

# Rosadío Villavicencio v. Peru

## ABSTRACT\*

*This case is about the botched prosecution of an intelligence officer in the Peruvian Army who had been infiltrated in a drug trafficking organization. The officer was prosecuted twice, in the ordinary jurisdiction and in the military jurisdiction, for the same crimes. Both prosecutions were marred by numerous errors of law and procedure, leading the Court to find Peru in violation of several articles of the American Convention.*

## I. FACTS

### A. Chronology of Events

#### 1. Events Pertaining to the Plan

**January 1, 1990:** Mr. Jorge Rosadío Villavicencio begins serving as Lieutenant of Intelligence in the Peruvian Army.<sup>1</sup>

**June 30, 1994:** The Army appoints Lt. Rosadío Villavicencio to Chief of the Sión Military Base of the Fifth Military Region, the Leoncio Prado unit, Intelligence Company No. 341, in the city of Tarapoto, San Martín, Peru.<sup>2</sup>

**July 1, 1994:** Lt. Rosadío Villavicencio begins his new position as Chief of the Sión Base.<sup>3</sup> His direct superior, Peruvian Army Colonel Emilio Murgueytio Yanez, assigns Lt. Rosadío Villavicencio an intelligence mission, called the “‘Angel” Operations Plan” (“the Plan”).<sup>4</sup> The purpose of the Plan is for Lt. Rosadío Villavicencio to infiltrate drug trafficking

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\*Laura Grigore, Author; Patricia Kim, Editor; Gabrielle Szlachta-McGinn, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

1. Jorge Rosadío Villavicencio v. Peru, Report on Merits, Report No. 42/17, Inter-Am. Comm’n H.R., Case No. 12.031, ¶ 50 (May 23, 2017).

2. *Id.* ¶ 8.

3. *Id.*

4. *Id.* ¶ 9.

operations in the Sión area, pose as a corrupt government officer and accept bribes from traffickers in exchange for authorizing the traffickers' drug transport flights out of the base, and eventually, arrest drug traffickers, and seize drugs, money, material and equipment during the process.<sup>5</sup> The Plan also specifies a portion of the money seized during the operation be paid to the Commander General of Leoncio Prado for his assistance in facilitating the operation.<sup>6</sup>

**August 17, 1994:** Lt. Rosadío Villavicencio authorizes three drug transport flights on the Sión airstrip: first, on August 17, second, on August 24 and finally, on August 31 in exchange for \$13,000.<sup>7</sup>

**August 30, 1994:** Lt. Rosadío Villavicencio files an official Army record that he received \$9,960 from drug traffickers after he authorized a drug transport flight, and he distributed the money among the military base personnel according to the terms of the Plan and in accordance with Col. Murgueytio Yanez's verbal direction.<sup>8</sup>

**September 1, 1994:** Lt. Rosadío Villavicencio informs Col. Murgueytio Yanez of the flight that took place on August 31; he allegedly fails to inform Col. Murgueytio Yanez of the flights that took place on August 17 and August 24.<sup>9</sup>

## 2. *Events Pertaining to the Investigation of the Leoncio Prado Detachment Inspectorate*

**September 5, 1994:** Lt. Rosadío Villavicencio is arrested and questioned by the Investigating Officer of the Leoncio Prado Province Detachment for his alleged involvement in illicit drug trafficking.<sup>10</sup>

**September 15, 1994:** Lt. Rosadío Villavicencio is appointed a military lawyer, Mr. Jorge Ramírez Huerta, and gives a statement to the Investigator of the National Police.<sup>11</sup> Mr. Rosadío Villavicencio indicates that, pursuant to the Plan, he authorized the three drug transport flights and his

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5. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶¶ 52-53.

6. *Id.* ¶ 54.

7. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 388, ¶ 42 (Oct. 14, 2019).

8. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶ 65.

9. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 42.

10. *Id.* ¶¶ 43, 45-47.

11. *Id.* ¶ 52.

supervisor, Col. Murgueytio Yanez, received the money and distributed it to base personnel.<sup>12</sup> Lt. Rosadio Villavicencio notes he reserved \$2,000 for himself and deposited it into his mother's bank account.<sup>13</sup>

**September 22, 1994:** Col. Murgueytio Yanez gives a statement to the investigator.<sup>14</sup> He confirms the Plan required Mr. Rosadio Villavicencio to earn the drug traffickers' trust and accept money from them.<sup>15</sup> The investigator asks Col. Murgueytio Yanez if he ordered Lt. Rosadio Villavicencio to take money from drug traffickers for distribution to base personnel; Col. Murgueytio Yanez indicates the money is sent to the Command General of Leoncio Prado after it has been officially recorded.<sup>16</sup> Col. Murgueytio Yanez adds Lt. Rosadio Villavicencio told him he authorized one flight on August 31, and he planned to capture the drug traffickers on the next flight, but the capture was suspended because Army officials discovered that Lt. Rosadio Villavicencio had authorized three drug transport flights instead of one.<sup>17</sup>

**September 23, 1994:** The Leoncio Prado Detachment Inspector's Office issues an investigation report and concludes that Lt. Rosadio Villavicencio acted maliciously by intentionally hiding information from the Army to carry out flights dedicated to drug trafficking for his personal economic benefit.<sup>18</sup> The Inspector's Office recommends the Investigative Council for Junior Officers, a committee of the Army responsible for pursuing potential administrative and disciplinary sanctions against Army personnel, conduct an investigation.<sup>19</sup>

The National Anti-Drug Directorate of the National Police of Perú files a complaint with the Second Provincial Prosecutor's Office of San Martín Tarapoto against Lt. Rosadio Villavicencio and other military personnel for the crime of drug trafficking.<sup>20</sup> Shortly thereafter, the Mixed First Instance Court issues an arrest warrant against Lt. Rosadio Villavicencio for drug trafficking.<sup>21</sup>

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12. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶¶ 58, 59-61

13. *Id.* ¶ 59.

14. *Id.* ¶ 61.

15. *Id.* ¶ 62.

16. *Id.* ¶ 63.

17. *Id.* ¶ 64.

18. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 47.

19. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶¶ 72-73.

20. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 53.

21. *Id.* ¶ 54.

**September 25, 1994:** Lt. Rosadío Villavicencio receives notice that he has been accused of violating sections of the civil and military code, including drug trafficking under ordinary criminal jurisdiction provided in Article 296 of the Penal Code, and other crimes under the Military Justice Code, such as negligence and disobedience.<sup>22</sup>

**December 15, 1994:** The Detachment Inspector presents the investigative report regarding Lt. Rosadío Villavicencio's alleged criminal conduct to the Commander General of the Army.<sup>23</sup> The report confirms Lt. Rosadío Villavicencio was assigned the intelligence mission under the Plan, and Col. Murgueytio Yanez dictated instructions to Lt. Rosadío Villavicencio to distribute the money obtained from drug traffickers to avoid suspicion.<sup>24</sup>

### 3. *Events Pertaining to the Military Disciplinary Process*

**February 7, 1995:** The Investigative Council for Subaltern Officers holds an administrative hearing to analyze possible administrative sanctions against Lt. Rosadío Villavicencio; the council recommends the Commander General of the Army retire Lt. Rosadío Villavicencio as punishment for his military offenses.<sup>25</sup> The Council conducts the hearing without Lt. Rosadío Villavicencio because he is still in detention.<sup>26</sup>

**March 3, 1995:** In Lima, the Commander General of the Army formally retires Lt. Rosadío Villavicencio from the Army.<sup>27</sup> Mr. Rosadío Villavicencio is physically impeded from appealing this decision because he is still detained in San Martín.<sup>28</sup>

### 4. *Events Pertaining to the Ordinary Criminal Jurisdiction Process*

**February 6, 1995:** Lt. Rosadío Villavicencio and his co-defendants request unconditional release from detention under Article 201 of the Code

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22. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 48.

23. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶ 67.

24. *Id.* ¶ 68.

25. *Id.* ¶¶ 72-73.

26. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 49.

27. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶ 78; Jorge Rosadio Villavicencio v. Peru, Admissibility Report, Report No. 13/03, Inter-Am. Comm'n H.R., Pet. No. 12.031, ¶ 12 (Feb. 20, 2003).

28. Jorge Rosadio Villavicencio v. Peru, Admissibility Report, ¶ 12.

of Criminal Procedure, arguing their release presents no procedural danger; they are active Peruvian Army members and reside at the Army base.<sup>29</sup> Article 201 of the Code of Criminal Procedure requires unconditional release from preventive detention until an investigation fully demonstrates an accused's guilt.<sup>30</sup>

**February 9, 1995:** The Mixed First Instance Court denies Lt. Rosadío Villavicencio's request for release from detention because he denied all criminal charges against him, which rendered him ineligible for the protections under Article 201 of the Code of Criminal Procedure.<sup>31</sup>

**February 13, 1995:** Lt. Rosadío Villavicencio and his co-defendants appeal the Mixed First Instance Court's decision and argue they have not yet been found guilty and are therefore entitled to unconditional release.<sup>32</sup>

**April 24, 1995:** The San Martín Supreme Court of Justice denies Mr. Rosadío Villavicencio's appeal for release from detention after finding Mr. Rosadío Villavicencio acted inconsistently with his Commander's directions while executing the Plan when he distributed the bribe money at his own discretion, despite knowing his duty was to deliver the money to his Commander.<sup>33</sup> The Supreme Court of Justice rules Mr. Rosadío Villavicencio took advantage of his role in the mission, and that the gravity of his actions render him ineligible for release from detention.<sup>34</sup>

**May 5, 1995:** The Mixed First Instance Court finds Mr. Rosadío Villavicencio and his co-defendants guilty for the crime of drug trafficking.<sup>35</sup>

**April 17, 1996:** The Criminal Chamber of the Superior Court of San Martín sentences Mr. Rosadío Villavicencio to six years imprisonment for illicit drug trafficking.<sup>36</sup>

The Mixed Chamber also issues a judgment absolving other accused military personnel due to a lack of evidence.<sup>37</sup> Mr. Rosadío Villavicencio

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29. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶ 124.

30. *Id.* ¶¶ 124-25.

31. *Id.* ¶ 126.

32. *Id.* ¶ 127; Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 56.

33. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶ 129.

34. *Id.*

35. *Id.* ¶ 104.

36. *Id.* ¶ 113.

37. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 60.

appeals this decision, and the proceeding is elevated to the Criminal Chamber Specialized in Crimes of Illicit Drug Trafficking of the Supreme Court of Justice.<sup>38</sup>

**April 24, 1996:** The Criminal Chamber of the Superior Court of San Martín finds that “the nature of the action” exception, which exempts a subordinate from liability for actions taken in the course of his duties, is inapplicable to Mr. Rosadío Villavicencio because it does not apply to criminal actions.<sup>39</sup>

**March 13, 1997:** Mr. Rosadío Villavicencio’s defense again asserts, in writing, that Mr. Rosadío Villavicencio is exempt from liability for his actions while executing the Plan because he acted “by mandatory order of a competent authority” and because Col. Emilio Murgueytio Yanez transferred the illicit responsibilities during the Plan to Mr. Rosadío Villavicencio.<sup>40</sup>

**June 19, 1997:** The Second Criminal Chamber of the Supreme Court of Justice nullifies Mr. Rosadío Villavicencio’s sentence and increases it from six years to fifteen years in prison.<sup>41</sup> Mr. Rosadío Villavicencio files an appeal for acquittal and annulment of the sentence because: 1) his conviction was based solely on Col. Emilio Murgueytio Yanez’s testimony, without any other evidence; 2) Mr. Rosadío Villavicencio is exempt from liability because his actions during the Plan were based on orders issued by his superior pursuant to Article 20 Number 9 of the Penal Code.<sup>42</sup>

**March 4, 1999:** Mr. Rosadío Villavicencio takes advantage of the semi-freedom benefit, which is granted when a convicted person has completed a third of his imposed sentence, and Mr. Rosadío Villavicencio is released from prison.<sup>43</sup> As part of this benefit, Mr. Rosadío Villavicencio must continue to abide by the prison system’s rules until the end of his sentence.<sup>44</sup>

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38. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶ 39.

39. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 61.

40. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶ 118.

41. *Id.* ¶ 119.

42. *Id.* ¶¶ 119-21.

43. *Id.* ¶ 41.

44. *Id.*

**May 24, 2001:** The Peruvian legislature modifies Article 300 of the Code of Criminal Procedure, establishing that if a convicted person files an appeal for annulment of his conviction, the Supreme Court cannot increase the imposed sentence, only confirm or reduce it.<sup>45</sup> This modification also includes a provision which retroactively applies this new rule to past convictions.<sup>46</sup>

**September 28, 2001:** The Mixed Chamber of the Superior Court officially adjusts Mr. Rosadío Villavicencio's fifteen-year sentence back to six years according to the retroactivity provision of the modified sentencing rule, finding that Mr. Rosadío Villavicencio's prison sentence ended on September 4, 2000.<sup>47</sup>

##### 5. *Events Pertaining to the Military Criminal Jurisdiction Process*

**November 7, 1994:** A military judge opens an investigation against Lt. Rosadío Villavicencio for crimes against his position's duty and dignity, aggravated by abuse of authority, falsehood, and negligence to the detriment of those under his command under Articles 200, 299, 238, and 180(a) of the Code of Military Justice.<sup>48</sup>

**March 12, 1995:** The Permanent Military Judge of Tarapoto, Mr. Ramirez Huerta, who was Mr. Rosadío Villavicencio's former legal advisor, orders an investigation into the alleged violations of the Code of Military Justice.<sup>49</sup>

**June 20, 1995:** Mr. Rosadío Villavicencio appears before Judge Ramírez Huerta at the Juanjuí Prison in Perú to give a statement, however, he does not answer any questions because his public defender is not present at the hearing.<sup>50</sup>

**July 27, 1995:** Judge Ramírez Huerta requests Mr. Rosadío Villavicencio give a statement before the Criminal Judge of Mariscal de Cáceres.<sup>51</sup> He

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45. Rosadío Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 64.

46. *Id.*

47. *Id.* ¶ 164.

48. Jorge Rosadío Villavicencio v. Peru, Report on Merits, ¶ 79.

49. *Id.* ¶ 80.

50. *Id.* ¶ 81; Rosadío Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 68.

51. Rosadío Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 69.

indicates that while executing the Plan, he authorized three drug transport flights and distributed the money obtained from the traffickers as follows: \$2,000 to himself, \$1,500 to the technician, \$1,000 to an officer, \$110 to a sergeant, \$40 to each troop member, and \$1,000 to a drug trafficker known as “Fifty.”<sup>52</sup> Mr. Rosadío Villavicencio also explains that he was following Col. Murgueytio Yanez’s verbal orders, and that Col. Murgueytio Yanez preferred verbal orders as opposed to written plans to maintain the secrecy of the mission.<sup>53</sup>

**August 9, 1995:** Judge Ramírez Huerta issues an arrest warrant against Mr. Rosadío Villavicencio based on Mr. Rosadío Villavicencio’s statement wherein he admitted to having received money from illicit drug traffickers and distributing that money among his co-defendants.<sup>54</sup>

**October 14, 1995:** Judge Ramírez Huerta presents a final report to the Council of Permanent War of the Fifth Judicial Zone of the Army.<sup>55</sup> The report states that, based on the findings from the investigation in the military criminal jurisdiction, the Military Court finds Mr. Rosadío Villavicencio guilty of the violating the Code of Military Justice.<sup>56</sup>

**October 17, 1995:** The Military Prosecutor’s Office files an accusation against Mr. Rosadío Villavicencio for the military crimes of offending the duty and dignity of his position, abusing his authority, and negligence.<sup>57</sup> The Military Prosecutor’s Office does not notify Mr. Rosadío Villavicencio of these accusations.<sup>58</sup>

**November 29, 1996:** The Permanent War Council of the Sixth Zone of the Army conducts a public hearing against Mr. Rosadío Villavicencio and two other co-defendants, where the Captain of the Army’s Legal Service appears as a public defender.<sup>59</sup> The War Council sentences Mr. Rosadío Villavicencio to sixteen months in prison for the commission of the

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52. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶ 82.

53. *Id.* ¶ 83.

54. *Id.* ¶ 134.

55. *Id.* ¶ 84.

56. *Id.*

57. *Id.* ¶ 85.

58. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶ 86.

59. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 74.



crime of negligence, based on Mr. Rosadío Villavicencio's breach in executing the Plan, failing to control his troops, and failing to give timely information to his Commander.<sup>60</sup>

Mr. Rosadío Villavicencio, through the Prosecutor of the Council of Military Justice, files an appeal against this judgment.<sup>61</sup>

**September 16, 1997:** The Supreme Council of Military Justice resolves Mr. Rosadío Villavicencio's appeal, declares the sentence null and void, and recommends that the War Council consider Mr. Rosadío Villavicencio's crime of disobedience.<sup>62</sup>

**December 15, 1997:** The Permanent War Council of the Sixth Judicial Zone of the Army holds a new public trial and sentences Mr. Rosadío Villavicencio to twenty-eight months in prison for the crimes of disobedience, against his position's duty and dignity, misrepresentation, abuse of authority, and negligence.<sup>63</sup> The Council also commands Mr. Rosadío Villavicencio to pay civil damages to the State.<sup>64</sup> Mr. Rosadío Villavicencio files an appeal against the decision.<sup>65</sup>

**June 30, 1998:** The Supreme Council of Military Justice rejects Mr. Rosadío Villavicencio's appeal and confirms the War Council's judgment.<sup>66</sup>

#### *B. Other Relevant Facts*

[None]

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60. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 75.

61. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶ 92.

62. *Id.* ¶ 93.

63. Jorge Rosadio Villavicencio v. Peru, Admissibility Report, ¶ 13.

64. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 78.

65. *Id.* ¶ 79.

66. *Id.* ¶ 80.

## II. PROCEDURAL HISTORY

## A. Before the Commission

**April 13, 1998:** Mr. Rosadío Villavicencio’s mother, Mrs. Amelia Villavicencio de Rosadío, files a petition with the Inter-American Commission on Human Rights (“Commission”).<sup>67</sup>

**February 20, 2003:** The Commission issues Admissibility Report No. 13/03, which declares the petition admissible.<sup>68</sup>

**May 23, 2017:** The Commission issues Merits Report No. 42/17.<sup>69</sup> The Commission concludes the State is responsible for violating rights to judicial equality and personal liberty provided in Articles 7(1) (Right to Personal Liberty and Security), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within), 7(6) (Right to Have Recourse Before a Competent Court), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2) (Right to Be Presumed Innocent), 8(4) (Prohibition of Double Jeopardy), and 25(1) (Right of Recourse Before a Competent Court) of the American Convention, in relation to Article 1(1) (Obligation of Non-Discrimination) of the same instrument, to the detriment of Mr. Rosadío Villavicencio.<sup>70</sup>

In light of the foregoing violations, the Commission recommends the State: (1) make comprehensive and adequate reparation to Mr. Rosadío Villavicencio; (2) enact legislative and administrative non-repetition measures to ensure administrative sanctioning processes strictly respect the presumption of innocence principle and guarantees of due process; (3) enact measures to ensure all preventative detention practices conform to the Commission’s standards; and (4) enact measures to prevent double jeopardy.<sup>71</sup>

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67. Jorge Rosadio Villavicencio v. Peru, Admissibility Report, ¶ 1.

68. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2(b).

69. *Id.* ¶ 2(c).

70. Jorge Rosadio Villavicencio v. Peru, Report on Merits, “conclusions” ¶ 217.

71. *Id.* “recommendations” ¶ 218.

*B. Before the Court*

**September 22, 2017:** The Commission submits the case to the Court after the State fails to adopt the Commission's recommendations.<sup>72</sup>

**June 28, 2018:** The State raises three preliminary objections arguing (1) domestic remedies have not been exhausted; (2) the fourth instance exception; and (3) the inclusion of Article 25 (Right to Judicial Protection) of the Convention in the Merits Report was improper.<sup>73</sup>

1. Violations Alleged by Commission<sup>74</sup>

Article 7(1) (Right to Personal Liberty and Security)

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

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

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

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

Article 8(2)(b) (Right to Have Prior Notification of Charges)

Article 8(2)(c) (Right to Adequate Time and Means to Prepare Defense)

Article 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel)

Article 8(2)(e) (Right to Assistance by Counsel Provided by State)

Article 8(4) (Prohibition of Double Jeopardy)

Article 25(1) (Right to Recourse Before a Competent Court)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) of the Inter-American Convention on Human Rights.

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72. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1.

73. *Id.* ¶¶ 6, 14.

74. Jorge Rosadio Villavicencio v. Peru, Report on Merits, ¶ 217.

## 2. Violations Alleged by Representatives of the Victims<sup>75</sup>

Same Violations Alleged by Commission, plus:

Article 9 (Freedom from Ex Post Facto Laws)

*in relation to:*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

### III. MERITS

#### A. Composition of the Court

Eduardo Ferrer Mac-Gregor Poisot, President  
Eduardo Vio Grossi, Vice President  
Humberto Antonio Sierra Porto, Judge  
Elizabeth Odio Benito, Judge  
Eugenio Raúl Zaffaroni, Judge  
L. Patricio Pamiño Freire, Judge  
Ricardo C. Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary

#### B. Decision on the Merits

**October 14, 2019:** The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.<sup>76</sup>

The Court found unanimously:

To dismiss all three of Peru preliminary objections,<sup>77</sup> because:

*First, the State argued Mr. Rosadío Villavicencio should have filed a domestic lawsuit against the Army disputing its decision to retire him early*

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75. Jorge Rosadío Villavicencio v. Peru, Report on Merits, ¶ 19. Petitioner Mrs. Amelia Villavicencio de Rosadío appointed Carolina Loayza Tamayo, Esq. as co-petitioner, who acted as such until July 24, 2003, at which time she sent a letter to the IACHR indicating her decision to withdraw from representation of Mr. Rosadío Villavicencio. Subsequently, Mr. Carlos Alfonso Rosadío Villavicencio and Mr. César Villacorta Spinner joined as co-petitioners and representatives of Mr. Rosadío Villavicencio.

76. Rosadío Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 265.

77. *Id.* “decide” ¶¶ 1-3.

before he resorted to the international court system.<sup>78</sup> Further, the State filed its objection in a timely manner and pointed to domestic procedures in force at the time for Mr. Rosadio Villavicencio to challenge the Army's decision, however, Mr. Rosadio Villavicencio chose not to avail himself of this recourse.<sup>79</sup> The Court rejected this argument because the State did not meet the standards necessary to argue lack of exhaustion of domestic remedies, such as stating which remedies were exhausted or in progress and why those remedies are effective.<sup>80</sup>

Second, the State argued the Court lacked jurisdiction over this case and was therefore not competent to review it.<sup>81</sup> The State focused on the fact that this case involved domestic law.<sup>82</sup> Moreover, none of the proceedings against Mr. Rosadio Villavicencio violated the American Convention.<sup>83</sup> However, the Court rejected these arguments and explained domestic laws may be intrinsically interrelated to international law.<sup>84</sup> Thus, when the Court is determining whether judicial bodies violated a State's international obligations, the Court may find that it must examine the State's respective domestic law to establish its compatibility with the Convention.<sup>85</sup>

Finally, the State objected to the inclusion of Article 25 in the Commission's Merits Report.<sup>86</sup> The State argued the Commission cannot add a violation of the right to an effective remedy on behalf of Mr. Rosadio Villavicencio without first getting an opportunity to dispute the alleged violation before the Commission.<sup>87</sup> The Court reviewed the Commission's reasoning for alleging the State violated Article 25 of the Convention and found its reasoning was related to the merits of the case.<sup>88</sup> Thus, the Court rejected the State's argument and concluded by stating the rights indicated in the Commission's Admissibility Report are part of a preliminary examination of a petition; a preliminary examination does not limit the

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78. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 15.

79. *Id.* ¶ 16.

80. *Id.* ¶ 20.

81. *Id.* ¶ 21.

82. *Id.*

83. *Id.* ¶¶ 21-22.

84. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 24.

85. *Id.*

86. *Id.* ¶ 26.

87. *Id.*

88. *Id.* ¶ 30.

*possibility that when evaluating the case on the merits, the Commission may find other rights that the State violated.*<sup>89</sup>

The Court found unanimously that Peru had violated:

Article 8(4) (Prohibition of Double Jeopardy) with respect to the ordinary criminal process and military criminal process, to the detriment of Mr. Rosadío Villavicencio,<sup>90</sup> because:

*The central controversy in this case was whether the State prosecuted and sentenced Mr. Rosadío Villavicencio in two criminal proceedings on the same factual basis; one in the ordinary jurisdiction and one in the military jurisdiction.<sup>91</sup> The Court contemplated the possibility that the language of Article 8(4)(Prohibition of Double Jeopardy) limits the scope of “ne bis in idem” to cases in which an accused individual is re-tried for a crime for which he was already acquitted.<sup>92</sup> However, if the scope were limited in this way, then the protections in Article 8(4)(Prohibition of Double Jeopardy) would not apply to Mr. Rosadío Villavicencio’s case because he was not acquitted and re-tried.<sup>93</sup> To resolve this, the Court looked to existing jurisprudence and other international judicial authorities to determine how it should interpret Article 8(4)(Prohibition of Double Jeopardy).<sup>94</sup>*

*Article 8(4) (Prohibition of Double Jeopardy) is a procedural guarantee, not a criminal law, which the Court verified by noting the difference between their respective sanctions: the violation of procedure carries the sanction of nullity, and the violation of criminal regulations carries the imposition of a penalty.<sup>95</sup>*

*The International Covenant of Civil and Political Rights prohibit States from trying or punishing a person for a crime for which that person has*

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89. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 29.

90. *Id.* “declares” ¶ 4.

91. *Id.* ¶ 87.

92. *Id.* ¶ 89.

93. *Id.*

94. *Id.*

95. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 92.

already been convicted or acquitted through a final judgment.<sup>96</sup> Additionally, the Universal Human Rights System and federal criminal legislation in Peru provide that one crime corresponds to only one punishment.<sup>97</sup> The Court also recognized that it cannot interpret provisions of the Convention in a way that conflicts with federal criminal laws of the State, or with other conventions to which the State belongs.<sup>98</sup> Therefore, the Court held Article 8(4) (Prohibition of Double Jeopardy) prohibits multiple trials or convictions for the same crime.<sup>99</sup>

Here, Peru prosecuted and sentenced Mr. Rosadío Villavicencio in two criminal proceedings, one in the ordinary criminal jurisdiction and one in the military criminal jurisdiction, both arising from the same set of facts and the same alleged crime: drug trafficking.<sup>100</sup> Moreover, the military criminal proceedings conducted were not merely administrative; they subjected Mr. Rosadío Villavicencio to a second criminal proceeding and punishment, which the Court found violated Mr. Rosadío Villavicencio's rights established in Article 8(4) (Prohibition of Double Jeopardy).<sup>101</sup>

However, the Court noted the criminal sanction and the administrative sanction did not pursue the same objective, and thus, with regard to the military disciplinary process and the ordinary criminal jurisdiction, the State did not violate the "ne bis in idem" principle of Article 8(4) (Prohibition of Double Jeopardy) of the Convention.<sup>102</sup>

Therefore, the Court found the State responsible for the violation of the "ne bis in idem" principle provided in Article 8.4 (Prohibition of Double Jeopardy) of the Convention, in relation to the military and ordinary criminal proceedings, but not in relation to the disciplinary procedure of those proceedings.<sup>103</sup>

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96. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 90.

97. *Id.* ¶¶ 93-95, 97.

98. *Id.* ¶ 90.

99. *Id.* ¶ 105.

100. *Id.* ¶¶ 87, 100.

101. *Id.* ¶ 106.

102. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 116.

103. *Id.* ¶ 120.

Article 8(2)(b) (Right to Have Prior Notification of Charges) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, with respect to the ordinary criminal proceedings, military criminal proceedings, and military disciplinary proceedings, to the detriment of Mr. Rosadío Villavicencio,<sup>104</sup> because:

*In order to establish whether the State violated the guarantees of Article 8(2)(b) (Right to Have Prior Notification of Charges), the Court analyzed the following elements: (1) the right to have prior communication and detailed information on the accusation; (2) the right to defense; and (3) the right to be informed of the reasons for the detention.<sup>105</sup> At a minimum, the accused has a right to know the details regarding the facts being attributed to him.<sup>106</sup>*

*Here, the State failed to present evidence demonstrating that during the ordinary criminal process, Mr. Rosadío Villavicencio was notified of the accusations against him or the reasons for his detention prior to his first statement.<sup>107</sup> Further, there was no evidence that he was notified of the criminal charges against him.<sup>108</sup> However, within the military criminal process, the State admitted it lacked documentation to prove it had notified Mr. Rosadío Villavicencio of the accusations against him.<sup>109</sup> Thus, the Court concluded the State violated Mr. Rosadío Villavicencio's rights provided by Article 8(2)(b) (Right to Have Prior Notification of Charges) of the Convention.<sup>110</sup>*

Articles 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel) and 8(2)(e) (Right to Assistance by Counsel Provided by State), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, with respect to the military disciplinary proceedings, to the detriment of Mr. Rosadío Villavicencio,<sup>111</sup> because:

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104. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, “declares” ¶ 5.

105. *Id.* ¶¶ 125, 127.

106. *Id.* ¶ 127.

107. *Id.* ¶ 130.

108. *Id.* ¶ 131.

109. *Id.* ¶ 134.

110. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 137.

111. *Id.* “declares” ¶ 6.



*At a minimum, the Convention requires States to provide accused individuals with a public defender.<sup>112</sup> Here, although military disciplinary proceedings are outside of the judicial system, this guarantee still applies to those accused in the military disciplinary jurisdiction.<sup>113</sup> The Court noted the State lacked evidence that it had provided Mr. Rosadio Villavicencio with legal assistance within the military disciplinary procedure.<sup>114</sup> Thus, the Court found the State in violation of Mr. Rosadio Villavicencio's right to a defender.<sup>115</sup>*

Articles 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal) and 8(2)(c) (Right to Adequate Time and Means to Prepare Defense) of the Convention, with respect to the military disciplinary proceedings, to the detriment of Mr. Rosadio Villavicencio,<sup>116</sup> because:

*The right to be heard generally requires all persons to have access to a court or the state body in charge of determining individual rights and obligations.<sup>117</sup> This guarantee also ensures the state reaches its decisions in accordance with due process through a competent tribunal.<sup>118</sup> Here, the disciplinary procedure in question involved three stages; Mr. Rosadio Villavicencio was never given an opportunity to present oral or written arguments, make objections, present evidence, or perform procedural activity beyond his initial statement at any of the three stages.<sup>119</sup> Therefore, the Court found the State deprived Mr. Rosadio Villavicencio of his right to defend himself beyond his initial statement at the start of the proceedings.<sup>120</sup>*

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112. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 142.

113. *Id.*

114. *Id.* ¶ 144.

115. *Id.* ¶ 145.

116. *Id.* "declares" ¶ 7.

117. *Id.* ¶ 146.

118. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 146.

119. *Id.* ¶¶ 147-48, 151-52.

120. *Id.* ¶¶ 152-53.

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention, with respect to the military disciplinary proceedings, to the detriment of Mr. Rosadío Villavicencio,<sup>121</sup> because:

*Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) also requires States safeguard an individual's right to due process.<sup>122</sup> States are required to document how they arrived at decisions related to punitive actions taken against an individual to ensure there is no bias or arbitrariness involved in the process.<sup>123</sup> Moreover, an individual may argue against any judicial ruling or administrative decision, which an individual cannot participate in competently without knowing the facts, motives and rules on which the authority based its decision.<sup>124</sup>*

*In this case, the Court found that the Army not only failed to assess evidence in favor of Mr. Rosadío Villavicencio in reaching its decision—it hardly assessed any evidence at all.<sup>125</sup> Instead, in his decision, the Commander General merely cited two rules from the Military Law of the Officers of the Army, Navy, and Air Force regarding the military retirement process and the Commander General's authority to approve actions made by his staff.<sup>126</sup> Therefore, the Court concluded that the State failed to comply with its duties by failing to assess all the evidence available and document the facts, motives, and rules in reaching its decisions.<sup>127</sup>*

Articles 8(2)(c) (Right to Adequate Time and Means to Prepare Defense) and 8(2)(e) (Right to Assistance by Counsel Provided by State), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, with respect to the ordinary criminal proceedings, to the detriment of Mr. Rosadío Villavicencio,<sup>128</sup> because:

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121. Rosadío Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, “declares” ¶ 8.

122. *Id.* ¶ 154.

123. *Id.*

124. *Id.*

125. *Id.* ¶ 155.

126. *Id.*

127. Rosadío Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 154-56.

128. *Id.* “declares” ¶ 9.

*States are required to provide an accused with effective counsel and enough time and means to prepare his defense.<sup>129</sup> This means States are prohibited from appointing public defenders simply to check a box and comply with a procedural formality; this conduct could jeopardize the defendant's case and deprive the defendant of his right to a competent, diligent, and trustworthy attorney.<sup>130</sup> Furthermore, even if a State's domestic legal system permits assigning the same defense counsel to several co-defendants, the State must still identify any conflicts of interest that may exist, and rectify potential issues by appointing separate attorneys if necessary.<sup>131</sup>*

*Here, in the ordinary criminal proceedings, the State assigned Mr. Rosadío Villavicencio and his co-defendant the same criminal defender, Mr. Jorge Ramírez Huerta, despite the existence of serious conflicts of interest.<sup>132</sup> In fact, in his initial statement to the National Police of Peru, Col. Murgueytio Yanez argued that Mr. Rosadío Villavicencio misstated Col. Murgueytio Yanez's commands and lied about the number of drug transport flights he authorized.<sup>133</sup> This contradicted Mr. Rosadío Villavicencio's defense that he was simply following commands from his superior.<sup>134</sup> Therefore, the State violated Mr. Rosadío Villavicencio's right to an effective defender and defense.<sup>135</sup>*

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, with respect to the military criminal process, to the detriment of Mr. Rosadío Villavicencio,<sup>136</sup> because:

*One of the fundamental elements of due process is the right to be heard in an impartial tribunal, by an objective judge who is free from prejudice toward either party.<sup>137</sup> Here, Mr. Rosadío Villavicencio's public defender during the ordinary criminal process also served as the judge during the*

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129. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 174.

130. *Id.* ¶ 175.

131. *Id.* ¶ 176.

132. *Id.* ¶ 177.

133. *Id.*

134. *Id.* ¶ 178.

135. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 178-79.

136. *Id.* "declares" ¶ 10.

137. *Id.* ¶ 186.

*military criminal process; he issued the arrest warrant against Mr. Rosadío Villavicencio, and during the arrest hearing, he relayed that Mr. Rosadío Villavicencio admitted misappropriating the traffickers' money.<sup>138</sup> Based on Mr. Jorge Ramírez Huerta's participation in the investigation by the National Police of Peru, the Court acknowledged that he may have already developed an opinion about Mr. Rosadío Villavicencio prior to serving as the judge in the military criminal court.<sup>139</sup>*

*Therefore, the Court found that Peru violated Mr. Rosadío Villavicencio's right to be heard in an impartial tribunal, in violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention.<sup>140</sup>*

Articles 7(1) (Right to Personal Liberty and Security), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), and Article 8(2) (Right to Be Presumed Innocent), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Rosadío Villavicencio,<sup>141</sup> because:

*The general rule around the right to personal liberty requires the freedom of the accused until he is proven guilty.<sup>142</sup> The analysis of deprivation of liberty under Article 7 (Right to Personal Liberty and Security) requires the detention not be arbitrary; the Court considers three factors to determine arbitrariness: unreasonableness; unpredictability; and proportionality.<sup>143</sup>*

*The Court has long held that because the principles of the presumption of innocence and proportional punishment for crimes are indispensable to a democracy, preventative detention should only be used in exceptional circumstances, such as an extreme risk that the defendant would evade justice.<sup>144</sup> Furthermore, a State that subjects a defendant to preventative detention must substantiate, through sufficient evidence, the necessity of*

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138. Rosadío Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 187.

139. *Id.* ¶ 188.

140. *Id.*

141. *Id.* "declares" ¶ 11.

142. *Id.* ¶ 202.

143. *Id.* ¶¶ 203-04.

144. Rosadío Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 200-01.

*the detention – mere suspicion that the defendant is a flight risk is not sufficient.*<sup>145</sup>

*The Court analyzed the following within this framework: (1) the orders for detention in the ordinary and military criminal jurisdictions; (2) the responses to Mr. Rosadio Villavicencio's requests in the ordinary criminal jurisdiction for unconditional release; and (3) the duration of the pre-trial detention.*<sup>146</sup>

*First, with respect to the arrest warrants, the Court found that none of the reasons provided were sufficient and individualized to justify depriving Mr. Rosadio Villavicencio of liberty by preventive detention in both the ordinary and military jurisdictions.<sup>147</sup> Second, the State failed to periodically review the necessity and propriety of Mr. Rosadio Villavicencio's preventative detention in order to ensure that it complied with the Convention.<sup>148</sup> The Court explained that criminal proceedings may continue against a defendant, however, States are required to free him from preventative detention the moment it is no longer justified.<sup>149</sup> Finally, Mr. Rosadio Villavicencio remained in pretrial detention for three-quarters of the sentence period finally imposed, which the Court considered to be excessive and unreasonable.<sup>150</sup>*

The Court found unanimously that Peru had not violated:

Article 8(4) (Prohibition of Double Jeopardy) of the Convention, with respect to the ordinary criminal proceedings and military disciplinary proceedings, to the detriment of Mr. Rosadio Villavicencio,<sup>151</sup> because:

*Although the Court found that Peru violated the principle of “ne bis in idem” when it subjected Mr. Rosadio Villavicencio to criminal proceedings in both the ordinary criminal jurisdiction and the military criminal jurisdiction for the same crime, the Court found that this principle did not apply to the military disciplinary proceedings and the ordinary criminal*

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145. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 200.

146. *Id.* ¶ 205.

147. *Id.* ¶ 209.

148. *Id.* ¶ 211.

149. *Id.* ¶ 210.

150. *Id.* ¶ 215.

151. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, “declares” ¶ 12.

proceedings.<sup>152</sup> The Court reasoned that the military administrative sanctions were distinct from the ordinary criminal proceedings because the purpose of the military's internal disciplinary process is to maintain order in the military, not to criminally prosecute its members.<sup>153</sup> Similarly, a defendant can be liable for both criminal and civil penalties for the same action, because each sanction serves a separate, legitimate purpose.<sup>154</sup> Therefore, since the military disciplinary proceedings served a legitimate purpose that was different from the ordinary criminal proceedings, Peru did not violate Article 8(4)(Prohibition of Double Jeopardy) in subjecting Mr. Rosadío Villavicencio to both proceedings.<sup>155</sup>

Article 8(4) (Prohibition of Double Jeopardy) of the Convention, with respect to the military criminal proceedings and military disciplinary proceedings, to the detriment of Mr. Rosadío Villavicencio,<sup>156</sup> because:

*The Court found that Peru did not violate Article 8(4) (Prohibition of Double Jeopardy) when it subjected Mr. Rosadío Villavicencio to both military criminal proceedings and military disciplinary proceedings for the same action.<sup>157</sup> Although both proceedings arose from the same facts, each sanction served its own distinct, legitimate purpose: the sanctions in the military criminal proceedings were imposed to hold Mr. Rosadío Villavicencio criminally liable for the alleged crime of disobedience in the military criminal jurisdiction, while the sanctions in the military disciplinary proceeding were imposed to maintain internal order in the military.<sup>158</sup>*

Article 8(2) (Right to Be Presumed Innocent) of the Convention, with respect to the military disciplinary proceedings, to the detriment of Mr. Rosadío Villavicencio,<sup>159</sup> because:

*Although the Court found that Peru deprived Mr. Rosadío Villavicencio of his right to be heard in the military disciplinary proceedings, these*

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152. Rosadío Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 116.

153. *Id.* ¶ 115.

154. *Id.*

155. *Id.* ¶¶ 115-16.

156. *Id.* “declares” ¶ 13.

157. *Id.* ¶¶ 118-19.

158. Rosadío Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 117-18.

159. *Id.* “declares” ¶ 14.

*violations do not also constitute a violation of Article 8(2)(Right to Be Presumed Innocent) per se.*<sup>160</sup>

Article 9 (Freedom from Ex Post Facto Laws) of the Convention, with respect to the military disciplinary proceedings, to the detriment of Mr. Rosadío Villavicencio,<sup>161</sup> because:

*Article 9 (Right of Freedom from Ex Post Facto Laws) prohibits the State from retroactively punishing, increasing sanctions, or creating aggravating types of offenses.<sup>162</sup> This article protects persons from being penalized for committing an act that was not an offense when it was committed and applies to administrative sanctions as well as criminal punishments.<sup>163</sup>*

*In this case, the Court found that sanctions imposed against Mr. Rosadío Villavicencio were for conduct that violated military rules, which were specifically established though prior internal Army regulations.<sup>164</sup> Even if the offenses were not already established within the Army's internal regulations, the Council and Commander General of the Army failed to document their decision-making process when they elected to retire Mr. Rosadío Villavicencio.<sup>165</sup> This prevented the Court from having sufficient evidence to prove the sanctions imposed against Mr. Rosadío Villavicencio were for conduct already established as against State military law.<sup>166</sup>*

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention, with respect to the June 19, 1997 Supreme Court judgment in the ordinary criminal proceedings, to the detriment of Mr. Rosadío Villavicencio,<sup>167</sup> because:

*The Court considered whether the State violated the duty of motivation by virtue of the June 1997 judgment that increased Mr. Rosadío Villavicencio's sentence from six to fifteen years.<sup>168</sup> The Court acknowledged*

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160. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 153, 157.

161. *Id.* "declares" ¶ 15.

162. *Id.* ¶ 158.

163. *Id.*

164. *Id.* ¶ 159.

165. *Id.*

166. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 159.

167. *Id.* "declares" ¶ 16.

168. *Id.* ¶ 165.

*the State passed Law No. 2745 on May 24, 2001, which modified Article 300 of the Code of Criminal Procedure by giving the Supreme Court the power to confirm or reduce existing sentences, but not increase them.*<sup>169</sup> *This law also applied retroactively to past sentences that the Supreme Court increased.*<sup>170</sup> *The Court considered the State fully absolved of liability when it recognized its wrong and reduced Mr. Rosadío Villavicencio's sentence in September 2001.*<sup>171</sup>

Article 8(2)(e) (Right to Assistance by Counsel Provided by State) of the Convention, with respect to the military criminal proceedings, to the detriment of Mr. Rosadío Villavicencio,<sup>172</sup> because:

*In the military criminal proceedings, the Court found that Peru violated Mr. Rosadío Villavicencio's right to be heard in an impartial tribunal because the defender assigned to assist Mr. Rosadío Villavicencio in the ordinary criminal investigation also served as the judge in the military criminal proceedings and also represented his co-defendant despite a serious conflict of interest.*<sup>173</sup> *In light of these findings, the Court found it unnecessary to rule whether such violations applied to the military criminal proceedings too.*<sup>174</sup>

Articles 7(6) (Right to Have Recourse Before a Competent Court) and 25 (Right to Judicial Protection) of the Convention, to the detriment of Mr. Rosadío Villavicencio,<sup>175</sup> because:

*The Court analyzed the Mixed First Instance Court's denial of Mr. Rosadío Villavicencio's request for unconditional release under Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment) of the Convention.*<sup>176</sup> *While Mr. Rosadío Villavicencio was detained, he did not file any other action, including a writ of habeas corpus, in addition to his requests for unconditional release.*<sup>177</sup> *Therefore, the Court did not find it necessary to assess additional violations under Articles 7(6)(Right to Have Recourse*

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169. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 168.

170. *Id.* ¶ 168.

171. *Id.* ¶ 169.

172. *Id.* “declares” ¶ 17.

173. *Id.* ¶ 188.

174. *Id.* ¶ 190.

175. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, “declares” ¶ 18.

176. *Id.* ¶ 212.

177. *Id.*



*Before a Competent Court) and 25 (Right to Judicial Protection) of the Convention.*<sup>178</sup>

#### IV. REPARATIONS

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

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

1. Judgment as a Form of Reparation

The Court noted that the Judgment itself is a form of reparation.<sup>179</sup>

2. Nullify All Conviction Sentences

The Court ordered the State to adopt judicial, administrative and any other necessary measures to nullify the conviction sentences issued in each of the proceedings.<sup>180</sup> The State must also suppress any judicial or disciplinary records that may exist in the ordinary criminal or military jurisdictions against Mr. Rosadío Villavicencio as a result of this case.<sup>181</sup>

3. Publish the Judgment

The State must publish the Judgment within six months of the Judgment and publish the Official Summary of the Judgment in a newspaper of large national circulation and in the Official Gazette.<sup>182</sup> The Court required the Judgment be published on an official State website for one year, and noted the State must immediately notify the Court once each publication is made available regardless of any time period restriction.<sup>183</sup>

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178. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 212.

179. *Id.* “and provides” ¶ 19.

180. *Id.* “and provides” ¶ 20.

181. *Id.* ¶ 224.

182. *Id.* “and provides” ¶ 21.

183. *Id.* ¶ 231.

### B. Compensation

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court awarded Mr. Rosadío Villavicencio \$110,000 for income he would have received from his position in the Army had the State not detained him and subjected him to the proceedings in this case.<sup>184</sup>

The Court also awarded Mr. Rosadío Villavicencio \$1,000 for consequential damages for expenses he incurred while he was detained.<sup>185</sup>

#### 2. Non-Pecuniary Damages

The Court awarded Mr. Rosadío Villavicencio \$20,000 to compensate him for the lifelong mental and social effects of the two unlawful convictions he endured.<sup>186</sup>

#### 3. Costs and Expenses

The Court awarded \$2,000 to representative César Villacorta Spinner for legal costs and expenses.<sup>187</sup>

The Court also ordered the State must pay \$2,283.84 as reimbursement to the Victim's Legal Assistance Fund, which provided financial support for Mr. Rosadío Villavicencio and his legal representative.<sup>188</sup>

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

\$ 135,283.84

### C. Deadlines

Within one year from the Judgment, the State must provide the Court with a report on the measures it took to comply with the Judgment.<sup>189</sup>

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184. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 242.

185. *Id.* ¶ 243.

186. *Id.* ¶¶ 248-49.

187. *Id.* ¶ 253.

188. *Id.* ¶¶ 255, 259.

189. *Id.* “and provides” ¶ 24.

The State must suppress any judicial or disciplinary records that exist in the ordinary criminal or military jurisdictions against Mr. Rosadio Villavicencio within six months of notification of the Judgment.<sup>190</sup>

The State must publish the Official Summary and the Judgment within six months.<sup>191</sup>

The State must make all payments for material and immaterial damages and for the reimbursement of costs and expenses within one year from the date of the Judgment, and the State must reimburse the Court Assistance Fund within six months from the date of the Judgment.<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

Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 388, (Oct. 14, 2019).

Rosadio Villavicencio v. Peru, Resolution of the President, Call for Hearing, Inter-Am. Ct. H.R. (ser. C) No. 388, (Dec. 6, 2018).

Rosadio Villavicencio v. Peru, Resolution of the President, Victim's Legal Assistance Fund, Inter-Am. Ct. H.R. (ser. C) No. 388, (Sept. 17, 2018).

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190. Rosadio Villavicencio v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 224.

191. *Id.* ¶ 231.

192. *Id.* ¶ 259-60.

## 3. Provisional Measures

[None]

## 4. Compliance Monitoring

[None]

## 5. Review and Interpretation of Judgment

[None]

*B. Inter-American Commission*

## 1. Petition to the Commission

[Not Available]

## 2. Report on Admissibility

Jorge Rosadio Villavicencio v. Peru, Admissibility Report, Report No. 13/03, Inter-Am. Comm'n H.R., Pet. No. 12.031, (Feb. 20, 2003).

## 3. Provisional Measures

[None]

## 4. Report on Merits

Jorge Rosadio Villavicencio v. Peru, Report on Merits, Report No. 42/17, Inter-Am. Comm'n H.R., Case No. 12.031, (May 23, 2017).

## 5. Application to the Court

Jorge Rosadio Villavicencio v. Peru, Letter of Submission to the Court, Inter-Am. Comm'n H.R., Case No. 12.031, (Sept. 22, 2017).

## VIII. BIBLIOGRAPHY

[None]