

Lori Berenson Mejía v. Peru

ABSTRACT¹

This case involves the arrest, conviction, and detention of Lori Helene Berenson Mejía, a United States citizen charged with treason for her alleged affiliation with the Tupac Amaru Revolutionary Forces. On November 30, 1995, she was arrested and on March 12, 1996, she was sentenced to life imprisonment, which was later annulled by the Supreme Council of Military Justice. She was confined in the Yanamayo Prison from January 17, 1996 to October 7, 1998 (2 years, 8 months and 20 days), and during this period was subjected to inhumane detention conditions. On August 28, 2000, a new proceeding against Ms. Berenson Mejía was commenced in the ordinary criminal jurisdiction. This trial culminated in the judgment of June 20, 2001, which found Ms. Berenson Mejía guilty of the crime of “collaboration with terrorism,” and sentenced her to 20 years imprisonment. The Supreme Court of Justice of Peru confirmed the judgment on February 13, 2002. The Court found that the State violated the American Convention on Human Rights.

I. FACTS

A. Chronology of Events

November 13, 1969: Lori Berenson Mejía, a United States citizen, is born.²

1980-1994: Peru experiences serious social turmoil due to terrorism.³

1. Jennifer Toghian, Author; Amy Choe, Editor; Jenna Eyrich, Senior Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 119, ¶ 88.77 (Nov. 25, 2004).

3. *Id.* ¶ 88.1.

1990: After dropping out of Massachusetts Institute of Technology, Ms. Berenson Mejía moves to Central America, and proceeds to live in Nicaragua, Panama, and El Salvador.⁴

1991: Ms. Berenson Mejía begins working as an aide to Leonel González, a leader of the Farabundo Marti Liberation Front (“FMLN”), a leftwing Salvadoran rebel group.⁵ However, Ms. Berenson Mejía states that during this time she had no involvement with FMLN.⁶

1992: The State issues Decree Laws Nos. 25,475, and 25,659, to define the crimes of terrorism and treason, respectively.⁷ According to Article 2 of Decree Law No. 25,475, any individual who generates or preserves a state of fear among the State or a part of it, or who uses weapons to act against the security of public property or services, commits the crime of terrorism.⁸ According to Article 4 of this Decree Law, anyone who voluntarily facilitates any type collaboration, or promotion of the committing the crimes of terrorism commits the crime of collaboration with terrorism.⁹ Additionally, Article 1(a) of Decree Law No. 25,659 states that any person that takes part in the actions stated in Article 2 of Decree Law No. 25,475, while using weapons of war that cause the death of individuals or damages property, commits treason.¹⁰ Article 2 of Decree Law No. 25,659 describes a criminal participant in the crime of treason by referring to specific qualities, such as being the forerunner of a terrorist group.¹¹

1992: Ms. Berenson Mejía makes at least one trip to Panama, where she meets a Panamanian arms dealer, Pacífico Abdiel Castrellón.¹²

4. Kevin Baxter, *The Price of Passion: Thousands of Young Americans Have Gone to Latin America to Right What They See as Injustices. Most Come Back. But Not Lori Berenson, Who Sits Isolated for Life in a Peruvian Prison*, L.A. TIMES (Feb. 7, 1996), http://articles.latimes.com/1996-02-07/news/ls-33113_1_lori-berenson; Lori Berenson, DISCOVERTHENETWORKS.ORG, <http://www.discoverthenetworks.org/individualProfile.asp?indid=1881> (last visited Jan. 29, 2014).

5. *Id.*

6. *Id.*

7. Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, ¶ 88.2.

8. *Id.* ¶ 116(i).

9. *Id.* ¶ 116(v).

10. *Id.* ¶ 116(ii).

11. *Id.* ¶ 116(iii).

12. Kevin Baxter, *The Price of Passion: Thousands of Young Americans Have Gone to*

Ms. Berenson Mejía and Mr. Castellón then travel to Ecuador, where they meet Nestor Cerpa, head of the Tupac Amaru Revolutionary Forces (“MRTA”), one of two main armed groups instigating a guerrilla war against the Peruvian government.¹³ The organization, which is fueled by Marxist philosophy, is considered responsible for the murders of over 200 individuals.¹⁴

1994: Ms. Berenson Mejía arrives in Peru with Mr. Castellón.¹⁵ When in Peru, she rents a house in the suburb of La Molina, a suburb of Lima, with Mr. Castellón.¹⁶ In Peru, Ms. Berenson-Mejía observes Peruvian politics and writes articles for United States-based publications.¹⁷ She attends the Peruvian Congress’s plenary sessions and also interviews several Congress members.¹⁸

1995: National Counterterrorism Directorate (“DINCOTE”), a division of the Peruvian National Police (“PNP”), is responsible for counterterrorism operations during this time period.¹⁹ The investigation and prosecution of cases of treason fall solely within military jurisdiction.²⁰ The military holds summary proceedings for treason before “faceless” judges, whose identities are obscured.²¹

August 1995: Ms. Berenson Mejía moves out of the house in La Molina that she and Mr. Castellón rented and moves into an apartment in another part of Lima.²² Ms. Berenson Mejía continues to visit the La

Latin America to Right What They See as Injustices. Most Come Back. But Not Lori Berenson, Who Sits Isolated for Life in a Peruvian Prison, L.A. TIMES (Feb. 7, 1996), http://articles.latimes.com/1996-02-07/news/ls-33113_1_lori-berenson.

13. *Id.*

14. *Lori Berenson*, DISCOVERTHENETWORKS.ORG, <http://www.discoverthenetworks.org/individualProfile.asp?indid=1881> (last visited Jan. 29, 2014).

15. *Chronology of Events in Berenson Case*, ASSOCIATED PRESS (June 20, 2001), <http://www.latinamericanstudies.org/peru/berenson-chronology.htm>.

16. *Lori Berenson*, DISCOVERTHENETWORKS.ORG, <http://www.discoverthenetworks.org/individualProfile.asp?indid=1881> (last visited Jan. 29, 2014).

17. Rhoda Berenson, LORI: MY DAUGHTER WRONGFULLY IMPRISONED IN PERU 60-70 (2000).

18. *Id.*

19. *Lori Berenson v. Peru*, Merits, Reparations, and Costs, Judgment, ¶ 88.3.

20. *Id.* ¶ 88.4.

21. *Id.*

22. *Chronology of Events in Berenson Case*, ASSOCIATED PRESS (June 20, 2001), <http://www.latinamericanstudies.org/peru/berenson-chronology.htm>.

Molina home.²³ She later denies having any knowledge of the terrorists and large quantities of ammunition and dynamite that are hidden on the top floor of the home.²⁴

November 30, 1995: In the afternoon, Ms. Berenson Mejía attends a session of the Congress of the Republic of Peru.²⁵ During this time, members of DINCOTE observe her.²⁶ After the session, Ms. Berenson Mejía is arrested on a public bus with Mr. Cerpa's wife, Nancy Gilvonio.²⁷ After a member of DINCOTE makes Ms. Berenson Mejía exit the bus and enter his vehicle,²⁸ he drives her to a National Police building and places her in police custody.²⁹ The women are accused of being active members of MRTA.³⁰ Ms. Berenson Mejía says that she did not know Ms. Gilvonio's true identity, and that she had hired her as a photographer for articles that she planned to write about women and poverty in Peru.³¹

December 1, 1995: An eleven-hour siege on the La Molina home that Ms. Berenson Mejía rented with Mr. Castellón and housed MRTA rebels begins.³² Three insurgents and one police officer are killed in this encounter, which results in twenty people's deaths, including MRTA's second-in-command, Miguel Rincon.³³ The rebels are suspected of conspiring to attack the State's Congress to take politicians hostage in exchange for the release of several of their members from prison.³⁴ Peruvian officials say that Ms. Berenson Mejía obtained forged press credentials to get access to Congress, which she visited at least four

23. *Id.*

24. *Id.*

25. *Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment*, ¶ 74a.

26. *Id.* ¶ 88.9.

27. *Id.* ¶ 74a.

28. *Id.* ¶ 74a.

29. *Id.* ¶¶ 74a, 88.9.

30. Kevin Baxter, *The Price of Passion: Thousands of Young Americans Have Gone to Latin America to Right What They See as Injustices. Most Come Back. But Not Lori Berenson, Who Sits Isolated for Life in a Peruvian Prison*, L.A. TIMES (Feb. 7, 1996), http://articles.latimes.com/1996-02-07/news/ls-33113_1_lori-berenson.

31. *Chronology of Events in Berenson Case*, ASSOCIATED PRESS (June 20, 2001), <http://www.latinamericanstudies.org/peru/berenson-chronology.htm>.

32. *Id.*

33. Lizette Alvarez, *Gramercy Park Woman is Held as a Rebel in Peru*, N.Y. TIMES (Dec. 6, 1995), <http://www.nytimes.com/1995/12/06/nyregion/gramercy-park-woman-is-held-as-a-rebel-in-peru.html>.

34. *Id.*

times.³⁵ Additionally, the police say they grew suspicious of Ms. Berenson Mejía when they saw her entering the La Molina home carrying many loaves of bread.³⁶

Subsequently, the Special Military judge opens a preliminary investigation against Ms. Berenson Mejía for treason.³⁷ The government searches and seizes many of her assets including her United States passport, cell phone, and driver's license from the Republic of Nicaragua.³⁸ Additionally, the Special Military Prosecutor and DINCOTE search Mr. Castellón's home.³⁹ During this search they find weapons, ammunition, explosives, and a voter's identity card with Ms. Berenson Mejía's picture and the name Ana Gion Mansinni Flores.⁴⁰ As of this date, Ms. Berenson Mejía is detained by DINCOTE.⁴¹ She is unable to see her family for the first week of her detention and receives access to a lawyer eight days after this day.⁴² Ms. Berenson Mejía's lawyers insist that she had no knowledge of any terrorist plans by MRTA.⁴³ Rather, her lawyers say that Ms. Berenson Mejía thought she was helping the organization learn about the legislative system in order to form a political party and take part in elections.⁴⁴

December 2, 1995: Ms. Berenson Mejía is transferred to DINCOTE, where she is detained and interrogated.⁴⁵

December 4, 1995: Ms. Berenson Mejía is taken to her apartment without her lawyer to search it.⁴⁶ The record of the search indicates that documents, cash, electrical appliances, and two uniforms apparently belonging to the Peruvian Army were found.⁴⁷ Ms. Berenson Mejía

35. *Id.*

36. *Id.*

37. Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, ¶ 88.13.

38. *Id.* ¶ 74a.

39. *Id.* ¶ 88.17.

40. *Id.* ¶ 88.17.

41. *Id.* ¶ 88.14.

42. *Id.*

43. Kevin Baxter, *The Price of Passion: Thousands of Young Americans Have Gone to Latin America to Right What They See as Injustices. Most Come Back. But Not Lori Berenson, Who Sits Isolated for Life in a Peruvian Prison*, L.A. TIMES (Feb. 7, 1996), http://articles.latimes.com/1996-02-07/news/ls-33113_1_lori-berenson.

44. *Id.*

45. Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, ¶ 74a.

46. *Id.* ¶ 88.18.

47. *Id.*

refuses to sign the search record stating that the record listed items that do not belong to her.⁴⁸

December 14, 1995 – December 16, 1995: Ms. Berenson Mejía makes a pre-trial statement at the DINCOTE offices in the presence of her attorney and the Army's Special Military Judge.⁴⁹ Ms. Berenson Mejía is never informed of the charges against her.⁵⁰ She affirms that she does not know why her photo was on the forged voter's identity card that had been found on the December 1, 1995 search.⁵¹

January 8, 1996: Three days before the Military Judge delivers Ms. Berenson Mejía's judgment, the Peruvian Police present her to the media without giving her the chance to access her lawyer.⁵² Ms. Berenson Mejía is then moved to a platform surrounded by reporters and soldiers who are shouting "terrorists, traitors!"⁵³ In response, Ms. Berenson Mejía angrily shouts to the crowd⁵⁴ and says, "If it is a crime to worry about the subhuman conditions in which the majority of this population lives, then I will accept my punishment. But this is not a love of violence.†.†. This is not to be a criminal terrorist because there are no criminal terrorists in the MRTA. It is a revolutionary movement."⁵⁵ This video of Ms. Berenson Mejía addressing the media is offered as evidence of her membership in a terrorist group.⁵⁶

January 11, 1996: The Special Military Court sentences Ms. Berenson Mejía to life imprisonment⁵⁷ for perpetrating treason by helping leftist guerrillas.⁵⁸ Though the prosecution asked only for thirty years, Ms. Berenson Mejía is given the maximum sentence.⁵⁹

48. *Id.*

49. *Id.* ¶ 88.21.

50. *Id.* ¶ 74a.

51. *Id.* ¶ 88.21.

52. *Id.* ¶ 88.28.

53. *Id.* ¶ 74a.

54. *Id.*

55. *Chronology of Events in Berenson Case*, ASSOCIATED PRESS (June 20, 2001), <http://www.latinamericanstudies.org/peru/berenson-chronology.htm>.

56. *Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment*, ¶ 88.29.

57. *Id.* ¶ 88.31.

58. *World IN BRIEF: PERU: Treason Conviction for U.S. Woman*, L.A. TIMES (Jan. 12, 1996), http://articles.latimes.com/1996-01-12/news/mn-23920_1_treason-conviction.

59. *Id.*

At this trial she is not questioned.⁶⁰ She is only asked whether she will appeal the sentence and she is not permitted to consult her attorney before answering.⁶¹ While the Court reads the judgment, the judges and prosecutors have their faces covered with masks in order to hide their identities.⁶² Ms. Berenson Mejía is sent to the Chorrillos High-Security Women's Prison.⁶³

January 17, 1996: Ms. Berenson Mejía is transferred to Yanamayo Prison, where she is detained for two years and nine months.⁶⁴ She is in solitary confinement for 23.5 hours a day in a cell that measures two and a half square meters without ventilation or natural light.⁶⁵ Additionally, water is scarce and the prison floors are constantly frozen due to high elevation.⁶⁶ Due to these conditions, Ms. Berenson Mejía suffers digestive and circulatory problems that later lead to Reynaud's disease (a condition that causes areas of the body, such as fingers, toes, the tip of the nose and ears, to feel numb and cool in response to cold temperatures or stress).⁶⁷

January 19, 1996: Ms. Berenson Mejía's lawyer appeals the judgment against her.⁶⁸

January 30, 1996: Unidentified members of the Army's Special Military Court declare Ms. Berenson Mejía's appeal inadmissible.⁶⁹ In response, her attorney files an appeal for annulment of this decision.⁷⁰

March 4, 1996: The Deputy Special Prosecutor responds to the appeal for annulment and states that the judgment sentencing Ms. Berenson Mejía to life imprisonment should not be annulled.⁷¹

March 11, 1996: Ms. Berenson Mejía's lawyer requests the Special

60. Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, ¶ 74a.

61. *Id.*

62. *Id.*; *Chronology of Events in Berenson Case*, ASSOCIATED PRESS (June 20, 2001), <http://www.latinamericanstudies.org/peru/berenson-chronology.htm>.

63. Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, ¶ 74a.

64. *Id.* ¶ 88.73.

65. *Id.* ¶ 74a.

66. *Id.* ¶

67. *Id.* ¶ 88.74.

68. *Id.* ¶ 88.32.

69. *Id.*

70. *Id.* ¶ 88.34.

71. *Id.* ¶ 88.35.

Military Supreme Court to declare unacceptable proceedings up to when the Prosecutor filed treason charge against Ms. Berenson Mejía.⁷²

March 12, 1996: The Special Military Supreme Court declares there will be no annulment of the January 30, 1996 decision that confirmed the January 11, 1996 decision sentencing Ms. Berenson Mejía to life imprisonment for treason.⁷³

August 1996: The President of Peru, Alberto Fujimori, defends the State's harsh anti-terrorism movement as necessary due suppress rebel violence.⁷⁴ However, he acknowledges that innocent people have been convicted by this system.⁷⁵

December 7, 1996: Prison officials allow Ms. Berenson Mejía's parents to visit her, after a year of not being allowed to see her family.⁷⁶

December 17, 1996: Thirteen MRTA members, while heavily armed, storm the Japanese Ambassador's home during a social event, and hold seventy-two individuals hostage for 126 days.⁷⁷ The insurgents demand the release of twenty of their imprisoned members, including Ms. Berenson Mejía.⁷⁸ The MRTA members are all killed in a military assault that rescues seventy-one of the hostages.⁷⁹

May 1999: President Fujimori is re-elected to his third term to the presidency, after a controversial campaign marked with charges of voter fraud⁸⁰ and harsh criticism from the United States.⁸¹

72. *Id.* ¶ 88.36.

73. *Id.* ¶ 88.37.

74. Lynn F. Monahan, *Peru May Free Many Who Deny Terrorist Ties*, L.A. TIMES (Oct. 20, 1996), http://articles.latimes.com/1996-10-20/news/mn-55817_1_terrorist-groups.

75. *Id.*

76. Laurie Goering, *Peru Crisis Leaves Jailed New Yorker With Less Hope*, CHI. TRI. (Feb. 13, 1997), http://articles.chicagotribune.com/1997-02-13/news/9702130179_1_lori-berenson-tupac-amaru-revolutionary-movement-upscale-lima-neighborhood.

77. *Id.*

78. *Chronology of Events in Berenson Case*, ASSOCIATED PRESS (June 20, 2001), <http://www.latinamericanstudies.org/peru/berenson-chronology.htm>; Laurie Goering, *Peru Crisis Leaves Jailed New Yorker With Less Hope*, CHI. TRI. (Feb. 13, 1997), http://articles.chicagotribune.com/1997-02-13/news/9702130179_1_lori-berenson-tupac-amaru-revolutionary-movement-upscale-lima-neighborhood.

79. *Id.*

80. Shaila K. Dewan, *American in Prison in Peru to Get New, Civil Trial in Treason Case*, N.Y. TIMES (Aug. 29, 2000), <http://www.nytimes.com/library/world/americas/082900peru-berenson.html>.

August or September 1999: Four individuals who have been held hostage in the Japanese Ambassador's residence become convinced that Ms. Berenson Mejía is not a leader of the MRTA.⁸² These statements open the door to Ms. Berenson Mejía's ability to file an appeal for review.⁸³ Subsequently, the Supreme Council of Military Justice orders the military case to be transferred to the civil jurisdiction.⁸⁴

December 7, 1999: Ms. Berenson Mejía files an appeal for review.⁸⁵

December 17, 1999: The Public Prosecutor responsible for affairs relating to terrorism and treason reviews Ms. Berenson Mejía's appeal and requests that the Supreme Council of Military Justice to deny it.⁸⁶

January 2000: On the fourth anniversary of her conviction, Ms. Berenson Mejía begins a hunger strike to protest her imprisonment.⁸⁷

January 13, 2000: The Plenary Chamber of the Supreme Council of Military Justice decides to admit Ms. Berenson Mejía's appeal.⁸⁸

August 11, 2000: The Government attorney requests the Plenary Chamber to declare the Ms. Berenson Mejía's appeal admissible because as it has been confirmed that Ms. Berenson Mejía is not a leader of the MRTA terrorist group.⁸⁹

August 14, 2000: The Prosecutor General of the Supreme Council of Military Justice contends that Ms. Berenson Mejía's appeal should be declared admissible and that a portion of the March 12, 1996 judgment should be overturned.⁹⁰

81. *Jonathan Levi & Liz Mineo, Review All Cases, Not Just Berenson's*, L.A. TIMES (Sept. 1, 2000), <http://articles.latimes.com/2000/sep/01/local/me-13688>.

82. *Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 119, ¶ 74a* (Nov. 25, 2004).

83. *Id.*

84. *Id.*

85. *Id.* ¶ 88.38.

86. *Id.* ¶ 88.39.

87. *American Prisoner Wages Hunger Strike*, L.A. TIMES (Jan. 15, 2000), <http://articles.latimes.com/2000/jan/15/news/mn-54320>.

88. *Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment*, ¶ 88.40.

89. *Id.* ¶ 88.41.

90. *Id.* ¶ 88.42.

August 24, 2000: The Military Supreme Court declares part of the January 30, 1996 null and the judgment of January 11, 1996, as without grounds.⁹¹ Additionally, they declare the order that opened the investigation against Ms. Berenson Mejía on December 1, 1995, null.⁹²

February 15, 2001: The Deputy National Superior Criminal Prosecutor for terrorism submits a report to the Superior Prosecutor⁹³ that states there are grounds for holding an oral proceeding against Ms. Berenson Mejía for the crime of terrorism against the State.⁹⁴ This report charges Ms. Berenson Mejía with being a member of the MRTA terrorist group as well as several acts of cooperation with the group.⁹⁵ In view of this report, the Superior Prosecutor determines that Ms. Berenson Mejía is guilty of these crimes.⁹⁶

March 20, 2001: Ms. Berenson Mejía's oral proceeding begins,⁹⁷ on lesser charges of collaboration with terrorists and illicit association.⁹⁸ The proceedings are open and televised and she is permitted to testify in the court.⁹⁹ Prosecutors assert that Ms. Berenson Mejía posed as a journalist in order to take part in a plan to gain entry to Congress and hold members of the legislature hostage.¹⁰⁰

April 19, 2001: Miguel Rincon testifies that Ms. Berenson Mejía knew nothing about MRTA's plan to take over the State's Congress.¹⁰¹ Additionally, he says that said the group's members had deceived Ms. Berenson Mejía into renting the house where the police raid took

91. *Id.* ¶ 88.43.

92. *Id.*

93. *Id.* ¶ 88.54.

94. *Id.* ¶ 88.53.

95. *Id.*

96. *Id.* ¶ 88.54.

97. *Id.* ¶ 88.58.

98. *Chronology of Events in Berenson Case*, ASSOCIATED PRESS (June 20, 2001), <http://www.latinamericanstudies.org/peru/berenson-chronology.htm>.

99. Sebastian Rotella & Natalia Tarnawiecki, *American Found Guilty of Working With Rebels*, L.A. TIMES (June 21, 2001), <http://articles.latimes.com/2001/jun/21/news/mn-12873>.

100. *Retrial of American Begins in Peru*, L.A. TIMES (Mar. 21, 2001), <http://articles.latimes.com/2001/mar/21/news/mn-40634>.

101. *Rebel Supports U.S. Woman at Retrial*, L.A. TIMES (Apr. 21, 2001), <http://articles.latimes.com/2001/apr/21/news/mn-53831>.

place.¹⁰²

May 2, 2001: Ms. Berenson Mejía's representatives raise an objection with the President of the National Chamber of Criminal Organizations and Groups.¹⁰³

May 4, 2001: The National Terrorism Chamber declares Ms. Berenson Mejía's lawyer's objection to the President of the Chamber as inadmissible because it was filed during the continuation of the public hearing when it should have been filed up to three days before the hearing.¹⁰⁴ Ms. Berenson Mejía's attorney files an appeal for annulment of this decision.¹⁰⁵

June 20, 2001: Berenson Mejía affirms her innocence in her closing statement to the court.¹⁰⁶ The National Terrorism Chamber declares that the objections raised by Ms. Berenson Mejía to several documents that were offered as evidence in the oral proceeding are all inadmissible.¹⁰⁷ The Chamber determines that Ms. Berenson Mejía's collaborated with terrorists¹⁰⁸ but that they were not persuaded that Ms. Berenson Mejía had actually become a member or leader of the MRTA terrorist group.¹⁰⁹ Due to this, the Chamber rules that Ms. Berenson Mejía's penalty should be as light as possible,¹¹⁰ and convict her to twenty years imprisonment.¹¹¹

June 25, 2001: Incoming President Alejandro Toledo says that he will not interfere with the court's decision and pardon Ms. Berenson Mejía to respect the independence of the courts.¹¹²

102. *Id.*

103. Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 119, n.178 (Nov. 25, 2004).

104. *Id.* ¶ 88.59.

105. *Id.* ¶ 88.60.

106. *Chronology of Events in Berenson Case*, ASSOCIATED PRESS (June 20, 2001), <http://www.latinamericanstudies.org/peru/berenson-chronology.htm>.

107. Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, ¶ 88.62.

108. *Id.* ¶ 88.66.

109. *Id.* ¶ 88.67.

110. *Id.* ¶ 88.68.

111. *Id.* ¶ 88.69.

112. Shaïla K. Dewan, *New Peru President Won't Enter Berenson Case*, N.Y. TIMES (June 26, 2001), <http://www.nytimes.com/2001/06/26/world/new-peru-president-won-t-enter-berenson-case.html>.

July 3, 2001: Ms. Berenson Mejía's lawyer files an appeal for annulment against the June 20, 2001 judgment.¹¹³

January 22, 2002: Ms. Berenson Mejía's attorney petitions before the Supreme Court to overturn her twenty-year prison term for collaborating with insurgents.¹¹⁴ Prosecutor Ysaias Tamayo asks the court to confirm the sentence, stating that Ms. Berenson Mejía's civil trial met the maximum guarantee of due process.¹¹⁵

February 13, 2002: Supreme Court of Justice of Peru declares, by a 4-5 vote,¹¹⁶ that it will not annul the June 20, 2001 judgment that sentenced Ms. Berenson Mejía to twenty years imprisonment.¹¹⁷ This is Ms. Berenson Mejía's last opportunity for appeal in the State's judicial system.¹¹⁸

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

January 22, 1998: The Commission receives a petition from Grimaldo Achahui Loaiza, Ramsey Clark and Thomas H. Nooter on behalf Lori Berenson.¹¹⁹

February 11, 1998: The Commission opens case No. 11,876 and forwards it to the State to provide information within ninety days.¹²⁰

June 30, 1998: After an extension, the State presents its comments on the Commission's petition and requests it be declared inadmissible,

113. Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, ¶ 88.70.

114. *Berenson Sentence Appealed*, L.A. TIMES (Jan. 23, 2002), <http://articles.latimes.com/2002/jan/23/news/mn-24332>.

115. *Id.*

116. *Berenson Exhausts Appeals*, L.A. TIMES (February 19, 2002), <http://articles.latimes.com/2002/feb/19/news/mn-28752>.

117. Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, ¶ 88.71.

118. *Berenson Exhausts Appeals*, L.A. TIMES (February 19, 2002), <http://articles.latimes.com/2002/feb/19/news/mn-28752>.

119. Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, ¶ 7.

120. *Id.* ¶ 8.

because they have determined Ms. Berenson Mejía has not exhausted domestic legal remedies.¹²¹

December 8, 1998: The Commission adopts Report No. 56/98, which declares the case admissible.¹²²

April 3, 2002: The Commission adopts Merits Report No. 36/02, and recommends that the State adopt all measures necessary to mend the human rights violations against Ms. Berenson Mejía.¹²³ The Commission also recommends the State adopt all measures necessary to improve Decree Laws 25,475 and 25,659, in order to make them compatible with the American Convention on Human Rights.¹²⁴

B. Before the Court

July 19, 2002: The Commission submits the case to the Court after the State failed to adopt its recommendations.¹²⁵

Violations Alleged by Commission¹²⁶

To the detriment of Ms. Berenson Mejía:

Article 5 (Right to Humane Treatment)

Article 9 (Freedom from Ex Post Facto Laws)

all in relation to:

Article 1(1) (Obligation to Respect Rights) and

Article 2 (Domestic Legal Effects) of the American Convention.

Violations Alleged by Representatives of the Victims

To the detriment of Ms. Berenson Mejía:

Same Violations Alleged by Commission, plus:¹²⁷

121. *Id.* ¶ 9.

122. *Id.* ¶ 11.

123. *Id.* ¶ 15. The Merits Judgment does not indicate which articles the Commission determined the State violated, and Merits Report No. 36/02 was not available at the time of publication. *Id.*

124. *Id.*

125. *Id.* ¶ 1.

126. *Id.* ¶¶ 95, 110, 129, 211, 215.

127. *Id.* ¶¶ 96, 111, 130, 212, 216.

Article 7 (Right to Personal Liberty)
Article 11 (Right to Privacy) of the American Convention.

III. MERITS

A. *Composition of the Court*¹²⁸

Sergio García Ramírez, President
Alirio Abreu Burelli, Vice-President
Oliver Jackman, Judge
Antônio A. Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge
Juan Federico D. Monroy Gálvez, Judge *ad-hoc*

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

November 25, 2004: The Court issues its Judgment on Merits, Reparations and Cost.

The Court found unanimously that Peru had violated:

Article 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) and 5(6) (Detention Must Aim to Reform and Rehabilitate) in relation to Article 1(1) of the Convention, to the detriment of Ms. Berenson Mejía,¹²⁹ because:

The Court determined that Peru violated Ms. Berenson Mejía's right to humane treatment due to the conditions of her imprisonment.¹³⁰ After being sentenced to life imprisonment for treason by the military court, Ms. Berenson Mejía was kept in solitary confinement, in a small cell

128. Judge Diego García Sayán excused himself from hearing this case because he is a Peruvian national. *Id.* at n.*.

129. *Id.* ¶ 109.

130. *Id.* ¶ 108.

*without ventilation, natural light, heating, adequate food or efficient sanitary facilities for one year at Yanamayo Prison.*¹³¹

*The Court has held that penalties are a manifestation of the State's authority to punish.*¹³² *Nevertheless, the injuries, sufferings, damage to health or prejudices suffered by a person while he or she is imprisoned can be a form of cruel punishment if he or she suffers a decline in physical, mental and moral integrity in violation of Article 5(2) of the American Convention.*¹³³ *While at Yanamayo Prison, Ms. Berenson Mejía suffered from circulatory problems, Reynaud's Syndrome, as well as problems with her vision.*¹³⁴

*Additionally, the Court has also established that prolonged isolation is cruel and inhuman treatment that harms the physical and moral integrity of a person because isolation causes one to be vulnerable and produces moral and mental stress.*¹³⁵ *The Court recognized that the United Nations Committee against Torture had deemed Ms. Berenson Mejía's imprisonment at Yanamayo Prison a cruel and inhuman treatment and punishment.*¹³⁶ *Though the conditions at Yanamayo Prison varied from time to time, the Court still determined that the conditions of Ms. Berenson Mejía's imprisonment violated Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), and 5(6) (Detention Must Aim to Reform and Rehabilitate) of the American Convention, in relation to Article 1(1).*¹³⁷

Article 9 (Freedom from *Ex Post Facto* Laws), in relation to Article 1(1) of the Convention, to the detriment of Ms. Berenson Mejía, with regard to her trial,¹³⁸ because:

*The Court concluded that the State violated Ms. Berenson Mejía's right to freedom from ex-post facto laws in its investigation into her case and her military trial.*¹³⁹ *Article 9 (Freedom from Ex Post Facto Laws) of the*

131. *Id.* ¶¶ 105-106.

132. *Id.* ¶ 106.

133. *Id.* ¶ 101.

134. *Id.* ¶ 106.

135. *Id.* ¶¶ 103-104.

136. *Id.* ¶ 105.

137. *Id.* ¶ 109.

138. *Id.* ¶ 121.

139. *Id.*

*American Convention establishes that no person will be convicted for an act that did not constitute a criminal offense, under the applicable law, when it was committed.*¹⁴⁰ Article 9 also prohibits the State to impose a heavier penalty than the one that was originally valid when the offense was committed.¹⁴¹

*Ms. Berenson Mejía was subjected to two criminal proceedings, one in the military court and another in civil court.*¹⁴² *In the military court she was tried for the crime of treason and in the civil court she was tried for the crime of collaboration with terrorism.*¹⁴³

*In past cases, the Court has considered the crimes of terrorism and treason as equal or overlapping in regards to the typical conduct required, elements of the crimes, entities against which they were carried out, and the effect the crimes had on society.*¹⁴⁴ *Therefore, conduct that could constitute terrorism could also be considered treason and vice versa.*¹⁴⁵ *The Court, therefore, found that the State had violated Article 9 (Freedom from Ex Post Facto Laws) of the Convention, in relation to Article 1(1) thereof, to the detriment of Ms. Berenson Mejía in her military trial.*¹⁴⁶

*The Court, however, did not find, by six votes to one, that the State violated Ms. Berenson Mejía's Article 9 (Freedom from Ex Post Facto Laws) rights in her civil trial.*¹⁴⁷ *The Peruvian legislation applied in Ms. Berenson Mejía's civil case instituted different categories of crime for terrorism, treason, and collaboration with terrorism.*¹⁴⁸ *As Ms. Berenson Mejía was charged with collaboration with terrorism in her ordinary criminal proceeding,*¹⁴⁹ *and, since the definition of the crime of collaboration with terrorism does not have the same components as the crime of treason, the Court found that the State did not violate Article 9 (Freedom From Ex Post Facto Laws) of the*

140. *Id.* ¶ 113.

141. *Id.*

142. *Id.* ¶ 114.

143. *Id.*

144. *Id.* ¶ 117.

145. *Id.*

146. *Id.* ¶ 121.

147. *Id.* ¶ 128.

148. *Id.* ¶ 127.

149. *Id.* ¶¶ 127-128.

*American Convention in Ms. Ms. Berenson Mejía's civil trial.*¹⁵⁰

Articles 8(1) (Right to a Hearing within Reasonable Time by Competent and Independent Tribunal) and 8(2) (Right to be Presumed Innocent) in relation to Article 1(1) of the Convention, to the detriment of Ms. Berenson Mejía, with regard to her trial,¹⁵¹ because:

*The State tried Ms. Berenson Mejía for treason in a military court.¹⁵² The Court previously established that military courts have a very limited scope and therefore should only try military personnel for committing crimes or misdemeanors that, due to their nature, harm the juridical interests of the military system.*¹⁵³

*The Court has previously stated that when military courts try cases that should be instead heard by the civil courts, the State violates the right to a competent, independent, and impartial hearing.¹⁵⁴ The right to be tried by a civil court under lawful procedures is a basic element of due process of law.¹⁵⁵ Military courts' neutrality is often affected by the fact that the military has two functions in the justice system: combating rebellious groups with military means, and judging and imposing penalties on these groups.¹⁵⁶ Therefore, the Court found that the military tribunal that tried Ms. Berenson Mejía violated Article 8(1) (Right to a Hearing within Reasonable Time by Competent and Independent Tribunal) of the Convention.*¹⁵⁷

*The State violated Ms. Berenson Mejía's right to be presumed innocent when DINCOTE paraded her as a perpetrator of the crime of treason to the media during her military proceeding, before she had been convicted.¹⁵⁸ Article 8(2) (Right to be Presumed Innocent) of the Convention does not allow a State to act in such a way as to induce the public to form an opinion about an individual's innocence while the individual's criminal responsibility has not yet been proved.*¹⁵⁹

150. *Id.* ¶ 128.

151. *Id.* ¶ 161.

152. *Id.* ¶ 150.

153. *Id.* ¶ 142.

154. *Id.* ¶ 141.

155. *Id.* ¶ 143.

156. *Id.* ¶ 145.

157. *Id.* ¶ 150.

158. *Id.* ¶¶ 88.28, 158.

159. *Id.* ¶ 160.

*Therefore, the State is responsible for the violation of Article 8(2) of the American Convention to the detriment of Ms. Berenson Mejía, for the criminal trial in the military court.*¹⁶⁰

*The Court held six votes to one that in both civil trials, the State respected Ms. Berenson Mejía's right to be heard by a competent unprejudiced court.*¹⁶¹ *Though Ms. Berenson Mejía's counsel filed an objection to the civil hearings, it was not raised at the proper time in the domestic jurisdiction.*¹⁶² *The Court, therefore, did not find prejudice in violation of Article 8(1)(Right to a Hearing within Reasonable Time by Competent and Independent Tribunal) of the Convention because it was not raised at the proper time in the domestic jurisdiction.*¹⁶³ *The Court also found that the evidence established that the State did not violate Article 8(2) (Right to be Presumed Innocent) in Ms. Berenson Mejía's civil trial.*¹⁶⁴

8(2)(b) (Right to Have Prior Notification of Charges), 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel in relation to Article 1(1) of the Convention, to the detriment of Ms. Berenson Mejía, with regard to her trial,¹⁶⁵ because:

*Ms. Berenson Mejía's right to communicate with her lawyer, without delay, interference or restriction in private not within the hearing of law enforcement officials, was violated.*¹⁶⁶ *Additionally, Ms. Berenson Mejía was never fully informed of the charges against her nor was she able to raise objections or prepare an adequate defense in trial because "faceless" officials tried her.*¹⁶⁷ *The Court considered the existence of Ms. Berenson Mejía's defense counsel a merely a formality, as the lawyer was only given access to the case file the day before delivery of judgment, not allowing Ms. Berenson Mejía a proper chance to defend herself.*¹⁶⁸ *Therefore, this constituted a violation of Article 8(2)(b) (Right to Have Prior Notification of Charges), 8(2)(c) (Right to Adequate Time*

160. *Id.* ¶ 161.

161. *Id.* ¶¶ 88.59, 152.

162. *Id.* ¶¶ 153, 155-156.

163. *Id.* ¶¶ 155-156.

164. *Id.* ¶¶ 163, 164.

165. *Id.* ¶ 186.

166. *Id.* ¶ 166.

167. *Id.* ¶ 167.

168. *Id.*

*and Means to Prepare Defense), and 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel).*¹⁶⁹

The Court determined, by six votes to one, that Ms. Berenson had the right to a defense in her civil trial because she had access to a defense lawyer throughout the proceedings who had the ability to cross-examine the witnesses during the proceedings, which were all public, and could also provide evidence.¹⁷⁰ Additionally, though the Court raised issue about the illegal evidence that was gathered by the State, the Court said it did not have the authority to assess evidence from the domestic proceedings because this would interfere with domestic jurisdiction.¹⁷¹ Finally, the Court determined that because the State had established judicial procedures, and the State complied with these procedures, the Court did not wish to interfere with the State's choice of system.¹⁷²

8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them) in relation to Article 1(1) of the Convention, to the detriment of Ms. Berenson Mejía, with regard to her trial,¹⁷³ because:

The Inter-American Court, as well as the European Court of Human Rights, have found that in order to defend herself, a defendant has the right to examine witnesses who testify either for and against her.¹⁷⁴ Imposing any restrictions on this right and preventing the victim and her attorney from cross-examining witnesses violates this right.¹⁷⁵ Because the State did not allow Ms. Ms. Berenson Mejía's attorney to cross-examine the police and military agents who took part in Ms. Ms. Berenson Mejía's investigation, the State violated Article 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them).¹⁷⁶

The Court however, recognized, by six votes to one that, Ms. Berenson Mejía's lawyer exercised the right to examine the witnesses who testified during the pre-trial investigation and oral proceeding in the

169. *Id.* ¶ 168.

170. *Id.* ¶ 170.

171. *Id.* ¶ 174.

172. *Id.* ¶ 179.

173. *Id.* ¶ 186.

174. *Id.* ¶ 184.

175. *Id.* ¶ 185.

176. *Id.* ¶ 186.

civil jurisdiction, and also exercised the right to present pertinent witnesses.¹⁷⁷ Therefore, the Court did not deem that the State violated Article 8(2)(f) (Right of Defense to Examine Witnesses) of the Convention.¹⁷⁸

8(2)(h) (Right to Appeal) in relation to Article 1(1) of the Convention, to the detriment of Ms. Berenson Mejía, with regard to her trial,¹⁷⁹ because:

The Court has previously recognized that legislation regarding crimes of treason provides the possibility of filing an appeal against the first-instance judgment and an appeal for annulment against the second-instance judgment.¹⁸⁰ However, the Court has indicated that the right to appeal a judgment is not satisfied merely where there is a court higher than the one that tried and convicted the accused that may assess his appeal.¹⁸¹ For an accurate review, this higher court must meet the requirements of a competent and neutral tribunal to have the jurisdictional authority to reexamine the case in question.¹⁸² In the present case, the second-instance court was a division of the military and therefore not a neutral tribunal.¹⁸³ Consequently, though remedies that could be used by Ms. Berenson Mejía did exist, there was no guarantee that a higher court that satisfied the requirements of impartiality established in the Convention would reexamine her case.¹⁸⁴ This constituted a violation of Article 8(2)(h)(Right to Appeal).¹⁸⁵

The Court, however, by six votes to one, did not find that the State violated Article 8(2)(h) (Right to Appeal) to the detriment of Ms. Berenson Mejía.¹⁸⁶ Ms. Berenson Mejía's lawyer filed an appeal for annulment of the National Terrorism Chamber June 20, 2001 judgment on July 3, 2001, which was later rejected by the Supreme Court of Justice.¹⁸⁷ Since Ms. Berenson Mejía's civil trial was heard by

177. *Id.* ¶¶ 88.50, 88.58, 187.

178. *Id.* ¶ 189.

179. *Id.* ¶ 186.

180. *Id.* ¶ 192.

181. *Id.*

182. *Id.*

183. *Id.* ¶ 193.

184. *Id.*

185. *Id.* ¶ 194.

186. *Id.* ¶ 195.

187. *Id.*

*competent, independent, and impartial tribunal the Court found that the evidence did not establish a violation of Article 8(2)(h) (Right to Appeal) of the Convention in Ms. Berenson Mejía's civil proceedings.*¹⁸⁸

Article 8(4) (Prohibition of Double Jeopardy) in relation to Article 1(1) of the Convention, to the detriment of Ms. Berenson Mejía, with regard to her trial in civil court,¹⁸⁹ because:¹⁹⁰

*Ms. Berenson Mejía's representatives argued that her Article 8(4) (Prohibition of Double Jeopardy) right was violated when she was tried by a civil court after she was tried by the State's military court.*¹⁹¹ *However, because the military jurisdiction was not deemed to be competent, due to its lack of impartiality, the trial held against Ms. Berenson Mejía in military did not constitute a real proceeding under Article 8(4).*¹⁹² *Moreover, because Ms. Berenson Mejía's military trial was waived and her case was moved to a civil trial, the Court did not find that the State violated Article 8(4) (Prohibition of Double Jeopardy) of the Convention to the detriment of Ms. Berenson.*¹⁹³

Article 8(5) (Criminal Proceedings Must Be Public) in relation to Article 1(1) of the Convention, to the detriment of Ms. Berenson Mejía, with regard to her trial,¹⁹⁴ because:

*Since military trials of noncombatants alleged to have committed treason were held by "faceless" judges and prosecutors and where held in isolation from the public on military premises, the State violated Article 8(5) (Criminal Proceedings Must Be Public) of the Convention to the detriment of Ms. Berenson Mejía in her criminal proceeding in military court.*¹⁹⁵

The Court held, six votes to one, that because the civil court proceedings were accessible to the public and held before identifiable judges, the State had not violated the right to the public nature of the

188. *Id.* ¶¶ 152, 196.

189. *Id.* ¶ 186.

190. A violation of Article 8(4) was not alleged for the military court, as there had not yet been a second trial by the State.

191. *Id.* ¶¶ 201-202, 205.

192. *Id.* ¶ 206.

193. *Id.* ¶¶ 208-209.

194. *Id.* ¶ 186.

195. *Id.* ¶¶ 198, 199.

*proceeding embodied in Article 8(5) (Criminal Proceedings Must Be Public) of the Convention.*¹⁹⁶

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

Article 2 (Obligation to Give Domestic Legal Effect to Rights), of the Convention, to the detriment of Ms. Berenson Mejía,¹⁹⁷ because:

*A state that has ratified a human rights treaty must adjust its domestic law to guarantee compliance with its obligations under the treaty.*¹⁹⁸ *States that have adopted the provisions of the Convention may not enact measures that violate the rights they guarantee.*¹⁹⁹ *The provisions of the emergency laws adopted by the State to deal with terrorism, as used in Ms. Berenson Mejía's case, violated Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention because they do not respect the rights enshrined in the American Convention.*²⁰⁰

*The Court noted that the judgment given against Ms. Berenson Mejía in the military court was based on regulations that violated the rights to due process and judicial protection and therefore that conflicted with the American Convention.*²⁰¹ *Though the Court noted that the State was executing a process of reform to its domestic legislation, it found that the State violated Article 2 (Domestic Legal Effects) of the American Convention.*²⁰²

C. Dissenting and Concurring Opinions

1. Dissenting Opinion of Judge Cecilia Medina Quiroga

In a separate opinion, Judge Medina Quiroga discussed first the State's ambiguous definition of terrorism.²⁰³ She declared that the Court should examine Peru's definition of the crime carefully and completely

196. *Id.* ¶ 200.

197. *Id.* ¶ 209. The Court did not indicate that this right was violated in relation to Article 1(1). *See id.* "Decides" ¶ 4.

198. *Id.* ¶ 220.

199. *Id.* ¶ 221.

200. *Id.* ¶ 222.

201. *Id.* ¶ 224.

202. *Id.* ¶ 226.

203. *Lori Berenson v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Cecilia Medina Quiroga, Inter-Am. Ct. H.R. (ser. C) No. 119 ¶ III-XI (Nov. 25, 2004).*

to determine whether it is compatible with Article 9 (Freedom from *Ex Post Facto Laws*) of the American Convention.²⁰⁴ She stated that the National Terrorism Court's judgment of June 20, 2000 does not undermine the objections raised by Ms. Berenson Mejía's lawyer, but rather affirms the Peruvian Constitution's defects in the criminal law.²⁰⁵ The judgment says that the flaws could be changed "when times and situations change" when the standards "are no longer reasonable," which Judge Medina Quiroga does not believe occurred in Ms. Berenson Mejía's judgment.²⁰⁶ Therefore, she did not agree with the majority's decision regarding Article 9 (Freedom from *Ex Post Facto Laws*) of the American Convention.²⁰⁷

Then, Judge Medina Quiroga disagreed with the Court's decision in not finding a violation of Article 8 (Right to a Fair Trial) against Ms. Berenson Mejía.²⁰⁸ She stated that due process of law, which is embodied in Article 8, is a cornerstone of the system for the protection of human rights.²⁰⁹ She explained that the Court's role in inspecting the application of this right in a criminal trial is important, as it ensures a defendant was able to adequately defend himself and in turn safeguards justice.²¹⁰

Judge Medina Quiroga admitted that the Court's authority to review domestic trials is limited.²¹¹ The Court cannot re-assess the evidence of the trial in question, rather it determines whether there had been procedural violations.²¹² However, she believed that the evidence admitted in the civil trial against Ms. Berenson Mejía was fundamentally flawed.²¹³ Judge Medina Quiroga noted that the Court deemed that the evidence used against Ms. Berenson Mejía in her military trial was unlawful and that this evidence was also used in the civil trial.²¹⁴

Furthermore, she reflected on the Court's statement that when taking into consideration the characteristics of the military trial concerning the unlawful origins of the evidence adduced, and "only

204. *Id.* ¶ III.

205. *Id.* ¶ V.

206. *Id.* ¶ IX.

207. *Id.* ¶ X.

208. *Id.* ¶ XI.

209. *Id.* ¶ XII.

210. *Id.* ¶ XIII.

211. *Id.* ¶ XV.

212. *Id.* ¶ XV.

213. *Id.* ¶ XVI.

214. *Id.* ¶¶ XVI-XIX.

refer to the trial held directly before the civil court.”²¹⁵ In this regard, she believed that by separating the evidence in this way, the Court implied that it had the power to distinguish between the evidence used in the military and civil trials, to determine that the civil court had ignored the illegal evidence and had only used what was admissible.²¹⁶ She disagreed with this because the Court did not have the power to distinguish between the evidence and reach that conclusion and because it is impossible to make such distinction.²¹⁷ Additionally, Judge Medina Quiroga considered that the State violated Article 8(2) (Right to Be Presumed Innocent) of the American Convention by allowing evidence to be admitted into Ms. Berenson Mejía’s civil trial and therefore it should be declared that its judgment was invalid.²¹⁸

Judge Medina Quiroga went on to state that because the Court decided that due process was not violated in Ms. Berenson Mejía’s civil trial, the reparations ordered by the Court are insufficient.²¹⁹ She suggested that the Court order the State to significantly reduce Ms. Berenson Mejía’s prison sentence.²²⁰

2. Concurring Opinion of Judge Oliver Jackman

In a separate opinion, Judge Jackman wrote to indicate his support for Judge Medina Quiroga’s position on adequate reparation and support her contention that the State should be ordered to reduce Ms. Berenson Mejía’s prison term.²²¹

IV. REPARATIONS

The Court ruled that the State had the following obligations:

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

1. Judgment as a Form of Reparation

215. *Id.* ¶ XXIII.

216. *Id.* ¶ XVIII.

217. *Id.* ¶ XIV.

218. *Id.* ¶ XXV.

219. *Id.* ¶¶ XXVIII-XXX.

220. *Id.* ¶ XXX.

221. *Lori Berenson v. Peru, Merits, Reparations, and Costs, Separate Opinion of Judge Oliver Jackman, Inter-Am. Ct. H.R. (ser. C) No. 119 (Nov. 25, 2004).*

The Court explained that the judgment was to constitute a *per se* form of reparation.²²²

2. Revise Legislation

The Court ordered the State to revise its emergency legislation, Decree Laws No. 25,475 and 25,659, in order to meet the standards of the American Convention.²²³

3. Publish the Judgment

The Court ordered the State to publish the Proven Facts and the operative paragraphs sections of the judgment, without the corresponding footnotes, in the official gazette and another daily newspaper with national circulation in Peru.²²⁴

4. Provide Services to Victim

The Court ordered the State to provide medical and psychological treatment to Ms. Berenson Mejía for the health problems she suffered from her imprisonment.²²⁵

5. Change Conditions of Detention at Yanamayo Prison

The Court ordered the State to immediately take whatever steps necessary to modify the conditions at Yanamayo Prison, in order to meet international standards.²²⁶ Prisoners, who due to health reasons cannot be kept at high altitude, should be transferred.²²⁷ The State must update and provide reports to the Court every six months on these alterations.²²⁸

B. Compensation

222. *Id.* ¶ 235.

223. *Lori Berenson v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 119, ¶¶ 233-234 (Nov. 25, 2004).* The USD amount is based on the USD to nuevo sol exchange rate on November 25, 2004.

224. *Id.* ¶ 240.

225. *Id.* ¶ 238.

226. *Id.* ¶ 241.

227. *Id.*

228. *Id.*

The Court awarded the following amounts:

1. Pecuniary Damages

The Court observed that the State had sentenced Ms. Berenson Mejía to pay PEN 100,000 (\$30,211.71 USD) for civil reparation in favor of the State.²²⁹ The Court declared the State should excuse this debt as a form of reparation.²³⁰

2. Non-Pecuniary Damages

The Court determined that the compensation for non-pecuniary damages should include the need for psychological and medical treatment because of the health problems that Lori Berenson Mejía endured.²³¹

3. Costs and Expenses

The Court awarded \$30,000 to Mark and Rhoda Berenson for the costs and expenses endured in Ms. Berenson Mejía's domestic proceedings and in the proceedings before the Inter-American system for the protection of human rights.²³²

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

\$30,000

C. Deadlines

The State must adequately compensate the beneficiaries for the pecuniary and non-pecuniary damages as well as reimburse them for the costs and expenses within six months of this judgment,²³³ except with regard to the Yanamayo Prison, where the measures should be complied with within one year.²³⁴

229. *Id.* ¶ 242.

230. *Id.*

231. *Id.* ¶ 238.

232. *Id.* ¶ 243.

233. *Id.* ¶ 245.

234. *Id.* ¶ 241.

If the State fails to meet the deadlines the Court has set, it shall pay interest on the amount owed.²³⁵ If the beneficiaries are unable to receive this within the period of six months, the State shall deposit the amount in their favor in an account or a deposit certificate in a respectable Peruvian bank.²³⁶ If the compensation is not claimed within ten years it will be returned to the State.²³⁷

Within one year of this judgment, the State must provide the Court with a report on the measures it has taken to comply with the judgment.²³⁸

V. INTERPRETATION AND REVISION OF JUDGMENT

June 23, 2005: Ms. Berenson Mejía's representatives requested an interpretation of the Judgment on the merits, reparations, and on several points.²³⁹

First, the representatives stated that the Court did not explain why they concluded that the elements of the crime of cooperation with terrorism do not present the defects associated with of the crime of treason.²⁴⁰ Second, the representatives argued that the second suit against Ms. Berenson Mejía violated Article 8(4) (Prohibition of Double Jeopardy) of the Convention.²⁴¹ Third, that the Court should clarify whether Ms. Berenson Mejía's motion to challenge a violation of due process during her civil proceedings in violation of the State's law that such motions must be made before the start of the suit equates to the ability of the State to set rights guaranteed by the Convention.²⁴²

Fourth, the representatives requested that the Court clarify whether cases tried by special courts *ad hoc* are considered commonplace, competent proceedings appropriate for criminal actions.²⁴³ Fifth, the representatives requested that the Court clarify whether it declared that the State's court may avoid liability for violating of Article 8(2) (Right

235. *Id.* ¶ 245.

236. *Id.* ¶ 246.

237. *Id.*

238. *Id.* ¶ 247.

239. Lori Berenson v. Peru, Interpretation of Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 128, ¶ 2 (June 23, 2005).

240. *Id.* ¶ 3(a).

241. *Id.* ¶ 3(b).

242. *Id.* ¶ 3(c).

243. *Id.* ¶ 3(d).

to Be Presumed Innocent) of the Convention, after admitting to illegal evidence being used in the proceedings that convicted the accused by merely declaring that the judgment was not based on any illegal evidence without specifying what evidence was used in the determination.²⁴⁴ Sixth, the representatives argued that the Court seemingly eliminated any need for the State to conform to Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, which thereby eliminated the requirement to comply with Article 4 (Right to Life) of the Convention.²⁴⁵ Seventh, the representatives pointed out that the Court refused to deliberate on many of Ms. Berenson Mejía's arguments, thus showing that the Court is biased in favor of the State.²⁴⁶ Finally, the representatives expressed concern that the Court changed its opinion in Ms. Berenson Mejía's case due to political pressures, and requested that the Court clarify the measures it adopted in the Judgment.²⁴⁷

A. *Composition of the Court*²⁴⁸

Sergio García-Ramírez, President
Alirio Abreu Burelli, Vice President
Oliver Jackman, Judge
Antônio A. Cançado Trindade, Judge
Cecilia Medina Quiroga, Judge
Manuel E. Ventura Robles, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Merits*

The Court has held that requests for interpretation should not be used as a means to appeal the Judgment.²⁴⁹ Furthermore, the Court stated that an alteration or annulment of a judgment cannot be petitioned

244. *Id.* ¶ 3(e).

245. *Id.* ¶ 3(f).

246. *Id.* ¶ 3(g).

247. *Id.* ¶ 3(h).

248. *Id.* Judge Diego García Sayán excused himself from hearing this case because he is a Peruvian national. *Id.* n.*. Judge *ad hoc* Juan Federico D. Monroy also did not participate.

249. *Id.* ¶ 12.

through a request for interpretation.²⁵⁰ On these grounds, the Court unanimously dismissed the Request for Interpretation of the Judgment on the Merits, Reparations, and Costs, filed by Ms. Berenson Mejía's representatives.²⁵¹ The Court also unanimously decided to continue monitoring the execution of the Judgment.²⁵²

VI. COMPLIANCE AND FOLLOW-UP

September 22, 2006: The Court issued a monitoring compliance judgment.²⁵³

The Court found that the State fully complied with certain obligations stipulated in the Judgment on the Merits, Reparations and Costs.²⁵⁴ Specifically, the State has published the judgment in the *Diario Oficial* and another national daily newspaper.²⁵⁵ Also, the State has waived the debt imposed on Ms. Berenson Mejía as reparation and pecuniary damages in favor of the State.²⁵⁶ Finally, the State has paid Ms. Rhonda Berenson Mejía and Mr. Mark Berenson Mejía for legal costs and expenses.²⁵⁷

The Court requests that the State modify its domestic legislation to conform to American Convention's standards.²⁵⁸ Additionally, the Court ordered the State to provide Ms. Berenson Mejía with adequate medical care and to conform the conditions of Yanamayo penal facility to the standards of the American Convention.²⁵⁹

June 20, 2012: The Court found that the State has complied with its obligations set forth in the Judgment.²⁶⁰ Specifically, the State modified its domestic legislation to the standards of the American Convention, provided satisfactory medical care to Ms. Berenson Mejía, and brought the detention conditions in the Yanamayo Prison in line with

250. *Id.*

251. *Id.*

252. *Id.* ¶ 1.

253. Lori Berenson-Mejia v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" (Sep 22, 2006).

254. *Id.* ¶ 11(a).

255. *Id.* ¶ 11(b).

256. *Id.* ¶ 11(c).

257. *Id.*

258. *Id.* ¶ 12(a).

259. *Id.* ¶¶ 12(b)-12(c).

260. Lori Berenson-Mejia v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares That" ¶ 1 (June 20, 2012).

international standards.²⁶¹ The Court, therefore, concluded the monitoring of compliance with the Judgment, closed Ms. Berenson Mejía's case and archived the case file.²⁶²

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Lori Berenson Mejía v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 119 \(Nov. 25, 2004\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Lori Berenson Mejia v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(June 20, 2012\).](#)

[Lori Berenson Mejia v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sep 22, 2006\).](#)

5. Review and Interpretation of Judgment

[Lori Berenson v. Peru, Interpretation of Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 128 \(June 23, 2005\).](#)

B. *Inter-American Commission*

261. *Id.* ¶¶ 1(a)-1(c).

262. *Lori Berenson-Mejia v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (June 20, 2012).*

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Lori Berenson Mejia v. Peru, Admissibility Report, Report No. 11.876 \(Dec. 8, 1998\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

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