to monitor the compliance of the State with the requirements for due process in the new proceedings against Mr. Ramírez Rojas.<sup>293</sup> The Court ordered the State to promptly, effectively, and fully comply with the measures of reparation ordered by the Judgment and to provide additional updated information regarding its compliance with the Judgment no later than September 28, 2007.<sup>294</sup>

**July 1, 2011:** The Court found that the State has complied partially with its obligation to provide Mr. García Asto with the opportunity of receiving professional training by giving him a scholarship.<sup>295</sup> The Court will continue to monitor the State's compliance with the award of a grant to allow him to obtain further training.<sup>296</sup>

Additionally, Mr. Ramírez Rojas informed the State of his interest in obtaining a master's degree in Economics, but the State has failed to provide a satisfactory answer.<sup>297</sup> The Court ordered the State to provide recent, precise, and complete information on the steps taken to comply with this obligation.<sup>298</sup>

The Court found that the State has complied fully with its obligation to make the compensation ordered, except for payment to

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288. *García Asto and Ramírez Rojas v. Peru*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Considering," ¶ 9 (July 12, 2007).

289. *Id.* ¶ 10.

290. *Id.* ¶ 11.

291. *Id.* ¶ 12.

292. *Id.* ¶ 13.

293. *Id.* ¶ 14.

294. *Id.* "Considering," ¶ 21, "Therefore" ¶ 1.

295. *García Asto and Ramírez Rojas v. Peru*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., "Considering That" ¶ 9 (July 1, 2011).

296. *Id.* ¶ 14.

297. *Id.* ¶ 15.

298. *Id.*

Mr. Marcos Ramírez Álvarez.<sup>299</sup> The Court ordered the State to provide information on this payment.<sup>300</sup> Further, Mr. García Asto continues to be required to pay for medications, which was ordered as an obligation of the State.<sup>301</sup> The State has not provided documentation indicating that it has published the Judgment in a nation-wide newspaper and has not indicated when it will comply with this obligation.<sup>302</sup> Thus, the Court ordered the State to promptly, effectively, and fully comply with the measures of reparation ordered by the Judgment and to provide additional updated information regarding its compliance with the Judgment no later than December 5, 2011.<sup>303</sup>

**November 26, 2013:** The Court issued a Compliance Monitoring Judgment.<sup>304</sup> The Court determined that the State had partially complied with its obligation to compensate Mr. Marco Ramírez Álvarez.<sup>305</sup> The Court found that the State had not: provided free medical and psychological care to Mr. García Asto; provided scholarships and grants to Mr. García Asto or Mr. Ramírez Rojas; compensated Mr. Marco Ramírez Álvarez for non-pecuniary damages; or published portions of the Judgment.<sup>306</sup> The Court stated that it would continue monitoring compliance, and requested that the State submit a compliance report by March 31, 2014.<sup>307</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[None]

#### 2. Decisions on Preliminary Objection, Merits, Reparations, and Costs

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299. *Id.* ¶ 20.

300. *Id.*

301. *Id.* ¶ 9.

302. *Id.* ¶ 24.

303. *Id.* "Therefore" ¶ 1.

304. García Asto and Ramírez Rojas v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Nov. 26, 2013).

305. *Id.* "Decides That" ¶ 1.

306. *Id.* "Decides That" ¶¶ 2(a)-(d).

307. *Id.* "Decides That" ¶¶ 3-4.

[García Asto and Ramírez Rojas v. Peru, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 137 \(Nov. 25, 2005\).](#)

[García Asto and Ramírez Rojas v. Peru, Preliminary Objection, Merits, Reparations and Costs, Separate Opinion of Judge Santistevan de Noriega, Inter-Am. Ct. H.R. \(ser. C\) No. 137 \(Nov. 25, 2005\).](#)

[García Asto and Ramírez Rojas v. Peru, Preliminary Objection, Merits, Reparations and Costs, Separate Opinion of Judge Medina Quiroga, Inter-Am. Ct. H.R. \(ser. C\) No. 137 \(Nov. 25, 2005\).](#)

### 3. Provisional Measures

[None]

### 4. Compliance Monitoring

[García Asto and Ramírez Rojas v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 26, 2013\).](#)

[García Asto and Ramírez Rojas v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(July 1, 2011\).](#)

[García Asto and Ramírez Rojas v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(July 12, 2007\).](#)

### 5. Review and Interpretation of Judgment

[None]

#### *B. Inter-American Commission*

#### 1. Petition to the Commission

García Asto v. Peru, Petition No. 12.413, Inter-Am. Comm'n H.R. (November 9, 1998).

Ramírez Rojas v. Peru, Petition No. 12.423, Inter-Am. Comm'n H.R. (November 12, 1998).

## 2. Report on Admissibility

Report on Admissibility and Merits No. 27/04, Inter-Am. Comm'n H.R., Case No. 12.413 (March 11, 2004).

## 3. Provisional Measures

[None]

## 4. Report on Merits

[None]

## 5. Application to the Court

[García Asto and Ramírez Rojas v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.413 \(June 22, 2004\) \(Available only in Spanish\).](#)

## VIII. BIBLIOGRAPHY

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