

# Tarazona Arrieta et al. v. Peru

## ABSTRACT<sup>1</sup>

*This case is about the accidental shooting of three civilians travelling on a bus by soldiers of Peru's armed forces. Prosecution of the soldier responsible for the shooting was first halted by an amnesty law, and then resumed after the Inter-American Court, in the Barrios Altos v. Peru case, had found the amnesty in violation of the American Convention. Eventually, the Court found Peru in violation of the American Convention for the unreasonably long prosecution of the shooter and for failing to take measures to implement domestically the Convention.*

## I. FACTS

### A. Chronology of Events

**August 9, 1994:** At approximately 8:40 p.m., a military truck carrying fifteen soldiers is dispatched to patrol the Ate Vitarte neighborhood of Lima, Peru.<sup>2</sup> Expecting to encounter suspicious activity, the patrol leader, Army Technician Antonio Enrique Vivas Chapilliquen, orders his men to disembark from their vehicle and continue on foot.<sup>3</sup> Army Technician Vivas Chapilliquen's fourteen soldiers pair off into seven groups and patrol the neighborhood.<sup>4</sup> The patrol plans to investigate the area by questioning civilians and asking for identification.<sup>5</sup> Sergeant (Sgt. 2<sup>o</sup>) Antonio Mauricio Evangelista Pinedo, age eighteen, and a little over a year into his service, is paired with Corporal (Cabo) José Carlos Arica López.<sup>6</sup>

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2. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 286, ¶ 30 (Oct. 15, 2014).

3. *Id.* ¶ 31.

4. *Id.*

5. *Id.*

6. *Id.*

Near the patrol area, Ms. Zulema Tarazona Arrieta, Ms. Norma Teresa Pérez Chávez, both age 22, and Mr. Luis Alberto Bejarano Laura, age 27, are riding a public bus when it stops to pick up a passenger.<sup>7</sup> After picking up the passenger the bus begins to drive away, but Sergeant Evangelista Pinedo and Corporal Arica López approach the vehicle and order the driver to stop.<sup>8</sup> The bus driver does not see the soldiers and continues to drive away.<sup>9</sup> Sergeant Evangelista Pinedo raises his weapon and fires on the bus.<sup>10</sup> The bullet barrage kills Ms. Tarazona Arrieta and Ms. Pérez Chávez, and Mr. Bejarano Laura is severely injured in the stomach but survives after extensive surgery.<sup>11</sup>

Army Technician Vivas Chapilliquen hears the shots from afar, and notices Sergeant Evangelista Pinedo and Corporal Arica López are missing.<sup>12</sup> Shortly after, a nearby civilian approaches him and tells him that his soldiers fired on a bus and two people were injured.<sup>13</sup> Army Technician Vivas Chapilliquen and his troops rush to the scene of the shooting, where they find both Sergeant Evangelista Pinedo and Corporal Arica López.<sup>14</sup> When questioned, both Sergeant Evangelista Pinedo and Corporal Arica López deny firing on the bus.<sup>15</sup>

Subsequently, the troops go to the National Directorate of Criminal Investigation (“DININCRI”) of the National Police (“PNP”) to write reports on the incident and begin investigating whether Sergeant Evangelista Pinedo fired the shots.<sup>16</sup>

At approximately 11:15 p.m., the 27th Provincial Criminal Prosecutor’s Office of Lima (“Provincial Prosecutor”) orders the PNP Homicide Division to oversee the investigation.<sup>17</sup>

**August 10, 1994:** The Chief of the Delegation of the National Police sends a report to his superior alerting him of the investigations

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7. Tarazona Arrieta et al. v. Peru, Report on Merits, Report No. 72/12, Inter-Am. Comm’n H.R., Case No. 11.581, ¶ 2 (Nov. 8, 2012).

8. *Id.*

9. *Id.*

10. *Id.*

11. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 34.

12. *Id.* ¶ 32.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* ¶ 33.

17. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 35.

regarding the shooting that took place in his jurisdiction, allegedly committed by members of the military.<sup>18</sup>

Concurrently, the central command of the Motorized Infantry Battalion (“BIM”) notifies the Brigade General Commander of the First Division of Special Forces Las Palmas (“DIFFE”) about the shooting.<sup>19</sup> The report states Sergeant Evangelista Pinedo is directly responsible for the shooting and that his recklessness caused the death of two civilians and injury of a third.<sup>20</sup>

Sergeant Evangelista Pinedo testifies before military officials and confesses to being responsible for the shooting.<sup>21</sup> He also confesses to leaving the scene of the shooting and not reporting the shooting to his commander because he was afraid of being punished.<sup>22</sup>

The President of the War Council of the 2<sup>nd</sup> Judicial Zone receives a complaint from the Commander General of the First DIFFE accusing Sergeant Evangelista Pinedo of negligent homicide and demanding he turn over the weapon fired.<sup>23</sup>

**August 12, 1994:** The National Human Rights Coordinator (“CNDDHH”) files a grievance with the Office of the Prosecutor for the killing, wounding, and desertion of Ms. Tarazona Arrieta and Ms. Pérez Chávez.<sup>24</sup>

**Later in August 1994:** The National Police of Peru’s Directorate of Criminal Investigations receives oral testimony from three witnesses<sup>25</sup>: Corporal Arica López, who was with Sergeant Evangelista Pinedo at the time of the shooting; Sergeant Evangelista Pinedo, the alleged shooter; and Mr. Bejarano Laura, the surviving victim injured in the shooting.<sup>26</sup> Corporal Arica Lopez testifies that he was with Sergeant Evangelista Pinedo at the time of the incident and that he saw him fire his weapon at the bus.<sup>27</sup> Corporal Arica Lopez also states that he believes Sergeant Evangelista Pinedo accidentally fired his weapon, and that his intentions were only to make the bus driver stop but that his weapon accidentally

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18. *Id.*

19. *Id.* ¶ 36.

20. *Id.*

21. Tarazona Arrieta et al. v. Peru, Report on Merits, ¶ 38.

22. *Id.* ¶ 18.

23. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 38.

24. *Id.* ¶ 39.

25. Tarazona Arrieta et al. v. Peru, Report on the Merits, ¶ 71.

26. *Id.*

27. *Id.*

discharged.<sup>28</sup> Sergeant Evangelista Pinedo also states his weapon accidentally discharged when he pulled it from his waist and raised it to stop the bus, and that he left the scene without reporting the incident because he was afraid of being punished by his commander.<sup>29</sup> The investigation concludes and confirms Sergeant Evangelista Pinedo was the suspect behind the shooting.<sup>30</sup>

**August 25, 1994:** The Provincial Prosecutor's Office receives the CNDDHH complaint from the Supreme Deputy Prosecutor in Charge of the General Secretariat of the Office of the Public Prosecutor.<sup>31</sup>

**August 31, 1994:** The Permanent War Council ("the War Council") opens an official investigation into the crimes committed by Sergeant Evangelista Pinedo.<sup>32</sup> The criminal investigation looks at the homicide of Ms. Tarazona Arrieta and Ms. Pérez Chávez and the tortious injury of Mr. Bejarano Laura.<sup>33</sup> The War Council approves the jurisdiction of the Third Permanent Military Court of Lima ("the Military Court").<sup>34</sup>

**September 13, 1994:** The Military Court orders the arrest of Sergeant Evangelista Pinedo.<sup>35</sup>

**November 2, 1994:** The Provincial Prosecutor files a criminal complaint before the 27th Criminal Court of Lima ("Criminal Court") against Sergeant Evangelista Pinedo for the death of Ms. Tarazona Arrieta and Ms. Pérez Chávez and for the injuries sustained by Mr. Bejarano Laura.<sup>36</sup>

**November 24, 1994:** The Military Court requests the Criminal Court refrain from hearing the case because of the pending proceedings before the Military Court, and because the alleged crime was committed while

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28. *Id.*

29. *Id.* ¶ 18.

30. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 41.

31. *Id.* ¶ 39.

32. *Id.* ¶ 40.

33. *Id.*

34. *Id.*

35. *Id.* ¶ 43.

36. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 41.

Sergeant Evangelista Pinedo was on a military operation.<sup>37</sup> Accordingly, the matter fell within the Military Court's jurisdiction.<sup>38</sup>

**November 25, 1994:** In response to the Provincial Prosecutor's Office's request, the Military Court begins its investigation of Sergeant Evangelista Pinedo.<sup>39</sup> The Military Court demands the indictment of Sergeant Evangelista Pinedo.<sup>40</sup>

**January 10, 1995:** Mr. Santiago Pérez Vera, Ms. Pérez Chavez's father, and Mr. Victor Tarazona Hinostroza, Ms. Tarazona Arrieta's father, submit briefs requesting they be added as parties in the criminal hearings.<sup>41</sup> Mr. Santiago Pérez Vera's request is accepted.<sup>42</sup>

**January 11, 1995:** Mr. Tarazona Hinostroza's request is accepted.<sup>43</sup>

**January 25, 1995:** Mr. Pérez Vera asks the Criminal Court to issue an arrest warrant for Sergeant Evangelista Pinedo.<sup>44</sup> He also requests that Army Technician Vivas Chapilliquen, the patrol commander on the night of the incident, re-deliver his testimony before the court.<sup>45</sup>

**April 25, 1995:** The Provisional Prosecutor requests a 30-day extension for the Criminal Court to carry out various proceedings and suggests, among other things, that the defendant's instructions be received and that the military personnel assigned to the BIM on the night of the incident appear before the court.<sup>46</sup>

**May 2, 1995:** The Criminal Court allows the extension, for the period of instruction, to carry out various proceedings.<sup>47</sup>

**May 22, 1995:** The victims' representatives request that the Criminal Court gather testimony from passengers on the bus that witnessed the shooting.<sup>48</sup>

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37. *Id.* ¶ 43.

38. *Id.*

39. *Id.* ¶ 45.

40. *Id.*

41. *Id.* ¶ 46.

42. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 46.

43. *Id.* ¶ 44.

44. *Id.*

45. *Id.*

46. *Id.* ¶ 47.

47. *Id.*

**June 14, 1995:** Amnesty Law No 26,479 (“Law No 26,479”) is approved by Congress and grants amnesty against the criminal prosecution of military, police, and civilians for their involvement in counter-terrorism operations, beginning in May 1980 until the date the law goes into effect.<sup>49</sup>

**June 16, 1995:** The civil party argues, via letter, that Law No 26,479 is unconstitutional and requests that the Provincial Prosecutors office not apply the law in this case.<sup>50</sup>

**June 20, 1995:** The Supreme Counsel of Military Justice applies Law No 26,479 to Sergeant Evangelista Pinedo’s case because his actions fell within the scope of counter-terrorism operation.<sup>51</sup> The resolution orders the retraction of any restrictions placed on the freedom of the accused, in addition to the cancellation of police, judicial, and criminal records.<sup>52</sup>

**June 22, 1995:** In response to the official letter granting an extension to the Provisional Prosecutor, sent on May 2, 1995 by the Criminal Court of Lima, members of the Army patrol appear before the court to testify.<sup>53</sup>

**June 23, 1995:** Sergeant Evangelista Pinedo requests that the Criminal Court, like the Military Court, apply Law No. 26,479 to his case.<sup>54</sup>

**June 28, 1995:** Congress broadly interprets Law No. 26,492’s Article One to grant amnesty for “all the facts derived or occasioned by or resulting from the fight against terrorism from May 1980 to June 14, 1995.”<sup>55</sup>

**June 30, 1995:** The Criminal Court allows an additional 30-day extension based on the August 25, 1995 request by the prosecutor.<sup>56</sup>

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48. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 47.

49. Tarazona Arrieta et al. v. Peru, Report on Merits, ¶ 20.

50. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 51.

51. *Id.* ¶ 52.

52. *Id.*

53. *Id.* ¶ 57.

54. *Id.* ¶ 53.

55. *Id.* ¶ 50.

56. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 54.

**July 24, 1995:** Mr. Pérez Vera requests the Criminal Court not apply Law No. 26,479 in Sergeant Evangelista Pinedo's criminal case by arguing that its application would be unconstitutional.<sup>57</sup>

**August 3, 1995:** Sergeant Evangelista Pinedo files an "exception of *res judicata*" opposition with the Criminal Court.<sup>58</sup> He argues that although cases were brought against him both in the Military Court and the Criminal Court, he gained amnesty through the Military Court's application of Law No. 26,479.<sup>59</sup> As such, under the principle of *res judicata*, a second judgment in the Criminal Court on the same matter would be precluded by the determination reached in the Military Court.<sup>60</sup>

**August 18, 1995:** The Provincial Prosecutor delivers its opinion before the Criminal Court, finding Sergeant Evangelista Pinedo's *res judicata* argument valid based on sound reasoning.<sup>61</sup>

**September 7, 1995:** The Provincial Prosecutor restates its opinion to the Criminal Court.<sup>62</sup>

**September 11, 1995:** The Criminal Court approves Sergeant Evangelista Pinedo's *res judicata* objection and orders the resolution of the case.<sup>63</sup> In turn, the resolution orders the prompt release of Sergeant Evangelista Pinedo and for the court records to be nullified.<sup>64</sup>

**September 12, 1995:** The Criminal Judge asks the Military Court to promptly release Sergeant Evangelista Pinedo,<sup>65</sup> and he is released from custody that day.<sup>66</sup>

**April 19, 2001–January 21, 2003:** Sergeant Evangelista Pinedo's criminal case is closed.<sup>67</sup>

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57. *Id.* ¶ 55.

58. *Id.* ¶ 56.

59. *Id.*

60. *Id.*

61. *Id.* ¶ 58.

62. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 58.

63. *Id.* ¶ 59.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

**March 14, 2001:** The Inter-American Court of Human Rights issues its judgment in the case of *Barrios Altos v. Peru*,<sup>68</sup> and finds that Amnesty Laws No. 26,479 and No. 26,492 do not comply with the American Convention on Human Rights, and therefore, should have no legal effect.<sup>69</sup>

**April 19, 2001:** The parties to the criminal case request the Criminal Court void the September 11, 1995 decision and reopen the case.<sup>70</sup> The parties argue that Law No. 26,492 has no legal effect and refer to the ruling in *Barrios Altos v. Peru* to support their argument.<sup>71</sup>

**June 7, 2001:** The victim's next of kin ask the Supreme Council of Military Justice to annul the amnesty granted to Sergeant Evangelista Pinedo, and to nullify the September 11, 1995 decision.<sup>72</sup>

**January 31 and April 25, 2002:** The next of kin restates their request to the Supreme Council of Military Justice.<sup>73</sup>

**August 29, 2001:** The Provincial Prosecutor's Office proposes that the petitioners' requests be declared inadmissible, because the petitioners included a copy of the *Barrios Altos* case but did not adhere to established judicial procedures.<sup>74</sup>

**October 23, 2002:** The Provincial Prosecutor's Office rules to continue the proceedings, after receiving the *Barrios Altos* judgment in compliance with judicial procedures.<sup>75</sup>

**January 21, 2003:** The case is resumed in the ordinary jurisdiction after the judgment issued in *Barrios Altos v. Peru*,<sup>76</sup> which declares Law

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68. In this case, the Inter-American Court determined the State was responsible for the massacre of fifteen civilians by the Peruvian army and that the government's attempt to protect those responsible for carrying out the massacre through the passage of amnesty laws was in violation of the American Convention on Human Rights. Tarazona Arrieta et al. v. Peru, Report on Merits, ¶ 20.

69. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 59.

70. *Id.* ¶ 60.

71. *Id.*

72. *Id.* ¶ 61.

73. *Id.*

74. *Id.* ¶ 62.

75. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 63.

76. Tarazona Arrieta et al. v. Peru, Official Summary of Judgment, Preliminary Objection, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 286, ¶ 4 (Oct. 15, 2014).

No. 26,479 incompatible with the American Convention of Human Rights.<sup>77</sup> The term of instruction is extended to restate the criminal procedures and recapture of the accused.<sup>78</sup>

**May 12, 2003:** The Provincial Prosecutor requests the judge grant them an extension of thirty days to restart their investigation.<sup>79</sup> The prosecutor claims it needs more time to locate and recapture Sergeant Evangelista Pinedo and obtain testimony from Sergeant Evangelista Pinedo's former patrol members.<sup>80</sup>

**July 15, 2003:** The testimony of Third Army Technician Vivas Chapilliquen, the commander of the patrol on the night the incident occurred, is taken.<sup>81</sup>

**July 18, 2003:** The civil party asks the Criminal Court to make the State a responsible third party because the case involves actions committed by the Peruvian Army on behalf of the State.<sup>82</sup>

**July 21, 2003:** Mr. Tarazona Hinostroza's testimony is taken.<sup>83</sup>

**September 12, 2003:** The Provincial Court is given the opinion of the Prosecutor describing the process for finding Sergeant Evangelista Pinedo and noting the failings of the investigation.<sup>84</sup>

**September 25, 2003:** The Prosecutor asks the Criminal Court to make the State responsible third parties, because the case involves actions committed by the Peruvian Army on behalf of the State.<sup>85</sup>

**December 22, 2003:** The Ministry of Defense is declared responsible as a third party for possible payment of reparations.<sup>86</sup>

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77. *Id.*

78. *Id.*

79. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 65.

80. *Id.*

81. *Id.* ¶ 66.

82. *Id.* ¶ 67.

83. *Id.*

84. *Id.*

85. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 67.

86. *Id.*

**May 7, 2004:** The Third Superior Criminal Prosecutor's Office of Lima requests a fifty-day extension to obtain Sergeant Evangelista Pinedo's testimony and to obtain the testimony of Sergeant Evangelista Pinedo's former patrol members.<sup>87</sup>

**May 21, 2004:** The fifty-day extension is granted.<sup>88</sup>

**November 2, 2004:** The criminal judge issues a ruling warning that imperative steps were still incomplete and orders the following: (1) that he be given prompt notice of the location and recapture of the accused; (2) that testimony be obtained from members of the patrol; and (3) that the Office of the Army Personnel be immediately contacted for information about Sergeant Evangelista Pinedo's work status, and if found active, that the information be made available to the Court.<sup>89</sup>

**August 2, 2005:** The Criminal Court extends the investigation for another thirty days, to allow for the completion of the above-mentioned proceedings.<sup>90</sup> The Criminal Court made an order to oversee the National Registry of Identification and Civil Status to secure the testimony of the patrol members.<sup>91</sup>

**September 21, 2005:** The criminal judge refuses to continue hearing the case because an administrative resolution expands the reach of the Specialized Courts for terrorism crimes.<sup>92</sup> As a result, the case is remanded to the Superior Court of Justice of Lima so that it can be sent to the Specialized Court of Competent Terrorism Offenses.<sup>93</sup>

**December 19, 2005:** The Provincial Criminal Court requests an exceptional extension period to implement various proceedings, including the collection of the defendant's testimony and that of eleven patrol members.<sup>94</sup>

**May 30, 2006:** The Senior Prosecutor of the National Criminal Superior Prosecutor's office requests permission from the President of the

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87. *Id.* ¶ 68.

88. *Id.*

89. *Id.* ¶ 69.

90. *Id.* ¶ 70.

91. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 70.

92. *Id.* ¶ 71.

93. *Id.*

94. *Id.* ¶ 72.

National Criminal Chamber for an additional twenty-day extension to continue the investigation.<sup>95</sup>

**May 31, 2006:** The National Criminal Court denies the extension request because the allowable investigation period lapsed, and the investigation period was previously extended on multiple occasions with no results to show for the extensions.<sup>96</sup>

**July 14, 2006:** The Fourth National Criminal Superior Prosecutor indicts Sergeant Evangelista Pinedo for the deaths of Ms. Tarazona Arrieta and Ms. Pérez Chavez, and for the serious injury of Mr. Bejarano Laura, and asks for a ten-year incarceration, in addition to 30,000 *nuevo sols* in damages (approximately 9,600 United States dollars) for each victim.<sup>97</sup>

**October 3, 2006:** Sergeant Evangelista Pinedo cannot be found, and therefore, the trial is not scheduled.<sup>98</sup>

**2007 to 2008:** Throughout 2007 and 2008, the petitioners request that the President of the National Criminal Chamber update Sergeant Evangelista Pinedo's arrest warrant.<sup>99</sup> The warrant is forwarded to the following locations: (1) The Office of Requisition of the National Police, to ensure the prompt location and capture of Sergeant Evangelista Pinedo; (2) the Immigration Directorate of the Ministry and the National Office of Electoral Processes, to determine if Sergeant Evangelista Pinedo left the country or participated in the recent state elections; and (3) the judicial police, to acquire a report on actions taken to capture the accused.<sup>100</sup>

**June 27, 2007:** The National Criminal Chamber reinstates the arrest warrants.<sup>101</sup>

**July 12, 2007:** The Immigration Division informs the National Criminal Chamber that they have no record of Sergeant Evangelista Pinedo leaving the State.<sup>102</sup>

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95. *Id.* ¶ 73.

96. *Id.*

97. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 74.

98. *Id.* ¶ 75.

99. *Id.*

100. *Id.*

101. *Id.* ¶ 76.

**July 16, 2007:** The National Office of Electoral Processes informs the National Criminal Chamber that Sergeant Evangelista Pinedo voted in the recent general elections as well as regional and municipal elections of the same year.<sup>103</sup>

**November 22, 2007:** The National Criminal Chamber orders the above-mentioned reports to be made part of the record.<sup>104</sup>

**January 7, 2008:** The National Criminal Chamber orders the arrest warrants be re-issued.<sup>105</sup>

**June 4, 2008:** The National Criminal Chamber orders that the office sent by the Head of the Catch Department – Division of Judicial Police – be included in the file, stating that locating and capturing the accused has not been feasible, in addition to plans to locate him.<sup>106</sup>

**June 20, 2008:** The Bureau of the Parties gives notification that Sergeant Evangelista Pinedo is found and orders him to be placed in the proper penal institution.<sup>107</sup>

**June 27, 2008:** The Secretariat of the Bureau of Parties reports that the accused is being held in the Lurigancho Criminal Institution.<sup>108</sup> Subsequently, the National Criminal Chamber schedules oral trial for July 21, 2008.<sup>109</sup>

**July 23, 2008:** The National Criminal Chamber finds Sergeant Evangelista Pinedo guilty of the homicides of Ms. Tarazona Arrieta and Ms. Pérez Chávez, and liable for causing serious injury to Mr. Bejarano Laura.<sup>110</sup> He is ordered to financially compensate Mr. Bejarano Laura, and the relatives of the deceased.<sup>111</sup> He receives a sentence of six years

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102. *Id.*

103. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 76.

104. *Id.*

105. *Id.* ¶ 77.

106. *Id.*

107. *Id.* ¶ 78.

108. *Id.*

109. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 78.

110. Tarazona Arrieta et al. v. Peru, Official Summary of Judgment, ¶ 5.

111. *Id.*

in prison, reduced by his prior incarceration from September 13, 1994 to August 29, 1995.<sup>112</sup>

**March 4, 2009:** The General Command of the Peruvian Army receives notice of the judgment.<sup>113</sup>

**April 27, 2009:** The petitioners request the judge of the Fourth Supra-Provincial Criminal Court demand the Peruvian Army also pay damages to the victims.<sup>114</sup>

**April 28, 2009:** The Fourth Supra-Provincial Criminal Court orders that the damages issue be resolved by March 4, 2009.<sup>115</sup>

**June 2009:** The petitioners present their request to collect damages from the army.<sup>116</sup>

**August 4, 2009:** The petitioners reiterate their request to collect damages from the army.<sup>117</sup>

**August 5, 2009:** The Fourth Supra-Provincial Criminal Court orders the Peruvian Army, as a responsible third party, to pay the victims.<sup>118</sup>

**November 30, 2009:** The Army's General Office of Economy sends a judicial deposit to the Fourth Supra-Provincial Criminal Court in the amount of 5,000 *nuevo sols* (approximately 1,700 United States dollars) to Mr. Bejarano Laura, and 15,000 *nuevo sols*, (approximately 5,100 United States dollars), to Ms. Tarazona Arrieta, to conclude civil reparations.<sup>119</sup>

**December 15, 2009:** The Fourth Supra-Provincial Criminal Court notifies Mr. Tarazona Hinostroza that the General Office of Economy of Peruvian Army paid him \$15,000 *nuevo sols*.<sup>120</sup>

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112. *Id.*

113. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 83.

114. *Id.* ¶ 84.

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 85.

120. *Id.*

**January 29, 2010:** Sergeant Evangelista Pinedo is granted parole and released from Lurigancho Penitentiary by the 16<sup>th</sup> Criminal Court of Lima.<sup>121</sup>

**July 2011:** The rest of the reparation ordered on July 23, 2008 is tendered to the legal heirs of Ms. Tarazona Arrieta and Ms. Pérez Chávez, and Mr. Bejarano Laura, before July 2011.<sup>122</sup>

### B. Other Relevant Facts

Between 1980 and 2000, the State is plagued by a civil war that causes the death of nearly 70,000 people, the majority of whom are civilians caught in the cross-fire between State forces and rebel groups.<sup>123</sup> One of the more infamous rebel groups is the *Sendero Luminoso*, or Shining Path, a leftist terrorist group that uses violence against both government forces and civilians suspected of supporting the government.<sup>124</sup> It is estimated that the Shining Path is responsible for 54 percent of all deaths in the twenty-year conflict.<sup>125</sup>

The government's response to rebel activity is brutal: it cracks down on all insurgent groups and allows its forces to indiscriminately kill individuals suspected of having ties to the Shining Path or other rebel groups.<sup>126</sup> In 1990, in a surprise victory, Alberto Fujimori is elected president of Peru.<sup>127</sup> President Fujimori sets out to fix the State's many problems through a series of measures that "suppress... civil liberties and erode... political institutions and notions of accountability."<sup>128</sup> When his measures are met with opposition, President Fujimori, with support from the military, institutes a self-coup in 1992 that temporarily dissolves the legislature which allows him to take authoritarian-like control over the State.<sup>129</sup> During his quasi-dictatorship, the State's use of death squads to stamp out suspected insurgent groups is common-place and results in tragedies such as the

121. *Id.* ¶ 81.

122. *Id.* ¶ 86.

123. Juan Forero, *Peru Report Says 69,000 Died in 20 Years of Rebel War*, N.Y. TIMES (Aug. 29, 2003), <http://www.nytimes.com/2003/08/29/world/peru-report-says-69000-died-in-20-years-of-rebel-war.html?pagewanted=all&src=pm>.

124. Peru, *Encyclopedia of Human Rights* (2009).

125. Forero, *supra* note 123.

126. Jocelyn E. Getgen, *Untold Truths: The Exclusion of Enforced Sterilizations from the Peruvian Truth Commission's Final Reports*, 29, B.C. THIRD WORLD L.J., 1, 7 (2009).

127. *Profile: Alberto Fujimori*, BBC NEWS (Dec. 8, 2011) <http://www.bbc.com/news/world-latin-america-16097439>.

128. Getgen, *supra* note 126 at 8.

129. *Id.*

Barrios Altos Massacre.<sup>130</sup> The Barrios Altos Massacre occurs in the Barrios Altos neighborhood of Lima when a group of masked men, later confirmed to be government paramilitaries hunting Shining Path members, gun down fifteen people at a family party.<sup>131</sup> Human rights abuses during President Fujimori's rule are deemed to be "generalized and systematic."<sup>132</sup>

## II. PROCEDURAL HISTORY

### A. Before the Commission

**January 22, 1996:** The Association for Human Rights (*Asociación Por Derechos Humanos*; APRODEH), Mr. Tarazona Hinojosa, and Mr. Pérez Vera file a petition with the Inter-American Commission of Human Rights against the State for the murders of Ms. Tarazona Arrieta and Ms. Pérez Chávez, and for the injuries sustained by Mr. Bejarano Laura.<sup>133</sup>

**October 10, 2001:** The Commission declares the petition admissible.<sup>134</sup>

**November 8, 2012:** The Commission issues its Report on the Merits.<sup>135</sup> The Commission determines that the State violated Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), Article 5(1) (Right to Physical, Mental, and Moral Integrity), Article 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, although it finds that the violations of Article 4(1) and 5(1) are partially remedied because the victims received some compensation.<sup>136</sup>

The Commission recommends that the State take the following actions: (1) properly compensate victims for the fourteen-year delay in the criminal proceeding; (2) take measures to ensure diligent and quick investigations involving lethal force by armed service members; and (3) adopt measures to prevent similar occurrences in the future.<sup>137</sup>

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130. Dan Collyns, 'Network of corruption': Fujimori's legacy at heart of fierce battle for Peru's future, *THE GUARDIAN* (June 3, 2016), <https://www.theguardian.com/world/2016/jun/03/peru-election-alberto-fujimori-keiko-pedro-pablo-kuczynski>.

131. *Id.*

132. Forero, *supra* note 123.

133. Tarazona Arrieta et al. v. Peru, Report on Merits, ¶ 1.

134. *Id.* ¶ 8.

135. *See generally id.*

136. *Id.* ¶ 179.

137. Tarazona Arrieta et al. v. Peru, Report on Merits, ¶ 180.

*A. Before the Court*

**June 3, 2013:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>138</sup>

1. Violations Alleged by Commission<sup>139</sup>

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

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

Article 25 (Right to Judicial Protection)

*in relation to:*

Article 1(1) (Obligation of Non-Discrimination)

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

2. Violations Alleged by Representatives of the Victims<sup>140</sup>

Same Violations Alleged by the Commission.

III. MERITS

*A. Composition of the Court*<sup>141</sup>

Humberto Antonio Sierra Porto, President

Roberto F. Caldas, Vice President

Manuel E. Ventura Robles, Judge

Eduardo Vio Grossi, Judge

Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary

Emilia Segaras Rodriguez, Deputy Secretary

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138. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 2.

139. Tarazona Arrieta et al. v. Peru, Report on Merits, ¶ 179.

140. *Id.* ¶ 1.

141. Judge Diego García-Sayán, of Peruvian nationality, in accordance with Article 19.1 of the Inter-American Court's Rules of Procedure, does not participate in the deliberations of this judgment. In addition, Judge Alberto Pérez Pérez, by reason of *force majeure*, is unable to participate in the deliberation of this judgment. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs. n.1.

*B. Decision on the Merits*

**October 15, 2014:** The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.<sup>142</sup>

The Court dismissed the State’s preliminary objection because<sup>143</sup>:

*The State claimed that if the Court heard arguments relating to violations of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection), it would be acting as a court of “fourth instance” since the judicial proceedings had not only concluded, but had resulted in a favorable verdict to the victims.<sup>144</sup> When determining whether a State breached its international obligations, the Court is not acting as a court of “fourth instance,” but acting within its capacity as an international judicial body.<sup>145</sup> Therefore, the Court rejected the State’s preliminary objection.<sup>146</sup>*

The Court found unanimously that State had violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Bejarano Laura, Mr. Tarazona Hinostrroza, Ms. Lucila Arrieta, Ms. Santiago Pérez Vera and Ms. Nieves Emigdia Chávez Rojas,<sup>147</sup> because:

*The Court found that the State failed to prosecute Sergeant Evangelista Pinedo within a reasonable time.<sup>148</sup> The Court first analyzed whether the internal investigation occurred within a reasonable time.<sup>149</sup> The amount of time considered begins at the procedural stage and ends when the final judgment is ordered.<sup>150</sup> The Court determined that the*

142. Tarazona Arrieta et al. v. Peru, Report on Merits, ¶ 3.

143. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 1.

144. *Id.* ¶ 20.

145. *Id.* ¶ 22.

146. *Id.* ¶ 24.

147. *Id.* ¶ 122.

148. *Id.* ¶ 95.

149. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 98.

150. *Id.* ¶ 99.

*criminal proceedings against Sergeant Evangelista Pinedo lasted roughly sixteen years and two months,<sup>151</sup> beginning with the first procedural act, which occurred on November 2, 1994, to the final conviction, which occurred on January 6, 2011.<sup>152</sup> The Court also considered how long it took to receive compensation following the final judgment.<sup>153</sup>*

*The Court examined four factors to determine whether the criminal proceedings of Sergeant Evangelista Pinedo had been processed within a reasonable time.<sup>154</sup> These included: (1) the complexity of the case; (2) the procedural activity of the interested party; (3) the judicial authority's conduct; and (4) the defendant's involvement in the proceedings.<sup>155</sup>*

*First, the Court concluded that the prosecution of Sergeant Evangelista Pinedo was not a complex case.<sup>156</sup> Specifically, the facts were not so complex to warrant a sixteen-year delay.<sup>157</sup> Sergeant Evangelista Pinedo confessed to his wrongdoing and his confession was corroborated by witness testimony.<sup>158</sup>*

*Second, the Court took note of: the request of the parents of the victims to be civil parties in the process; the non-application of the amnesty law; the reopening of the criminal process; the nullification of Sergeant Evangelista Pinedo's conviction; and the multiple re-issuances of Sergeant Evangelista Pinedo's arrest warrant.<sup>159</sup>*

*Third, with regard to the behavior of judicial authorities, the Court found several examples of decisions that contributed to the delay, including: (1) delays in the initial instruction; (2) delays in the selection of a competent judge, considering that for about a year the case was heard by two different jurisdictions (the civil and the military); (3) on multiple occasions prosecutors requested extensions to the investigation deadlines, of which one was granted; (4) the criminal court's*

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151. *Id.*

152. *Id.* ¶ 101.

153. *Id.*

154. *Id.* ¶ 102.

155. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 102.

156. *Id.* ¶ 103.

157. *Id.*

158. *Id.*

159. *Id.* ¶ 104.

application of Amnesty Law 26,492 delayed proceedings for approximately seven years; (5) the delay in the re-capture of Sergeant Evangelista Pinedo; and (6) the time elapsed in making reparations.<sup>160</sup>

Finally, the Court determined that the above-mentioned behavior of the judicial authorities implicated the fourth element: “the extent of a potential effect on the legal position of the persons involved in the proceedings for the duration of the proceedings.”<sup>161</sup>

Thus, because the State did not conduct the criminal proceeding against Mr. Evangelista Pinedo within a reasonable amount of time, the Court concluded that the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention.<sup>162</sup>

Article 2 (Obligation to Give Domestic Legal Effect to Rights), in relation to Articles (4) (Right to Life), (5) (Right to Physical, Mental, and Moral Integrity), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) of the Convention, to the detriment of Ms. Tarazona Arrieta, Ms. Pérez Chávez, Mr. Bejarano Laura, Mr. Tarazona Hinostroza, Ms. Bellena, Mr. Pérez Vera, and Mr. Rojas,<sup>163</sup> because:

*In Barríos Altos v. Peru, the Court noted that the State’s Law No. 26,479’s provisions “prevent the investigation and punishment of those responsible for serious violations of human rights.”*<sup>164</sup>

*Sergeant Evangelista Pinedo’s criminal proceedings were unjustly closed for over seven years because Law No. 26,479 granted him protection from prosecution.*<sup>165</sup> *However, the prosecuting court in 2008 established that Sergeant Evangelista Pinedo had “acted with possible willful conduct.”*<sup>166</sup> *The Court determined the matter had always been a*

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160. *Id.* ¶¶ 106-20.

161. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 104.

162. *Id.* ¶ 122.

163. *Id.* ¶ 158.

164. *Id.* ¶ 155.

165. *Id.* ¶ 156.

166. *Id.* ¶ 157.

straightforward homicide and serious injury case.<sup>167</sup> The Court further established that “acts of investigation practiced d[id] not reveal a decision to kill the passengers.”<sup>168</sup> Therefore, by applying Law No 26,479 to Sergeant Evangelista Pinedo’s case, the State violated Article 2 (Obligation to Give Domestic Legal Effect to Rights) in relation to Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25 (Right to Judicial Protection) to the detriment of Mr. Bejarano Laura and the families of Ms. Tarazona Arrieta and Ms. Pérez Chávez.<sup>169</sup>

Additionally, in previous cases where the Court examined potentially unlawful uses of force, the use of force typically resulted from a planned operation by State authorities.<sup>170</sup> Here, the Court recognized that the same analysis was inapplicable because the shot was “accidental” and therefore had no pre-established purpose.<sup>171</sup> As a result, the analysis for this violation would have to be examined under different jurisprudence.<sup>172</sup>

The Court examined national and international regulations regarding use of force by State armed forces.<sup>173</sup> It considered domestic and international laws in existence at the time the events took place.<sup>174</sup> It took into consideration the 1990 Basic Principles on the Employment of Force and Firearms by Law Enforcement Officials, and concluded that the State did not have adequate internal regulations to prevent and circumvent the use of force.<sup>175</sup> Specifically, the State’s regulations on the use of force by state agents did not meet requirements on safeguards to prevent the lethal use of force.<sup>176</sup> Furthermore, the State did not provide its forces with training on giving medical attention and assistance to those wounded.<sup>177</sup> In addition, the Court found that Sergeant Evangelista Pinedo did not take necessary precautions to

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167. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 157.

168. *Id.*

169. *Id.* ¶ 158.

170. *Id.* ¶ 162.

171. *Id.*

172. *Id.*

173. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶¶ 162-63.

174. *Id.* ¶ 164.

175. *Id.* ¶ 165.

176. *Id.* ¶ 167.

177. *Id.*

avoid discharging his firearm, and that he and his companion failed to tend to the wounded.<sup>178</sup>

*In conclusion, the Court held that the State was responsible for breaching its responsibility to implement domestic law that would prevent the unlawful use of force and provide aid to injured individuals.<sup>179</sup> Therefore, the Court found the State in violation of Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention, in relation to the rights to life and personal integrity enshrined in Articles 4 (Right to Life) and 5 (Right to Humane Treatment) of the Convention, to the detriment of Ms. Tarazona Arrieta, Ms. Pérez Chávez, and Mr. Bejarano Laura.<sup>180</sup>*

### C. Dissenting and Concurring Opinions

[None]

## IV. REPARATIONS

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

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

#### 1. Publish the Judgment

The Court ordered the State to publish the official summary of the Judgment, at least once, in the State's Official Gazette and in another newspaper of broad nationwide dissemination, and the operative paragraphs of the Judgment within six months of notification of this Judgment.<sup>181</sup> Further, the Court ordered the State to publish the entire Judgment on an official State website for one year.<sup>182</sup>

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178. *Id.*

179. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 169.

180. *Id.*

181. *Id.* ¶ 7.

182. *Id.*

## 2. Report on Measures Adopted to Comply with the Court's Judgment

Within a period of one year from the date of notification of the present judgment, the State must submit to the Court a report on the measures adopted.<sup>183</sup>

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

[None]

#### 2. Non-Pecuniary Damages

[None]

#### 3. Costs and Expenses

The Court ordered the State to pay \$10,000 to the representatives,<sup>184</sup> for reimbursement of cost and expenses incurred during the national and international litigation of the case.<sup>185</sup> The Court also noted that it might order the State to further reimburse the representatives for expenses incurred to monitor the compliance of this judgment.<sup>186</sup>

Additionally, the Court ordered the State reimburse the Victim's Legal Assistance Fund \$2,308.91.<sup>187</sup>

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

\$12,308.91

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183. *Id.* ¶ 9.

184. *Id.* ¶ 200.

185. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 200.

186. *Id.*

187. *Id.* ¶ 203.

### C. Deadlines

The State must publish the Judgment in the Official Gazette and another nationally circulated publication within six months of notice of the Judgment.<sup>188</sup>

The State must publish within one year the Judgment in full on an official website and keep it posted for one year.<sup>189</sup>

The State must pay, within six months from the notice of the Judgment, \$10,000 to the representatives.<sup>190</sup>

The State must reimburse, within ninety days from the notice of the Judgment, \$2,030.89 to the Victim's Legal Assistance Fund.<sup>191</sup>

The State must submit to the Court, within one year, a compliance report on the requested measures.<sup>192</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

[None]

## VII. LIST OF DOCUMENTS

### A. Inter-American Court

#### 1. Preliminary Objections

[None]

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

[Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 286, \(Oct. 15, 2014\). \(Available Only in Spanish\).](#)

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188. *Id.* ¶ 7.

189. *Id.*

190. *Id.* ¶ 200.

191. Tarazona Arrieta et al. v. Peru, Preliminary Objection, Merits, Reparations and Costs, ¶ 203.

192. *Id.* ¶ 9.

## 3. Provisional Measures

[Tarazona Arrieta et. al. v. Peru, Order of the President of the Court, Victim's Legal Assistance Fund Request, Inter-Am. Ct. H.R. \(ser. C\) \(Jan. 22, 2014\).](#)

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[None]

*B. Inter-American Commission*

## 1. Petition to Commission

[Not Available]

## 2. Report on Admissibility

[Not Available]

## 3. Provisional Measures

[None]

## 4. Report on Merits

[Tarazona Arrieta et al. v. Peru, Report on Merits, Report No. 72/12, Inter-Am. Comm'n H.R., Case No. 11.581, \(Nov. 8, 2012\).](#)

## 5. Application to the Court

[Not Available]

## VIII. BIBLIOGRAPHY

Juan Forero, *Peru Report Says 69,000 Died in 20 Years of Rebel War*, N.Y. TIMES (Aug. 29, 2003), [http://www.nytimes.com/2003/08/29/world/peru-report-says-69000-died-in-20-years-of-rebel-war.html?pagewanted=all&src=pm.](http://www.nytimes.com/2003/08/29/world/peru-report-says-69000-died-in-20-years-of-rebel-war.html?pagewanted=all&src=pm)