

J. v. Peru

ABSTRACT¹

This case is about the arrest and prosecution of a woman suspected of aiding and abetting Shining Path's terrorists. Tried and acquitted by a faceless court in Peru, she sought and obtained political asylum in the United Kingdom. Eventually, judicial proceedings against her were resumed in Peru, leading to her arrest in Germany and request of extradition back to Peru. The Court found violation of several articles of the American Convention to the detriment of the victim, due to faults in her arrest, prosecution, and detention.

I. FACTS

A. Chronology of Events

Sometime between 1967 and 1968: Ms. J is born.²

1987: State Officials arrest Ms. J for putting up a poster of “*Cambio*,” a weekly publication portraying the views of the Rebel Tupac Amaru Revolutionary Movement.³

1989: “*El Diario*,” a newspaper published by the State Communist Party, *El Sendero Luminoso* (Shining Path), goes underground.⁴

1992: Ms. J is now twenty-five years old and a law graduate of the Pontificia Universidad Católica del Peru.⁵

1. Nazanin Farahdel, Author; Alyssa Rutherford, Editor; Hayley Garscia, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. See *J. v. Peru*, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 275, ¶ 76 (Nov. 27, 2013). Throughout the proceedings, the Court identified the victim as Ms. J; however, during the Inter-American Commission on Human Rights's proceedings, the Commission identified the victim by her full name: Jesus Mónica Feria Tinta. See *Jesus Mónica Feria Tinta v. Peru*, Admissibility Report, Report No. 27/08. Inter-Am. Comm'n H.R. (Mar. 14, 2008).

3. *J. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, ¶ 77.

4. *Id.* ¶ 78.

5. *Id.* ¶¶ 76, 77. Ms. J has no criminal or judicial record; however, she does have a police

March 1992: Mr. Marc de Beaufort, a Colombian journalist, hires Ms. J as a production assistant for a television show for WGBH, a Boston public television station, about the political situation in Peru.⁶ Specifically, the show focuses on the Shining Path guerilla movement.⁷ Ms. J's duties include obtaining all the necessary permits and authorizations to visit locations within Lima and surrounding areas.⁸ State authorities authorize the trips made by Ms. J and the other journalists.⁹

1992: The State's National Counter-terrorism Directorate ("DINCOTE") orders the publication of *El Diario* to be monitored.¹⁰

April 13, 1992: DINCOTE begin "Operation Mayano", a military plan to raid various buildings in the capital and continue the inquiries into *El Diario*'s publications.¹¹ With suspicions that a building owned by Ms. J's parents, located on Las Esmeraldas Street, houses terrorists, State police raid the building.¹²

The police and Ms. J offer differing versions of the events.¹³ The State asserts that when the police arrive to the building, the occupants are captured as they try to escape through a back door.¹⁴ The official records report that the State police arrest Ms. J, another woman, and a man.¹⁵ Furthermore, the record indicates that when the agents search the premises, they find documents belonging to Shining Path.¹⁶ Ms. Magda Victoria Otto Mendives, the representative of the Public Prosecution Service, is present and states that there was never any violence.¹⁷

Ms. J insists that that on the night of the raid, she is showing a prospective tenant the building.¹⁸ When Ms. J is about to leave the building, she hears someone trying to open the backdoor of the building and the person claims ownership of the house.¹⁹ As Ms. J replies that she in fact

record and an arrest warrant dated June 1990 for terrorism, although the case file does not provide a reason for this warrant. *Id.* ¶ 77. In fact, in all her statements before State authorities, Ms. J denies all membership and affiliation with Shining Path and *El Diario*. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* ¶ 78.

11. *Id.* ¶ 79.

12. *Id.* ¶ 80.

13. *Id.*

14. *Id.*

15. *Id.* ¶ 81.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

is the owner, an arm breaks the window pane, grabs Ms. J's hair, points a gun at her, and fifteen armed people, dressed in civilian clothing, enter her house.²⁰ Then, the police throw Ms. J on the floor, tie her up, rob her of a gold ring and bracelet, and sexually abuse her.²¹ Thereafter, the armed guards beat and blindfold Ms. J, take her to the back of the property, and threaten her.²² Ms. J asserts that the representative of the Public Prosecution Service is not present at the time of the police raid, but arrives later, meaning that there was no lawyer who could confirm anything that was found in the offices.²³ Moreover, when the prosecutor arrives to the property, she indicates that no documents or articles of suspicion have been found on the property.²⁴

Ms. J states that at the end of the search, the armed men take her and the prospective female tenant to the car, blindfold and tie them up, and drive around until 6:00 a.m.²⁵ Two men assault Ms. J's mother and younger sister while they are on their way to the property.²⁶ The two men force them into a car, drive them to the Las Esmeraldas building and tell them that Ms. J resisted and they had killed her.²⁷

Ms. J's mother and sister authorize a search of their family's house on Casimiro Negrón Street.²⁸ The DINCOTE police find two revolvers in Ms. J's room, along with documents deemed to be of a subversive nature.²⁹ Ms. J's sister refuses to sign papers and the DINCOTE police arrest her and note in the official records that the arrest was meant to "clarify the offense against the public peace (terrorism)."³⁰ Ms. J alleges that the revolvers belong to her father.³¹ She further insists that she does not recognize two letters addressed to her.³² She believes that the police put those items in her house in order to frame her.³³

April 14, 1992: Ms. J alleges that she is taken to the police station.³⁴ The

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* ¶ 84.

24. *Id.*

25. *Id.* ¶ 86.

26. *Id.*

27. *Id.*

28. *Id.* ¶ 88.

29. *Id.*

30. *Id.* ¶ 89.

31. *Id.* ¶ 90.

32. *Id.*

33. *Id.*

34. *Id.* ¶ 92. However, the DINCOTE detainee register insists that Ms. J entered the center on April 15, 1992 at 11:55 a.m. *Id.*

DINCOTE police unit informs a Lima provincial criminal prosecutor and an investigating court that Ms. J and her younger sister are detained.³⁵ Ms. J's mother goes to the DINCOTE police unit to look for her daughters, but she cannot find them because they are not yet registered.³⁶

April 16, 1992: Another building belonging to Ms. J's family is searched.³⁷ There are no results regarding terrorist activity from this location.³⁸

April 18, 1992: Two male forensic physicians conduct a medical examination on Ms. J, particularly in order to determine which injuries are old and which are new.³⁹ The finding establishes that she has small abrasions and bruising on her back and legs.⁴⁰

April 21, 1992: Police agents search Ms. J's room on Casimiro Negrón Street for a second time.⁴¹ They find more photographs and items linking her to Shining Path,⁴² Furthermore, in the presence of her defense counsel, Ms. J gives a statement in the DINCOTE offices.⁴³ The DINCOTE officers use this statement, and the information gathered during the various searches, as evidence against Ms. J and the other detainees for the crime of terrorism.⁴⁴

April 23, 1992: A conference facilitated by the Ministry of Interior presents Ms. J, her sister, and other detainees to the media.⁴⁵

April 28, 1992: Ms. J leaves the DINCOTE Center.⁴⁶ Ms. J's younger sister, who is also released, is summoned and notified to appear before the competent judicial authority.⁴⁷ Furthermore, the DINCOTE police agents forward their allegations to the prosecutor.⁴⁸ Ms. J becomes a

35. *Id.*

36. *Id.*

37. *Id.* ¶ 91.

38. *Id.*

39. *Id.* ¶ 93.

40. *Id.*

41. *Id.* ¶ 91.

42. *Id.*

43. *Id.* ¶ 95.

44. *Id.*

45. *Id.* ¶ 96.

46. *Id.* ¶ 94.

47. *Id.*

48. *Id.* ¶ 97.

suspect for the crime of terrorism.⁴⁹ Ms. J is suspected to be responsible for writing, editing and coordinating with foreign journalists on *El Diario*, in addition to having prior criminal terrorist activity linking to Shining Path.⁵⁰

On the same day, the prosecutor files criminal charges against Ms. J and the Tenth Investigating Court of Lima begins an inquiry against Ms. J and the other detainees.⁵¹ The Investigating Court of Lima issues an order for the preliminary statements of the accused, and a warrant for the arrest of Ms. J.⁵²

April 30, 1992: Ms. J enters the Miguel Castro Castro National Petitionary Institute.⁵³

June 10, 1992 – August 3, 1992: Portions of Ms. J's preliminary statements are received.⁵⁴

October 28, 1992: The criminal allegations against Ms. J are expanded to include an offense of conspiracy to commit a terrorist act.⁵⁵

February 1, 1992: The Higher Court of Lima declares that the case will proceed to an oral hearing against Ms. J for the crimes of terrorism and conspiracy to commit a terrorist act.⁵⁶

January 8, 1993: Prosecutor No. 9288526Y files charges against Ms. J and ninety-three other people for the crime of terrorism and conspiracy to commit a terrorist act against the State.⁵⁷

May 19 - June 9, 1993: A private hearing is held for the crime of terrorism and conspiracy to commit a terrorist act.⁵⁸

June 18, 1993: Due to lack of evidence, a “faceless” Lima Superior Court of Justice acquits Ms. J, and indicates the she should be re-

49. *Id.*

50. *Id.*

51. *Id.* ¶ 98.

52. *Id.*

53. *Id.* ¶ 94.

54. *Id.* ¶ 99.

55. *Id.* ¶ 100.

56. *Id.* ¶ 101.

57. *Id.*

58. *Id.* ¶ 101.

leased.⁵⁹ Accordingly, the Lima Superior Court of Justice advises the National Penitentiary Counsel that Ms. J should be released.⁶⁰

August 9, 1993: After Ms. J's release, she files a complaint to the Public Prosecution Service, alleging that after her acquittal, Ms. J and her family had been victim to threats by unknown individuals and presumed police agents.⁶¹

August 12, 1993: Ms. J asks the Prosecution Service to supply her with the necessary guarantees of safety.⁶²

August 16, 1993: Due to the threats and harassment Ms. J experiences in Peru, she leaves Peru for the United Kingdom.⁶³

September 30, 1993: Ms. J arrives to the United Kingdom.⁶⁴ When she arrives, she is suffering from tuberculosis, most likely contracted in prison, and chronic complex post-traumatic stress disorder.⁶⁵

October 13, 1993: Ms. J requests asylum.⁶⁶

December 27, 1993: Following an appeal filed by the senior prosecutor and those convicted in the judgment of June 18, 1993, the faceless Supreme Court of Justice annuls the June 18th judgment and orders a new hearing.⁶⁷ Specifically, the grounds for the annulment were that the June 18th judgment did not properly establish the facts or the evidence to establish the guilt or innocence of the accused.⁶⁸

February 9, 1994: The faceless National Counter-terrorism Chamber takes over the hearing of the case and issues a warrant for the re-arrest of Ms. J.⁶⁹

April 5, 1994: The proceeding against Ms. J is delayed because she has

59. *Id.* ¶ 102.

60. *Id.* ¶ 104. The exact date of Ms. J's release is not included in the Judgment.

61. *Id.* ¶ 114.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.* ¶ 105.

68. *Id.*

69. *Id.* ¶ 106.

not been re-arrested yet.⁷⁰

January 23, 1997: The United Kingdom grants Ms. J refugee status.⁷¹

May 26, 2000: The United Kingdom grants Ms. J indefinite permission to remain in the United Kingdom as a refugee.⁷²

February 24, 2000: Ms. J becomes naturalized as a British citizen.⁷³

May 20, 2000: Pursuant to Legislative Decree No. 926, the National Counter-terrorism Chamber annuls all proceedings regarding Ms. J.⁷⁴ Additionally, the Chamber discusses that the proceedings should be held according to the ordinary proceeding established in the Code of Criminal Procedures.⁷⁵

September 21, 2004: The Permanent Chamber of the Supreme Court issues an arrest warrant against Ms. J, indicating that she has been located in London.⁷⁶

September 29, 2005: The senior prosecutor of the Third National Superior Criminal Prosecution Service issues a report where he charges Ms. J. with terrorism, and requests twenty years of imprisonment.⁷⁷ Additionally, he requests a reorder of Ms. J's arrests.⁷⁸

January 24, 2006: The National Criminal Chamber declares that there are grounds to proceed to an oral hearing.⁷⁹

May 25, 2006: The National Criminal Chamber determines that many of the accused are guilty and delays sentencing against Ms. J until she is arrested and brought to a competent judicial authority.⁸⁰ Ms. J is held in

70. *Id.*

71. *Id.* ¶ 115.

72. *Id.*

73. *Id.*

74. *Id.* ¶ 107.

75. *Id.*

76. *Id.* ¶ 108. The senior prosecutor charged Ms. J with conduct established in Articles 316 and 322 of the Criminal Code for the crimes of defense of terrorism and membership in a terrorist group, respectively. *Id.* Furthermore, he reordered Ms. J to be found and arrested, and declared her to be in contempt of court. *Id.*

77. *Id.* ¶ 111.

78. *Id.*

79. *Id.* ¶ 112.

80. *Id.* ¶ 113.

contempt of court.⁸¹

November 5, 2007: An international warrant is issued for the location and arrest of Ms. J.⁸²

December 2007: Ms. J travels to Germany to visit her younger sister.⁸³

December 28, 2007: Pursuant to the request for arrest sent out by State authorities through INTERPOL, the Police of the Cologne-Bonn Airport, in Germany, detain Ms. J when she prepares to return from London.⁸⁴

January 4, 2008: The Cologne Higher Regional Court issues an order of preventive detention against Ms. J.⁸⁵

January 21, 2008: The statute of limitations runs on the offense of apology of terrorism surpassed, thus only the crime of terrorism charge remains.⁸⁶

January 24, 2008: The State Government requests Germany to extradite Ms. J.⁸⁷

August 22, 2008: The Cologne Higher Regional Court declares the criminal prosecution of Ms. J inadmissible because it would violate the prohibition on trying someone twice for the same offense.⁸⁸

November 2009: Upon Ms. J's request, the General Secretariat of INTERPOL removes the seek and arrest order from her name.⁸⁹

B. Other Relevant Facts

[None]

81. *Id.*

82. *Id.*

83. *Id.* ¶ 116.

84. *Id.*

85. *Id.*

86. *Id.* ¶ 118.

87. *Id.*

88. *Id.* ¶ 119.

89. *Id.*

II. PROCEDURAL HISTORY

A. Before the Commission

June 17, 1997: Ms. J and her representative, Mr. Curtis Francis Doebler, submit the initial petition to the Inter-American Commission on Human Rights.⁹⁰

March 14, 2008: The Commission approves Admissibility Report No. 27/08.⁹¹

B. Before the Court

January 4, 2012: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁹²

1. Violations Alleged by Commission⁹³

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

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

Article 11 (Right to Privacy)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture.

Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Inter-American Convention on the Prevention, Punish-

90. *Id.* ¶ 2(a).

91. *Id.* ¶ 2(b).

92. *Id.* ¶ 1.

93. Jesus Mónica Feria Tinta v. Peru, Admissibility Report, Report No. 27/08. Inter-Am. Comm'n H.R., ¶ 77, (Mar. 14, 2008).

ment, and Eradication of Violence against Women.

2. Violations Alleged by Representatives of the Victims⁹⁴

Same Violations Alleged by Commission.

September 26, 2012: The State submits its preliminary objection to the Court.⁹⁵

III. MERITS

*A. Composition of the Court*⁹⁶

Manuel E. Ventura Robles, Acting President
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge
Roberto de Figueiredo Caldas, Judge
Humberto Antonio Sierra Porto, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

November 27, 2013: The Court issues its Judgment on Preliminary Objection, Merits, Reparations and Costs.⁹⁷

94. The Judgment does not indicate if the representative alleged any additional violations. Mr. Curtis Francis Doebller serves as the representative of Ms. J. J v. Peru, Preliminary Objections, Merits, Reparations and Costs, ¶ 2(a).

95. *Id.* ¶ 7.

96. The President of the Court, Judge Diego García-Sayán was a Peruvian national and did not participate in the hearing of this case. *Id.* at n.*. Judge Manuel E. Ventura Robles, the Vice-President, of the Court became the acting President for the deliberation and signature of this Judgment. *Id.*

97. *Id.* ¶ 1.

The Court unanimously rejects:

The preliminary objection raised by the State concerning the temporal competence of the Court to rule on the violation of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women,⁹⁸ because:

The State insisted that the facts alleged by Ms. J from April 13, 1992, were not within the Court's jurisdiction.⁹⁹ The State argued that this was an issue because the State did not ratify the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women until June 4, 1996, which obliged the State to act with due diligence when investigating cases of violence.¹⁰⁰ The Court discussed that Article 28 of the Vienna Convention on the Law of Treaties had codified non-retroactivity, thus, the Court could only examine facts or cases that occurred after June 4, 1996.¹⁰¹ However, just because the Court did not have competence to rule on Ms. J's 1992 rape, in regards to the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, that did not mean that the Court could not rule on whether the alleged acts constituted a violation of the American Convention.¹⁰² Thus, the Court concluded that it would examine Ms. J's arguments in regards to the alleged violations discussed in Article 7(b)(Duty to Prevent, Investigate, and Punish Violence) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women where the Court does have competence.¹⁰³ Accordingly, the Court rejected the State's preliminary objection.¹⁰⁴

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

98. *Id.* "Decides" ¶ 1.

99. *Id.* ¶ 15.

100. *Id.*

101. *Id.* ¶ 19.

102. *Id.* ¶ 20.

103. *Id.*

104. *Id.* ¶ 21.

to a Trial Within Reasonable Time), and 7(6) (Right to Have Recourse Before a Competent Court) of the American Convention, in relation to Article 1(1) and as appropriate, Article 2 of the American Convention to the detriment of Ms. J,¹⁰⁵ because:

On September 5, 1990, the department of Lima and the province of Callao were declared to be in a state of emergency.¹⁰⁶ Accordingly, a decree was in place, which limited “many constitutional freedoms such as privacy of the home, freedom of movement, freedom of association, personal liberty, and safety.”¹⁰⁷ The Court kept this decree in mind during the analysis of the Ms. J’s arrest, the delay in presenting her to a judge, and the violation against the privacy of the home.¹⁰⁸

The analysis of Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law) of the Convention requires a specific examination of the reasons and the conditions of Ms. J’s deprivation of freedom.¹⁰⁹ If the deprivation of an individual’s freedom, clashes with domestic laws, then that will be in conflict with Article 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law) of the Convention.¹¹⁰ Here, there is no reference as to where Ms. J was detained from April 28 to 30, and from April 13 to April 15 1992.¹¹¹ The ambiguity of Ms. J’s whereabouts are in conflict with the procedures of detaining an individual because the procedures require indicating clearly, “the reasons for the detention, who executed it, the time of detention, the time of release, and record that the competent judge was informed.”¹¹² Thus, because Ms. J’s detention occurred without a court order as required by State law, the failure to register Ms. J’s detention was a violation of Article 7(1) (Right to Personal Liberty and Security) and 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law).¹¹³

Furthermore, the analysis of Article 7(3)(Prohibition of Arbitrary Ar-

105. *Id.* ¶¶ 61-171.

106. *Id.* ¶ 61.

107. *Id.* ¶¶ 61, 132.

108. *Id.* ¶ 132.

109. *Id.* ¶ 126.

110. *Id.*

111. *Id.* ¶ 134.

112. *Id.* ¶ 152.

113. *Id.*

*rest or Imprisonment) requires a broad interpretation.*¹¹⁴ *Although the State was in a period of chaos and danger, it could not ignore the limits on its power.*¹¹⁵ *In order to determine whether the measures that the State took were legal, the Court looked at the nature, intensity, complexity, and particular context of the emergency, in addition to the proportionality and reasonableness of the measures adopted in relation to it.*¹¹⁶ *Moreover, it is essential that the suspension of guarantees imposed by the State did not exceed what was “strictly necessary” in the state of emergency.*¹¹⁷

*Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges) of the Convention implements procedural guarantees for people who are arrested.*¹¹⁸ *Specifically, an oral or written reason for the person’s arrest must be given, as well as a written notification of the charges.*¹¹⁹ *However, Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges) is not satisfied from a mere mention of the legalities, rather, the language indicating the charges and the reason for the arrest must be in “simple language, without using technical terminology.”*¹²⁰ *Here, the State did not inform Ms. J, or any of the other victims of the arrest, of the reasons for the detention.*¹²¹ *Accordingly, the detention was a violation of Article 7(4) (Right to Be Informed of Reasons of Arrest and Charges).*¹²²

*Article 7(5)(Right to be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) of the Convention requires the State to be prompt in judicial matters.*¹²³ *When arrests like Ms. J’s are made without a court order, it is very important that there is a prompt judicial measure and authority in place.*¹²⁴ *Ms. J did not see a judge until fifteen days after her arrest, nor were there any good reasons for this delay.*¹²⁵ *Thus, the failure to bring Ms. J to a judge violated Article 7(1) (Right to Personal Liberty and Security), Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), and Article 7(5) (Right to Be Promptly*

114. *See id.* ¶ 158.

115. *See id.* ¶ 137.

116. *Id.* ¶ 139.

117. *Id.*

118. *Id.* ¶ 149.

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* ¶ 143.

124. *Id.*

125. *Id.* ¶ 144.

Brought Before a Judge and Right to a Trial Within Reasonable Time).¹²⁶

Article 7(6) (*Right to Have Recourse Before a Competent Court*) is essentially the right to stand before a competent judge, so that the judge can promptly determine the lawfulness of the deprivation of liberty, and order the individual's release if appropriate.¹²⁷ The Court held that because Ms. J was unable to stand before a competent judge or court for ten months and five days, the State violated Article 7(6) of the Convention to the detriment of Ms. J.¹²⁸

Articles 8(1) (*Right to Hearing Within Reasonable Time by a Competent and Independent Tribunal*), 8(2) (*Right to Be Presumed Innocent*), 8(2)(b) (*Right to Have Prior Notification of Charges*), 8(2)(c) (*Right to Adequate Time and Means to Prepare Defense*), 8(2)(d) (*Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel*), 8(2)(f) (*Right of Defense to Obtain the Appearance of Witnesses and Examine Them*), and 8(5) (*Criminal Proceedings Must Be Public*) all in relation to Article 1(1) of the American Convention, to the detriment of Ms. J,¹²⁹ because:

*It is fundamental to provide reasoning for decisions related to the administration of justice.*¹³⁰ Specifically, the State's decisions that impact human rights and liberty must be rational and fair.¹³¹ Additionally, the State's decisions must show that different arguments and various pieces of evidence have been taken into account.¹³² The State's burden of establishing its reasoning for a particular decision is one of the guarantees of due process required by Article 8(1) (*Right to Hearing Within Reasonable Time by a Competent and Independent Tribunal*).¹³³ On June 18, 1993, the Lima Higher Court of Justice acquitted Ms. J, thereafter, the "faceless" Supreme Court of Justice declared that the acquittal of December 27, 1993 was null and void and thus ordered a new oral hearing.¹³⁴ The December 1993 judgment never specified on what

126. *Id.*

127. *Id.* ¶ 170.

128. *Id.* ¶ 171.

129. *Id.* ¶¶ 166-297.

130. *Id.* ¶ 224.

131. *See generally id.*

132. *Id.*

133. *Id.*

134. *Id.* ¶ 225.

fact or legal basis the judgment was declared null and void.¹³⁵ The lack of reasoning and details regarding this decision made it impossible for Ms. J to defend herself.¹³⁶ Additionally, the Supreme Court did not act in agreement with the presumption of innocence because it did not wait to convict Ms. J until there was complete evidence or evidence to establish her guilt beyond a reasonable doubt.¹³⁷ Accordingly, the Supreme Court of Justice's judgment failed to comply with the obligation to provide the reasoning for judicial decisions and therefore infringed on Ms. J's presumption of innocence in violation of Articles 8(1) (Right to Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 8(2) (Right to Be Presumed Innocent) of the Convention.¹³⁸

Article 8(2) (Right to Be Presumed Innocent) of the Convention recognizes the right to the presumption of innocence.¹³⁹ In order to abide by this principle, the State has the burden to show that the presumption of innocence was respected when the State detains an individual.¹⁴⁰ Ms. J's detention was arbitrary because the State did not provide objective and reasoned legal grounds concerning its appropriateness.¹⁴¹ Because Decree Law No. 25,475 prevented a thorough evaluation of Ms. J's detention, in addition to the fact that Ms. J was detained for about fourteen months, the State violated the right to the presumption of innocence as established in Article 8(2) (Right to Be Presumed Innocent) of the Convention.¹⁴² Furthermore, the State presented Ms. J before the press as a member of Shining Path.¹⁴³ The way she was represented through the media, followed by the "unqualified statements of diverse State officials at different times" encouraged the Peruvian community to believe in her guilt, before she had ever been convicted of the offenses.¹⁴⁴ Accordingly this tainted the judicial authority's evaluation of facts and violated Ms. J's presumption of innocence, recognized in Article 8(2) of the Convention.¹⁴⁵

Article 8(1) (Right to a Hearing Within Reasonable Time by a Compe-

135. *Id.* ¶ 226.

136. *Id.*

137. *Id.* ¶ 228.

138. *Id.* ¶ 229.

139. *Id.* ¶ 166.

140. *Id.*

141. *Id.* ¶ 168.

142. *Id.*

143. *Id.* ¶ 248.

144. *Id.*

145. *Id.*

tent and Independent Tribunal) is a procedural instrument that is aimed at the right to be tried by an impartial party.¹⁴⁶ Ms. J and her lawyer did not know the identity of either the prosecutor who brought the 1993 charge, or the judges of the Lima Higher Court of Justice or the judge of the Supreme Court of Justice because they were faceless.¹⁴⁷ Additionally, Decree Law No. 25,475 prohibited the disqualification of judges and prosecutors.¹⁴⁸ Because Ms. J did not know the identity of her judge, she was not able to assess the “aptness and competence” of the judge in addition to determine whether this was a judge that she should disqualify and therefore, present her case to an “independent and impartial judge.”¹⁴⁹ Accordingly, the Court held that trials before a “faceless” or secret judge violate Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention.¹⁵⁰ Furthermore, the intervention of the “faceless” prosecutor in the criminal proceeding against Ms. J also constitutes a violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention.¹⁵¹

Article 8(2)(b) (Right to Have Prior Notification of Charges) of the Convention highlights the right to defend oneself.¹⁵² This right requires the State to treat an individual “as a true subject of the proceedings, in the broadest sense of this concept, and not simply as its object.”¹⁵³ The rights within Article 8(2)(b) (Right to Have Prior Notification of Charges) attach before an accusation, and the notification of the crime must be established before the accused gives her first statement before any public authority.¹⁵⁴ The State has the burden to explain as explicitly, clearly, and fully as possible, the act or omissions she has been accused of, in addition to the reasons and evidence that led to the charges.¹⁵⁵ The State’s accusations of Ms. J were inconsistent.¹⁵⁶ For example, in the first stage of the criminal proceeding, Ms. J was accused of terrorism, aggravated terrorism, and membership in a terrorist organization.¹⁵⁷ Conversely, during the second stage of criminal proceedings the charg-

146. *Id.* ¶ 182.

147. *Id.* ¶ 183.

148. *Id.*

149. *Id.* ¶ 184.

150. *Id.*

151. *Id.* ¶¶ 184, 186, 189.

152. *See id.* ¶ 194.

153. *Id.*

154. *Id.* ¶ 195.

155. *Id.* ¶ 199.

156. *See Id.* ¶ 289.

157. *Id.*

es were offenses of apology of terrorism, and membership in a terrorist organization.¹⁵⁸ During the initial search of the building on Las Esmeraldas Street, Ms. J was verbally notified of the reason for her arrest.¹⁵⁹ However, even though the police told Ms. J that she was detained under terrorism suspicions, there is no record that she was notified of the facts, causes and reasons that led to the State's accusations.¹⁶⁰ Accordingly, the first statement that Ms. J gave to the public on April 21, 1992, was without any of the necessary information required to be in compliance with Article 8(2)(b) (Right to Have Prior Notification of Charges).¹⁶¹ Ms. J's defense counsel obtained the required information on April 28, 1992, after Ms. J gave her first statement.¹⁶² For these reasons, the State violated Article 8(2)(b) of the American Convention.¹⁶³

Articles 8(2)(c) (Right to Adequate Time and Means to Prepare a Defense) and 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel) detail the rights to be able to communicate freely with self-defense or legal counsel, and the right to have adequate time of preparation.¹⁶⁴ This right goes beyond the mere right to defense counsel, rather there is a higher degree of protection, in that adequate timing and means of preparation are required.¹⁶⁵ Ms. J did not meet with her lawyer without the strict supervision of State authorities.¹⁶⁶ Although the State is determined to carry out the punishment of the guilty, these interests must be "within the limits and in accordance with procedures that permit preserving both public safety and the fundamental rights of the individual."¹⁶⁷ Additionally, within the fourteen months of preventive detention, which Ms. J endured, she only had access to three supervised meetings between fifteen and twenty-five minutes with her lawyer.¹⁶⁸ Accordingly, the State violated Articles 8(2)(c) (Right to Adequate Time and Means to Prepare a Defense) and 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel) of the Convention.¹⁶⁹

158. *Id.*

159. *Id.* ¶ 198.

160. *Id.*

161. *Id.*

162. *Id.* ¶ 200.

163. *Id.*

164. *Id.* ¶ 205.

165. *Id.*

166. *Id.* ¶ 62.

167. *Id.* ¶ 206.

168. *Id.*

169. *Id.* ¶ 207.

*Article 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them) discusses the right of the accused to examine the witnesses for and against them.*¹⁷⁰ *Article 13(c) of Decree Law No. 25,475, prevented Ms. J from questioning the witnesses who added to the police's charges against her.*¹⁷¹ *This restriction on Ms. J was especially damaging considering that she denied and questioned the "content of the search records and the police attestation used as the basis for the charges against her."*¹⁷² *Accordingly, the State violated Article 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them) of the Convention, in relation to Article 1(1) to the detriment of Ms. J.*¹⁷³

*Article 8(5) (Criminal Proceedings Must Be Public) of the Convention requires public criminal proceedings.*¹⁷⁴ *Only in exceptional circumstances and in order to preserve the interests of justice, may a criminal proceeding be kept private.*¹⁷⁵ *In Ms. J's circumstances the State did not show a significant need to keep Ms. J's proceedings private.*¹⁷⁶ *Thus, the "private nature of the proceeding against Ms. J until the 2 legislative reform" of Decree-Law No. 25,475, violated Article 8(5) (Criminal Proceedings Must Be Public) of the Convention.*¹⁷⁷

Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane, or Degrading Treatment), 11(1) (Right to Honor and Dignity), and 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity) of the American Convention, in relation to Article 1(1) of this instrument, Article 6 of the Inter-American Convention to Prevent and Punish Torture, and Article 7(b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women to the detriment of Ms. J,¹⁷⁸ because:

The rights highlighted in Articles 5(1) (Right to Physical, Mental, and

170. *Id.* ¶ 208.

171. *Id.* ¶ 210.

172. *Id.*

173. *Id.*

174. *Id.* ¶ 220.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.* ¶¶ 298-378.

Moral Integrity) and 5(2) (*Prohibition of Torture, and Cruel, Inhumane, or Degrading Treatment*) underscore the State's duty to investigate possible acts of torture or other cruel, inhuman, or degrading treatment.¹⁷⁹ Additionally, Article 7(b) (*Duty to Prevent, Investigate, and Punish Violence*) of the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women*, requires the State to exercise its due diligence to open and promptly investigate the potential acts of violence against women, in particular.¹⁸⁰ The State has a duty to respect the personal integrity of anyone in its custody, and if the individual deprived of liberty appears with health problems, the State must have an explanation for the person's deteriorating state.¹⁸¹ In cases that include a claim of sexual violence, the State's duties are heightened in that the investigation requires that:

“(i) the victim's statement is taken in a safe and comfortable location, that provides privacy and confidence; (ii) the victim's statement is recorded in such a way as to avoid or limit the need to repeat it; (iii) the victim is provided with medical and psychological healthcare, on an emergency basis and continuously if it is required by a treatment protocol designed to reduce the consequences of the rape; (iv) a complete medical and psychological examination is performed immediately by appropriate trained personnel, of the sex indicated by the victim, insofar as possible, informing her that she may be accompanied by a person of her confidence if she so wishes; (v) the investigative actions are documented and coordinated and the evidence is handled diligently, taking sufficient samples, conducting tests to determine the possible authorship of the act, securing other evidence such as the victim's clothes, investigating promptly the site of the facts, and ensuring the proper chain of custody; and (vi) access to free legal assistance is provided to the victim during all stages of the proceedings.”¹⁸²

In order to determine what exactly happened to Ms. J, the Court considered five components: (1) the context at the time of the events; (2) the statements by Ms. J; (3) the forensic medical examination; (4) the testimony of the prosecutor of the Public Prosecution Service; and (5) the failure to investigate the facts described.¹⁸³

179. *Id.* ¶ 241.

180. *Id.* ¶ 342.

181. *Id.* ¶ 343.

182. *Id.* ¶ 344.

183. *Id.* ¶ 313.

During the era of Ms. J's detention the State's actions followed a specific pattern: violent arrest of the victim, a search of the victim's home, blindfolding the victim, and then taking the person to a confined location.¹⁸⁴ During this transfer, the arrestee was subjected to torture and other cruel, inhuman or degrading treatment or punishment.¹⁸⁵ Many women arrested during this time were victims of rape, sexual violence, sexual abuse, sexual blackmail, sexual harassment or inappropriate touching by State actors and subversive groups.¹⁸⁶ Specifically, DINCOTE engaged in repeated acts of sexual violence.¹⁸⁷ The corrupt practices of DINCOTE were furthered with the willful blindness of prosecutors who disregarded the complaints of the detainees and even signed statements without being present while they were taken, meaning they were incapable of guaranteeing the physical and mental integrity of the detainee.¹⁸⁸

Ms. J made statements alleging the men who arrested her, also beat her, pulled her hair, touched her sexually, and blindfolded her.¹⁸⁹ The Court notes that because sexual touching occurs in the absence of anyone other than the victim or the perpetrators, there is usually no other evidence besides the victim's statements.¹⁹⁰ When there is reason to believe that the State's jurisdiction has been involved in an act of torture, the decision to open and conduct an investigation is not a discretionary power of the State, but instead constitutes a peremptory State obligation under international law.¹⁹¹

On April 18, 1992, five days after Ms. J's initial arrest, two male physicians gave Ms. J a medical examination.¹⁹² One of the essential purposes of a medical examination is to ensure the personal integrity of the person deprived of liberty and to verify complaints of possible ill treatment and torture.¹⁹³ However, even though the medical examination revealed visible injuries on Ms. J's posterior thorax and her lower limbs there is no record of the doctors asking Ms. J where the injuries came

184. *Id.* ¶ 315.

185. *Id.*

186. *Id.* ¶ 316.

187. *Id.* ¶ 317.

188. *Id.* ¶ 319.

189. *Id.* ¶ 322.

190. *Id.* ¶ 323.

191. *Id.* ¶ 347.

192. *Id.* ¶ 327.

193. *Id.* ¶ 328.

from.¹⁹⁴ Additionally, although it is essential that the medical examination be performed by someone of the sex preferred by the victim, at no time was Ms. J asked her preference.¹⁹⁵ Accordingly, the medical report did not facilitate a trusting environment where Ms. J could reveal her version of the events.¹⁹⁶ After the medical examination, Ms. J (for the first time) revealed the facts of her initial arrest.¹⁹⁷ Even after these statements, the domestic authorities did not order additional medical examination including the new information regarding the sexual offenses.¹⁹⁸ Thus, the sexual violence was never examined medically, nor was there a psychological examination conducted on Ms. J.¹⁹⁹

The degree of promptness is essential in an effective investigation of torture.²⁰⁰ When there is a suspicion of sexual abuse, the lack of medical evidence does not take away from the truth of the victim's allegations.²⁰¹ Thus the Court finds that the medical examination is not in conflict with Ms. J's version of the events, and the fact that there were no other medical or psychological examinations cannot be used against Ms. J's retelling of the facts.²⁰² The Court concludes that Ms. J suffered various types of mistreatment at the time of her initial arrest and that reaching another conclusion would permit the State's ineffective and negligent investigative practices.²⁰³ Additionally, the Court defines sexual violence as an act of a sexual nature "committed on a person without their consent that, in addition to encompassing the physical invasion of the human body, could include acts that do not involve penetration or even any physical contact."²⁰⁴ Particularly, the inappropriate touching, which Ms. J endured, was an act of sexual violence.²⁰⁵ Thus, the ill treatment and torture that Ms. J experienced during her arrest was in direct violation of Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane, or Degrading Treatment).²⁰⁶

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.* ¶ 332.

198. *Id.*

199. *Id.*

200. *Id.* ¶ 333.

201. *Id.*

202. *Id.* ¶ 334.

203. *Id.* ¶ 356.

204. *Id.* ¶ 358.

205. *Id.* ¶ 365.

206. *Id.* ¶¶ 367-368.

In addition to the right of protection of honor and dignity, Article 11 of the American Convention essentially highlights the right to privacy.²⁰⁷ The right to privacy includes the realm of sexual life, and the right to be free from sexual violence.²⁰⁸ Accordingly, the sexual violence which Ms. J was subjected to, constitutes an interference of the “most personal and intimate” form.²⁰⁹ Accordingly, the sexual violence and mistreatment Ms. J was subjected to violated Articles 11(1) (Right to Honor and Dignity) and 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity).²¹⁰

Article 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(4) (Right of Accused to Be Segregated from Convicted Persons) in relation to Article 1(1) of the American Convention to the detriment of Ms. J,²¹¹ because:

Ms. J was kept incommunicado.²¹² International human rights law has clarified that when an individual is kept incommunicado, it may conflict with human dignity and thus, should only be used in exceptional circumstances.²¹³ Specifically, prolonged isolation can be harmful to the mental and moral integrity of the individual.²¹⁴ Additionally, although the State is required to allow people who are deprived of liberty to have contact with family members, Ms. J was forbidden to see any of her family members.²¹⁵ Accordingly, the Court held that the State violated Article 5(1) (Right to Physical, Mental, and Moral Integrity) to the detriment of Ms. J because being held incommunicado violated the appropriate procedures of depriving an individual of their liberty.²¹⁶

Article 5(4) (Right of Accused to Be Segregated from Convicted Persons) requires that states classify prison inmates in a way that separates those that are being prosecuted from those that are convicted.²¹⁷ Specifically, those who are convicted must not only be in different cells, but

207. *Id.* ¶ 367.

208. *Id.*

209. *Id.*

210. *Id.* ¶¶ 367-368.

211. *Id.* ¶ 381.

212. *Id.* ¶ 376.

213. *Id.*

214. *Id.*

215. *Id.* ¶ 378.

216. *Id.*

217. *Id.* ¶ 380.

*also in different sections from those who are being prosecuted.*²¹⁸ *Additionally, the inmates who have not been convicted should be presumed innocent until proven guilty.*²¹⁹ *Ms. J was detained in the Miguel Castro Castro Prison, a prison which failed to have a proper classification system for the different levels of prisoners.*²²⁰ *Thus, Ms. J was not separated from the prisoners who were guilty.*²²¹ *Accordingly, due to the fact that the State did not have a valid reason for this failure in separation, the State violated Article 5(4) (Right of Accused to Be Segregated from Convicted Persons) of the American Convention.*²²²

The Court decided unanimously that the State is not responsible for the violation of:

Article (11)(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor and Dignity) of the American Convention in relation to the search of the house on Casimiro Negrón Street to the detriment of Ms. J,²²³ because:

*The search of the house located on Casimiro Nerón Street was carried out with the authorization Ms. J's mother.*²²⁴ *Although Ms. J insisted that her mother was required to sign the papers allowing the search, and that the signing had in fact been coerced, the Court analyzed all the statements and evidence as a whole and held that there was insufficient evidence to conflict with the fact that Ms. J's mother signed the search record, and authorized entry into her home by the police agents.*²²⁵ *Thus, the search of Ms's J home was not in violation of Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor and Dignity) of the Convention.*²²⁶

218. *Id.*

219. *Id.*

220. *Id.* ¶ 381.

221. *Id.*

222. *Id.*

223. *Id.* ¶ 147.

224. *Id.* ¶ 146.

225. *Id.* ¶ 147.

226. *Id.*

Article 8(4) (Prohibition of Double Jeopardy) to the detriment of Ms. J,²²⁷ because:

Article 8(4) (Prohibition of Double Jeopardy) aims to protect the rights of individuals who have been prosecuted for certain acts, to ensure they will not be tried again for those same acts.²²⁸ A violation of Article 8(4) (Prohibition of Double Jeopardy) occurs if: (1) the accused has been acquitted; (ii) the acquittal must be the result of a final judgment; and (iii) the new trial must be based on the same facts that were the grounds of the first trial.²²⁹ Ms. J's June 18, 1993 acquittal was not final under domestic law.²³⁰ Additionally the secret identity of the judges lacked reasoning during the nullity proceeding, and thus the Court had no evidence that the failure to provide the reasoning for the 1993 judgment of nullity would have rendered the acquittal delivered previously in favor of Ms. J final and non-appealable.²³¹ Furthermore, the statute of limitations was not a factor in the filing of the appeal for the declaration.²³² Accordingly, the acquittal of Ms. J does not constitute a non-appealable judgment for the effects of Article 8(4)(Prohibition of Double Jeopardy) and the State is not in violation of Article 8(4).²³³

Article 9 (Freedom from *Ex Post Facto* Laws) to the detriment of Ms. J,²³⁴ because:

*Article 9 (Freedom from *Ex Post Facto* Laws) discusses the principle of legality within the criminal prosecution system.²³⁵ Legality concerns the concept that no one shall be convicted of any act or omission that did not constitute a criminal offense under the applicable law at the time it was committed.²³⁶ Additionally, an offender cannot be guilty of a criminal offense if their act was never considered illegal. Thus the notion that a particular act is illegal, has to exist before the offender committed the act.²³⁷ Furthermore, the State may not exercise its punitive powers retroactively.²³⁸ The 1991 State Criminal Code defined the*

227. *Id.* ¶ 271.

228. *Id.* ¶ 259.

229. *Id.* ¶ 262.

230. *Id.* ¶ 267.

231. *Id.* ¶ 270.

232. *Id.* ¶ 271.

233. *Id.*

234. *Id.* ¶ 284.

235. *Id.* ¶ 278.

236. *Id.*

237. *Id.* ¶ 279.

238. *Id.*

offenses of “apology of terrorism,” “crime of terrorism,” “aggravated terrorism,” and “membership in terrorist organizations.”²³⁹ In May 1992, Decree Law No. 25,475 amended the 1991 Criminal Code and included a new working definition for “crime of terrorism,” “membership in terrorist organizations,” and “apology of terrorism.”²⁴⁰ However, this new language was not applied retroactively to Ms. J in the first stage of the criminal proceedings, nor in the current proceedings.²⁴¹ Accordingly, a retroactive application of the criminal laws were never applied to Ms. J, so the State did not violate Article 9 (Freedom from Ex Post Facto Laws) of the Convention.²⁴²

The Court did not rule on:

Article 11 (Right to Privacy) of the American Convention regarding the search of the building on Las Esmeraldas Street,²⁴³ because:

*The right to privacy can be prohibited temporarily.*²⁴⁴ Accordingly, the Court stated that the search of Ms. J’s home was carried out during a state of emergency, and thus would not factor into the Court’s decision making.²⁴⁵

Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention regarding the failure to investigate the ill treatment suffered by Ms. J,²⁴⁶ because:

*The Court concluded that the State violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 11(1) (Right to Honor and Dignity), and 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor and Dignity).*²⁴⁷ In addition the State failed to investigate the specific acts that violated Articles 5 (Right to Humane Treatment) and 11 (Right to Privacy), thus it was unnecessary to make an additional ruling regarding Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Pro-

239. *Id.*

240. *Id.* ¶ 280.

241. *Id.* ¶ 283.

242. *Id.* ¶ 284.

243. *Id.* ¶ 140.

244. *Id.*

245. *Id.*

246. *Id.* “Declares” ¶ 11.

247. *Id.* ¶ 368.

tection) of the Convention based on the same facts.²⁴⁸

Article 7(6) (Right to Have Recourse Before a Competent Court) of the American Convention to the detriment of Ms. J,²⁴⁹ because:

The State implemented Decree Law No. 26,659 in August 1992, which denied any refuge or protection for individuals accused of terrorism.²⁵⁰ Thus, the Court noted that due to Decree Law No. 26,659 it was virtually impossible for Ms. J to exercise her right to recourse before a competent court and thus it was unnecessary to rule on whether there had been a violation of Article 7(6) (Right to Have Recourse Before a Competent Court).²⁵¹

The Court does not have evidence to determine whether the prosecution of Ms. J for the offense of apology of terrorism violated the principle of legality,²⁵² because:

Ms. J was never charged with the offense of apology of terrorist.²⁵³

The Court does not have evidence to determine whether Ms. J was a victim of ill treatment while she was in detention in DINCOTE, or that the State was advised of this mistreatment,²⁵⁴ because:

Although Ms. J discussed the harsh treatment she was subjected to during her arrest, she never discussed ill treatment during her detention.²⁵⁵ The Court could not determine the detention conditions from the Ms. J's briefs and initial petitions.²⁵⁶ Furthermore, there is no evidence that the State was informed of the ill treatment that Ms. J underwent in DINCOTE detention or that it has been advised of this internally.²⁵⁷

C. Dissenting and Concurring Opinions

[None]

248. *Id.*

249. *Id.* ¶ 172.

250. *Id.* ¶ 171.

251. *Id.* ¶ 172.

252. *Id.* "Declares" ¶ 12.

253. *Id.* ¶ 294.

254. *Id.* "Declares" ¶ 13.

255. *Id.* ¶ 373.

256. *Id.* ¶ 374.

257. *Id.* ¶ 375.

IV. REPARATIONS

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

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

1. Open and Conduct Effective Criminal Investigations

The attacks on personal integrity and privacy must be investigated in order to determine the appropriate measures and punishments of all of those involved.²⁵⁸ These investigations must take the appropriate investigatory protocols into consideration.²⁵⁹

2. Publish the Judgment

Should Ms. J wish that the State publish the official summary of this Judgment in: (1) the official gazette; (2) a national newspaper with widespread coverage; and (c) an official website for one year, the State must do so.²⁶⁰

3. Ensure Requirements of Due Process

The State is required to ensure that the violations against Ms. J do not reoccur.²⁶¹ Additionally the State must guarantee that the proceedings against Ms. J observe the requirements of due process of law such as full guarantees of a hearing and defense for Ms. J, as well as a determination of the effects of the violation.²⁶²

258. *Id.* ¶ 392.

259. *Id.*

260. *Id.* ¶ 398.

261. *Id.* ¶ 413.

262. *Id.*

B. Compensation

The Court awarded the following amounts:

1. Pecuniary and Non-Pecuniary Damages

The State must pay Ms. J \$40,000 for pecuniary and non-pecuniary damages.²⁶³

Additionally, because Ms. J does not live in Peru, the State must provide Ms. J \$7,000 for any psychological, psychiatric, or medicinal treatment she may need in the area she resides.²⁶⁴

2. Costs and Expenses

The State must pay Ms. J \$40,000 for the costs and expenses of the work associated with the litigation at the international level.²⁶⁵

The State must reimburse the Legal Assistance Fund \$3,683.52 for the expenses incurred during litigation.²⁶⁶

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

\$50,683.52

C. Deadlines

The State must open and conduct effective criminal investigations within a reasonable time.²⁶⁷

The State must publish the Judgment, if Ms. J wishes, within nine months of notification of the Judgment.²⁶⁸

The State must provide the \$40,000 in pecuniary and non-pecuniary damages within a reasonable time frame established by the Court.²⁶⁹

The State must provide the Court with the \$3,683.52 for the Legal Assistance Fund within ninety days of notification of this Judgment.²⁷⁰

263. *Id.* ¶ 417. The Court was not able to sufficiently determine the pecuniary and non-pecuniary damages in this case, and thus awards this amount in equity. *Id.*

264. *Id.* ¶ 397.

265. *Id.* ¶ 423.

266. *Id.* ¶ 428.

267. *Id.* ¶ 392.

268. *Id.* ¶ 398.

269. *Id.* ¶ 417.

270. *Id.* ¶ 428.

Finally, the State must provide the Court with a report of the measures taken in compliance with this Judgment within one year of its notification.

V. INTERPRETATION AND REVISION OF JUDGMENT

March 17, 2014: The representatives requested an interpretation of certain aspects of the Judgment.²⁷¹ The representatives requested clarification as to: (1) the evidentiary source of paragraph 87 concerning the events on Las Esmeraldas Street, as they believed there was a material error that impacted the Court's analysis contained in paragraph 147; and (2) the legal consequences resulting from the State's violation of Ms. J's judicial guarantees, as discussed in paragraph 227.²⁷²

March 21, 2014: The State requested an interpretation of certain aspects of the Judgment.²⁷³ The State requested interpretation as to the scope of the judgment, specifically: (1) whether the facts in paragraphs 357-368 should be classified as torture or cruel, inhuman, or degrading treatment, or if the national courts should determine said qualification; (2) the criteria and methodology used by the Court to arrive at the costs and expenses contained in paragraph 422; and (3) that it correct Mr. Federico Javier Moya Llaque's title as a Specialized Attorney for Crimes of Terrorism.²⁷⁴

A. Composition of the Court²⁷⁵

Humberto Antonio Sierra Porto, President
Roberto de Figueiredo Caldas, Vice President
Manuel E. Ventura Robles, Judge,
Eduardo Vio Grossi, Judge
Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary

271. J. v. Peru, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C), No. 275 ¶ 2 (Nov. 20, 2014). (Available only in Spanish)

272. *Id.* ¶ 2.

273. *Id.* ¶ 3.

274. *Id.*

275. The President of the Court, Judge Diego García-Sayán was a Peruvian national and did not participate in the deliberation or signature of the Judgment. *Id.* n.1. For reasons beyond his control, Judge Alberto Pérez Pérez was unable to participating in the deliberation and signature of the interpretation of the Judgment. *Id.*

Emilia Segares Rodríguez, Deputy Secretary

B. Merits

First, as to the State's request regarding the qualification of Ms. J's treatment, the Court recognized that although Ms. J was a victim of sexual violence, the Court could not determine whether this treatment constituted torture or cruel, inhuman, or degrading treatment.²⁷⁶ The State should investigate this matter and make a determination through its domestic proceedings.²⁷⁷

Second, the Court addressed the representative's request for a clarification as to the legal consequences imposed upon the State due to its failure to afford Ms. J her judicial guarantees, specifically that her acquittal in 1993 had no legal effect.²⁷⁸ In its Judgment, however, the Court found no evidence establishing that the State committed this violation.²⁷⁹ Because parties may not request an interpretation of the Judgment as a means of challenging the Court's judgment, the Court found this request by the representatives improper.²⁸⁰ If the State's internal investigations find that Ms. J indeed suffered due process violations, reparations should be determined through domestic proceedings.²⁸¹

Next, with regard to the State's request for an explanation of the methods used to determine the costs and expenses awarded, the Court referred to paragraphs 422 and 423 of the Judgment, stating that said paragraphs sufficiently explained the Court's methodology.²⁸²

Finally, the Court addressed clerical errors contained within the judgment.²⁸³ Although Article 76 of the Rules of Procedure dictate that clerical errors should be corrected within one month of the issuance of the judgment, the Court may correct such errors beyond this time on its own accord.²⁸⁴ In the Judgment, the Court used inconsistent titles to describe Mr. Federico Javier Moya Llaque's position; therefore, it will amend the Judgment so that he is consistently referred to as a Specialized Attorney for Crimes of Terrorism.²⁸⁵ The second clerical error involved the "material error" regarding the events at Las Esmeraldas

276. *Id.* ¶ 21.

277. *Id.*

278. *Id.* ¶¶ 25, 27.

279. *Id.* ¶ 27.

280. *Id.* ¶ 29.

281. *Id.* ¶ 30.

282. *Id.* ¶ 35.

283. *Id.* ¶ 36.

284. *Id.*

285. *Id.* ¶ 37.

Street.²⁸⁶ Based on the statement given by Ms. J's mother, the Court will change "Las Esmeraldas Street" to the street of Ms. J's mother's business.²⁸⁷ However, the Court found that this error did not impact its findings elsewhere in the Judgment.²⁸⁸

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[J. v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 275 \(Nov. 27, 2013\).](#)

2. Decisions on Merits, Reparations and Costs

[J. v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 275 \(Nov. 27, 2013\).](#)

3. Provisional Measures

[J. v. Peru, Provisional Measures, Order of the Acting President of the Court, Inter-Am. Ct. H.R. \(ser. C\) \(Oct. 24, 2012\).](#)

[J. v. Peru, Provisional Measures, Order of the Acting President of the Court, Inter-Am. Ct. H.R. \(ser. C\) \(Apr. 16, 2013\).](#)

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[J. v. Peru, Interpretation of the Judgment on Preliminary Objection,](#)

286. *Id.* ¶ 38.

287. *Id.*

288. *Id.* ¶ 41.

[Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\), No. 275 \(Nov. 20, 2014\) \(Available only in Spanish\).](#)

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

J. v. Peru, Admissibility Report, Report No. 27/08, Inter-Am. Comm'n H.R. (Mar. 14, 2008).

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[None]

VIII. BIBLIOGRAPHY

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