

Tenorio Roca et. al. v. Peru

ABSTRACT¹

This case is about the forced disappearance of a young man who was reporting for duty in the military and of the captain who was suspected of having disappeared him. The Court found violation of several articles of the American Convention, as well as of the Inter-American Convention on the Forced Disappearance of Persons.

I. FACTS

A. Chronology of Events

July 7, 1984: Rigoberto Tenorio Roca is traveling in a bus from the city of Huanta to Huamanga (Ayacucho), to report to the Military Infantry Base No. 51 Los Cabbitos and inquire about his military recruitment.² Members of the Navy and the Investigation Police of Peru (PIP) intercept the bus and request identification from the passengers.³ After his identification is verified, Mr. Tenorio Roca is arrested, his face is covered with a jacket, and he is forced into an armored car as his wife, Mrs. Cipriana Huamani Anampa, and other passengers watch.⁴ He is driven to the Navy Barracks in the Municipal Stadium of Huanta.⁵

July 8, 1984: Mrs. Huamani Anampa and her children search for Mr. Tenorio Roca at the Navy barracks, but are forced to leave following death threats from the soldiers.⁶

1. Kevin Zipser, Author; Raymond Chavez, Editor; Kimberly Barreto, Chief IACHR Editor; Cesare Romano, Faculty Advisor

2. Tenorio Roca et al., v. Peru, Report on the Merits, Report No. 34/13, Inter-Am. Comm'n H.R., Case No. 12.745, ¶ 58 (July 10, 2013).

3. *Id.*

4. *Id.* ¶¶ 58-59.

5. *Id.* ¶ 59.

6. *Id.* ¶ 62.

July 9, 1984: Mrs. Huamani Anampa goes to the Office of the Prosecutor, requesting help for Mr. Tenorio Roca, but the Prosecutor refuses and warns her something bad will happen if she continues to search.⁷

July 10, 1984: *Diario Extra*, a tabloid newspaper, publishes an article describing Mr. Tenorio Roca's arrest, stating he is being detained and interrogated in the Municipal Stadium of Huanta for being linked to the terrorist group the Shining Path.⁸

July 18, 1984: The Department Head of Education of Ayacucho sends a letter to the Military Political Chief of the Emergency Sub-Area of the Province of Huanta requesting that Mr. Ternorio Roca be provided his due process rights.⁹

July – August, 1984: Mr. Tenorio Roca's relatives petition for an investigation into Mr. Tenorio Roca's arrest and whereabouts with the Provincial Prosecutor's Office of Huanta, Political Military Command in Ayacucho, Ministry of the Interior, Second Army Military Region and the Presidency of the Joint Command of the Armed Forces.¹⁰

August 24, 1984: Approximately fifty bodies in advanced state of decay are found in the pits of Pucayacu, showing macroscopic evidence of violent deaths caused by bullet impacts, perforations and other injuries.¹¹ The approximate age, sex, cause and probable date of the death are recorded for the victims.¹²

October 12, 1984: The Instructor Judge of the Province of Huanta opens a criminal investigation into Captain Álvaro Artaza Adrianzén for homicide and issues an arrest warrant.¹³

November 6, 1984: The Permanent Court Martial of the Navy opens an investigation against Captain Artaza Adrianzén for the death of the fifty unidentified persons.¹⁴

7. *Id.*

8. Tenorio Roca et al. v. Peru, Report on the Merits, ¶ 61.

9. *Id.* ¶ 78.

10. *Id.*

11. *Id.* ¶ 75.

12. *Id.*

13. *Id.* ¶ 71.

14. Tenorio Roca et al., v. Peru, Report on the Merits, ¶ 72.

November 16, 1984: The trial court Judge of Huanta recuses himself from hearing the case.¹⁵

November 14-23, 1984: The Substitute Instructor Judge of the Navy orders: (1) the Electoral Registry of Huamanga and Huanta to provide the residences of missing people; (2) the PIP to issue a statement and ballistic expert opinions; (3) edicts allowing relatives of missing people to appear before the Court of Instruction of the Navy in Huanta as witnesses, and; (4) four doctors in the Regional Hospital Management of Ayacucho to perform autopsies on the corpses found in the graves of Pucayacu.¹⁶

January 1985-March 1986: The ad Hoc Prosecutor's Office of Human Rights requests information on the whereabouts of Mr. Tenorio Roca to the National Penitentiary Institute, Directorate of Judicial Police of the Public Prosecutor's Office, General Command of the Second Military Region and the General Director of the Electoral Registry of Peru.¹⁷

January 10, 1985: The Correctional Court revokes the investigation, stating jurisdiction properly belonged to the Supreme Court of Justice.¹⁸

January 29, 1985: The owner of the company which owned the bus Mr. Tenorio Roca was riding provides the Deputy Provincial Prosecutor of the Province of Huanta with a list of the 14 passengers that were on the bus on July 7, 1984.¹⁹

February 13, 1985: Captain Artaza Adrianzén delivers a statement before the Substitute Marine Examining Judge in Lima, denying the allegations against him.²⁰ Members of the Navy assigned to Huanta when the arrest occurred also testify and deny the allegations against Captain Artaza Adrianzén.²¹

February 22, 1985: The Substitute Marine Examining Judge orders Captain Artaza Adrianzén's unconditional freedom, stating the situation has been resolved.²²

15. *Id.*

16. *Id.* ¶ 73.

17. *Id.* ¶ 79.

18. *Id.* ¶ 72.

19. *Id.* ¶ 80.

20. Tenorio Roca et al., v. Peru, Report on the Merits, ¶ 74.

21. *Id.*

22. *Id.*

Mar 29, 1985: The Provincial Prosecutor of Huanta informs the Prosecutor Superior Dean of the Judicial District of Ayacucho to notify the 14 people who were possible passengers on the bus with Mr. Tenorio Roca, but no one appears.²³

April 10, 1985: The Second Criminal Chamber of the Supreme Court of Justice establishes jurisdiction over the case.²⁴ The Provincial Prosecutor's Office receives the declaration of Mrs. Huamani Anampa.²⁵

November 17, 1985: The Substitute Marine Examining Judge in Lima declares that Captain Artaza Adrianzén did not commit homicide and dismisses the charges against him.²⁶

Dec 23, 1985: The Prosecutor's Office files a criminal complaint against Captain Artaza Adrianzén for kidnapping Mr. Tenorio Roca and Juan Medina Gray.²⁷

January 3, 1986: The Huanta Examining Magistrate opens an investigation against Captain Artaza Adrianzén for kidnapping.²⁸

January 21, 1986: The Superior Council of Military Justice dismisses the arrest warrants and charges Captain Artaza Adrianzén.²⁹

February 2, 1986: Captain Artaza Adrianzén is declared missing.³⁰

March 5, 1986: The Superior Council of Military Justice grants jurisdiction over the case to the War Council of the Legal Area of the Air Force.³¹

September 16, 1986: The Office of the Investigative Police of Peru in Huanta informs the Trial Court of Huanta it could not take the statement of the bus driver because he no longer works with the transport company.³²

23. *Id.* ¶ 81.

24. *Id.* ¶ 72.

25. *Id.* ¶ 83.

26. Tenorio Roca et al., v. Peru, Report on the Merits, ¶ 77.

27. *Id.* ¶ 83.

28. *Id.* ¶ 84.

29. *Id.* ¶ 77.

30. *Id.* ¶ 88.

31. *Id.*

32. Tenorio Roca et al., v. Peru, Report on the Merits, ¶ 86.

September 25, 1986: The Court of Instruction of Huanta postpones Captain Artaza Adrianzén's trial.³³

March 30, 1987: The Permanent Judge of the Air Force informs the Chairman of the Permanent Council of War of the Air Force it is impossible to prove Captain Artaza Adrianzén abused his authority because Mr. Tenorio Roca was not a military or civil employee of the Army, and Captain Artaza Adrianzén is still missing.³⁴

January 19, 1990: The Judge of First Instance in Civil and Instruction of Huanta refuses to continue the case and refers it to military jurisdiction based on article 10 of Law No. 24150, which provides the military jurisdiction over crimes by military members while on duty in emergency areas.³⁵

June 19, 1995: The Supreme Council of Military Justice grants amnesty to Captain Artaza Adrianzén.³⁶

April 17, 1996: The Sixth Civil Court of Lima declares Captain Artaza Adrianzén dead in absentia.³⁷

March 7, 2003: The Truth and Reconciliation Commission issues a report analyzing human rights violations occurring in Huanta in 1984 and indicates that members of the Navy directly participated in at least 57 forced disappearances.³⁸

March 16, 2004: The State declares Article 10 of Law No. 24150 unconstitutional.³⁹

November 28, 2006: The Second Supraprovincial Criminal Court of Lima opens an investigation into the named Navy members, but finds no cause to initiate legal proceedings against the accused because the allegations did not constitute a punishable act.⁴⁰

33. *Id.*

34. *Id.* ¶ 92.

35. *Id.* ¶ 87.

36. *Id.* ¶ 95.

37. *Id.* ¶ 96.

38. Tenorio Roca et al., v. Peru, Report on the Merits, ¶ 97.

39. Tenorio Roca et al., v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 314, ¶ 203 (June 22, 2016).

40. *Id.* ¶¶ 14, 101.

February 19, 2008: The First Supra-National Criminal Prosecutor's Office of Ayacucho orders for DNA samples be collected from the recovered bodies and their relatives.⁴¹

May 29, 2008: The Ombudsman's Office concludes concluding that the available evidence allows a reasonable presumption that Mr. Tenorio Roca was forcibly disappeared while in the custody of members of the Navy acting under the orders of Captain Artaza Adrianzén.⁴²

July-August 2012: The First Supraprovincial Criminal Court of Lima orders the completion of autopsies and forensic examinations of the fifty discovered bodies from the Forensic Investigation Laboratory of Ayacucho and the Criminal Courts of Huamanga and Huanta, department of Ayacucho.⁴³

Sept 6, 2012: The National Criminal Court informs the Coordinator of the National Criminal Superior Prosecutor's Office the autopsies and forensic examinations remain unexecuted.⁴⁴

B. Other Relevant Facts

Between 1983 and 1984, Army and Navy soldiers used forced disappearances as a deterrent mechanism for militants, potential members or supporters of irregular armed groups and to obtain information, eliminate suspects, and intimidate the public.⁴⁵ The disappearances were extremely prevalent in the provinces of Ayacucho, Huancavelica, and Apurímac.⁴⁶

II. PROCEDURAL HISTORY

A. Before the Commission

November 13, 1998: Mrs. Huamani Anampa and the National Committee of Relatives of the Detained, Disappeared and Refugee in Lima files a petition alleging the forced disappearance of Mr. Tenorio Roca by the State.⁴⁷

41. Tenorio Roca et al., v. Peru, Report on the Merits, ¶ 30.

42. *Id.* ¶¶ 66, 68.

43. Tenorio Roca et al., v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 105.

44. *Id.* ¶ 104.

45. Tenorio Roca et al., v. Peru, Report on the Merits, ¶ 44.

46. *Id.*

47. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

February 1, 2007: The Association Pro Human Rights and the International Federation of Human Rights become co-petitioners.⁴⁸

March 15, 2010: The Commission declares the case admissible.⁴⁹

July 10, 2013: The Commission approves the Merits Report and concludes that the State violated Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5.1 (Right to Physical, Mental, and Moral Integrity), 5.2 (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 7 (Right to Personal Liberty), 8.1 (Right to Hearing Within Reasonable Time by a Competent and Independent), and 25.1 (Right of Recourse Before a Competent Court) of the American Convention, in relation to Articles 1.1 (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights, as well as Articles I (Obligation to Adopt Measures) and III (Obligation to Adopt Legislative Measures) of the Inter-American Convention on Forced Disappearances of Persons.⁵⁰ The Commission recommends: (1) an effective and complete investigation into the whereabouts of Mr. Tenorio Roca, including the return of his remains to his family if he is deceased; and (2) the State adopt psychological care programs for Mr. Tenorio Roca's family members and human rights training programs for the Armed Forces training schools.⁵¹

B. Before the Court

September 1, 2014: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁵²

1. Violations Alleged by Commission⁵³

To the detriment of Mr. Tenorio Roca:

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 5.1 (Right to Physical, Mental, and Moral Integrity)

48. *Id.* ¶ 2.

49. *See* Tenorio Roca et al. v. Peru, Admissibility Report, Report No. 4/10, Inter-Am. Comm'n H.R., Pet. No. 664-98 (Mar. 15, 2010).

50. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

51. *Id.*

52. *Id.*

53. Tenorio Roca et al., v. Peru, Report on the Merits, ¶¶ 1, 3.

Article 5.2 (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

Article 7 (Right to Personal Liberty)

Article 8.1 (Right to Hearing Within Reasonable Time by a Competent and Independent)

Article 25.1 (Right of Recourse Before a Competent Court)

all in relation to:

Article 1.1 (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights),

2. Violations Alleged by Representatives of the Victim⁵⁴

To the detriment of Mr. Tenorio Roca:

Same Violations Alleged by Commission, plus:

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

March 9, 2015: The State submits two preliminary objections, arguing: (1) failure to exhaust domestic remedies; and (2) the Court lacks competence to hear the case regarding forced disappearances because the events occurred before the State ratified the Inter-American Convention on the Forced Disappearance of Persons.⁵⁵ The Court dismisses the first preliminary objection because it was not raised during the admissibility phase, the proper time for such an objection.⁵⁶ It dismisses the second preliminary objection and determines it has jurisdiction because, even though the events occurred before the State's ratification of the Inter-American Convention on the Forced Disappearance of Persons, forced disappearances have a continuous nature.⁵⁷ Therefore, the events continue to after the State ratified the Convention and the Court has jurisdiction over the case.⁵⁸

June 21, 2016: The Court begins the deliberation of the judgment.⁵⁹

54. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 5.

55. *Id.* ¶ 6.

56. *Id.* ¶ 24.

57. *Id.* ¶ 31.

58. *Id.*

59. *Id.* ¶ 13.

III. MERITS

A. *Composition of the Court*

Roberto F. Caldas, President
Eduardo Ferrer Mac-Gregor Poisot, First Vice-President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge
Elizabeth Odio Benito, Judge
Eugenio Raúl Zaffaroni, Judge
L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri., Secretary
Emilia Segaras Rodríguez, Deputy Secretary

B. *Decision on the Merits*

June 22, 2016: The Court issues its Judgment on the Preliminary Objections, Merits, Reparations and Costs.⁶⁰

The Court found unanimously that the State had violated:

Articles 3 (Right to Juridical Personality), 4.1 (Prohibition of Arbitrary Deprivation of Life), 5.1 (Right to Physical, Mental, and Moral Integrity), 5.2 (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), and 7 (Right to Personal Liberty), in relation to Article 1.1 (Obligation of Non-Discrimination) of the Convention, and I(a) (Prohibition of Practicing, Tolerating or Permitting Forced Disappearances) to the detriment of Mr. Tenorio Roca,⁶¹ because:

Article I(a) (Prohibition of Practicing, Tolerating or Permitting Forced Disappearances) of the Inter-American Convention on Forced Disappearance of Persons provides for no tolerance of forced disappearances and that the State must punish anyone responsible within a State's jurisdiction.⁶² A forced disappearance occurs when there is: (1) deprivation of freedom; (2) direct intervention by state agents; and (3) the state's failure to recognize the arrest or locate the victim.⁶³ Here, the Court concluded Mr. Tenorio Roca was forcibly disappeared after the

60. See Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs.

61. *Id.* ¶ 157.

62. *Id.* ¶ 142.

63. *Id.* ¶ 141.

State verified his identity and affirmed that his arrest did not correlate with any ongoing investigation or court case.⁶⁴ This action is considered a selective arrest, which is typical of the State's behavior during its pattern of forced disappearances.⁶⁵ Additionally, despite his family's multiple attempts to gather information on his disappearance, the State at first denied that Mr. Tenorio Roca was even taken, and failed to update his family on his whereabouts.⁶⁶

The Court recognized that Mr. Tenorio Roca's disappearance occurred during a state of emergency, meaning the State suspended several rights, including the right to personal freedom.⁶⁷ However, when Mr. Tenorio Roca was transferred to the Municipal Stadium of Huanta, the State abused its power because it failed to record his presence and he was not made available to a competent judge.⁶⁸ Accordingly, the State violated Article 7 (Right to Personal Liberty) of the American Convention to the detriment of Mr. Tenorio Roca.⁶⁹

Because Mr. Tenorio Roca was taken during a pattern of forced disappearances, the State placed him in a specially vulnerable situation where there was an increased risk to his personal integrity and life.⁷⁰ Specifically, Mr. Tenorio Roca was physically abused when he was arrested and taken in a military convoy, and was taken to the Municipal Stadium of Huanta, a detention center infamous for torturing its detainees.⁷¹ Moreover, the Court recognized the inherent physical and mental suffering in forced disappearances, where the victim is isolated, receives no communication, and does not know what will happen.⁷² Therefore, the Court found that the State violated Articles 5.1 (Right to Physical, Mental, and Moral Integrity) and 5.2 (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the American Convention to the detriment of Mr. Tenorio Roca.⁷³

Additionally, the Court opined that the very nature of forced disappearances places a victim in a situation of vulnerability, in which

64. *Id.* ¶ 147.

65. *Id.*

66. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 152.

67. *Id.* ¶ 156.

68. *Id.* ¶ 157.

69. *Id.*

70. *Id.* ¶ 158.

71. *Id.*

72. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 158.

73. *Id.*

there is an increased risk for many of his human rights, including the right to life, to be violated.⁷⁴ Forced disappearances frequently entail the clandestine execution of a detainee without a judgment and hiding the corpse to conceal the evidence of the crime.⁷⁵ Noting that Mr. Tenorio Roca has been missing for 32 years, the Court found the State violated Article 4.1 (Prohibition of Arbitrary Deprivation of Life) of the American Convention.⁷⁶

Finally, the Court noted that forced disappearance of a person constitutes one of the most serious forms of theft of a victim from the entire legal system, denies the victim's very existence, and deprives the victim of his legal status in both the state and international community.⁷⁷ This leads to a violation of Article 3 (Right to Juridical Personality) because by refusing to acknowledge a person has disappeared or refraining from determining the victim's location, the state is taking the victim's personal and legal security and "directly prevents the recognition of legal personality."⁷⁸ Here, the Court determined that the State placed Mr. Tenorio Roca in a state of legal uncertainty, preventing him from exercising his rights and denying him recognition of his legal personality.⁷⁹ Even though the State created legal measures, such as starting an investigation, to determine his whereabouts, the Court found these mechanisms to be a "legal fiction" because the State failed to appropriately investigate the whereabouts of Mr. Tenorio Roca.⁸⁰ Therefore, the Court found that the State violated Article 3 (Right to Juridical Personality) of the American Convention to the detriment of Mr. Tenorio Roca.⁸¹

Articles 8.1 (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25.1 (Right of Recourse Before a Competent Court) in relation to Article 1.1 (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, as well as in relation to articles I(b) (Duty to Punish Forced Disappearances) and III (Obligation to Adopt Legislative Measures) of the Inter-American Convention on Forced Disappearances

74. *Id.* ¶ 159.

75. *Id.*

76. *Id.*

77. *Id.* ¶ 160.

78. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 160.

79. *Id.* ¶ 163.

80. *Id.*

81. *Id.*

of People, as well as the right to truth, to the detriment of Mr. Tenorio Roca and his family,⁸² because:

First, the Court emphasized the importance for States to adopt all measures necessary to investigate forced disappearances, punish those responsible, determine the truth of what happened with the disappearance, and locate the victim and inform his family.⁸³ These actions show that the State is fulfilling its obligation to prevent the conditions in which patterns of forced disappearances occur.⁸⁴ This obligation to investigate forced disappearances is reinforced by Article I(b) (Duty to Punish Forced Disappearances) of the Inter-American Convention on Forced Disappearances of People.⁸⁵ Here, the Court reasoned that the State failed to utilize fundamental elements of an effective investigation, including: (1) investigating the Municipal Stadium of Huanta to discover relevant information of Mr. Tenorio Roca's disappearance and whereabouts; (2) receiving declarations of eyewitness accounts from the bus driver and passengers on the bus Mr. Tenorio Roca was taken from; and (3) taking the statements of Mr. Palomino Vargas and Mr. Flores Rojas, who were in the vehicle that took Mr. Tenorio Roca.⁸⁶ The Court found these omissions to be manifestly unreasonable and contrary to the State's obligation to conduct effective investigations into forced disappearances.⁸⁷ Furthermore, the State's military jurisdiction hampered the investigation into Captain Artaza Adrianzén, the primary suspect, by failing to make him appear before the State courts and declaring him abducted and murdered without substantial evidence.⁸⁸ Accordingly, the Court determined the State failed to conduct the investigation into Mr. Tenorio Roca's death with due diligence.⁸⁹

Second, the Court acknowledged the limited nature of military jurisdictions in terms of human rights violations, as military jurisdictions can only exercise a restricted and exceptional scope over crimes

82. *Id.* ¶ 249. The Court determined Mr. Tenorio Roca's family to include: Cipriana Huamaní Anampa, Gladys Marleni Tenorio Huamaní, Gustavo Adolfo Tenorio Huamaní, Jorge Rigoberto Tenorio Huamaní, Walter Orlando Tenorio Huamaní, Maritza Roxana Tenorio Huamaní, Jaime Tenorio Huamaní, Ingrid Salomé Tenorio Huamaní, Edith Carolina Tenorio Huamaní, Isidora Roca Gómez and Juan Tenorio Roca

83. *Id.* ¶ 166.

84. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 166.

85. *Id.* ¶ 167.

86. *Id.* ¶ 181.

87. *Id.* ¶ 182.

88. *Id.* ¶ 187.

89. *Id.* ¶ 189.

committed by active military personnel that threaten the legal interest of the military.⁹⁰ Thus, the State's military jurisdiction did not have the ability to conduct an effective investigation into and find and punish those responsible for Mr. Tenorio Roca's disappearance.⁹¹ The Court further emphasized Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) obliges States to refrain from referring human rights violations to military jurisdictions as a due process guarantee.⁹² Here, the investigations into the grave of 50 bodies and Mr. Tenorio Roca's disappearance were pursuant to allegations indicating the violation of State criminal law and the American Convention, not military jurisdiction.⁹³ Accordingly, by referring the investigation to the military jurisdiction, the State denied Mr. Tenorio Roca and his family due process rights, including access to a competent, impartial, and independent judge.⁹⁴

Third, the Court determined that because the State granted amnesty to Captain Artaza Adrianzén, the investigation into Mr. Tenorio Roca's disappearance was closed for several years.⁹⁵ Even though it was reopened, the investigation still remains in the beginning stages.⁹⁶ Moreover, the investigation was only reopened because it related to another case previously adjudicated by the Court.⁹⁷ Therefore, the Court determined the State failed to comply with its Article 2 (Obligation to Give Domestic Legal Effect to Rights) duty by allowing the State's amnesty laws to impede the investigation into Mr. Tenorio Roca's disappearance for eight years.⁹⁸

Fourth, the Court reiterated a State's obligation, derived from Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention and Article III (Obligation to Adopt Legislative Measures) of the Inter-American Convention on the Forced Disappearance of Persons, to adopt domestic law criminalizing and punishing forced disappearances.⁹⁹ Here, even though the State reopened the investigation into Mr. Tenorio Roca's death and changed its laws related to forced disappearances to

90. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 194.

91. *Id.*

92. *Id.* ¶ 196.

93. *Id.* ¶ 197.

94. *Id.* ¶ 195.

95. *Id.* ¶ 211.

96. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 211.

97. *Id.* ¶ 218.

98. *Id.* ¶ 219.

99. *Id.* ¶ 225.

match international standards, the Court noted the State's criminal law definition of "forced disappearance" itself does not compute with international standards.¹⁰⁰ This failure to correct the definition has led to the State's failure to properly investigate victims who have been missing for decades.¹⁰¹ Accordingly, the Court found the State violated Article 2 (Obligation to Give Domestic Legal Effect to Rights of the American Convention and Article III (Obligation to Adopt Legislative Measures) of the Inter-American Convention on the Forced Disappearance of Persons.¹⁰²

Fifth, the Court recognized that the right of access to justice includes the right of the victim or his family to know the truth relating to his disappearance and whereabouts.¹⁰³ Thus, the State's prolonged delay in providing this information is itself a violation of judicial guarantees.¹⁰⁴ Here, 32 years have passed since Mr. Tenorio Roca was abducted, and 13 years have passed since the most recent investigation was opened.¹⁰⁵ This investigation still remains in the beginning stages.¹⁰⁶ Accordingly, the Court determined that the State failed to conduct a serious, exhaustive, and diligent investigation within a reasonable time, in contravention of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the American Convention and Article I(b) (Duty to Punish Forced Disappearances) of the Inter-American Convention on Forced Disappearances of People.¹⁰⁷

Finally, the Court discussed the right everyone, including the victim, his family, and the public, to know the truth behind human rights violations committed by the State.¹⁰⁸ Specifically, the right to know the whereabouts of a person who was forcibly taken is a fundamental component of the right to know the truth.¹⁰⁹ Here, 32 years after Mr. Tenorio Roca's forced disappearance, the State failed to clarify why Mr. Tenorio Roca was taken, who took him, and where his remains are located.¹¹⁰ Mr. Tenorio Roca's family has suffered physical and moral anguish because they still

100. *Id.* ¶ 232.

101. *Id.*

102. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 233.

103. *Id.* ¶ 237.

104. *Id.*

105. *Id.* ¶ 241.

106. *Id.*

107. *Id.*

108. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 243.

109. *Id.* ¶ 244.

110. *Id.*

do not know what happened to him.¹¹¹ Therefore, the Court found that the State violated Mr. Tenorio Roca's family's right to truth.¹¹²

Articles 5.1 (Right to Physical, Mental, and Moral Integrity) and 5.2 (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), in relation to Article 1.1 (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Tenorio Roca's family,¹¹³ because:

The Court recognized that the victims of forced disappearances, as well as their relatives, both undergo severe psychological harm stemming from the disappearance.¹¹⁴ Mr. Tenorio Roca's relatives never received information of his whereabouts, presumably causing them emotional and mental harm.¹¹⁵ The Court noted that the relatives are victims deprived of truth, and noted the lack of cooperation from state authorities as the families sought to learn the truth.¹¹⁶ As a result, the family members suffered excessively, causing changes to the family dynamic and their life plans.¹¹⁷ Accordingly, the Court found that the State violated Articles 5.1 (Right to Physical, Mental, and Moral Integrity) and 5.2 (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) in relation to Article 1.1 (Obligation of Non-Discrimination) of the American Convention to the detriment of Mr. Tenorio Roca's family.¹¹⁸

The Court found unanimously that the State had not violated:

Article 2 (Obligation to Give Domestic Legal Effect to Rights), in relation to articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, as well as article 10 of Law No. 24150, to the detriment of Mr. Tenorio Roca,¹¹⁹ because:

Article 10 of Law No. 24150, which provided military jurisdiction over crimes committed by military personnel in areas declared a state of emergency, allowed the military jurisdiction to favor military personnel when investigating these crimes.¹²⁰ The State ultimately repealed Article

111. *Id.*

112. *Id.*

113. *Id.* ¶ 258.

114. *Id.* ¶ 254.

115. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 255.

116. *Id.* ¶ 256.

117. *Id.* ¶ 257.

118. *Id.* ¶ 258.

119. *Id.* "Declares" ¶ 6.

120. *Id.* ¶ 203.

10 of Law No. 24150.¹²¹ Therefore, the Court found no additional violation of Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.¹²²

IV. REPARATIONS

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

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

1. Continue the Investigation

The Court ordered the State to conduct an investigation and punish those responsible for Mr. Tenorio Roca's disappearance.¹²³ The State must publish the results.¹²⁴

2. Use Judicial & Administrative Resources

The Court ordered the State to use any judicial and administrative measure available for the investigation into Mr. Tenorio Roca's disappearance.¹²⁵ The State must notify the relatives, and include them if possible.¹²⁶ The Court, emphasizing the importance of recovering Mr. Tenorio Roca's body as a measure of compensation, ordered that if found deceased, the body be delivered to the relatives.¹²⁷

3. Provide Medical and Psychological Treatment

The State must provide free medical and psychological treatment indefinitely to Mr. Tenorio Roca's relatives, including individual, collective, and family treatment.¹²⁸

121. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 204.

122. *Id.*

123. *Id.* ¶ 268.

124. *Id.* ¶ 269.

125. *Id.* ¶ 273.

126. *Id.* ¶ 275.

127. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 276.

128. *Id.* ¶ 284.

4. Publish Judgment in Public Documents

The State must publish the official summary of the Judgment in both the Official Gazette and a nationally-circulated newspaper.¹²⁹ Additionally, the State must publish the full judgment for a year on an official website, within six months from the notification of the judgment.¹³⁰

5. Public Act of Recognition of International Responsibility

The State must publicly recognize their international responsibility by holding a public ceremony according to the victims' specifications.¹³¹

6. Provide Scholarships to Public Institutions

The Court the State grant full educational scholarships to Mr. Tenorio Roca's children, Gladys Marleni Tenorio Huamaní, Gustavo Adolfo Tenorio Huamaní, Jorge Rigoberto Tenorio Huamaní, Walter Orlando Tenorio Huamaní, Maritza Roxana Tenorio Huamaní, Jaime Tenorio Huamaní, Ingrid Salomé Tenorio Huamaní and Edith Carolina Tenorio Huamaní.¹³² Because it has been over 32 years since Mr. Tenorio Roca's disappearance, and his children are much older, they reserve the right to transfer the scholarship to a relative up to the second degree, and must make it known within one year from notification of this Judgment if they wish to do so.¹³³

7. Reform the Criminal Legislation

The Court orders the State's criminal code by reformed to comply with the Inter-American Convention and Article III of the Inter-American Convention on Forced Disappearance of Persons, emphasizing that the first legal reform was ordered 11 years ago and was reiterated in several other cases against the State.¹³⁴

129. *Id.* ¶ 288.

130. *Id.*

131. *Id.* ¶ 293.

132. *Id.* ¶ 297.

133. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 298.

134. *Id.* ¶¶ 303-304.

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded Mrs. Huamañi Anampa \$12,000.00 (USD), and Mr. Juan Tenorio Roca \$3,000.00 for court and travel expenses incurred by Mr. Tenorio Roca's relatives due to his disappearance.¹³⁵

2. Non-Pecuniary Damages

The Court awarded \$80,000.00 (USD) for moral damage: \$40,000.00 to be paid by the State to Mrs. Huamañi Anampa, and the other \$40,000.00 to be divided equally between Mr. Tenorio Roca's children.¹³⁶ The State must also pay the Mrs. Huamani Anampa and her children \$45,000.00 (USD) for suffering.¹³⁷ The Court also awarded \$20,000.00 (USD) to Mr. Tenorio Roca's mother, Mrs. Isidora Roca Gómez, and \$10,000.00 to Mr. Tenorio Roca's brother, Mr. Juan Tenorio Roca.¹³⁸

3. Costs and Expenses

The Court awarded \$10,000.00 for the costs and expenses incurred during litigation to be delivered to the Association for Human Rights.¹³⁹ The State must also pay \$2,133.69 to the Fund of Legal Assistance for Victims as reimbursement for legal services.¹⁴⁰

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

\$ 182,133.69

C. Deadlines

The State must submit a report to the Court on its adopted measures for each order, within one year from the notification of the Judgment.¹⁴¹

135. *Id.* ¶ 333.

136. *Id.* ¶ 336.

137. *Id.* ¶ 338.

138. *Id.*

139. Tenorio Roca et al. v. Peru Preliminary Objections, Merits, Reparations, and Costs, ¶ 345.

140. *Id.* ¶ 347.

141. *Id.* ¶ 289.

The State must also pay the compensation and reimburse for costs and expenses within one year from the notification of the Judgment.¹⁴²

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

[Tenorio Roca et al. v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 314 \(June 22, 2016\).](#)

3. Provisional Measures

[Tenorio Roca et al. v. Peru, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. \(ser. E\) \(Dec. 15, 2015\).](#)

[Tenorio Roca et al., v. Peru, Provisional Matters, Victims Legal Assistance Fund, Order of the President, Inter-Am. Ct. H.R. \(ser. E\) \(Mar. 24, 2015\).](#)

4. Compliance Monitoring

[None]

142. *Id.* ¶ 350.

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[Tenorio Roca et al. v. Peru, Admissibility Report, Report No. 4/10, Inter-Am. Comm'n H.R., Pet. No. 664-98 \(Mar. 15, 2010\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Tenorio Roca et al., v. Peru, Report on Merits, Report No. 34/13, Inter-Am. Comm'n H.R., Case No. 12.745 \(July 10, 2013\).](#)

5. Application to the Court

[Tenorio Roca et al., v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.745 \(Sept. 1, 2014\)](#)

VIII. BIBLIOGRAPHY

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[The IACHR Judges Peru for an Enforced Disappearance in 1984, AGENCIA EFE, Feb. 22, 2016, <https://www.efe.com/efe/america/sociedad/la-corteidh-juzga-a-peru-por-una-desaparicion-forzada-en-1984/20000013-2847100>](#)