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Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Lori Berenson-Mejia v. Peru
Doc. Type:	Judgment (Merits, Reparations and Costs)
Decided by:	President: Sergio Garcia Ramirez; Vice President: Alirio Abreu Burelli; Judges: Oliver Jackman; Antonio A. Cancado Trindade; Cecilia Medina Quiroga; Manuel E. Ventura Robles; Juan Federico D. Monroy Galvez Judge Diego Garcia-Sayan, a Peruvian national, excused himself from hearing the instant case, in accordance with Articles 19(2) of the Statute and 19 of the Rules of Procedure of the Court, and also because he had been a judge ad hoc since October 2002.
Dated:	25 November 2004
Citation:	Berenson-Mejia v. Peru, Judgment (IACtHR, 25 Nov. 2004)
Represented by:	APPLICANTS: Ramsey Clark, Thomas H. Nooter and Jose Luis Sandoval Quesada
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In the Lori Berenson Mejía case,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), pursuant to Articles 29, 31, 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") [FN1], and Article 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), delivers this judgment.

[FN1] This judgment is delivered according to the Rules of Procedure adopted by the Inter-American Court of Human Rights at its forty-ninth regular session in an order of November 24, 2000, which entered into force on June 1, 2001, and according to the partial reform adopted by the Court at its sixty-first regular session in an order of November 25, 2003, and in force since January 1, 2004.

I. INTRODUCTION OF THE CASE

1. On July 19, 2002, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed an application before the Court against the Republic of Peru (hereinafter "the State" or "Peru"), arising from petition No. 11,876, received by the Secretariat of the Commission on January 22, 1998.

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2. The Commission filed the application on the basis of Article 61 of the American Convention for the Court to decide whether the State had violated Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 9 (Freedom from Ex Post Facto Laws) of the Convention, all in relation to the obligation established in Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of Lori Helene Berenson Mejía (hereinafter "Lori Berenson" or "the alleged victim"). It also indicated that the State had failed to comply with its obligation to adopt domestic legislative measures, in the terms of Article 2 (Domestic Legal Effects) of the Convention. All the foregoing, according to the Commission, in relation to the proceedings in which she was tried by both military courts and civil courts, to the inhumane conditions of detention to which she was subjected in the Yanamayo maximum security prison, in Puno (hereinafter "Yanamayo Prison"), and to the issue of Decree Laws Nos. 25,475 and 25,659, and their application in the said proceedings.

3. According to the information which the Commission provided in the application, the alleged victim was detained on November 30, 1995, in Lima, Peru, and then tried, under the provisions of Decree Law No. 25,659, by a "faceless' military court and with restrictions to her right to a defense. On March 12, 1996, Lori Berenson was sentenced to life imprisonment for "treason." On August 18, 2000, as a result of Lori Berenson's defense lawyers having filed an appeal for "special review of res judicata ["sentencia ejecutoriada"]," the Supreme Council of Military Justice annulled the judgment of March 12, 1996, and waived jurisdiction in favor of the ordinary criminal jurisdiction. The Commission added that the alleged victim 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.

4. The Commission added that, on August 28, 2000, a new proceeding against Lori Berenson was commenced in the ordinary criminal jurisdiction. This trial culminated in the judgment of June 20, 2001, which found Lori Berenson guilty of the crime of "collaboration with terrorism," established in Article 4 of Decree Law No. 25,475, and sentenced her to 20 years imprisonment. The Supreme Court of Justice of Peru confirmed the judgment on February 13, 2002.

5. The Commission also requested the Court, in accordance with Article 63(1) of the Convention, to order the State to adopt specific measures of reparation, which were described in the application. Lastly, it requested the Court to order the State to pay the costs arising from processing the case in the domestic jurisdiction and before the organs of the inter-American system.

II. COMPETENCE

6. Peru has been a State Party to the American Convention since July 28, 1978, and accepted the jurisdiction of the Court on January 21, 1981. Consequently, the Court is competent to hear this case in the terms of Articles 62 and 63(1) of the Convention.

III. PROCEEDING BEFORE THE COMMISSION

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7. On January 22, 1998, the Commission received a petition submitted by Grimaldo Achahui Loaiza, Ramsey Clark and Thomas H. Nooter, denouncing that the State had violated certain rights established in the American Convention, to the detriment of Lori Berenson.

8. On February 11, 1998, the Commission opened case No. 11,876 and forwarded the pertinent parts of the said petition to the State, so that the latter could provide information within 90 days.

9. On June 30, 1998, having been granted an extension, the State presented its comments on the petition and requested that it should be declared inadmissible, because it considered that domestic legal remedies had not been exhausted.

10. On October 8, 1998, during the Commission's onehundredth session, and at the request of the petitioners, a hearing was held on the case.

11. On December 8, 1998, the Commission adopted Report No. 56/98, in which it declared the case admissible. In this report, the Commission also made itself available to the parties in order to reach a friendly settlement.

12. On February 16, 1999, the State commented on the friendly settlement and concluded that "it [was] not opportune to refer to the possibility of reaching an [... agreement on a] friendly settlement in this case, either on the initiative of the parties or the Commission."

13. On October 13, 2000, and November 12, 2001, hearings were held before the Inter-American Commission.

14. On March 12, 2002, the State requested the Commission to convene a hearing at its next regular session to review matters relating to the case. The Commission decided it was not necessary to hold this hearing, because it had sufficient elements to take a decision and the parties had been given the opportunity to submit their arguments and evidence.

15. On April 3, 2002, the Commission adopted Report on merits No. 36/02, in accordance with Article 50 of the American Convention, in which it recommended that the State:

227. […] adopt all necessary measures to repair integrally the violations of the human rights of Lori Helene Berenson Mejía determined in the […] report.
228. […] adopt all necessary measures to reform Decree Laws 25,475 and 25,659, to make them compatible with the American Convention on Human Rights.

16. On April 22, 2002, the Commission forwarded this report to the State and granted it two months to comply with its recommendations. In a communication of June 21, 2002, Peru indicated that "it consider[ed] that the recommendations of the Inter-American Commission on Human Rights lack[ed] justification and, consequently, it [could] not be obliged to implement them."

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17. In view of the State's failure to comply with the recommendations of the report on merits, the Commission decided to submit the instant case to the jurisdiction of the Inter-American Court.

IV. PROCEEDING BEFORE THE COURT

18. On July 19, 2002, the Inter-American Commission filed the application before the Court (supra para. 1), and appointed Juan Méndez, Marta Altolaguirre and Santiago A. Canton as delegates and Ignacio Álvarez and Pedro Díaz as legal advisers.

19. On July 22, 2002, the State submitted a brief entitled "petition concerning report 36/02 of the Inter-American Commission on Human Rights," in which it requested the Court to declare that Peru had complied with "the standards established by the Convention and by the Court's case law" in the Lori Berenson case, with regard to which the Commission had issued Report No. 36/02. For this purpose, the State appointed Jorge Villegas Ratti and César Azabache Caracciolo as its agent and deputy agent, respectively.

20. On September 6, 2002, the Court issued an order admitting the Commission's application and the State's brief of July 22, 2002, the latter to be processed "within the same proceeding as the application presented by the Commission."

21. On October 10, 2002, after the President of the Court (hereinafter "the President") had reviewed the application, the Secretariat of the Court (hereinafter "the Secretariat") notified it to the State, together with its attachments, and informed the latter of the time allowed for answering it and appointing its representatives for the proceedings. The same day, on the instructions of the President, the Secretariat informed the State of its right to appoint a judge ad hoc to take part in hearing the case.

22. El October 7, 2002, in accordance with the provisions of Article 35(1)(d) and (e) of the Rules of Procedure, the Secretariat notified the Commission's application (supra para. 18) and the State's brief of July 22, 2002 (supra para. 19), to Ramsey Clark, in his capacity as original petitioner and representative of the alleged victim, so that, in accordance with Article 35(4) of the Rules of Procedure, [FN2] he could submit his brief with requests, arguments and evidence (hereinafter "requests and arguments brief") within 30 days. On the instructions of the President, he was granted one month to submit comments on the State's brief.

[FN2] Rules of Procedure adopted by the Inter-American Court of Human Rights at its forty-ninth regular session in an order of November 24, 2000, which entered into force on June 1, 2001. This Article, among others, was reformed by the Court at its sixty-first regular session in an order of November 25, 2003. This reform entered into force on January 1, 2004.

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23. On October 7, 2002, the Secretariat notified the State's brief of July 22, 2002 (supra para. 19) to the Commission and, on the instructions of the President, granted it a non-extendible period of one month to submit its comments.

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24. On October 31, 2002, the State appointed Juan Federico D. Monroy Gálvez as Judge ad hoc in this case.

25. The representatives of the alleged victim did not submit a requests and arguments brief. However, on November 6, 2002, and on January 7, 2003, they presented two briefs entitled "emergency motions." In these briefs, they requested that the case should be decided promptly by a final summary judgment to avoid irreparable harm to the alleged victim. On the instruction of the Court, both briefs were rejected by communications from the Secretariat dated December 4, 2002, and February 26, 2003, respectively, because cases are heard in the order in which they are received, since each case is extremely important.

26. On November 7, 2002, the Commission submitted comments, with an attachment, to the brief presented by the State on July 22, 2002.

27. On November 15, 2002, the State provided certified copies of the whole of "case file 154-00 processed [in the ordinary jurisdiction] against Lori Berenson Mejía for the crime of terrorism against the State."

28. On December 3, 2002, the State submitted its answer to the application.

29. On January 15, 2003, the State submitted an electronic version of the judgment of January 3, 2003, of the Constitutional Court of Peru, which appears in file No. 010-2002-AI/TC.

30. On February 26, 2003, the State forwarded to the Court the text of Legislative Decrees Nos. 921 to 927, which had been adopted "urgently" in order to "adapt counterterrorism legislation to the mandates established by the Constitutional Court.

31. On July 2, 2003, the Archbishopric of El Salvador presented an amicus curiae brief.

32. On January 8, 2004, the State forwarded a copy of the case file against Lori Berenson in the military jurisdiction.

33. On January 8, 2004, the Commission appointed Lilly Ching as legal adviser in this case, together with Ignacio Álvarez and Pedro Díaz.

34. On February 27, 2004, the State informed the Court that it had appointed Enrique Carrillo Thorne as legal adviser, in accordance with the provisions of Article 21(1) of the Rules of Procedure.

35. On March 5, 2004, the President issued an order in which, pursuant to Article 47(3) of the Rules of Procedure, he requested that the alleged victim, proposed as a witness by the Commission, and Valentín Paniagua Corazao, Javier Pérez de Cuellar, Henry Pease García and Dennis Jett, proposed as witnesses by the State, should provide their testimonies by affidavit. The President granted a non-extendible period of twenty days from transmittal of these documents for the Inter-American Commission, the representatives, and the State to make any

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comments they deemed pertinent on the statements presented by the other parties. In the same order, the President convened the parties to a public hearing to be held at the seat of the Inter-American Court, as of May 7, 2004, to receive the testimonial statements of Rhoda Berenson, witness offered by the representatives and convened by the President, Grimaldo Achahui Loaiza, witness proposed by the Inter-American Commission, and Fausto Humberto Alvarado Dodero and Walter Albán Peralta, witnesses offered by the State, and also to hear the final oral arguments on merits, reparations, and costs. Moreover, in this order, the President informed the parties that they had until June 7, 2004, to present their final written arguments on merits, reparations, and costs.

36. On March 26, 2004, the State consulted the Court on the admissibility of the Commission's request to film the statement made by Lori Berenson before public notary. On March 29, 2004, on the instructions of the President, the Secretariat informed the State that the request was authorized.

37. On April 3, 2004, Gil Barragán Romero, forwarded an amici curiae brief, on behalf of 41 organizations.

38. On April 5, 2004, the State presented the affidavits made by Valentín Paniagua Corazao, Javier Pérez de Cuellar, Henry Pease García and Dennis Jett (supra para. 35).

39. On April 5, 2004, the Commission presented the affidavit made by Lori Berenson (supra para. 35) and, on April 7, 2004, it remitted a video with the recording of the statement.

40. On April 7, 2004, the Commission advised that it had appointed Freddy Gutiérrez and Santiago A. Canton as new delegates in this case.

41. On April 19, 2004, the Commission advised that Grimaldo Achahui Loaiza could not testify at the public hearing convened by the Court (supra para. 35), and requested that he be substituted by José Luis Sandoval Quesada. When the parties had been heard, on April 30, 2004, on the instructions of the President, the Secretariat informed the Commission, the State and the representatives of the alleged victim that this request had been rejected, since it had not been demonstrated that there was an impediment preventing the witness, Achahui, from appearing at the public hearing.

42. On April 23, 2004, the Commission forwarded its comments on the statements made by affidavits of the witnesses proposed by the State (supra para. 38).

43. On April 26, 2004, the representatives of the alleged victim submitted their comments, together with some attachments, on Lori Berenson's statement, which had been forwarded by the Inter-American Commission (supra para. 39), and on the statements made before public notary by Valentín Paniagua Corazao, Javier Pérez de Cuellar, Henry Pease García and Dennis Jett, forwarded by the State (supra para. 38).

44. On April 27, 2004 the State presented its comments on the statement made before public notary by Lori Berenson, forwarded by the Inter-American Commission (supra para. 39), in

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which it objected to some questions formulated to the alleged victim as it considered them "impertinent."

45. On April 29, 2004, the President issued an order in which he decided that the witness, Walter Albán Peralta, should make his statement before a notary public (affidavit).

46. On May 6, 2004, the Commission accredited Marisol Blanchard as a legal adviser in the case.

47. On May 7, 2004, the Court received the statement of the witness proposed by the State, Fausto Humberto Alvarado Dodero, and that of the witness proposed by the representatives of the alleged victim and convened by the President of the Court, Rhoda Berenson, in a public hearing on merits, reparations, and costs. The Court also heard the final oral arguments of the Inter-American Commission, the representatives of the alleged victim and the State.

There appeared before the Court:

for the Inter-American Commission on Human Rights:

Freddy Gutiérrez, delegate
Ignacio Álvarez, legal adviser
Lilly Ching, legal adviser, and
Marisol Blanchard, legal adviser

for the representatives of the alleged victim:

Ramsey Clark, representative
Thomas H. Nooter, representative, and
José Luis Sandoval Quesada, representative

for the State:

Jorge Villegas Ratti, agent;
César Azabache Caracciolo, deputy agent, and
Enrique Carrillo Thorne, adviser.

Witness proposed by the representatives of the alleged victim:

Rhoda Berenson.

Witness proposed by the State:

Fausto Humberto Alvarado Dodero

Grimaldo Achahui Loaiza, witness proposed by the Commission, did not appear.

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48. On May 12, 2004, the State forwarded the affidavit made by Walter Albán Peralta. On May 13, 2004, the Secretariat forwarded this affidavit to the Commission and to the representatives of the alleged victim so that they could present their comments within a non-extendible period of 15 days.

49. On May 19, 2004, the Commission advised that it had no comments to make on the affidavit of Walter Albán Peralta.

50. On May 28, 2004, the representatives of the alleged victim submitted comments on the affidavit of Walter Albán Peralta.

51. On June 7, 2004, the Commission, the representatives of the alleged victim, and the State presented final written arguments. The State and the representatives appended attachments to these briefs.

52. On July 8, 2004, the Inter-American Commission requested that the expert report of Héctor Fáundez Ledesma, presented by the State as an attachment to the brief with final arguments, should not be admitted.

53. On July 9, 2004, the State made some "comments" concerning the written arguments of the Commission and of the representatives of the alleged victim. On July 13, 2004, on the instructions of the President of the Court, the Secretariat informed the State, that the Court would not examine this brief as it had been submitted after the presentation of the final written arguments.

54. On July 13, 2004, on the instructions of the President, the Secretariat informed the parties that the Court would assess the pertinence of considering the report by Mr. Faúndez Ledesma at the appropriate moment of the proceeding (supra para. 51 and 52), and granted the Commission and the representatives of the alleged victim until July 21, 2004, to present their comments on the report.

55. On July 21, 2004, the Inter-American Commission on Human Rights submitted its comments on the report by Héctor Faúndez Ledesma (supra para. 54).

56. On July 21, 2004, the representatives of the alleged victim presented comments, in English, on the report by Faúndez Ledesma (supra para. 54). The Spanish translation was forwarded on July 26.

57. On August 16, 2004, the State asked the Court "to reject the arguments presented by the Commission concerning the alleged time-barred nature of the report [by Faúndez Ledesma], and also the objection raised by the representatives of the alleged victim to consideration of the letter of opinion [...]," and requested that Mr. Faúndez Ledesma's comments should be taken into consideration "in accordance with the rules that regulate the opinions of the parties' advisers [...] and not in accordance with the rules relating to evidence," since Peru did not claim that these comments "[should] receive the treatment corresponding to an expert report on law."

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58. On October 15, 2004, on the instructions of the President, the Secretariat requested the State to present information, as helpful evidence, on the state of emergency in force in the Department of Lima and in the Constitutional Province of Callao when Lori Berenson was detained, and the corresponding notification to the Organization of American States (OAS); the Code of Military Justice in force in 1995 and 1996; Decree Laws Nos. 26,447 and 26,248; and copies of the judgments of the Chamber for Terrorism Crimes.

59. On November 1, 2004, the State presented the documents requested by the Court as helpful evidence (supra para. 58). They consisted of the transcript of Supreme Decree No. 074-95-DE-CCFFAA issued on November 2, 1995, which extended the state of emergency in the Department of Lima and in the Constitutional Province of Callao; transcript of paragraphs 9, 11, 12 and 24 subparagraph (f) of Article 2 of the 1993 Constitution of Peru; copy of note 7-5-M/387 issued on November 13, 1995, in which the Permanent Representative of Peru before the OAS notified the Executive Secretariat of the Inter-American Commission on Human Rights about the issue of Supreme Decree No. 074-95-DE-CCFFAA of November 2, 1995; Code of Military Justice in force in 1995 and 1996; transcript of Laws Nos. 26,477 and 26,248 enacted on April 18 and November 12, 1995, respectively; and the copies requested from the Chamber for Terrorism Crimes.

60. On November 19, 2004, Salomón Lerner Febres forwarded an amicus curiae brief.

V. EVIDENCE

61. Before examining the evidence provided, the Court will make some observations, in light of the provisions of Articles 44 and 45 of the Rules of Procedure, which have been developed in its case law and are applicable to this case.

62. The adversary principle, which respects the right of the parties to defend themselves, applies to matters pertaining to evidence. This principle is embodied in Article 44 of the Rules of Procedure, as regards the time at which the evidence should be submitted to ensure equality between the parties. [FN3]

[FN3] Cf. Case of Tibi. Judgment of September 7, 2004. Series C No. 114, para. 66; Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004. Series C No. 112, para. 63; and Case of Ricardo Canese. Judgment of August 31, 2004. Series C No. 111, para. 47.

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63. According to the Court's practice, at the commencement of each procedural stage, the parties must indicate the evidence they will offer at the first opportunity they are given to communicate with the Court in writing. Moreover, in exercise of the discretional powers included in Article 45 of its Rules of Procedure, the Court may request the parties to provide additional probative elements as helpful evidence; and this shall not provide a new opportunity for expanding or completing the arguments or offering fresh evidence, unless the Court expressly permits it. [FN4]

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[FN4] Cf. Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 56; Case of Molina Theissen. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of July 3, 2004. Series C No. 108, para. 22; and Case of Maritza Urrutia. Judgment of November 27, 2003. Series C No. 103, para. 47.

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64. In the matter of receiving and weighing evidence, the Court has indicated that its proceedings are not subject to the same formalities as domestic proceedings and, when incorporating certain elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and the procedural equality of the parties. [FN5] Likewise, the Court has taken account of international case law; by considering that international courts have the authority to assess and evaluate the evidence according to the rules of sound criticism, it has always avoided a rigid determination of the quantum of evidence needed to support a judgment. [FN6] This criterion is true for international human rights courts, which have greater latitude to evaluate the evidence on the pertinent facts, in accordance with the principles of logic and on the basis of experience. [FN7]

[FN5] Cf. Case of Tibi, supra note 3, para. 67; Case of the "Juvenile Reeducation Institute", supra note 3, para. 64; and Case of Ricardo Canese, supra note 3, para. 48.
[FN6] Cf. Case of Tibi, supra note 3, para. 67; Case of the "Juvenile Reeducation Institute", supra note 3, para. 64; and Case of Ricardo Canese, supra note 3, para. 48.
[FN7] Cf. Case of Tibi, supra note 3, para. 67; Case of the "Juvenile Reeducation Institute", supra note 3, para. 64; and Case of Ricardo Canese, supra note 3, para. 48.

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65. Based on the foregoing, the Court will now proceed to examine and weigh all the elements of the body of evidence in this case, according to the principle of sound criticism within the applicable legal framework.

A) DOCUMENTARY EVIDENCE

66. The Commission provided documentary evidence when it submitted the application brief (supra para. 18) and comments on the State's brief of July 22, 2002 (supra para. 26). [FN8]

[FN8] Cf. appendixes 1 to 31 of the application brief of July 19, 2002, submitted by the Inter-American Commission on July 26, 2002 (file of appendixes to the application, tomes 1 to 10, folios 1 to 3858).

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67. The representatives of the alleged victim provided documentary evidence in the brief with comments on the statements made before public notary by Lori Berenson, Valentín Paniagua Corazao, Javier Pérez de Cuellar, Henry Pease García and Dennis Jett (supra para. 43), and also in their final written arguments (supra para. 51). [FN9]

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[FN9] Cf. appendixes to the brief with comments on the affidavits made by Lori Helene Berenson Mejía, Valentín Paniagua Corazao, Javier Pérez de Cuellar, Henry Pease García and Dennis Jett, submitted by the representatives of the alleged victim on April 26, 2004 (affidavits and comments file, folios 9826 to 9952), appendixes A and B to the brief with final arguments presented by the representatives of the alleged victim on June 7, 2004 (file of appendixes to the briefs with final arguments presented by the parties, folios 9997 to 10017).

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68. The State provided documentary evidence in its briefs of July 22, 2002, answering the application and with final arguments (supra paras. 19, 28 y 51). [FN10]

[FN10] Cf. appendixes to the briefs of July 22, 2002, and the answer to the application presented by the State (file of probative evidence provided by the State, tomes 1 to 12, folios 3859 to 9792); and appendixes to the brief with final arguments presented by the State on June 7, 2004 (file of appendixes to the briefs with final arguments presented by the parties, folios 10018 to 10223).

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69. On November 15, 2002, the State presented certified copies of the whole of file No. 154-00 relating to the case against the alleged victim in the ordinary jurisdiction. [FN11]

[FN11] Cf. file of probative evidence provided by the State, tomes 5 to 12, folios 5513 to 9792.

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70. On January 15, 2003, the State forwarded the electronic version of the judgment of January 3, 2003, issued by the Constitutional Court of Peru, in file No. 010-2002-AI/TC.

71. On February 26, 2003, the State forwarded a copy of Legislative Decrees Nos. 921 to 927, issued in response to the mandates of the Constitutional Court on counterterrorism legislation.

72. On January 8, 2004, the State forwarded a copy of the file of the case against Lori Berenson in the military jurisdiction. [FN12]

[FN12] Cf. file of probative evidence provided by the State, tomes 1 to 5, folios 3951 to 5512.

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73. On November 1, 2004, the State presented the documents requested as helpful evidence by the Court (supra para. 59). [FN13]

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[FN13] Cf. file of helpful evidence submitted by the State, folios 10224 to 10784.
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74. The Commission forwarded the sworn testimonial statement of the alleged victim (affidavit) (supra para. 39), as ordered by the President in the order of March 5, 2004 (supra para. 35). The Court summarizes the relevant parts of this statement below:

a. Statement by Lori Helene Berenson Mejía, alleged victim

She is confined in the Huacariz Prison, Cajamarca, Peru (hereinafter "Huacariz Prison").
On November 30, 1995, after having attended the plenary session of the Congress of the Republic of Peru until approximately 7.00 p.m., she boarded a bus, from which she was obliged to alight by an individual in civilian dress, who made her get into a car. She later learned that her captors were members of a division of the National Counterterrorism Directorate (hereinafter "DINCOTE") of the Peruvian National Police (hereinafter "the National Police" or "PNP"), although, initially, they did not identify themselves. Subsequently, they drove her to the front of a building belonging to the National Police. There, an individual who said that he was a DINCOTE captain approached her. The alleged victim remained in the car.
An hour later, several policemen in civilian clothing got into the car, and they left for a building located on Avenida Alameda del Corregidor No. 1049, La Molina, Lima (hereinafter "building located on Avenida Alameda del Corregidor"). They made the witness alight from the car and someone who had the keys to the building, showed them to her and told her to open the door. She saw about 10 or 15 individuals with rifles aimed at the house. She was afraid, because she did not know what would happen. The alleged victim warned them that there were civilians present; then, they tied a rope ["marroca"] around her hands and back and pushed her towards the vehicle. The witness heard shots and an explosion and saw people running. After she had been left alone for a while, some policemen appeared and told her that a girl and others had died; an armed officer hit her on the head and lifted her up by her hair; he repeated this when the witness refused to give him the telephone number of that house. The alleged victim finally gave him the number he had asked for and the officer left. Subsequently, there was an exchange of gunfire a short distance away and cars belonging to the Police and the Army arrived. The witness remained in the car, handcuffed, for approximately eleven hours.
The witness was put in a vehicle with Mr. "Castrellón". Around 6.00 or 6.30 a.m., they transferred her to DINCOTE, where they took "her particulars." The interrogations began on December 2 or 3, 1995; at the start, "she was treated well." As of December 4, 1995, the more in-depth interrogations began; this occurred after she had been taken to carry out a "procedure in her apartment." A military prosecutor, a police major, a captain and, at times, a colonel, conducted the interrogations. When the witness proceeded to make her pre-trial statement, on December 9, 1995, which lasted several hours, she began to note problems. They told her "we know everything," and it was then that "the version she ended up relating in her pre-trial statement was established," since she was unable to say anything else, because the tone was "quite threatening [and ...] she did not have a lawyer." The alleged victim's lawyer was not present during the interrogations, and she was not informed that her answers could be used as evidence against her. The first time that Ms. Berenson could meet her defense lawyer, Grimaldo Achahui Loaiza, was on December 9, 1995, "after [having] replied to the police interrogations for eleven hours." She was not allowed to meet with her lawyer in private.

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On the first day of her detention, a legal medicine examination was conducted to determine whether she had been beaten or violated; the alleged victim's lawyer was not present during this appraisal. She was also taken to carry out two search procedures, one of them at her apartment on December 4, 1995, without the presence of her lawyer. Those who took her there had the key to the apartment. A reconstruction was also carried out in the building located on Avenida Alameda del Corregidor on December 15, 1995, and her lawyer was not notified of this. Although they said that there were arms and other things there, Lori Berenson maintains that there were no such things in her room.

On December 7 or 8, 1995, she was able to talk to her family. The discussion, in the DINCOTE offices, was very brief.

She was never informed of the charges against her. On December 15, 1995, she made a pre-trial statement before the military court, based on her pre-trial statement to the police. She was not given the opportunity to submit evidence at this trial; or at the stage of the pre-trial investigation by the police. Her lawyer had very little time to study the file of more than one thousand pages, and to prepare her defense. She was only able to meet with him a few times and always with restrictions; at times, these meetings were recorded. She was not allowed to cross-examine the witnesses or the other defendants. Neither the alleged victim nor her lawyer were present when the case was presented to the court by the military prosecutors. During the trial, she was only able to appear before the Court that was trying her during her interrogation and when judgment was delivered.

On January 8, 1996, three days before the military judge delivered judgment against the witness, she was put on television. She was taken to a room, where a colonel informed her that she was going to be televised and would have to shout if she wanted to be heard. She was unable to consult her lawyer about the desirability of this situation. She was escorted to a sort of platform where there were many people and a lot of light, and many journalists and soldiers who shouted her name and called out: "terrorists, traitors." The alleged victim raised her voice and appeared extremely annoyed; she regrets this as she did not want to give that impression. Subsequently, she unsuccessfully contested the probative value of this declaration. Ms. Berenson considers that it resulted in her sentence to life imprisonment and left the public with a negative impression, because the episode was understood as a justification of terrorism and a demonstration of her alleged leadership role.

The days preceding this broadcast had been very difficult. After the military interrogation, at the end of December 1995, she had taken to another DINCOTE building, where the co-defendants were kept. There, she shared a cell with Lucinda Rojas Landa, who had five bullet wounds, and was unable to get up and could not wash herself. There were two boys with bullet wounds in the next-door cell, in a similar situation of neglect. The fact that she had observed this situation affected her greatly; she did not sleep or eat well during the days she remained in DINCOTE. She was not treated badly there, except for the first few days or during some interrogations; however, the fact that "she had no rights," that she was obliged to affirm things that were not true, that she was threatened, that she depended on others to bathe or use the toilet was difficult; it was rather humiliating.

The military trial was held on January 11, 1996, at the Chorrillos Military Base, in a type of room, like a tent, where there were several armed men in uniform. While the judgment was being read, the judges and prosecutors had their faces covered with balaclava helmets. The trial lasted "a couple of hours" and consisted merely in the reading of the judgment. At this trial she was sentenced to life imprisonment; she was not questioned; she was only asked if she would appeal

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the sentence. Even though her lawyer was present, she could not consult him to take the decision to appeal, although she could signal to him.

While the appeal was being processed, when the alleged victim was interned in the Yanamayo Prison, three judges came to question her to process the confirmation of the appeal of her sentence. Her face was covered when she was taken to the hearing; then, during the hearing, their faces were covered. More evidence was produced at that time; for example, that the alleged victim was an arms-trafficker. The witness refused to declare, because her lawyer was not present. Even so, she was questioned for more than an hour. Mr. Achahui had been informed of the hearing to be held in Yanamayo, Puno, on the morning of that same day, when he was in Lima. Subsequently, a final appeal was filed before the Supreme Court, which was decided in April 1996.

After her conviction in the military trial, Ms. Berenson was sent to the Chorrillos High-Security Women's Prison (hereinafter "Chorrillos Women's Prison"), where she remained for six days; from there, she was transferred to the Yanamayo Prison, where she remained for two years and nine months. In Yanamayo she was subjected to a regime of continuous isolation in her cell for a year. She was only allowed to receive visits from the United States Embassy and the Red Cross. The regime consisted in being confined for 23.5 hours every day, with half an hour "in the exercise yard," which was extended to one hour as of the second year, with half an hour of visiting time with her direct next of kin, except during the first year of isolation, because she had been sentenced to life imprisonment. Furthermore, until 2000, she was prohibited from obtaining work or study material, access to radio, television, journals and newspapers.

The cells measured two and a half square meters and did not have ventilation or natural light. In the corridor, there were openings in the wall, where natural light and air entered. During the first year, there was a serious scarcity of water. They were give a bucket with about twelve liters per person per day, which they had to use to drink, to wash clothes and utensils, and for the bathroom; the water was insufficient and the blocks had a foul smell. There was only one lamp on the ceiling of the corridor. It was very cold. The Yanamayo Prison was located at approximately 3,900 meters above sea level; water froze on the floors and, at times, there were "freezes." The food was prepared on the basis of flour, rice or potatoes.

She suffered several health problems owing to the altitude, slow digestion, unhealthy food and the cold. The problems with her sign degenerated in the Socabaya Prison, in Arequipa (hereinafter "Socabaya Prison"). She suffered from a chronic throat infection all the time she was confined in the Yanamayo Prison. There was a prison doctor who prescribed medication for a circulatory illness from which she suffered. During the first 18 months, she also suffered from a problem in her hands, known as Reynaud syndrome. The Red Cross provided her with medicines.

In 2000, the Military Supreme Court annulled the operative paragraph of the judgment that convicted her of treason. The probative grounds for this annulment were a fact that had occurred in August or September 1999. Four people who had been held hostage in the residence of the Japanese Ambassador "were convinced" that the alleged victim was not a leader of the Túpac Amaru Revolutionary Movement (hereinafter "MRTA"). These testimonies opened the door to filing an appeal for review. Then, the Supreme Council of Military Justice ordered the transfer of the military case file to the civil jurisdiction. The witness was notified of the ruling of the Supreme Council of Military Justice on August 27 or 28, 2000, and she was taken to Lima on August 31, 2000.

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The day she arrived at the prison, Prosecutor Peralta Ramírez and Judge Borda were there; they wanted to open the pre-trial investigation the same day, even though she had no lawyer. She did not have a lawyer even when the new examining judge began to question witnesses. The day of her arrival, they asked for her "particulars" and intended to continue questioning her, but she refused. On the following days, her next of kin submitted a brief in order to "find a lawyer"; to do this, they had to travel from the United States. When her defense lawyer had been appointed, she was able to talk to him the day he was hired and, later, another day for half an hour, in the locutory, in order to prepare her defense before the hearing. He was a new lawyer and only had a couple of hours that same day to review the file before she made her statement. The problem stemmed from the fact that there was only one copy of the file in the Chamber, which was shared with the judge and the prosecutor, and they only loaned it when they were not consulting it. The Chamber was not in the prison. During the first month and a half, the time she could meet with her lawyer was limited, because the times for judicial procedures coincided with visiting times for lawyers.

The plenary stage took place in the Trial Chamber in the Lurigancho Prison, one and a half hours away from the Chorrillos Women's Prison. There, they built a platform inside a sort of fenced-in place that was like a "cage" where they placed a special stand, so that the press could see her inside the "cage." During the first few days, the trial was more like an address to the media than a judicial proceeding. The moderator was a candidate for Ombudsman. The environment was "hostile" to the defense; any witnesses summoned by the Chamber, "who did not say what they wanted to hear, were treated badly, with hostility and ridicule." When the formal questioning began, the first thing the prosecutor did was to refer to the validity of the evidence obtained in the military jurisdiction.

The presiding Judge, Marcos Ibazeta Merino, was challenged because, in 1999, in an interview on the issue of prisoners who were taking their cases to the Inter-American Commission, he had said he considered it "illogical" that such cases were submitted and affirmed that they should not be admissible. Judge Ibazeta had also had close ties to the Government of Alberto Fujimori, and the latter had even sent him to represent the State before the Inter-American Commission in 1998. Finally, she considered that Ibazeta did not play the role of moderator, but of prosecutor, owing both to his attitude and during the presentation of evidence.

She said that objections were raised to other decisions made by the court; such as the use of the case file from the military trial and all its components as evidence, and the use of the video of her presentation to the press. However, the objections were declared inadmissible by the court and in the final judgment.

Mario Cavagnaro, the prosecutor who had taken part in the military trial, also took part in the civilian trial. During the oral stage, he took alleged evidence to the National Chamber for Terrorism, Criminal Organizations and Groups (hereinafter "National Terrorism Chamber") consisting in newspaper Articles and "irregular" reports on acts of indiscipline that occurred in the prison where the alleged victim was confined. In the ordinary jurisdiction, the National Police provided him with a copy of the case file from the military jurisdiction, while her lawyer did not have a copy and could only examine it in the National Terrorism Chamber, if the file was not being used. A member of the Chamber even gave copies of the file to the press. The basis for the whole civil trial was the case file from the military trial. Mr. Cavagnaro admitted the whole of this file. Neither the alleged victim nor her lawyer requested the incorporation of the evidence used in the military trial.

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The legislation under which she was tried responded to the socio-political context of the fight against subversion by then President Fujimori. She considered that her case has been used as a political case.

75. The State forwarded the sworn testimonial statements (affidavits) of Javier Pérez de Cuellar, Henry Pease García, Dennis Jett, Valentín Paniagua Corazao and Walter Albán Peralta (supra paras. 38 and 48), as ordered by the President in orders of March 5 and April 29, 2004 (supra paras. 35 and 45). The Court will now summarize the relevant parts of these statements.

a. Testimony of Javier Pérez de Cuellar, Ambassador of the Republic of Peru to France

He was Minister for Foreign Affairs of the Republic of Peru from November 2000 to July 2001, during the mandate of President Valentín Paniagua Corazao. The Cabinet of which he was member was committed to re-establishing the State's institutional structure, which had suffered the consequences of an authoritarian regime that violated human rights.
In the period preceding his mandate, Peru withdrew from the contentious jurisdiction of the Inter-American Court by Legislative Resolution No. 27,152. When the transition Government took office, Congress adopted Legislative Resolution No. 27,401, which annulled the former resolution. Thus, the Government gave formal notice to the Inter-American Court, the inter-American system, and the international community that the State would comply with its international human rights commitments, that the decisions of the Inter-American Court would be complied with, and that the Government would make every effort to ensure that the victims mentioned in the judgments of the Inter-American Court received just compensation. The Ministries of Justice and Foreign Affairs endeavored to resolve matters pending before the Inter-American Commission and to respond to those decided by the Inter-American Court. The transition Government made sure that Peru acceded to the different treaties designed to ensure the full exercise of human rights and to combat terrorism.
The "Truth and Reconciliation Commission" was set up in order to learn the truth about what happened during the years of terrorism. In parallel, another commission began to study the constitutionality of the laws and decree laws promulgated after April 5, 1992.
The Lori Berenson case was criticized because she was tried by a military court before the transition Government took office. During his mandate, he did not receive any formal protests from the United States Government or from human rights organizations concerning the trial and conviction of Ms. Berenson Mejía by the civil courts. He recalled that local and international public opinion was able to observe the conditions in which the trial was held, because the court authorized the presence of the press, and the hearings were filmed and broadcast live.

b. Testimony of Henry Pease García, President of the Congress of the Republic of Peru

By Legislative Resolution No. 009-2000-CR of November 21, 2002, the Congress of the Republic of Peru declared the permanent lack of moral competence of the President at that time, Alberto Fujimori. Consequently, as established in Article 113, paragraph 2, and Article 115 of the Peruvian Constitution, it declared the presidency of the Republic vacant. Since the Vice Presidents had resigned, the President of the Congress at that time, Valentín Paniagua Corazao, assumed the presidency.

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Law No. 27,600 established the procedure for constitutional reform and the Commission on the Constitution, its Regulations, and Actions on Unconstitutionality was entrusted with preparing a total reform of the Constitution, to be submitted to referendum. Some progress was made on the draft, but work was suspended. However, in the spirit of the reform, it was considered necessary to comply strictly with the provisions of Article 2 of the American Convention, as regards adapting domestic legislation to this treaty. In its report, the said Commission considered, inter alia, with regard to the promotion of human rights, the need to strengthen fundamental rights, the right of all persons to comprehensive reparation for the violation of their fundamental rights attributable to the State, and the right to have recourse to international courts. It also considered giving constitutional rank to the norm establishing the obligation of all State organs to comply with the judgments handed down by the supranational jurisdictional organs. Moreover, in line with the globalization of justice, the draft reform proposed incorporating into the Constitution a norm recognizing the possibility of acceding to treaties that granted supranational jurisdiction to human rights bodies, and those monitoring international crimes, corruption and terrorism.

With regard to the review of legislation on the crimes of terrorism and treason, the witness stated that, by Law No. 27,913, Congress delegated legislative faculties to the Executive to undertake a reform of the legislation in order to comply with the ruling of the Constitutional Court (File number 010-2002-AI/TC). Currently, draft laws are before the Justice and Human Rights Commission designed to compensate victims of terrorism and of the State's excesses; they are at the stage of review, consultation and discussion, before an opinion is issued.

Finally, in relation to the proceeding against Lori Berenson in the civil court, the witness added that Congress had respected the principle of the separation of powers and had not intervened in any way in this judicial proceeding.

c. Testimony of Dennis Jett, United States Ambassador to Peru from 1996 to 1999

Following the March 2002 meeting between President Bush and President Toledo, Secretary of State Powell told the press that, during the meeting, President Bush referred to the Lori Berenson case, noting that her second trial had respected the rules of due process of law.

Also, during a press conference in the White House Press Secretariat on March 26, 2002, when asked about the President's position in the Lori Berenson case, Ari Fleisher, Press Secretary, replied that, as he had said in Peru, the President noted that due process of law had been ensured during the second trial and that an international commission was reviewing the matter.

Consequently, he considered that the United States Government's official position with regard to Lori Berenson's second trial in a civil court could be concluded from the two statements; namely, that Lori Berenson had an "acceptable trial."

d. Testimony of Valentín Paniagua Corazao, former Constitutional President of the Republic of Peru

He assumed the presidency of the Republic of Peru on November 22, 2000, under Article 115 of the Peruvian Constitution, owing to the removal from office of Alberto Fujimori, due to "lack of moral competence," and the successive resignations of the First and Second Vice Presidents of the Republic. His Government's goal was to initiate a process of transition towards democracy, following the authoritarian period experienced by the State, adapting its institutional structure to

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international standards for human rights, respect for legality, political stability and economic equilibrium.

The acceptance of the contentious jurisdiction of the Inter-American Court, following the Fujimori Government's declaration of July 8, 1999, that it would not acknowledge this jurisdiction and would not comply with the judgments delivered by the Court, were steps in this direction. The judgments included those relating to the Castillo Petruzzi et al. case, which referred to the terrorism legislation and decided that the State was obliged to submit the defendants to a trial before an ordinary, independent and impartial court. The State responded to this decision by annulling Legislative Decree No. 27,152 of January 18, 2001, and informed the international community that it had complied with its human rights commitments. The Castillo Petruzzi et al. case was then transferred to the judicial authorities. Similarly, the Ministry of Justice began a comprehensive review of the cases pending before the Inter-American Commission and Court, in order to resolve them through a friendly settlement or the acknowledgement of State responsibility.

In additio, on December 5, 2000, Supreme Resolution "R.S. 281-2000-JUS" created a "Commission to Study and Review Legislation issued since April 5, 1992," which undertook the review of the main legal provisions issued during the previous regime, to determine violations of the Constitution or of the State's human rights obligations, and the problems these had caused. The Commission's report took into consideration comments on the terrorism legislation made by the Inter-American Court, the Ombudsman's office, and the human rights community and considered that it contained violations that were unacceptable to the constitutional norms on legality, liberty, due process and prison treatment, closely related to the provisions of the international instruments applicable in these cases.

In 1996, pressure exercised by the human rights community had forced the Government of then President Fujimori to permit the creation of a "High-Level Commission" presided by the Ombudsman, to recommend the release from prison of innocent individuals, who had been accused or convicted of terrorism. Based on this Commission's recommendations, 502 people were released from prison. The report of the High-Level Commission, published in August 2000, included a series of recommendations regarding the reform of the legislation in force, which tied in with conclusions of the Court's principal rulings in that regard and influenced the authorities. From August 1996 to December 1999, more than 600 people were acquitted. The report also stated that the civil Chamber responsible for the cases after the "faceless" courts had ceased had furnished "significant proof of its commitment to respecting fundamental rights."

The Judiciary commenced a process of adapting to the transition to democracy and dismantling the machinery it had set up for its functioning during the 1990s.

On June 4, 2002, during the witness's mandate, a "Truth and Reconciliation Commission" was created to establish the truth regarding the principal events and the violent conditions experienced in Peru; its final report was published on August 28, 2003. The Government also appointed a Special Commission to monitor compliance with the recommendations of this report.

The Lori Berenson case was not discussed specifically by the Cabinet during his Government. He knew that there had been public discussion of the case, especially in 1998, when the alleged victim was convicted by a military court. In June 1998, the United States Ambassador to Peru, Dennis Jett, made a public statement requesting that Lori Berenson should be brought before a civil court. The military justice system annulled the proceeding. When his Government took office, the case had been transferred to the ordinary jurisdiction. The witness considers that he fulfilled his constitutional obligation of not interfering in the course of a judicial proceeding.

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No formal protests were received owing to the result of this case. He knew about two official statements made by the United States State Department, which confirmed that the United States Government was observing the conditions in which the trial was held and the final ruling of the Supreme Court, and considered that the basic standards of due process of law had been respected. The local human rights community shared this opinion.

The process of regularizing the State's institutional structure continued after the Government was handed over to President Alejandro Toledo Manrique.

On January 3, 2003, the Constitutional Court of Peru declared that a series of provisions included in the decree laws on terrorism promulgated in 1992 were anti-constitutional and revoked them. It ordered a review of the trials held by the military courts or before courts with "faceless judges," and of any other trials whose result had been determined by the application of a norm that had been declared anti-constitutional. In execution of this ruling, Congress delegated special faculties to the Executive to review and redefine the applicable legislation in these cases, by Law No. 27,913. In February 2003, the Executive enacted six legislative decrees establishing the procedures for reviewing judicial cases.

e. Testimony of Walter Albán Peralta, Ombudsman of the Republic of Peru

Following the coup d'état of April 1992, the legislative system for the criminal prosecution of terrorism was designed and consolidated during the Government of Alberto Fujimori. The military justice system was given a leading role and expanded, which was unconstitutional. The State promoted and supported the unlawful activities of the intelligence services, and designed a legal and extra-legal system for the control of the justice system. The anti-terrorist legislation was the expression of this authoritarian political regime, which perceived respect for the rule of law and fundamental rights as obstacles to the need to combat terrorism.

At the substantive level, Decree Law No. 25,475 of May 6, 1992, regulated the basic crime of terrorism, and some aggravated categories: collaboration with and justification of terrorism. Decree Law No. 25,659 defined other aggravated types of the crime of terrorism as crimes of treason. Decree Law No. 25,580 also considered that the justification of terrorism by teachers constituted treason. Decree Law No. 26,880 considered the same with regard to cases of terrorism involving persons availing themselves of the repentance legislation. Defining these crimes as treason responded expressly to the desire to transfer their prosecution to the military justice system.

At the procedural level, Decree Law No. 25,475 included the procedural system applicable to the basic crime of terrorism and to the other categories of crime regulated in this norm. Decree Law No. 25,659 of August 13, 1992, excluded habeas corpus in the case of those prosecuted for crimes of terrorism. Decree Law No. 25,728 of September 18, 1992, established the possibility of convicting a person in absentia. Decree Law 25,708 of September 10, 1992, established that crimes of treason would be judged using a procedure known as "in the theater of operations," established in the Code of Military Justice. Finally, Decree Law No. 25,744 established rules applicable to the police investigation, preparation of the case and trial of crimes of treason.

With regard to imprisonment conditions, the regime established in Decree Laws Nos. 25,475 and 25,744 was enforced. Subsequently, on June 25, 1997, Supreme Decree No. 005-97-JUS was issued, adopting the "Regulation of the Daily Regime and Progressivism of the Treatment of Prisoners Processed and/or Sentenced for the Crime of Terrorism and/or Treason. Article 1 of this norm excluded from its applicability leaders and rebel leaders recruited "on military bases,

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for reasons of national security"; Decree Law No. 25,475 continued in force for the latter. This norm was complemented by Ministerial Resolution 182-97-JUS of August 21, 1997, and modified by Supreme Decrees 008-97-JUS of August 20, 1997, and 003-99-JUS of February 18, 1999.

The Ombudsman's office had always had reservations about the anti-terrorist legislation. At the substantive level, the reservations related to the principle of legality established in Article 2, paragraph 24(d), of the Peruvian Constitution and Article 9 of the American Convention, "specifically with regard to the requirement for certainty or specificity in the definition of crimes." This was because the definitions of terrorism (Decree Law No. 25,475) and treason (Decree Law No. 25,659) had similar elements which created uncertainty as to the applicable classification. The recourse to ambiguous and general terms and concepts was used intensively in the definition of crimes; this increased the margin of discretion of the Police, the Attorney General's office and the judges when classifying a crime.

At the procedural level, the reservations were based on the undue expansion of the powers of the National Police. The functional juridical management of the investigation of crimes of terrorism was handed over to this institution, when, according to Article 159, paragraph 4, of the Peruvian Constitution, it corresponded to the Attorney General's office (Ministerio Público). There were also reservations about detention on suspicion, which violated Article 2, paragraph 24(f) of the said Constitution (detention in flagrante delicto and with a judge's written, justified decision) and Article 7(2) of the American Convention. Solitary confinement in exceptional cases also violated the right to defense, because no visits were allowed, including meetings with a defense lawyer.

The obligation establishing that the judge would issue an order for detention within 24 hours, once the order to open the preliminary investigation had been issued, was contrary to the right to presumption of innocence; as was the prohibition to offer as a witness anyone who, owing to their functions, had taken part in the elaboration of the police investigation report, and the prohibition to grant any type of liberty, with the exception of unconditional discharge.

Similarly, the time frame established for the criminal proceeding was contrary to due process. A preliminary investigation should last a maximum of 30 days and, exceptionally, 20 days more. Then, the prosecutor should formulate the charges within 3 days, and the trial should take 15 days. These times were reduced by up to two-thirds in the case of trials for crimes defined as treason. This type of structure violated the principle of "equal protection," limiting the defendant's possibility of defending himself.

In the case of prison conditions, there were reservations about the rigid and vertical nature of the system and its harshness; also about the limited space accorded to the prisoners, the maximum restriction of their activities, the isolation from all social contact, even with their next of kin, during the first two stages of the regime, and the restriction of access to information in the mass media, all of which violated the punishment's aim of social rehabilitation established in Article 139, paragraph 22, of the Constitution, and in Article 5(6) of the Convention. The same reservation is true with regard to the extended duration of the punishments, the prohibition to receive prison benefits (such as reduction of the sentence through work and education, partial liberty, probation, and conjugal visits), and the deficient prison services.

Subjecting prisoners being processed to the regime established for those convicted violated the principle of presumption of innocence.

Similarly, isolation in a cell, the aspects of maximum security, incommunicado, life imprisonment, and the limitation of the right to receive visits, violate the principle of the humane nature of the punishment.

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Since it began functioning, the Ombudsman's office had recommended to the corresponding State instances that the anti-terrorist legislation should be reviewed in order to adapt it to the requirements of the Constitution and international treaties.

Some partial modifications took place during Mr. Fujimori's regime. Law No. 26,671 of October 12, 1996, revoked the figure of "faceless" prosecutors and judges as of October 15, 1997. Law No. 26,248 of October 25, 1993, revoked the prohibition for lawyers to take part in more than one proceeding simultaneously, at the national level.

Law No. 26,447 of April 21, 1995, revoked restricting the lawyer's intervention until after the police report. Law No. 26,248 of November 25, 1993, annulled the provision making it obligatory to decide prior questions, pre-judicial issues and objections in the principal case records and at the time of the sentence.

Law No. 26,248 revoked Decree Law No. 25,728, which allowed a person to be convicted in absentia, and also the provision of Decree Law No. 25,659 that limited the possibility of filing a writ of habeas corpus. Law No. 27,079 of March 29, 1999, made it possible to change the detention order for that of conditional appearance in the case of the "arrepentidos" [repentant terrorism or treason convicts].

Decision 674-99-INPE of the National Penitentiary Institute, adopting Directive 001/99-INPE-OGT-OTE, which contained the "norms for the admission of books, journals and/or newspapers into the penitentiary establishments of the Republic," granted the right of access to information of a scientific, cultural, artistic and humanistic nature, for rehabilitation purposes.

These modifications resulted from the growing reservations of national and international human rights organizations. Also, the Government was obliged to introduce modifications, owing to evidence of problems of effectiveness; for example, those resulting in the conviction of innocent people. Indeed, this led to the creation of an ad hoc Commission, which, by means of a pardon, achieved the liberation of these individuals. Thus, the essential structure of the legislation and, therefore, the reservations, were in force throughout Alberto Fujimori's regime.

In July 1999, the Government decided to declare itself in default before the inter-American system, by attempting to withdraw unilaterally the State's acceptance of the contentious jurisdiction of the Inter-American Court; a situation that was reversed with the fall of Alberto Fujimori's regime. One of the first decisions adopted by the transition Government presided by Mr. Paniagua Corazao was the annulment of the State's situation of default and the renewal of respect for and compliance with the obligations of the American Convention assumed by Peru.

On January 3, 2003, the Constitutional Court of Peru (File No. 010-2002 AI/TC Marcelino Tineo et al. case) ruled on the constitutionality of some of the provisions of Decree Laws Nos. 25,475 and 25,659. That tribunal declared the unconstitutional nature of the crimes known as treason (Articles 1 and 2 of Decree Law No. 25,659 – crime of treason), recalling the arguments put forward by the Court in the Castillo Petruzzi et al. case. The central concern was the existence of duplication in the categories of the crime of treason, in relation to the pre-existing categories of the crime of terrorism.

That tribunal also declared that the crime of justification of terrorism, established in Article 7 of Decree Law No. 25,475, was unconstitutional, since it created an excessive incrimination of this type of crime, because it was already established more precisely in Article 316 of the Penal Code, as justification of a crime. It also questioned the crime of justification of terrorism, because it was contrary to the principle of legality in its restricted sense, as well as respect for the right to freedom of expression. Furthermore, it established certain criteria for interpreting the

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said Article of the Penal Code, and stated that, in its opinion, they were extremely strict criteria that adequately delimited the crime of justification of terrorism.
The Constitutional Court also delimited and defined the interpretation of the prohibited conduct in the basic crime of terrorism (Article 2 of Decree Law No. 25,475). The Court retained the constitutionality of this norm by delimiting its objective elements and open clauses, and establishing clarifications, which were incorporated into its text. According to the witness, the foregoing provided sufficient guarantees in light of the principle of legality.
The Constitutional Court interpreted the threat and application of the penalty of life imprisonment in a restricted sense, by explaining that it would only be constitutional if provisions were introduced into domestic legislation to preclude it from being a penalty with no time limit, and providing for the possibility of eventual release from prison. Hence, it urged Congress to include a threshold above which it would be possible to review the sentence.
As a result of the Constitutional Court's ruling, a series of legislative decrees were issued to adapt anti-terrorist legislation to that tribunal's decisions and, particularly, its interpretative criteria. Accordingly, Legislative Decree No. 924 added a paragraph to Article 316 of the Penal Code, making justification of a crime an aggravated crime, when its object is terrorism.
Legislative Decree No. 921 established the inclusion in Title II of the Code on Execution of Sentences of a mechanism for reviewing life imprisonment sentences, when the person convicted has been in prison for 35 years.
Finally, Law No. 27,837 of October 4, 2002, created the Special Commission for Review of the Penal Code and special criminal laws, to carry out a reform to correct some irrational aspects of the expansion of criminal law. Nevertheless, there are still some secondary elements of the anti-subversion legislation that merit specific review, particularly those relating to respect for the principle of proportionality.
With regard to procedural matters, the judgment of the Constitutional Court declared that all the trials carried out before military courts were unconstitutional, as was the prohibition of the right to raise objections established in Article 13(h) of Decree Law No. 25,475, and the incommunicado of the detainee by order of the police, regulated by Article 12 (d) of Decree Law No. 25,475.
Also, in the Constitutional Court's interpretation, the provision under which the judge issues a detention order when the preliminary investigation order has been issued (Article 13(a) of Decree Law No. 25,475), should be understood in accordance with Article 135 of the Code of Criminal Procedure; in other words, this order should not be issued mechanically or obligatorily, but it must be ensured that the necessary requirements exist before proceeding with this precautionary measure.
Moreover, as a result of this ruling, Legislative Decree No. 922 was issued, which regulated the system for annulling proceedings for treason and established procedural norms for trying crimes related to terrorism.
Legislative Decree No. 926 regulated the mechanism for annulling terrorism trials that had been held in civilian courts, but with "faceless" prosecutors and judges, and where the prohibition to raise objections established in Article 13(h) of Decree Law No. 25,475 had been applied.
Regarding the penitentiary system, Supreme Decree 003-2001-JUS of January 9, 2001, modified the special prison regimes. For visits by next of kin and friends, a face-to-face visit was permitted three days a week, for a period of up to eight hours. Meetings and communication with the defense lawyer were made face-to-face, private and confidential. Finally, as regards access to

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the exercise yard and "corridors," it was established that prisoners would only be shut in between 9 p.m. and 6 a.m.

Supreme Decree 006-2001-JUS of March 23, 2001, granted the prison administrators powers to limit and suspend some prisoners' rights temporarily (up to 120 days, which could be extended), with adequate justification.

The Constitutional Court established that Article 20 of Decree Law No. 25,475, concerning compliance with the punishment of continuous solitary confinement during the first year of detention and the prohibition to share cells was an unreasonable and disproportionate measure, which constituted cruel and inhuman treatment, and violated Article 2(1) of the Peruvian Constitution and Article 5(1), 5(2) and 5(6) of the American Convention. The same was true of the requirement to maintain prisoners in one-person cells throughout their confinement.

Legislative Decree No. 927 was issued in response to the Constitutional Court's reservations in this area. It gave those imprisoned for terrorism access to prison benefits, authorizing reduction of the length of the sentence, although with different requirements from other crimes. However, this norm did not make it possible to grant the benefit of partial liberty.

Supreme Decree 015-2003 of September 23, 2003, which adopted the regulations for the Code on Execution of Sentences, regulated detention conditions, and prisoners' rights and duties, and established an "ordinary closed regime, with identical characteristics to those of the said Supreme Decree No. 003-2001-JUS".

With regard to the current penitentiary situation of prisoners for the crime of terrorism, they have been placed in different national prisons, generally in separate blocks from those destined to prisoners for other crimes. They are usually placed on the basis of their links to the Sendero Luminoso (Shining Path) and Túpac Amaru movements or their separation from these organizations (so-called "desvinculados" [disconnected] or independent individuals). The conditions of detention and access to the different prison services are similar to those of the rest of the prison population. The shortcomings that subsist respond to the critical situation of the Peruvian penitentiary system in general.

The prison administrators may determine a special regime for certain prisoners (Supreme Decree 006-2001-JUS), applicable to any prisoner, irrespective of his crime.

The Constitutional Court's judgment may be considered a step towards adapting anti-terrorist legislation to the Constitution and the American Convention. This judgment is binding for all the public powers, particularly the Legislature and the Judiciary as regards interpretation (Article 35 of the basic law of the Constitutional Court, Act 23,435). Hence, this is a legislative reform relating to the adaptation of anti-terrorist provisions to Peruvian constitutional norms and the American Convention. An example of this is that the jurisdictional body guarantees the right to a defense, the adversarial principle and equal protection of law, and to summon officials who took part in preparing the police investigation report as witnesses in the oral hearing.

Nevertheless, the fact that debatable aspects or aspects that can be improved subsist, should not permit it to be said that, today, the Peruvian State is unwilling to comply with its international human rights obligations.

B) TESTIMONIAL EVIDENCE

76. On May 7, 2004, the Court received the statements of the witness, Rhoda Berenson, proposed by the representatives of the alleged victim and convened by the President (supra para.

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35), and of the witness, Fausto Humberto Alvarado Dodero, proposed by the State (supra para. 35). The Court will now summarize the relevant parts of these statements.

a. Testimony of Rhoda Berenson, the alleged victim's mother

She heard about her daughter's arrest in December 1995, through the United States Embassy in Peru, which had learned that the President of Peru at that time, Alberto Fujimori, had shown her daughter's passport on television, stating that she had been arrested for terrorism. The witness had a close relationship with her daughter, even though the latter had lived abroad for several years; they kept in communication by telephone, letters, and visits that her daughter, Lori Berenson, made to her family in New York.

Lori Berenson was sentenced to life imprisonment, a sentence to be carried out in the Yanamayo Prison. The conditions in this prison were "inhuman" and it was located at 4,000 meters above sea level where the air is very "thin" and it is very cold. Almost all the prison was built of concrete, with the exception of a little steel. The corridors had high open windows, without glass, which let in a strong current of air, but did not allow sunlight to enter. The prison was extremely cold. She observed that "everyone walked about wearing gloves[, ...] hats and boots, a sweater with a coat, [it was necessary] to sleep under eight or ten blankets." The prisoners were only allowed to use the exercise yard for half an hour a day and they could only wash in buckets of cold water. The "inhuman" conditions of the prison affected her daughter's health.

The judgment convicting Lori Berenson established that she was not allowed to receive visitors for her first year in prison. The United States Embassy received quarterly reports on her health after she entered prison. Owing to the cold and the altitude, the alleged victim developed a condition known as "Reynaud's" syndrome; her hands were swollen and became purple, as if "she was wearing boxing gloves." Cuts and infections occurred, because this stretched the skin. The lack of oxygen affected her circulation, sometimes preventing her from using her hands. Although, Lori Berenson developed this syndrome almost immediately after her imprisonment, it has still not disappeared eight and a half years later.

The cold and the living conditions also resulted in chronic infections. Among other ailments, she suffered from "streptococcus," a resistant bacterial infection of the throat. This infection did not disappear until she changed prison. The alleged victim also suffered digestive problems owing to the very poor diet in the prison and the limit to the amount of food prisoners could receive from their next of kin. During her imprisonment, medical tests were performed because her liver was swollen and this caused pain. Furthermore, the darkness in the prison has led to problems with her vision, causing her difficulty in focusing and resulting in loss of vision in her right eye at night. Although she is better, Lori Berenson still suffers from health problems. During the first year, the witness received occasional reports on her daughter's health from the Consul General.

The first hearing before the Inter-American Commission on Human Rights was held on October 8, 1998. At that time, a doctor from the Peruvian delegation reported that, owing to concerns about the alleged victim's health, she had been transferred to the Socabaya Prison the previous day. This transfer took place on October 7, 1998, even though she had been examined several times previously and although there was extreme concern about her health. No other medical tests were ever performed; the "Reynaud" syndrome remains; the throat infections ceased, but she began to suffer from skin rashes on her face.

The Socabaya Prison was a prison for ordinary prisoners. As Lori Berenson was the only political prisoner, she was isolated from the other prisoners. The guards were even prohibited

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from talking to her. Her face was covered with a blanket when she was transferred from one place to another within the prison. It was only after the intervention of Amnesty International, the Red Cross, and the Church, that the alleged victim ceased to be isolated.

During autumn 1999, the United States Embassy in Peru informed her of the existence of hostages, taken during the seizure of the residence of the Japanese Ambassador to Peru, who had information that her daughter, Lori Berenson, was not an MRTA leader, the reason for her initial conviction. The Supreme Council of Military Justice also informed her about the procedure to request a review of the case. In August 2000, the Supreme Council of Military Justice annulled the case.

Subsequently, Lori Berenson was taken to another prison in Lima. On her arrival, a judge obtained the case file from the military trial and demanded that the alleged victim make a statement. Lori Berenson insisted that she would not testify without a lawyer and asked that no more witnesses should be interviewed without the presence of her defense lawyer. The witness was accompanied by Ramsey Clark when she talked to Judge Borda, who asked her to select a defense lawyer from a list of lawyers, adding that "in two hours he could read the file" and then the alleged victim could give her testimony. As they refused this offer, the judge gave them one week to find a lawyer, but, the following day, he told Lori Berenson that she only had a few days. Finally, a lawyer was found, Mr. Sandoval, who had very little time to study the military case file and talk to the alleged victim.

Around this time, the press published a transcript of the contents of a video recorded in Peru in January 1998, in which Mr. Montesinos spoke about the Lori Berenson case with a minister or prime minister, called Ferrero Costa. This was after the petition had been submitted to the Inter-American Commission. It was proposed that, to make a good impression on the Commission, Mr. Montesinos could suggest to the Supreme Council of Military Justice that the alleged victim be transferred to another prison, that the case be annulled, that the case be submitted to an ordinary judge and that she should be found guilty and sentenced to 10 to 15 years' imprisonment. She considered that this responded to a political maneuver.

The second trial was held in the Trial Chamber of the Lurigancho Prison. Lori Berenson was presented behind bars. The alleged victim requested that the presumption of innocence should be respected. The following day, the alleged victim was allowed to appear in front of the bars. Even after Fujimori had left, the laws that had been criticized so severely by international organizations continued to be enforced in Peru.

Judge Ibazeta, who was in charge of Lori Berenson's trial, had supported Fujimori previously and affirmed that it was "illogical" that the alleged victim should think that she could have a second trial, a civil trial. The prosecutor, who had played the same role during the military trial, sometimes took out documents and allowed the press to photograph them. These were published in the newspaper before Lori Berenson's lawyers had access to them.

She was present for 33 sessions of her daughter's trial and took note of everything that violated the American Convention. During the trial, her daughter was repeatedly questioned about her beliefs. The prosecutor indicated that the financial statements she had submitted in defense of her daughter were false, because "mothers do this when their daughters are the defendants." The sentence did not surprise her. The result was exactly as Montesinos had foretold in the 1998 video.

For eight years and a half her daughter never had a fair trial in Peru. She has spent a quarter of her life in prison, from 26 to 34 years of age, a period during which she could have done many things. The only way in which justice will be done is if she is liberated immediately.

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The United States State Department has referred to this case, stating that they would wait for the judgment of the inter-American system and that, when he met with President Toledo, President Bush had said that he was awaiting the response of the Inter-American Court and hoped that the Peruvian Government would take humanitarian considerations into account.

b. Testimony of Fausto Humberto Alvarado Dodero, former Minister of Justice and member of the Peruvian Congress

He was Minister of Justice of Peru from July 27, 2002, to February 16, 2004. When he made his statement before the Court, he was a member of Congress for the period 2001-2006 and belonged to the congressional Justice and Human Rights Commission.

In November 2000, Valentín Paniagua Corazao assumed the presidency owing to the declaration of the moral incompetence of the President of the Republic of Peru at that time, and the subsequent resignation of the Vice Presidents. In January 2001, a few months after he had assumed the presidency, the transition Government re-established civil rights in the sphere of the administration of justice, by allowing the population to have recourse to international bodies; thereby annulling the legislative resolution issued by the previous Government by which Peru withdrew from the jurisdiction of the international courts, specifically the Inter-American Court.

During Mr. Paniagua Corazao's Government, a commission of experts was set up to review the legislation enacted since 1992. The Commission reached important conclusions and produced a report. A "Truth and Reconciliation Commission" was also established, which also produced a report. In July 2001, Alejandro Toledo assumed the presidency and gave this Commission all necessary powers to attain its goals.

An immediate concern of Alejandro Toledo's Government was to comply with the judgments of the Inter-American Court and the recommendations of the Inter-American Commission. Peru took care to comply with the pecuniary and non-pecuniary reparations ordered by the Court. These efforts were described by the Report of the Truth Commission's Recommendations Monitoring Committee.

In 2002 a draft law modifying the terrorism legislation was submitted to the Peruvian Congress. Although the Government's intentions are not always reflected in Congress's diligence in taking decisions, it is the latter that has the power to modify the established laws and punishments, respecting the separation of powers.

The time limit for filing an action on unconstitutionality used to be six years from the issue of the contested norm. Alberto Fujimori's Government reduced this period to six months and required the vote of six of the seven members of the tribunal to declare unconstitutionality. This made any action on unconstitutionality unfeasible; furthermore, the Peruvian Constitutional Court lacked three of its members who had been dismissed unfairly.

During Alejandro Toledo's Government, Congress issued a law restoring the time limit for filing an action on constitutionality to six years. Consequently, 5,000 citizens filed an action on unconstitutionality requesting the review of the counterterrorism legislation. The matter was decided by the judgment of the Constitutional Court of January 3, 2003.

The Constitutional Court's judgment was appropriate, since it decided the issue by interpreting the contested principle. A simple declaration of unconstitutionality would have created a void that could have caused greater harm. The Constitutional Court declared that some Articles and paragraphs of the criminal legislation were unconstitutional. The judgment referred to three main issues: first, with regard to the annulment of trials before military courts, it urged Congress to

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enact norms on processing requests for the annulment of trials in the military jurisdiction; second, the maximum penalty for crimes for which only a minimum penalty had been established; and, third, application of the principle of duration within the penalty of life imprisonment.

The Constitutional Court's judgment acted as a "precipitator" encouraging Peru to act. Before the judgment, the Executive had submitted a draft law to the Congress of the Republic.

The request for powers and the "authoritative" legislation were not the only aspects of the Constitutional Court's decision. Powers were also requested to legislate on criminal matters, criminal procedure and execution of sentences. The annulment of trials before unidentified judges was allowed, and prison benefits were established for those convicted of the crime of terrorism. The current Government of Peru is repairing the harm caused by the previous Government, a usurper government.

The continuity of the crime classifications was maintained, although judges may not apply the phrases, paragraphs, subparagraphs or Articles that have been declared unconstitutional. Thus, the Constitutional Court's judgment did not establish a new normative framework, but eliminated certain Articles and subparagraphs of the anti-terrorist legislation, and urged Congress to enact norms on maximum sanctions, life imprisonment, and trials by the military courts. Norms other than those established in the judgment were added, including the nullity of trials before unidentified judges, prison benefits for those convicted of terrorism, and objections, inter alia.

The new legislation includes a safeguard clause that prohibits imposing a harsher sanction than the one applied in the annulled judgment. Many individuals have been acquitted. However, Peruvian society is still sensitive to the issue of terrorism; consequently, an effort of persuasion is also needed, so that all sectors of society understand that no one should be imprisoned, unless this is the result of a "final, lawful judgment." Prisons now respect the guiding principle for punishment: the prisoner's rehabilitation and social reinsertion.

Judgments handed down by the Constitutional Court are binding, for both the Executive and the Judiciary, which must obey them integrally. Hence, the elements that had been declared unconstitutional were eliminated from the legislation immediately.

The changes in the anti-terrorist legislation occurred after the last judgment in the Lori Berenson case had been delivered by the Supreme Court in May 2002.

The efforts of the next of kin to stop Lori Berenson's trial, because she was tried by military judges, were common knowledge. This violation was repaired by annulling that proceeding.

C) ASSESSMENT OF THE EVIDENCE

Assessment of the Documentary Evidence

77. In this case, as in others, [FN14] the Court accepts the probative value of the documents presented by the parties at the proper procedural opportunity or as helpful evidence, that were not contested or opposed, and whose authenticity was not questioned.

[FN14] Cf. Case of Tibi, supra note 3, para. 77; Case of the "Juvenile Reeducation Institute", supra note 3, para. 80; and Case of Ricardo Canese, supra note 3, para. 61.

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78. The State objected to the sworn testimonial statement made by Lori Berenson before a notary public, as required by the President in an order of March 5, 2004 (supra para. 35). However, this Court admits it insofar as it correspond to its purpose, bearing in mind the State's objections, and assesses it with the body of evidence, applying the rules of sound criticism. [FN15] In this regard, the Court considers that, as she is the alleged victim who has a direct interest in the case, her statement must be assessed together with all the evidence in the proceedings and not in isolation. As the Court has indicated, in matters concerning merits and reparations, the statement of the alleged victim is useful insofar as it can provide more information on the consequences of the alleged violations. [FN16]

[FN15] Cf. Case of Tibi, supra note 3, para. 81; Case of the "Juvenile Reeducation Institute", supra note 3, para. 86; and Case of Ricardo Canese, supra note 3, para. 62.
[FN16] Cf. Case of Tibi, supra note 3, para. 86; Case of Ricardo Canese, supra note 3, para. 66; and Case of the Gómez Paquiyauri Brothers. Judgment of July 8, 2004. Series C. No. 110, para. 63.

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79. With regard to the sworn written statements made before notary public by the witnesses proposed by the State (supra para. 38), in accordance with the order of the President of March 5, 2004 (supra para. 35), the Court admits them insofar as they correspond to their purpose and assesses them with the body of evidence, applying the rules of sound criticism.

80 In the case of the Articles published by the press, this Court considers that, even though they do not correspond to documentary evidence stricto sensu, they can be assessed to the extent that they refer to well-known public facts, or statements by State officials, or corroborate what has been established in other documents, or testimonies heard during the proceeding. [FN17]

[FN17] Cf. Case of the "Juvenile Reeducation Institute", supra note 3, para. 81; Case of Ricardo Canese, supra note 3, para. 65; and Case of the Gómez Paquiyauri Brothers, supra note 16, para. 51.

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81. The Court considers helpful the documents provided by the representatives of the alleged victim when submitting comments on the statement made by Lori Berenson before notary public (supra para. 67) and with their final written arguments, and also the documents provided by the State with its final written arguments (supra para. 68), since they were not contested or opposed, and their authenticity was not questioned, so they are added to the body of evidence, pursuant to Article 45(1) of the Rules of Procedure. [FN18]

[FN18] Cf. Case of Tibi, supra note 3, para. 78; Case of the "Juvenile Reeducation Institute", supra note 3, para. 90; and Case of Ricardo Canese, supra note 3, para. 64.

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82. This proceeding is a means of ensuring that justice is done and cannot be subject to mere formalities, [FN19] without this affecting legal certainty and the procedural equality of the parties. [FN20] Since it relates to human rights violations and, consequently, protects the principle of the historical truth, the proceeding before this international Court has a less formal character that a proceeding before the domestic authorities. [FN21]

[FN19] Cf. Case of the Gómez Paquiyauri Brothers, supra note 16, para. 58; Case of Juan Humberto Sánchez. Interpretation of the judgment on preliminary objections, merits and reparations. (Art. 67 American Convention on Human Rights). Judgment of November 26, 2003. Series C No. 102, para. 42; and Case of the 19 Tradesmen. Preliminary objections. Judgment of June 12, 2002. Series C No. 93, para. 35.
[FN20] Cf. Case of the Gómez Paquiyauri Brothers, supra note 16, para. 58; Case of Maritza Urrutia, supra note 4, para. 48; and Case of Juan Humberto Sánchez. Interpretation of judgment, supra note 19, para. 28.
[FN21] Cf. Case of the Gómez Paquiyauri Brothers, supra note 16, para. 58; Case of Maritza Urrutia, supra note 4, para. 48; and Case of Juan Humberto Sánchez. Interpretation of judgment, supra note 19, para. 42.

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83. The report by Héctor Fáundez Ledesma, presented as an attachment to the State's brief with final arguments (supra para. 51), was contested by the Commission and the representatives, as it had not be produced at the proper procedural opportunity (supra paras. 52, 55 and 56). Bearing in mind the reasoning set out in the preceding paragraph, the Court admits it and assesses it with the body of evidence, applying the rules of sound criticism [FN22] and also taking into consideration these objections.

[FN22] Cf. Case of Tibi, supra note 3, para. 81; and Case of the "Juvenile Reeducation Institute", supra note 3, para. 85.

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84. With regard to the documents requested by this Court based on Article 45 of the Rules of Procedure, which were presented by the State (supra paras. 58 and 59), the Court incorporates them into the body of evidence of the instant case, in accordance with the first paragraph of this rule.

Assessment of the Testimonial Evidence

85. The Court admits the statement made by Rhoda Berenson (supra para. 76), inasmuch as it corresponds to the purpose of the questions established by the President in the order of March 5, 2004 (supra para. 35). This Court considers that, since she is a member of the alleged victim's family and has a direct interest in the case, her statement must be assessed together with all the evidence in the proceedings and not in isolation. As the Court has indicated, the statements of the

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next of kin of alleged victims are useful insofar as they can provide more information on the consequences of the violations perpetrated. [FN23]

[FN23] Cf. Case of Tibi, supra note 3, para. 87; Case of the "Juvenile Reeducation Institute", supra note 3, para. 83; and Case of the Gómez Paquiyauri Brothers, supra note 16, para. 63.

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86. With regard to the testimonial statement made by Fausto Humberto Alvarado Dodero (supra para. 76), which was not contested or opposed, the Court admits it and recognizes its probative value.

87. Based on the above, the Court will assess the significance of the documents, statements and expert reports presented, which form part of a single body of evidence, considered as a whole, in order to establish the facts and their consequences. [FN24]

[FN24] Cf. Case of Tibi, supra note 3, para. 89; Case of the "Juvenile Reeducation Institute", supra note 3, para. 100; and Case of Ricardo Canese, supra note 3, para. 68.

VI. PROVEN FACTS

88. Having examined the documents and the statements of the witnesses, and the arguments of the Commission, the representatives of the alleged victim and the State, the Court considers that the following facts have been proved:

Background and legal context

88(1) From 1980 to 1994 Peru experienced serious social upheaval as a result of terrorist acts. [FN25]

[FN25] Cf. Case of the Gómez Paquiyauri Brothers, supra note 16, para. 67(a); Case of Cantoral Benavides. Judgment of August 18, 2000. Series C No. 69, para. 63(t); Case of Castillo Petruzzi et al.. Judgment of May 30, 1999. Series C No. 52, para. 86(1); Case of Castillo Páez. Judgment of November 3, 1997. Series C No. 34, para. 42; Case of Loayza Tamayo. Judgment of September 17, 1997. Series C No. 33, para. 46(l); Inter-American Commission on Human Rights, Report No. 101/01, Cases Nos. 10,247 and others, paras. 160 to 171; and Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Peru, 1993, Document OEA/Ser.L/V/II.83. Doc.31, March 12, 1993, para. 16.

88(2) In 1992, Decree Laws Nos. 25,475 [FN26] and 25,659 [FN27] were issued, which defined the crimes of terrorism and treason, respectively.

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[FN26] Decree Law No. 25,475 of May 5, 1992.
[FN27] Decree Law No. 25,659 of August 7, 1992.

88(3) When the facts of the instant case occurred, the body responsible for preventing, denouncing and combating terrorist activities and treason was DINCOTE, attached to the National Police. [FN28]

[FN28] Cf. Articles 1 and 2(a) of Decree Law No. 25,744 of September 21, 1992 (file of probative evidence provided by the State, tome 12, folios 9348 to 9353); Article 12 paragraphs (a), (c) and (d) of Decree Law No. 25,475 of May 5, 1992 (file of probative evidences provided by the State, tome 12, folios 9355 to 9367); and Case of Castillo Petruzzi et al., supra note 25, para. 86(2).

88(4) Both the investigation and the prosecution of cases of treason fell exclusively within the military jurisdiction, [FN29] which applied a summary proceeding known as the "theater of operations," before "faceless" judges. [FN30] Actions seeking judicial guarantees were not permitted. [FN31]

[FN29] Cf. Article 4 of Decree Law No. 25,659 of August 7, 1992; and testimonial statement made by Walter Albán Peralta before notary public on May 8, 2004 (file on merits, tome IV, folios 1000 to 10014).
[FN30] Cf. Case of Castillo Petruzzi et al., supra note 25, para. 86(10); Articles 1 and 3 of Decree Law No. 25,708 de September 2, 1992, entitled "norms concerning procedures in trials for crimes of treason"; Articles 710 to 724 of the Code of Military Justice (file of helpful evidence provided by the State, appendix 4, folios 10238 to 10344); Article 13 of Decree Law No. 25,475 of May 5, 1992 (file of probative evidence provided by the State, tome 12, folios 9355 to 9367); and testimonial statement made by Walter Albán Peralta before notary public on May 8, 2004 (file on merits, tome IV, folios 1000 to 10014).
[FN31] Cf. Case of Castillo Petruzzi et al., supra note 25, para. 86(10); and Case of Cantoral Benavides, supra para. 25, para. 63(h).

88(5) On June 24, 1997, Supreme Decree No. 005-97-JUS was issued, which adopted the "Regulation of the Daily Regime and the Progressivism of Treatment for Prisoners Processed and/or Sentenced for the Crime of Terrorism and/or Treason." [FN32]

[FN32] Cf. Supreme Decree No. 005-97-JUS of June 24, 1997 (file of probative evidence provided by the State, tome 12, folio 9371); Ministerial Decision No. 182-97-JUS of August 21, 1997 (file of probative evidence provided by the State, tome 12, folio 9370); and testimonial

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statement made by Walter Albán Peralta before notary public on May 8, 2004 (file on merits, tome IV, folios 1000 to 10014).

88(6) On January 18, 2001, Supreme Decree No. 003-2001-JUS was issued. [FN33] This decree indicated that prisoners' rights included: receiving face-to-face visits by their next of kin and friends at the times established therein, for up to 8 hours a day; [FN34] meeting and communicating in private with their defense lawyers for up to 6 hours a day; [FN35] carrying out any permitted activity in their cells, the corridors, or the exercise yard, at the appropriate time, and carrying out individual or group activities "compatible with the environment" of the establishment in which they were confined. [FN36]

[FN33] Cf. Supreme Decree No. 003-2001-JUS of January 18, 2001 (file of probative evidence provided by the State, tome 12, folios 9372 and 9373).
[FN34] Cf. Article 1 of Supreme Decree No. 003-2001-JUS of January 18, 2001 (file of probative evidence provided by the State, tome 12, folio 9372 and 9373).
[FN35] Cf. Article 2 of Supreme Decree No. 003-2001-JUS of January 18, 2001 (file of probative evidence provided by the State, tome 12, folio 9372 and 9373).
[FN36] Cf. Article 3 of Supreme Decree No. 003-2001-JUS of January 18, 2001 (file of probative evidence provided by the State, tome 12, folio 9372 and 9373).

88(7) On January 3, 2003, after the facts on which this case is based, the Constitutional Court of Peru delivered a judgment examining the alleged unconstitutionality of various provisions of Decree Laws Nos. 25,475, 25,659, 25,708 and 25,880. [FN37] The Constitutional Court decided, inter alia, that:

88(7)(i) Articles 1, 2, 3, 4, 5, and 7 of Decree Law No. 25,659, which regulated the crime of "treason", were unconstitutional. Also, "the phrase 'or treason' in Article 6 of Decree Law No. 25,659, and Articles 1, 2 and 3 of Decree Law No. 25,708 [and] Articles 1 and 2 of Decree Law No. 25,880 were unconstitutional. Finally, Articles 2, 3 and 4 of Decree Law No. 25,744 were also unconstitutional" [FN38];
88(7)(ii) Also, Article 7, Article 12(d) and Article 13(h) of Decree Law No. 25,475 were unconstitutional, as well as the phrases "with solitary confinement during the first year of detention and then..." and "[t]he Director of the establishment is responsible for ensuring that those convicted never share their individual cells, and this disciplinary regime shall be in force until they are released," both contained in Article 20 of this decree; [FN39]
88(7)(iii) Article 2 of Decree Law No. 25,475 was not unconstitutional. Within the "margins of reasonable ambiguity" contained in this norm, the interpretation criteria established in this judgment would be binding for all juridical agents; [FN40]
88(7)(iv) Paragraphs (a) and (c) of Article 13, both of Decree Law No. 25,475 were not unconstitutional. The interpretation criteria established in this judgment would be binding for all juridical agents; [FN41]
88(7)(v) It also urged the Congress of the Republic, within a reasonable time, to replace the corresponding legislation in order to adapt the legal regime for life imprisonment to the

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provisions of the judgment, and to establish the maximum limits of the penalties for the crimes regulated in Articles 2, 3(b) and 3(c), 4, 5 and 9 of Decree Law No. 25,475. Finally, to regulate the ways and means of processing petitions for new trials, referred to in the conclusions of this judgment. [FN42]

[FN37] Cf. judgment handed down by the Constitutional Court of Peru on January 3, 2003, to decide a public interest action on constitutionality filed by Marcelino Tineo Silva and more than 5,000 citizens, file No. 010-2002-AI/TC (file on merits, tome VI, folios 1364 to 1433).
[FN38] Cf. judgment handed down by the Constitutional Court of Peru on January 3, 2003 ,to decide a public interest action on constitutionality filed by Marcelino Tineo Silva and more than 5,000 citizens, file No. 010-2002-AI/TC, para. 41 and operative paragraphs (file on merits, tome VI, folios 1364 to 1433).
[FN39] Cf. judgment handed down by the Constitutional Court of Peru on January 3, 2003, to decide a public interest action on constitutionality filed by Marcelino Tineo Silva and more than 5,000 citizens, file No. 010-2002-AI/TC, paras. 88, 113 and 177 and operative paragraphs (file on merits, tome VI, folios 1364 to 1433).
[FN40] Cf. judgment handed down by the Constitutional Court of Peru on January 3, 2003, to decide a public interest action on constitutionality filed by Marcelino Tineo Silva and more than 5,000 citizens, file No. 010-2002-AI/TC, paras. 77 and 78 and operative paragraphs (file on merits, tome VI, folios 1364 to 1433).
[FN41] Cf. judgment handed down by the Constitutional Court of Peru on January 3, 2003, to decide a public interest action on constitutionality filed by Marcelino Tineo Silva and more than 5,000 citizens, file No. 010-2002-AI/TC, paras. 146, 154 and operative paragraphs (file on merits, tome VI, folios 1364 to 1433).
[FN42] Cf. judgment handed down by the Constitutional Court of Peru on January 3, 2003, to decide a public interest action on constitutionality filed by Marcelino Tineo Silva and more than 5,000 citizens, file No. 010-2002-AI/TC, operative paragraphs (file on merits, tome VI, folios 1364 to 1433).

88.8) The Executive issued Legislative Decrees No. 921 of January 17, 2003, No. 922 of February 11, 2003 and Nos. 923 to 927 of February 19, 2003, which, among other provisions, included the jurisprudential criteria indicated by the Constitutional Court in the judgment of January 3, 2003. [FN43]

[FN43] Cf. Legislative Decree No. 921 of January 17, 2003, entitled “Legislative Decree establishing the legal regime of life imprisonment in national legislation and the maximum limit of the sentence for the crimes established in Articles 2, 3, paragraphs "B" and "C", 4, 5 and 9 of Decree Law No. 25475” (file on merits, tome III, folio 627 bis); Legislative Decree No. 922-2003 of February 11, 2003, entitled “Legislative Decree that, pursuant to the judgment of the Constitutional Court File No. 010-2002-AI/TC, regulates the nullity of proceedings for the crime of treason and also establishes norms for the applicable criminal proceeding” (file on merits, tome III, folio 627 bis); Legislative Decree No. 923 of February 19, 2003, entitled “Legislative Decree that strengthens organizationally and functionally the State’s defense in relation to crimes

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of terrorism" (file on merits, tome III, folio 627 bis); Legislative Decree No. 924 of February 19, 2003, entitled "Legislative Decree adding a paragraph to Article 316 of the Penal Code regarding justification of the crime of terrorism" (file on merits, tome III, folio 627 bis); Legislative Decree No. 925 of February 19, 2003 entitled, "Legislative Decree regulating effective collaboration on crimes of terrorism" (file on merits, tome III, folio 627 bis); Legislative Decree No. 926 of February 19, 2003 entitled, "Legislative Decree regulating annulments of trials for crimes of terrorism before secret judges and prosecutors and application of the prohibition to raise objections" (file on merits, tome III, folio 627 bis); and Legislative Decree No. 927 of February 19, 2003, entitled "Legislative Decree regulating execution of sentence in crimes of terrorism" (file on merits, tome III, folio 627 bis).

Lori Berenson's detention

88.9) During the afternoon of November 30, 1995, Lori Berenson was observed by members of the National Police leaving the building located on Avenida Alameda del Corregidor, and "for this reason she was subjected to careful surveillance and, given her suspicious behavior, she was detained." [FN44]

[FN44] Cf. police investigation report No. 140-DIVICOTE II-DINCOTE of December 27, 1995 (file of appendixes to the application, tome 3, folio 1092; file of probative evidence provided by the State, tome 2, folio 4270); charge of the Army's Special Military Prosecutor for Cases of Treason of January 2, 1996 (file of appendixes to the application, tome 1, appendix 10, folio 102; and file of probative evidence provided by the State, tome 3, folios 4746); and testimonial statement made by Lori Berenson in the ordinary jurisdiction in file No. 154-2000 of April 4, 2001 (file of probative evidence provided by the State, tome 9, folio 7601).

88(10) The same November 30, 1995, Lori Berenson and Nancy Gloria Gilvonio Conde [FN45] were detained in Lima and placed in the custody of the Peruvian police authorities. [FN46] After her detention, Lori Berenson was transferred to the building located on Avenida Alameda del Corregidor, where the National Police carried out a police raid. [FN47]

[FN45] This name also appears in the body of evidence as Rosa Mita Calle. Hereinafter, the Court will use the name Nancy Gloria Gilvonio Conde.

[FN46] Cf. police investigation report No. 140–DIVICOTE II-DINCOTE of December 27, 1995 (file of appendixes to the application, tome 3, folio 1018; and file of probative evidence provided by the State, tome 2, folio 4195bis); testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folio 9812); and accusation of the Army's Special Military Prosecutor for Cases of Treason of January 2, 1996 (file of appendixes to the application, tome 1, appendix 10, folios 101 to 104).

[FN47] Cf. testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folio 9812); judgment handed down by the National Chamber for Terrorism, Criminal Organizations and Groups on June 20, 2000 (file of probative

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evidence provided by the State, tome 11, folio 9021); and testimonial statement made by Edgardo Emilio Garrido López in the ordinary jurisdiction in file No. 154-2000 of December 14, 2000 (file of probative evidence provided by the State, tome 7, folio 6934).

88(11) The same day, during "anti-terrorist police raid […] ALACRAN 95," [FN48] members of DINCOTE entered the building located on Avenida Alameda del Corregidor. A group of individuals responded from inside with armed resistance. The confrontation lasted several hours; [FN49] as a result, some people died and others were arrested. [FN50]

[FN48] Cf. police investigation report No. 140–DIVICOTE II-DINCOTE of December 27, 1995 (file of appendixes to the application, tome 3, folio 1016; and file of probative evidence provided by the State, tome 2, folio 4193bis).

[FN49] Cf. police investigation report No. 140–DIVICOTE II-DINCOTE of December 27, 1995 (file of appendixes to the application, tome 3, folio 1016; and file of probative evidence provided by the State, tome 2, folio 4193bis); testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folio 9812); expert report on forensic ballistics No. 3987/95 issued by the Technical Support Department of the Peruvian National Police on December 4, 1995 (file of appendixes to the application, tome 5, folios 1679 to 1682); newspaper cutting entitled "Casa de Miguel Rincón era un verdadero 'bunker'. Tenían dos habitaciones repletas de armas municiones y explosivos" published in "La República" on December 2, 1995 (file of probative evidence provided by the State, tome 7, folios 6690 and 6691); and Article entitled "Miguel Rincón. Cuando se comulga con la violencia. Quimera de Sangre" published in the journal "Careta" on December 7, 1995 (file of probative evidence provided by the State, tome 2, folios 4128 to 4132).

[FN50] Cf. order to open the pre-trial proceedings issued by the Special Military Judge on November 30, 1995, in trial No. 032-TP-95 processed in the military jurisdiction against Miguel Rincón Rincón et al. for the crime of treason (file of appendixes to the application, tome 1, appendix 7, folios 96 and 97; and file of probative evidence provided by the State, tome 2, folio 3955 y 3956).

88(12) When Lori Berenson was detained, there was a state of emergency in force in the Department of Lima and in the Constitutional Province of Callao together with the suspension of the exercise of the rights established in Articles 9 (inviolability of a domicile), 11 (freedom of movement in national territory), 12 (freedom of association) and 24(f) (detention with a judicial order or by the police authorities in flagrante delicto) of Article 2 of the 1993 Constitution of Peru. [FN51]

[FN51] Cf. Article 137(1) of the 1993 Constitution of Peru; Supreme Decree No. 74-95-DE-CCFFAA issued on November 2, 1995 (file of helpful evidence provided by the State, appendix 1, folios 10229 to 10230); and note 7-5-M/387 issued on November 13, 1995, by which Peru's Permanent Representative to the OAS notified the Executive Secretariat of the Inter-American

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Commission of the issue of Supreme Decree No. 74-95-DE-CCFFAA of November 2, 1995 (file of helpful evidence provided by the State, appendix 3, folio 10236).

Pre-trial procedures before the military justice system and DINCOTE

88(13) On November 30, 1995, the Special Military Judge opened the preliminary investigation against Miguel Wenceslao Rincón Rincón et al. for the crime of treason. [FN52] On December 1, 1995, the procedure was expanded to include Pacífico Abdiel Castrellón Santamaría, Lori Berenson, Manuel Rolando Serna Ponce and Nancy Gloria Gilvonio Conde, for the alleged crime of treason. [FN53] The Special Military Judge ordered that "the preliminary statements of the defendants" should be taken and also "other measures necessary to clarify the reported facts." [FN54]

[FN52] Cf. order to open the pre-trial proceedings issued by the Special Military Judge on November 30, 1995, in trial No. 032-TP-95 processed in the military jurisdiction against Miguel Rincón Rincón et al. for the crime of treason (file of appendixes to the application, tome 1, appendix 7, folios 96 and 97; and file of probative evidence provided by the State, tome 2, folio 3955 and 3956).

[FN53] Cf. order expanding the pre-trial proceedings issued by the Special Military Judge on December 1, 1995, in trial No. 032-TP-95 processed in the military jurisdiction against Miguel Rincón Rincón et al. for the crime of treason (file of appendixes to the application, tome 1, appendix 8, folio 98; and file of probative evidence provided by the State, tome 2, folio 3957).

[FN54] Cf. order expanding the pre-trial proceedings issued by the Special Military Judge on December 1, 1995, in trial No. 032-TP-95 processed in the military jurisdiction against Miguel Rincón Rincón et al. for the crime of treason (file of appendixes to the application, tome 1, appendix 8, folio 98; and file of probative evidence provided by the State, tome 2, folio 3957).

88(14) Lori Berenson was detained in DINCOTE as of December 1, 1995. She was unable to see her family during the first days of her detention [FN55] and she only had access to a lawyer eight days after this, when she made a pre-trial statement. [FN56]

[FN55] Cf. testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folio 9813).

[FN56] Cf. statement with instructions made by Lori Berenson before DINCOTE on December 9, 1995 (file of probative evidence provided by the State, tome 2, folio 4529); Article 12(f) of Decree Law No. 25,475 of May 5, 1992; and testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folio 9813).

88(15) The following steps were taken during the DINCOTE investigation; removal of corpses; [FN57] detentions; [FN58] legal medicine examinations; [FN59] personal [FN60] and house [FN61] searches and reconstructions; [FN62] seizures and freezing of assets; [FN63] preliminary

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statements from those detained; [FN64] and examination of the seized documentation, including expert reports, requests for police records [FN65] and requisitions. [FN66]

[FN57] Cf. record of removal of corpse which appears in file No. 032-TP-95 (file of probative evidence provided by the State, tome 2, folios 3959 to 3961).
[FN58] Cf. police investigation report No. 140-DIVICOTE II-DINCOTE of December 27, 1995 (file of appendixes to the application, tome 3, folio 1015; and file of probative evidence provided by the State, tome 2, folio 4193).
[FN59] Cf. attestations of legal medicine reports on the defendants which appear in file No. 032-TP-95 (file of probative evidence provided by the State, tome 2, folios 4087 to 4119); and medical certificates of the defendants issued by the Legal Medicine Institute of Peru which appear in file No. 032-TP-95 (file of probative evidence provided by the State, tome 2, folios 4596 to 4615).
[FN60] Cf. records of personal searches which appear in file No. 032-TP-95 (file of probative evidence provided by the State, tome 2, folios 4314 to 4336); and record of personal search of Lori Berenson of November 30, 1995 (file of probative evidence provided by the State, tome 2, folios 4332 to 4333).
[FN61] Cf. record of home searches which appear in file No. 032-TP-95 (file of probative evidence provided by the State, tome 2, folios 4337 to 4371); and record of the search of Lori Berenson's domicile on December 4, 1995 (file of probative evidence provided by the State, tome 2, folios 4350 to 4354).
[FN62] Cf. records of reconstruction which appear in file No. 032-TP-95-ZJE (file of probative evidence provided by the State, tome 2, folios 4380 to 4410); record of reconstruction in the presence of the defendants: Lori Berenson, Pacífico Castrellón and Jaime Ramírez Pedraza on December 15, 1995 (file of probative evidence provided by the State, tome 2, folios 4398 to 4407); and record of reconstruction in the presence of Lori Berenson on December 15, 1995 (file of probative evidence provided by the State, tome 2, folios 4408 to 4410).
[FN63] Cf. records of seizure that appear in file No. 032-TP-95-ZJE (file of probative evidence provided by the State, tome 2, folios 4367 to 4371); police investigation report No. 140-DIVICOTE II-DINCOTE of December 27, 1995 (file of appendixes to the application, tome 3, folios 1015 to 1114; and file of probative evidence provided by the State, tome 2, folios 4192 to 4292).
[FN64] Cf. statements in the pre-trial proceedings made by Ada Tabja de Sessarego; Andrés Boris Zapata Ascona; Jaime Armando Ramírez Pedraza; Carlos Adolfo Guija Gálvez; Edgar Cumapa Fasabi; Edwin Gamarra Pumayanqui; Erdman Winkler Cierto Rojas; Graciano Accilo Enciso Soto; Hernán La Chira Chambergo; Honorato Hinojosa Alhua; Jesús Rivas Astudillo; José Francisco Barreto Boggiano; José Mego Arrieta; Lenin Gutiérrez Torres o Gutiérrez Flores; Lucinda Rojas Landa; Lucy Garcia López; Manuel Rolando Serna Ponce; María Elena Montero Vargas; Miguel Romero Yompiri; Miguel Wenceslao Rincón Rincón; Moisés Valentín Meza Cano; Nancy Gloria Gilvonio Conde; Nancy Lidia Cuyubamba Puente; Odón Leoncio Torres Bautista; Pacífico Abdiel Castrellón Santamaría; Rider Hugo Arévalo López and Rolando Ubaldo Aucalla Quispe (file of probative evidence provided by the State, tome 2, folios 3962 to 4081 and 4422 to 4579); and pre-trial statement made by Lori Berenson before the military jurisdiction on December 9 and 14, 1995, which appears in file No. 032-TP-95 (file of probative evidence provided by the State, tome 2, folios 4059 to 4063 and 4529 to 4543).

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[FN65] Cf. criminal and legal records of the defendants, which appear in file No. 032-TP-95 (file of probative evidence provided by the State, tome 2, folios 4149 to 4176).
[FN66] Cf. police investigation report No. 140-DIVICOTE II-DINCOTE of December 27, 1995 (file of appendixes to the application, tome 3, folios 1015 to 1114; and file of probative evidence provided by the State, tome 2, folios 4193 to 4292).

88(16) On December 1, 1995, Lori Berenson was searched. The record indicates the seizure of various documents and assets, including: three letters in English, a spiral notebook, a notebook, a United States passport, a driving license from the Republic of Nicaragua, a membership card of the Peruvian National Journalists Association, "learning permit" to drive in New York City, United States, beeper, cell phone and nine keys. [FN67]

[FN67] Cf. record of personal search of Lori Berenson of November 30, 1995 (file of probative evidence provided by the State, tome 2, folios 4332 to 4333); police investigation report N° 140–DIVICOTE II–DINCOTE of December 27, 1995 (file of appendixes to the application, tome 3, folios 1024, 1080 and 1081; and file of probative evidence provided by the State, tome 2, folios 4201bis, 4258 and 4259).

88(17) The same day, the domicile of Pacífico Abdiel Castrellón, a building located on Avenida Alameda del Corregidor, was searched. The Special Military Prosecutor and DINCOTE officials took part in this search. The record of the house search indicated that, among other elements, they had found "long-range and short-range [weapons], ammunition [...], explosives, field uniforms, radio transmission and computer equipment, copiers, […] [FN68]" and a "Voter's Identity Card […] in the name of Ana Gion MANSINNI FLORES, with the photograph […] of" Lori Berenson on the document. [FN69]

[FN68] Cf. police investigation report N° 140–DIVICOTE II–DINCOTE of December 27, 1995 (file of appendixes to the application, tome 3, folio 1025; and file of probative evidence provided by the State, tome 2, folio 4203).
[FN69] Cf. record of domicile search and seizure at the building located on Avenida Alameda del Corregidor that appear in file No. 032-TP-95 (file of probative evidence provided by the State, tome 2, folios 4337 to 4349); and police investigation report N° 140–DIVICOTE II–DINCOTE of December 27, 1995 (file of probative evidence provided by the State, tome 2, folio 4244 to 4246).

88(18) On December 4, 1995, Lori Berenson's domicile, located at Calle La Técnica, No. 200, Apartment 1101, Torres de San Borja, Lima (hereinafter "building located on Calle La Técnica") was searched. The Special Military Prosecutor, DINCOTE officials and José Nelson Rojas González, the building's guard, who acted as a witness, and Lori Berenson, who did not have the advice of her lawyer, attended the search. [FN70]

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[FN70] Cf. record of domicile search of the building located on Calle La Técnica that appears in file No. 032-TP-95 prepared by the Peruvian National Police on December 4, 1995 (file of probative evidence provided by the State, tome 2, folios 4350 to 4354); and testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folio 9813).

88(19) The record of the domicile search of December 4, 1995, indicates, inter alia, that documents, cash, bills for the purchase of goods and services, rental contracts of the raided building, electrical appliances, home furnishings and "two uniforms [...] apparently from the Peruvian Army [...] wrapped up in a black bag" were found. [FN71] At the time, Lori Berenson refused to sign the search record, "because it contained Articles that [did] not belong to her, such as the torn-up documents [and] the uniforms with accessories." [FN72]

[FN71] Cf. record of domicile search of the building located in Calle La Técnica that appears in file No. 032-TP-95 prepared by the Peruvian National Police on December 4, 1995 (file of probative evidence provided by the State, tome 2, folios 4350 to 4354).
[FN72] Cf. police investigation report No. 140–DIVICOTE II–DINCOTE of December 27, 1995 (file of appendixes to the application, tome 3, folio 1057; file of probative evidence provided by the State, tome 2, folios 4235); and statement with instructions made by Lori Berenson before DINCOTE on December 9, 1995 (file of probative evidence provided by the State, tome 2, folio 4529).

88(20) On December 9, 1995, Lori Berenson made a pre-trial "declaration" in the DINCOTE offices, in the presence of the Peruvian National Police (PNP) attorney, the secret Special Military Prosecutor and her defense lawyer. [FN73]

[FN73] Cf. statement with instructions made by Lori Berenson before DINCOTE on December 9, 1995 (file of probative evidence provided by the State, tome 2, folio 4529 to 4543).

88(21) On December 14 and 16, 1995, Lori Berenson made a "pre-trial statement" in the DINCOTE offices in the presence of the Army's Special Military Judge and her defense lawyer. [FN74] In this statement, when referring, inter alia, to the record of the house search of December 4, 1995 (supra para. 88(19)), the alleged victim clarified that "the keys [and] the exact address of the [building located on Calle La Técnica] had been in the possession of D[INCOTE] since 8 p.m. on Thursday, November 30, [de 1995]." [FN75] Regarding the Voter's Identity Card found in the building on Avenida Alameda del Corregidor (supra para. 88(17)), the alleged victim affirmed that she did not know why her photograph was "stuck in this forged identity card," and did not know where it had been found. [FN76]

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[FN74] Cf. pre-trial statement made by Lori Berenson in the military jurisdiction on December 14, 1995 (file of probative evidence provided by the State, tome 2, folio 4059 to 4063).
[FN75] Cf. pre-trial statement made by Lori Berenson in the military jurisdiction on December 16, 1995 (file of probative evidence provided by the State, tome 2, folio 4064 to 4075).
[FN76] Cf. pre-trial statement made by Lori Berenson in the military jurisdiction on December 16, 1995 (file of probative evidence provided by the State, tome 2, folio 4064 to 4075).

88(22) On December 15, 1995, a reconstruction procedure in the building located on Avenida Alameda del Corregidor, in the presence of members of DINCOTE, the Special Military Judge, the Special Military Prosecutor, the court clerk, Pacífico Abdiel Castrellón Santamaría, Jaime Ramírez Pedraza and Lori Berenson. The alleged victim's lawyer was not present. [FN77]

[FN77] Cf. record of reconstruction in the presence of the defendants: Lori Berenson, Pacífico Castrellón and Jaime Ramírez Pedraza on December 15, 1995 (file of probative evidence provided by the State, tome 2, folios 4398 to 4407); and record of reconstruction in the presence of Lori Berenson on December 15, 1995 (file of probative evidence provided by the State, tome 2, folios 4408 to 4410).

88(23) On December 17, 1995, Lori Berenson's defense lawyer presented a brief in which he requested the Special Military Examining Judge to "waive competence" and forward the case to the "ordinary jurisdiction," because there had been an "inappropriate assessment of the figure of the crime of treason." [FN78].

[FN78] Cf. jurisdictional plea by the Special Military Examining Judge in relation to the case against Lori Berenson submitted by her defense lawyer on December 17, 1995 (file of appendixes to the application, tome 3, folios 945 to 948; and file of probative evidence provided by the State, tome 2, folios 4121 to 4124).

88(24) On December 27, 1995, DINCOTE prepared "[Police] Deposition N° 140–DIVICOTE II–DINCOTE," which classified the facts investigated as treason. The police investigation report summarized the background to the case and the PNP investigation procedure. [FN79]

[FN79] Cf. police investigation report No. 140-DIVICOTE II-DINCOTE of December 27, 1995 (file of appendixes to the application, tome 3, folios 1015 to 1114; and file of probative evidence provided by the State, tome 2, folios 4193 to 4292).

88(25) On January 2, 1996, Military Examining Judge concluded the investigation [FN80] and, the same day, the Army's Special Military Prosecutor for Cases of Treason formulated the corresponding charge. [FN81]

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[FN80] Cf. order to terminate the judicial investigation issued by the Special Military Judge on January 2, 1996 (file of probative evidence provided by the State, tome 3, folio 4744).
[FN81] Cf. charge formulated by the Army's Special Military Prosecutor for Cases of Treason on January 2, 1996 (file of probative evidence provided by the State, tome 3, folios 4745 to 4748).

Criminal proceeding in the military jurisdiction

88(26) The trial against the alleged victim for the crime of treason was held in the military jurisdiction, under provisions established in Decree Law No. 25,659 (supra para. 88(2)), with "faceless" judges and in private hearings. [FN82]

[FN82] Cf. order expanding the pre-trial proceedings issued by the Special Military Judge on December 1, 1995, in trial No. 032-TP-95 processed in the military jurisdiction against Miguel Rincón Rincón et al. for the crime of treason (file of appendixes to the application, tome 1, appendix 8, folio 98; file of probative evidence provided by the State, tome 2, folio 3957); police investigation report No. 140–DIVICOTE II-DINCOTE of December 27, 1995 (file of appendixes to the application, tome 3, folio 1015; and file of probative evidence provided by the State, tome 2, folio 4193).

88(27) The defense lawyer's access to the case file was hampered in the proceeding held in the military jurisdiction against Lori Berenson. The defense lawyer only had two hours to study it and prepare arguments; [FN83] he was not allowed to speak freely and in private to his client; [FN84] he was only allowed a few minutes for the oral defense; [FN85] some of the proceedings in the military criminal trial were not notified to the defense lawyer; [FN86] and he had difficulty in accessing the evidence and contesting it. [FN87]

[FN83] Cf. brief with arguments in defense of the alleged victim submitted to the Special Military Supreme Court on March 11, 1996 (file of probative evidence provided by the State, tome 4, folios 5221 to 5231); and report on the hearing of the procedural parties in file 032-TP-95 addressed to the Army's Special Military Judge on January 4, 1996 (file of probative evidence provided by the State, tome 3, folio 4752).
[FN84] Cf. jurisdictional plea by the Special Military Examining Judge in relation to the case against Lori Berenson submitted by her defense lawyer on December 17, 1995 (file of probative evidence provided by the State, tome 2, folio 4122); and testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folios 9811 to 9823).
[FN85] Cf. brief with the request of the alleged victim's defense lawyer to provide oral information to the Military Court submitted to the Special Military Judge on January 4, 1996 (file of probative evidence provided by the State, tome 3, folio 4799); record attesting to the

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alleged victim's lawyer speaking before the Special Military Court on January 19, 1996 (file of probative evidence provided by the State, tome 3, folio 4874); record attesting to the alleged victim's lawyer speaking before the Special Military Court on January 25, 1996 (file of probative evidence provided by the State, tome 3, folio 4981); and record attesting to the alleged victim's lawyer speaking before the Special Military Court on March 12, 1996 (file of probative evidence provided by the State, tome 4, folio 5237).

[FN86] Cf. brief with arguments in defense of the alleged victim submitted to the Special Military Judge on January 5, 1996 (file of probative evidence provided by the State, tome 3, folios 4760 to 4763); brief requesting the annulment of the judgment of January 17, 1996, filed by the alleged victim's defense lawyer before the Army's Special Military Court on January 19, 1996 (file of probative evidence provided by the State, tome 3, folios 4880 to 4884); and brief of the alleged victim's defense lawyer of January 24, 1996, addressed to the President of the Army's Special Court (file of probative evidence provided by the State, tome 3, folio 4959).

[FN87] Cf. testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folios 9811 to 9823); and brief with arguments in defense of the alleged victim submitted to the Special Supreme Military Tribunal on March 11, 1996 (file of probative evidence provided by the State, tome 4, folio 5221 to 5231).

88(28) On January 8, 1996, the Peruvian Police presented Lori Berenson to the media, and she was not given the opportunity to consult her defense lawyer. [FN88]

[FN88] Cf. video of the "Lori Berenson case, May 7, 2001 (1)" (file of probative evidence provided by the State, appendix 2, comprising 58 videos); and testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folio 9815).

88(29) The video of the presentation to the media of January 8, 1996, was offered by the Prosecutor of the Special Military Court as evidence "that confirm[ed] without doubt, [the alleged victim's] express acknowledgement of her "membership" in a subversive group. [FN89] The alleged victim's defense lawyer contested this presentation, because he considered it "an open violation of procedural norms." [FN90]

[FN89] Cf. brief submitted by the Public Prosecutor responsible for Judicial Affairs of the Ministry of the Interior to the Army's Special Military Judge on January 9, 1996 (file of probative evidence provided by the State, tome 3, folio 4797).

[FN90] Cf. brief submitted by the alleged victim's lawyer to the Army's Special Military Judge for the Zone on January 9, 1996 (file of appendixes to the application, tome 6, folio 2075; and file of probative evidence provided by the State, tome 3, folio 4795).

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88(30) On January 11, 1996, the Special Military Court delivered judgment (hereinafter "judgment of January 11, 1996"), [FN91] in which it considered that it had been proved, inter alia, that the alleged victim:

88(30)(i) Was a "member of M[RTA] and a leader of the said group," and that her participation in subversive activities had been ratified;
88(30)(ii) Had passed herself off as a "correspondent" of the newspapers Modern Times and Third World Viewpoint in order to have free access to the Congress of the Republic of Peru;
88(30)(iii) Had provided information for "planning a terrorist attack against the Congress of the Republic";
88(30)(iv) Had purchased various "electrical devices and computer equipment for the terrorist organization" with money provided by the co-defendant;
88(30)(v) "Had leased the building on Avenida La Alameda del Corregidor […] and acquired a Nissan truck";
88(30)(vi) "Was in contact with foreign terrorist criminals who trafficked in arms";
88(30)(vii) "A Voter's Identity Card with her photograph and stamps in the name of Ana Gión Mansini Flores was seized from her";
88(30)(viii) She lived in the building located on Avenida Alameda del Corregidor;
88(30)(ix) She took part in the "importation of the weapons that were taken […] to the La Molina building";
88(30)(x) "She prepared and distributed food and gave talks to terrorist criminals from the M[RTA] Armed Unit";
88(30)(xi) She leased an apartment on "Calle La Técnica," from where documentation of a subversive nature was seized and also uniforms and military supplies" and "the co-defendant, Nancy Gloria Gilvonio Conde, visited [this apartment] and stayed overnight on several occasions"; and
88(30)(xii) She "demonstrated her affiliation and membership in the M[RTA] terrorist organization publicly, when she [was] presented to the media, as is seen in the video in the case file."

[FN91] Cf. judgment handed down by the Special Military Judge on January 11, 1996 (file of appendixes to the application, tome 2, appendix 12, folios 505 to 525; and file of probative evidence provided by the State, tome 3, folios 4810 to 4830).

88(31) The judgment of January 11, 1996, sentenced the alleged victim "to LIFE IMPRISONMENT, as perpetrator of the crime of treason against the Peruvian State." [FN92]

[FN92] Cf. judgment handed down by the Special Military Judge on January 11, 1996 (file of appendixes to the application, tome 2, appendix 12, folio 524; and file of probative evidence provided by the State, tome 3, folio 489).

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88(32) On January 19, 1996, Lori Berenson's lawyer appealed this judgment before the Army's Special Military Court. [FN93]

[FN93] Cf. appeal brief prepared by the alleged victim's defense lawyer and submitted to the Army's Special Military Court on January 19, 1996 (file of probative evidence provided by the State, tome 3, folios 4880 to 4884).

88(33) On January 30, 1996, the Army's Special Military Court, whose members were unidentified, delivered judgment, in which it:

Declare[d] inadmissible the objection on jurisdiction filed by the defense lawyer of Lori Helene BERENSON MEJIA [… and] confirm[ed][the judgment handed down by the Army's Special Military Judge [on January 11, 1996 ...] which sentence[d] Lori Helene BERENSON MEJIA to LIFE IMPRISONMENT, [...] as perpetrator of the crime of treason[.] [FN94]

[FN94] Cf. judgment handed down by the Army's Special Military Court on January 30, 1996 (file of appendixes to the application, tome 2, appendix 14, folios 530 to 542; and file of probative evidence provided by the State, tome 3, folios 4983 to 4995).

88(34) On January 30, 1996, Lori Berenson's lawyer filed an appeal for annulment of the judgment delivered by the Special Military Supreme Court that day. [FN95]

[FN95] Cf. remedy of nullity against the judgment of the Army's Special Military Court filed by the alleged victim's defense lawyer before the Special Military Supreme Court on January 30, 1996 (file of probative evidence provided by the State, tome 3, folio 5009).

88(35) On March 4, 1996, the Deputy Special Prosecutor General issued his legal opinion on the appeal for annulment filed by Lori Berenson's defense lawyer, and requested "[t]hat it should be declared that the Court's judgment SENTENCING Lori Helene BERENSON MEJIA [...] to LIFE IMPRISONMENT SHOULD NOT BE ANNULLED." [FN96]

[FN96] Cf. opinion of the Deputy Special Prosecutor General's office of March 4, 1996 (file of probative evidence provided by the State, tome 4, folios 5080 to 5155).

88(36) On March 11, 1996, Lori Berenson's defense lawyer submitted his written arguments, requesting, inter alia, that the objection on jurisdiction should be admitted, in favor of the ordinary jurisdiction, and that the all the preceding proceedings should be declared null "up until

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the stage at which the Prosecutor formulated the charge, in his capacity as person responsible for the criminal proceeding." [FN97]

[FN97] Cf. brief with arguments in defense of the alleged victim submitted to the Army's Special Military Supreme Court on March 11, 1996 (file of probative evidence provided by the State, tome 4, folio 5221 to 5231).

88(37) On March 12, 1996, the Special Military Supreme Court, whose members were unidentified, delivered a ruling in which it declared that there would be no annulment "of the decision of January 30, [1996], which confirm[ed] in part the first-instance judgment of January 11, [1996], SENTENCING Lori Helene BERENSON MEJÍA […] to life imprisonment as the perpetrator of the crime of treason" (supra para. 88(30)). [FN98]

[FN98] Cf. judgment handed down by the Army's Special Military Supreme Court on March 12, 1996 (file of probative evidence provided by the State, tome 4, folio 5239 to 5253).

88(38) On December 7, 1999, Lori Berenson filed an appeal for review of res judicata before the Supreme Council of Military Justice. [FN99]

[FN99] Cf. brief filing a special action for review of res judicata submitted to the Supreme Council of Military Justice on December 7, 1999 (file of appendixes to the application, tome 5, folios 1800 to 1803; file of probative evidence provided by the State, tome 5, folios 5430 to 5433); and Articles 689 to 693 of the Code of Military Justice, Decree Law No. 23,214 (file of helpful evidence provided by the State, appendix 4, folios 10238 to 10345).

88(39) On December 17, 1999, the Public Prosecutor responsible for the Judicial Affairs of the Ministry of the Interior relating to terrorism and treason requested the Supreme Council of Military Justice to "declare the appeal for review of res judicata filed [by the alleged victim] inadmissible." [FN100]

[FN100] Cf. brief submitted to the Supreme Council of Military Justice by the Public Prosecutor responsible for the Judicial Affairs of the Ministry of the Interior relating to terrorism and treason on December 17, 1999 (file of probative evidence provided by the State, tome 5, folios 5437 to 5447).

88(40) On January 13, 2000, the Plenary Chamber of the Supreme Council of Military Justice decided, in a supreme judgment, "to ADMIT FOR PROCESSING the special appeal for review of res judicata, filed by Lori Helene BERENSON MEJIA." [FN101]

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[FN101] Cf. decision of the Supreme Council of Military Justice issued on January 13, 2000 (file of probative evidence provided by the State, tome 5, folios 5450 to 5452).

88(41) On August 11, 2000, the Government attorney issued his opinion to the effect that "the appeal for review of res judicata should be declared admissible, [...] as it has been confirmed that [the alleged victim] was not a leader, head, chief or the equivalent of the MRTA terrorist group." [FN102]

[FN102] Cf. report No. 019 V.I.CSJM-2S issued by Major General FAP, Government attorney on August 11, 2000 (file of probative evidence provided by the State, tome 5, folios 5494 to 5495).

88(42) On August 14, 2000, the Prosecutor General of the Supreme Council of Military Justice issued his opinion to the effect that "the appeal for review of res judicata should be declared ADMISSIBLE in favor of […] Lori Helene BERENSON MEJIA, and that only that part of the judgment of March 12, 1996, which convicted the said Lori Helene BERENSON MEJIA as perpetrator of the crime of treason should be declared NULL." [FN103]

[FN103] Cf. opinion of the Prosecutor General of the Supreme Council of Military Justice de August 14, 2000 (file of probative evidence provided by the State, tome 5, folio 5501 to 5504).

88(43) On August 18, 2000, the Plenary Chamber of the Supreme Council of Military Justice issued a decision, in which it considered that:

The petitioner was not a leader of the [...] subversive organization, so that the criminal conduct of which she was accused is not subsumed [...] in the presumptions established in Decree Law No. 25,659, which regulates the crime of treason. Therefore, an evident error has been made that must be rectified, in accordance with Article 689 of the Code of Military Justice. On these grounds: IT WAS DECIDED: TO DECLARE ADMISSIBLE the appeal for review of res judicata[... and] NULL that part of the [...] supreme judgment [of March 12, 1996,] that [...] sentence[d] [Lori Berenson] to life imprisonment as perpetrator of the crime of treason, and to the payment of civil reparation; and WITHOUT GROUNDS that part of the report of the Prosecutor General affirming this. IT WAS ORDERED: that the [...] appeal and the main case records should be forwarded to the Supreme Military Tribunal responsible for crimes of treason so that it could take action pursuant to its powers. [FN104]. (the highlighting appears in the original)

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[FN104] Cf. judgment handed down by the Plenary Chamber of the Supreme Council of Military Justice on August 18, 2000 (file of appendixes to the application, tome 2, appendix 16, folios 558 and 559; and file of probative evidence provided by the State, tome 5, folios 5505 to 5506).

88(44) On August 24, 2000, the Military Supreme Court delivered judgment, in which it declared that "an evident error ha[d] been made that must be rectified, in accordance with Article 689 of the Code of Military Justice," and that there were facts that "constituted the crime of terrorism, described and penalized in Decree Law No. 25,475, which corresponded to the ordinary jurisdiction." Consequently:

IT DECLARED: that only that part of the judgment [...] of January 30, 1996, which sentence[d] Lori Helene BERENSON MEJIA, to life imprisonment and payment of civil reparation, as perpetrator of the crime of treason was NULL; and WITHOUT GROUNDS the part of the judgment of the Military Judge of January 11, 1996, [...] which convict[ed] her as perpetrator of the same crime with the same penalty; and NULL that part of the order expanding the opening of investigation of December 1, 1995, which include[d] the said petitioner in the preliminary investigation for the crime of treason; IT AGREED: TO WAIVE COMPETENCE and TO DISQUALIFY ITSELF [...] in favor of the ordinary jurisdiction, only with regard to Lori Helene BERENSON MEJIA." [FN105] (the highlighting appears in the original)

[FN105] Cf. judgment handed down by the Army's Special Military Supreme Court on August 24, 2000 (file of appendixes to the application, tome 2, appendix 17, folio 560 to 562; and file of probative evidence provided by the State, tome 5, folios 5510 to 5512).

Criminal proceeding in the ordinary jurisdiction

88(45) On August 28, 2000, the Supreme Council of Military Justice forwarded to the Prosecutor General and President of the Executive Commission of the Attorney General's office "certified copies of Case No. 032-TP-95, with 1,405 pages (2 tomes), tried in the military jurisdiction against the civilian, Lori Helene BERENSON MEJÍA and others, for the crime of treason, […] because [the special] appeal [for review of res judicata] had been declared admissible." [FN106]

[FN106] Cf. official communication No. 045 P-CSJM addressed by the President of the Supreme Council of Military Justice to the Prosecutor General and President of the Executive Commission of the Attorney General's office on August 28, 2000 (file of probative evidence provided by the State, tome 5, folio 5515).

88(46) The same day, the Provincial Prosecutor ad hoc for cases of terrorism filed "Complaint No. 90-000-Pros. ad hoc Terrorism" against Lori Berenson, "as the alleged perpetrator of the crime […] against public peace – terrorism against the State; a crime defined and penalized in

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paragraphs (a), (b), (d), [and] (f) of art[icle] 4 and [Article] 5 of Decree Law 25,475." [FN107] This complaint accused Lori Berenson of "being a member of the M[RTA] terrorist group, with voluntary participation in this group, in the following acts of collaboration":

88(46.i) "[h]aving introduced herself as Pacífico Castrellón's wife[, …] in order to lease the building located on Av. Alameda del Corregidor No. 1049-1051 […], which was raided because it was the center of operations of the said subversive group[, …] and having accompanied [Mr.] Castrellón to lease the building located on Calle Carlos Tenaut No. 154 Of. 204[,] Santiago de Surco";
88(46.ii) "[h]aving leased the building located on Av. La Técnica No. 200-1101[, …] the placed where army uniforms were seized and where the subversive offender, Nancy Gilvonio Conde spent the night (in hiding)";
88(46.iii) "[h]aving taken part in the indoctrination of members of this subversive group in the building located on Av. El Corregidor[,] where she also provided support by acquiring and preparing food for the terrorists who lodged in this building"; and
88(46.iv) "[h]aving collaborated in the acquisition of different means of communication (beepers, telephones, computers and other goods that were seized […])." [FN108]

[FN107] Cf. complaint No. 90-000 of the Provincial Prosecutor ad hoc for cases of terrorism of August 28, 2000 (file of probative evidence provided by the State, tome 5, folio 5518 and 5520).
[FN108] Cf. complaint No. 90-000 of the Provincial Prosecutor ad hoc for cases of terrorism of August 28, 2000 (file of probative evidence provided by the State, tome 5, folio 5518 and 5520).

88(47) The complaint filed by the Provincial Prosecutor ad hoc offered as proof "the significance of the evidence in the case file forwarded by the Exclusive Military Jurisdiction (declarations, seizure records and expert reports) and request[ed] that measures should be taken" such as: arraignment of the alleged victim, criminal record, testimonial statements, ratification of expert opinions, and any "others that [might be] necessary to clarify the facts." [FN109]

[FN109] Cf. complaint No. 90-000 of the Provincial Prosecutor ad hoc for cases of terrorism of August 28, 2000 (file of probative evidence provided by the State, tome 5, folio 5520).

88(48) Also on August 28, 2000, the Judge of the Provincial Criminal Court, in accordance with Article 13(a) of Decree Law No. 25,475, issued an order to open the pre-trial proceedings with a warrant for the arrest of Lori Berenson, and established that the "measures necessary to clarify the facts should be taken." [FN110]

[FN110] Cf. order to open the pre-trial proceedings issued by the Judge of the Provincial Criminal Court on August 28, 2000 (file of probative evidence provided by the State, tome 5, folio 5521 to 5524).

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88(49) On September 8, 2000, the alleged victim's lawyer was appointed. [FN111] From this time onwards, the alleged victim's defense lawyer could litigate at all stages of the ordinary proceeding and meet with his client. [FN112]

[FN111] Cf. brief appointing a lawyer submitted by Rhoda Berenson to the twenty-eighth Criminal Court of Lima on September 8, 2000 (file of probative evidence provided by the State, tome 5, folio 5635).

[FN112] Cf. attestations of visits made to Lori Berenson in the Chorrillos prison during 2000 and 2001, issued by the Peruvian National Police (file of probative evidence provided by the State, tome 12, folio 9136 to 9142).

88(50) During the preliminary investigation in the ordinary jurisdiction, the following procedures were executed: testimonial statements were taken from Lori Berenson, [FN113] Pacífico Abdiel Castrellón Santamaría, [FN114] Lucinda Rojas Landa, [FN115] Nancy Gloria Gilvonio Conde, [FN116] José Mego Arrieta, [FN117] Carlos Adolfo Guija Gálvez, [FN118] Hernán La Chira Chambergo, [FN119] Miguel Wenceslao Rincón Rincón, [FN120] Lucy García López, [FN121] Nancy Lidia Cuyumabamba Puente, [FN122] José Barreto Boggiano, [FN123] Rolando Ubaldo Aucalla Quispe, [FN124] Herdman Winkler Ciero Rojas, [FN125] Jesús Rivas Astudillo, [FN126] Rufino Miguel Romero Yompiri, [FN127] Odón Leoncio Torres Bautista, [FN128] Andrés Boris Zapata Ascona, [FN129] Jaime Armando Ramírez Pedraza, [FN130] Manuel Rolando Serna Ponce, [FN131] Edgar Cumapa Fasablaedad, [FN132] Moisés Valentín Meza Cano, [FN133] Rider Hugo Arévalo López, [FN134] Denis Javier Vargas Marín, [FN135] Alejandro Oblitas Torres, [FN136] Beatriz Ascencio Barrera de la Chira, [FN137] Luis Alejandro Giampietri Rojas, [FN138] María Jesús Espinoza Matos, [FN139] Jorge Luis Valdez Carrillo, [FN140] Edgardo Emilio Garrido López, [FN141] Juana Isabel Rengifo Rojas [FN142] and Francisco Tudela Van Breugei-Douglas; [FN143] confrontation procedures; [FN144] site inspection; [FN145] expert reports; [FN146] ratifications of expert reports; [FN147] request for documentary evidence from different public and private entities, [FN148] and incorporation of the documentary evidence. [FN149]

[FN113] Cf. pre-trial statement by Lori Berenson in the ordinary jurisdiction on August 31, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folio 5528); continuation of the pre-trial statement of Lori Berenson in the ordinary jurisdiction on September 6, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folio 5601); continuation of pre-trial statement of Lori Berenson in the ordinary jurisdiction on September 8, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5633 and 5634); continuation of the pre-trial statement of Lori Berenson in the ordinary jurisdiction on September 13, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5649 and 5661); continuation of the pre-trial statement of Lori Berenson in the ordinary jurisdiction on September 14, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5666 to 5678); and continuation of the pre-trial

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statement of Lori Berenson in the ordinary jurisdiction on September 15, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5679 to 5686).

[FN114] Cf. testimonial statement by Pacífico Abdiel Castrellón Santamaría in the ordinary jurisdiction on September 5, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5588 to 5597); and continuation of the testimonial statement by Pacífico Abdiel Castrellón Santa María in the ordinary jurisdiction on September 19, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folio 5716).

[FN115] Cf. testimonial statement by Lucinda Rojas Landa in the ordinary jurisdiction on September 20, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5727 to 5728); testimonial statement by Lucinda Rojas Landa in the ordinary jurisdiction on September 28, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5877 to 5883); and continuation of the testimonial statement by Lucinda Rojas Landa in the ordinary jurisdiction on November 29, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6587 and 6588).

[FN116] Cf. testimonial statement by Nancy Gloria Gilvonio Conde in the ordinary jurisdiction on September 29, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folio 5894); testimonial statement by Nancy Gloria Gilvonio Conde in the ordinary jurisdiction on November 28, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folio 6552 to 6559); and continuation of the testimonial statement by Nancy Gloria Gilvonio Conde in the ordinary jurisdiction on December 6, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 6777 and 6778).

[FN117] Cf. testimonial statement by José Mego Arrieta in the ordinary jurisdiction on September 29, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5896 to 5900); and final part of the testimonial statement by José Mego Arrieta in the ordinary jurisdiction on December 5, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6759 and 6760).

[FN118] Cf. testimonial statement by Carlos Adolfo Guija Gálvez in the ordinary jurisdiction on October 2, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5933 to 5936).

[FN119] Cf. testimonial statement by Hernán La Chira Chambergo in the ordinary jurisdiction on October 2, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5936 and 5937).

[FN120] Cf. testimonial statement by Miguel Wenceslao Rincón Rincón in the ordinary jurisdiction on October 3, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5943 to 5945); and testimonial statement by Wenceslao Rincón Rincón in the ordinary jurisdiction on December 1, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6637 to 6646).

[FN121] Cf. testimonial statement by Lucy García López in the ordinary jurisdiction on October 4, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5950 to 5953); and continuation of the testimonial statement by Lucy García López in the ordinary jurisdiction on November 23, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6540 to 6542).

[FN122] Cf. testimonial statement by Nancy Lidia Cuyumabamba Puente in the ordinary jurisdiction on October 4, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 5954 to 5957); and continuation of the testimonial statement by Nancy Lidia

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Cuyumabamba Puente in the ordinary jurisdiction on November 23, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6538 and 6539).

[FN123] Cf. testimonial statement by José Barreto Boggiano in the ordinary jurisdiction in file No. 154-2000 on October 5, 2000 (file of probative evidence provided by the State, tome 6, folios 5961 and 5962); and expansion of the testimonial statement by José Barreto Boggiano in the ordinary jurisdiction on November 23, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folio 6521).

[FN124] Cf. testimonial statement by Rolando Ubaldo Aucalla Quispe in the ordinary jurisdiction on October 6, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 6, folios 6009 to 6013).

[FN125] Cf. testimonial statement by Herdman Winkler Ciero Rojas in the ordinary jurisdiction on October 6, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 6, folios 6014 to 6017).

[FN126] Cf. testimonial statement by Jesús Rivas Astudillo in the ordinary jurisdiction on October 6, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 6, folios 6018 to 6020).

[FN127] Cf. testimonial statement by Rufino Miguel Romero Yompiri in the ordinary jurisdiction on October 10, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 6, folios 6059 to 6062).

[FN128] Cf. testimonial statement by Odón Leoncio Torres Bautista in the ordinary jurisdiction on October 10, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 6, folios 6063 to 6067); and expansion of the testimonial statement by Odón Leoncio Torres Bautista in the ordinary jurisdiction on December 5, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6755 and 6756).

[FN129] Cf. testimonial statement by Andrés Boris Zapata Ascona in the ordinary jurisdiction in file No. 154-2000 on October 10, 2000 (file of probative evidence provided by the State, tome 6, folios 6068 to 6071).

[FN130] Cf. testimonial statement by Jaime Armando Ramírez Pedraza in the ordinary jurisdiction on October 13, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 6, folios 6121 to 6124).

[FN131] Cf. testimonial statement by Manuel Rolando Serna Ponce in the ordinary jurisdiction on October 13, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 6, folios 6125 to 6127).

[FN132] Cf. testimonial statement by Edgar Cumapa Fasablaedad in the ordinary jurisdiction on October 13, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 6, folios 6128 to 6130).

[FN133] Cf. testimonial statement by Moisés Valentín Meza Cano in the ordinary jurisdiction on October 13, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 6, folios 6131 to 6133).

[FN134] Cf. testimonial statement by Rider Hugo Arévalo López in the ordinary jurisdiction on October 13, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 6, folios 6134 to 6136).

[FN135] Cf. testimonial statement by Denis Javier Vargas Marín in the ordinary jurisdiction in file No. 154-2000 on October 19, 2000 (file of probative evidence provided by the State, tome 6, folios 6143 to 6145).

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[FN136] Cf. testimonial statement by Alejandro Oblitas Torres in the ordinary jurisdiction on November 23, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6522 to 6524).
[FN137] Cf. testimonial statement by Beatriz Ascencio Barrera de la Chira in the ordinary jurisdiction on November 23, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6525 to 6527).
[FN138] Cf. testimonial statement by Luis Alejandro Giampietri Rojas in the ordinary jurisdiction on November 27, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 5, folios 6541 to 6551).
[FN139] Cf. testimonial statement by María Jesús Espinoza Matos in the ordinary jurisdiction in file No. 154-2000 on December 13, 2000 (file of probative evidence provided by the State, tome 7, folios 6916 and 6917).
[FN140] Cf. testimonial statement by Jorge Luis Valdez Carrillo in the ordinary jurisdiction December 14, 2000, in file No. 154-2000 el (file of probative evidence provided by the State, tome 7, folios 6932 and 6933).
[FN141] Cf. testimonial statement by Edgardo Emilio Garrido López in the ordinary jurisdiction on December 14, 2000, in file No. 154-2000 on December 14, 2000 (file of probative evidence provided by the State, tome 7, folio 6931 to 6937).
[FN142] Cf. testimonial statement by Juana Isabel Rengifo Rojas in the ordinary jurisdiction on December 14, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6938 and 6939).
[FN143] Cf. testimonial statement by Francisco Tudela Van Breugei-Douglas in the ordinary jurisdiction on December 15, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6946 to 6949).
[FN144] Cf. confrontation procedure between Pacífico Abdiel Castrellón Santamaría and Lori Berenson in the ordinary jurisdiction on December 12, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6907 to 6913); confrontation procedure between the witness Rufino Miguel Romero Yompiri and Lori Berenson in the ordinary jurisdiction on December 15, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folio 6943 to 6945); confrontation procedure between Lori Berenson and the witness José Mego Arrieta in the ordinary jurisdiction on December 5, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folio 6753 and 6754); continuation of the confrontation procedure between Lori Berenson and the witness José Mego Arrieta in the ordinary jurisdiction on December 5, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6757 and 6758); and confrontation procedure between Lori Berenson and the witness Lucinda Rojas Landa in the ordinary jurisdiction on December 6, 2000, in file No. 154-2000 (file of probative evidence provided by the State, tome 7, folios 6774 to 6776).
[FN145] Cf. transcript of the site inspection in the presence of the alleged victim and her lawyer in the building located at Avenida Alameda del Corregidor No. 1049, El Remanso, La Molina, on October 20, 2000 (file of probative evidence provided by the State, tome 6, folios 6190 to 6198).
[FN146] Cf. graphology report No. 3103/00 of the Peruvian National Police, National Criminalistic Department, prepared on December 12, 2000 (file of probative evidence provided by the State, tome 7, folios 6971 to 6978).

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[FN147] Cf. procedure to ratify graphology report 075/95 carried out on September 25, 2000 (file of probative evidence provided by the State, tome 5, folios 5822 to 5823); procedure to ratify ballistics report No. 056/95 carried out on December 7, 2000 (file of probative evidence provided by the State, tome 7, folios 6779 to 6781); and procedure to ratify forensic explosives report 067/95 carried out on December 14, 2000 (file of probative evidence provided by the State, tome 7, folio 6930 and 6931).

[FN148] Cf. communications requesting information addressed by the Examining Judge to the Embassies of Argentina, Colombia, Guatemala, Mexico, Nicaragua, Uruguay and Venezuela (file of probative evidence provided by the State, tome 5, folios 5555 to 5561); communication addressed by the Examining Judge to Department of Migration and Naturalization on September 1, 2000 (file of probative evidence provided by the State, tome 5, folio 5573); communication from the Operations Center of the National Registry of Sentences to the Military Court (file of probative evidence provided by the State, tome 5, folio 5578); certification of migratory movement issued by the Department of Migration and Displacement on September 5, 2000 (file of probative evidence provided by the State, tome 5, folio 5641); communication addressed by the Examining Judge to the company, Telefónica S.A., on September 25, 2000 (file of probative evidence provided by the State, tome 5, folio 5862); communication addressed by the Examining Judge to the Peruvian National Police on September 25, 2000 (file of probative evidence provided by the State, tome 5, folio 5863); communication addressed by the Examining Judge to the Department of Migration and Naturalization on September 25, 2000 (file of probative evidence provided by the State, tome 5, folio 5864); communication addressed by the Examining Judge to the Head of the Department of Criminalistic Technical Inspection on September 25, 2000 (file of probative evidence provided by the State, tome 5, folio 5866); communication addressed by the Examining Judge to the company, Master Call, on September 25, 2000 (file of probative evidence provided by the State, tome 5, folio 5869); communication addressed by the Examining Judge to INTERPOL on September 25, 2000 (file of probative evidence provided by the State, tome 5, folio 5870); communication addressed by the Examining Judge to the company, Tele 2000, on September 25, 2000 (file of probative evidence provided by the State, tome 5, folio 5871); communication addressed by the Examining Judge to the company, Celular 2000, on September 25, 2000 (file of probative evidence provided by the State, tome 5, folio 5872); communication addressed by the Examining Judge to the National Journalists Association on October 2, 2000 (file of probative evidence provided by the State, tome 6, folio 5971); letter accrediting Rosa Mita Calle as a correspondent of the journal, Third World Viewpoint, issued on September 1, 1995 (file of probative evidence provided by the State, tome 6, folio 6024); communication of the National Journalists Association of October 3, 2000 (file of probative evidence provided by the State, tome 6, folio 6039); fraud complaint formulated by the National Journalists Association against Lori Berenson and Rosa Mita Calle (Nancy Gloria Gilvonio Conde) on December 5, 1995 (file of probative evidence provided by the State, tome 6, folio 6034); report No. 059-DINCOTE-DIVITER-2 of October 21, 2000 (file of probative evidence provided by the State, tome 6, folios 6379 to 6386); and communication from the company, MasterCom, addressed to the twenty-eighth Criminal Court of Lima on November 14, 2000 (file of probative evidence provided by the State, tome 6, folio 6427).

[FN149] Cf. procedure on the exhibition and transcript of the video presented by the Public Prosecutor of the State on September 20, 2000 (file of probative evidence provided by the State, tome 5, folio 5734 to 5737); statement made by Rhoda Berenson before notary public on October 31, 2000 (file of probative evidence provided by the State, tome 7, folios 6609 to 6615); copy of

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newspaper Articles from the newspaper La República for the period from November 1994 to December 1995 (file of probative evidence provided by the State, tome 7, folios 6689 to 6723); report of the company, Bell South, of December 1, 2000 (file of probative evidence provided by the State, tome 7, folio 6789); attestation of the lawyer's visits to the alleged victim in the Chorrillos Prison from September to November 2000, issued by PNP on December 6, 2000 (file of probative evidence provided by the State, tome 7, folio 6829); and attestation of the acquisition of services from the company, Internet Peru, of December 5, 2000 (file of probative evidence provided by the State, tome 7, folio 6830).

88(51) On October 30, 2000, when the period for carrying out the preliminary investigation expired, the Provincial Prosecutor ad hoc for terrorism cases prepared a report with a summary of the evidence in the file at that date, requesting an extension of the period for the preliminary investigation in order to execute some procedures that it had not been possible to carry out, owing to "the complexity of the […] investigation." [FN150] On November 13, 2000, the Deputy National Superior Criminal Prosecutor for terrorism reiterated the request for the extension of the preliminary investigation period and, among other procedures, requested that the statements of four police agents should be received. [FN151]

[FN150] Cf. report of the Provincial Criminal Prosecutor ad hoc for terrorism cases issued on October 30, 2000 (file of probative evidence provided by the State, tome 6, folios 6281 to 6350).
[FN151] Cf. report No. 77–00 of the Deputy National Superior Criminal Prosecutor for terrorism issued on November 13, 2000 (file of probative evidence provided by the State, tome 6, folios 6417 to 6421).

88(52) On November 15, 2000 the National Corporative Superior Criminal Chamber for Terrorism Cases granted a 20-day extension to the preliminary investigation stage "so that the case judge could carry out the procedures indicated by the Superior Prosecutor." [FN152]

[FN152] Cf. decision of the National Corporative Superior Criminal Chamber for Terrorism Cases issued on November 15, 2000 (file of probative evidence provided by the State, tome 6, folios 6422 to 6425).

88(53) On February 15, 2001, the Deputy National Superior Criminal Prosecutor for terrorism submitted Report No. 06-2001, indicating that there were grounds for holding an oral proceeding "for the crime of terrorism against the Peruvian State" against Lori Berenson. [FN153] The Prosecutor's report charged the alleged victim with "having been a member of the M[RTA] terrorist organization," and, as such, having carried out the following acts of collaboration:

88(53.i) "[h]aving facilitated the lease of the building located at Av. Alameda El Corregidor No. 1049-1051, […] in which […] she pretended to be Pacífico Abdiel Castrellón Santamaría's wife, it having been established that, in this place a base or center of operations of

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the said subversive organization had been set up [...]. Also, [having accompanied] Mr. Castrellón Santamaría to lease the building located at Calle Carlos Tenaut No. 154, Of. 204";
88(53.ii) "having leased the building located at Av. Técnica No. 200, apartment 1101 […], where army uniforms were seized and also where the subversive, Nancy Gilvonio Conde, hid as of the beginning of October 1995";
88(53.iii) "having taken part in the indoctrination of active members of the said subversive organization in the building located at Av. Alameda El Corregidor No. 1049-1051, El Remanso de La Molina Vieja, where she also collaborated in the acquisition and preparation of food";
88(53.iv) "having collaborated […] to acquire different means of communication, such as beepers, cell phones and computers and other seized goods"; and
88(53.v) "having obtained for the subversive, Nancy Gilvonio Conde, and for herself, credentials of the National Journalists Association of Peru […] and with these identity cards, they were able to enter the Congress of the Republic, and interviewed several members of Congress […]."

[FN153] Cf. report No. 06-2001, of the Deputy National Superior Criminal Prosecutor for terrorism issued on February 15, 2001 (file of probative evidence provided by the State, tome 7, folios 7121 to 7141).

88(54) In view of the above, the Superior Prosecutor considered that the alleged victim was "guilty under the provisions [of] Article 4, paragraphs (a), (b), (d) and (f) and Article 5 of Decree Law 25,475." [FN154]

[FN154] Cf. report No. 06-2001, of the Deputy National Superior Criminal Prosecutor for terrorism issued on February 15, 2001 (file of probative evidence provided by the State, tome 7, folio 7126).

88(55) The facts described in the Prosecutor's Report of February 15, 2001, were confirmed by the following evidence described therein: [FN155] police investigation report No. 140 DIVICOTE II-DINCOTE; record of domiciliary search of the building located on Avenida Alameda El Corregidor, of December 1, 1995; record of domiciliary search of the building located on Calle Técnica, of December 4, 1995; leases, and also contracts for the acquisition of goods and services; [FN156] expert reports; [FN157] attestation by the journal Third World Viewpoint; [FN158] contents of photographs; visual inspection procedure; procedure relating to the exhibition and transcript of the video cassette where the alleged victim was presented to the press [FN159] (supra para. 88(28)); statements made in the military jurisdiction; [FN160] Lori Berenson's pre-trial statement and testimonial statements made during the preliminary investigation in the ordinary jurisdiction. [FN161] The said report also offered as evidence four attachments with documentation corresponding to trial No. 032-TP-95 in the military jurisdiction. [FN162]

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[FN155] Cf. report No. 06-2001, of the Deputy National Superior Criminal Prosecutor for terrorism issued on February 15, 2001 (file of probative evidence provided by the State, tome 7, folios 7127 to 7141)
[FN156] Cf. report No. 06-2001, of the Deputy National Superior Criminal Prosecutor for terrorism issued on February 15, 2001 (file of probative evidence provided by the State, tome 7, folios 7127 to 7141); rental contract for the building located on Avenida Alameda El Corregidor No. 1049, signed by Carlos Adolfo Guija Gálvez and Pacífico Castrellón Santamaría on December 9, 1994 (file of probative evidence provided by the State, tome 2, folios 4580 to 4582); rental contract for apartment 1101 of the building located on Calle Técnica No. 200 signed by Hernán la Chira Chambergo and Lori Berenson on August 21, 1995 (file of probative evidence provided by the State, tome 2, folios 4587 to 4589); and communication from the Master Com Group of November 14, 2000 (file of probative evidence provided by the State, tome 6, folio 6427).
[FN157] Cf. report No. 06-2001, of the Deputy National Superior Criminal Prosecutor for terrorism issued on February 15, 2001 (file of probative evidence provided by the State, tome 7, folios 7127 to 7141). The expert reports described in this report are: graphology report No. 075/95; forensic explosives report No. 056/05; forensic ballistics report No. 056/95; forensic ballistics report No. 3987/95; graphology report No. 31/00; and procedure to ratify forensic explosives report No. 67/95.
[FN158] Cf. letter accrediting Lori Berenson as a correspondent of the journal, Third World Viewpoint, issued on September 1, 1995 (file of probative evidence provided by the State, tome 3, folio 4720).
[FN159] Cf. report No. 06-2001, of the Deputy National Superior Criminal Prosecutor for terrorism issued on February 15, 2001 (file of probative evidence provided by the State, tome 7, folio 7137).
[FN160] Cf. report No. 06-2001, of the Deputy National Superior Criminal Prosecutor for terrorism issued on February 15, 2001 (file of probative evidence provided by the State, tome 7, folios 7127 to 7141). The report describes the statements made in the military jurisdiction by: Miguel Wenceslao Rincón Rincón, José Mego Arrieta, Pacífico Abdiel Castrellón Santamaría, Nancy Gloria Gilvonio Conde, Lori Berenson, Lucinda Rojas Landa, Jaime Armando Ramírez Pedraza, Jesús Rivas Astudillo, Odón Leoncio Torres Bautista, Lenín Gutiérrez Torres, Nancy Lidia Cuyubamba Puente, Moisés Meza Cano, Edgar Cumapa Fasabi, Rider Hugo Arévalo López, Andrés Boris Zapata Ascona, Rolando Ubaldo Aucalla Quispe, Erdman Winkler Cierto Rojas, Honorato Hinojosa Alhua and Lucy García López.
[FN161] Cf. report No. 06-2001, of the Deputy National Superior Criminal Prosecutor for terrorism issued on February 15, 2001 (file of probative evidence provided by the State, tome 7, folios 7127 to 7141). The report describes the testimonial statements made in the ordinary jurisdiction by: Pacífico Abdiel Castrellón Santamaría; Lucinda Rojas Landa; Carlos Adolfo Guija Gálvez; Hernán La Chira Chambergo; José Barreto Boggiano; Rufino Miguel Romero Yompiri; Nancy Gloria Gilvonio Conde and Edgardo Emilio Garrido López.
[FN162] Cf. report No. 06-2001, of the Deputy National Superior Criminal Prosecutor for terrorism issued on February 15, 2001 (file of probative evidence provided by the State, tome 7, folios 7127 to 7141). Appendix I appends the following documents: samples of Miguel Rincón Rincón's photographs of different scenes and of OT-MRTA combatants; board with photographs of the Government Palace (18 photographs); original bill No. 11145159 issued by the Peruvian Scientific Network – Peruvian internet, in Lori Berenson's name for US$185.00; guarantee

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deposit made by Lori Berenson in favor of Hernán La Chira Chambergo for US$400.00 for the apartment located at Calle Técnica No. 200, apartment 1101; original receipt signed by Beatriz Asencio de la Chira for Lori Berenson's US$400.00 deposit; copy of passport No. 014831206 of Lori Berenson; copy of Lori Berenson's statement from the Banco Popular; copy of Lori Berenson's statement from the Chemical Bank; attestation forwarded by the editor of the journal Modern Times, William Massey, indicating that Lori Berenson is a journalist and correspondent for Latin America; attestation forwarded by Lloyd D'Aguilar, Editor of the journal Third World Viewpoint; receipts from TRANSFAR Supplies Computer S.A., for the acquisition of different computer items in the name of Lori Berenson; sales voucher No. 206 issued by the company, DELTRON International, S.A., in Lori Berenson's name, for the purchase of a fax machine; sales voucher No. 32542 from MasterCall S.A., in Lori Berenson's name, for a beeper service in July and August 1995; rental contract signed by Lori Berenson and Hernán la Chira for the house located at Calle Técnica 200; telephone receipt for the telephone installed at Calle Técnica 200; rental contract for a cell phone from the company, Tele 2000-Renta Cell, in Lori Berenson's name; "MRTA Political Report"; rental contract signed by José Barreto Boggiano and Pacífico Castrellón, for the building located at Calle Carlos Tenau No. 154; rental contract and inventory signed by Pacífico Castrellón Santa María and Carlos Adolfo Guija Gálvez, for the building located at Avenida Alameda El Corregidor 1051, La Molina; receipt for terminating the lease on the building located on Avenida Alameda del Corregidor, by which Pacífico Castrellón gives Carlos Guija US$2,500 for terminating the lease of the building; purchase and sale contract for the white rural truck RGP-749, sold by Jian Yong Xiang to Pacífico Abdiel Castrellón Santamaría; "[d]ifferent documentation belonging to Pacífico Castrellón"; plans of the location of the Congress of the Republic; drawing of the facade of the Congress of the Republic; original identity card identifying Rosa Mita Calle as a journalist; Lori Berenson's driving license; card identifying Lori Berenson as a journalist; sketch of the plan of the Congress of the Republic on kraft paper; plan of the Congress of the Republic; and sketch of the maquette of the facade of the Congress of the Republic; appendix II adjoined the following documents: graphology report No. 085-95; Sixto Antonio Nima Arana's voter's identity card (original); voter's identity card of the "Colombian Ignacio de la Cruz Rosales" (original); voter's identity card of "Ana Gion Mansini Flores" (original), with Lori Berenson Mejía's photograph"; Benjamín Zabarburu Urbina's voter's identity card, "with no photograph and no signature" (original); Lorenzo Cirilo Cabana Vargas's voter's identity card (original); Reyes Olivera Vásquez's voter's identity card, with no photograph (original); Margarita Francisca Mayta Hoyos's voter's identity card (original); graphology reports Nos. 078/95, 079-95, 080/95, 082/9, 084-95 and 083-95; record of samples of Lori Berenson's handwriting; sketch of the location of members of Congress (M-A-20); record of samples taken from handwriting of Pacífico Abdiel Castrellón Santamaría; record of samples taken from Miguel Rincón Rincón; photograph of Sergio Cruz Suárez; Pacífico Abdiel Castrellón Santamaría's passport; Lori Berenson's passport; Rosa Mita Calle's passport; Montiel Romer's passport; military identity card of Arana Nima Sixto and Mayta Hoyos Margarita; Sixto Antonio Arana Nima's driving license; graphology report No. 051/96; appendix III adjoined the following documents: MRTA newsletter, "MRTA inserts" and newspaper cuttings with photographs of various members of Congress and politicians; and appendix IV adjoined the following: Sony micro cassette player; three diskettes (TDK, Maxel and 3M); various MRTA document, reports, plans, flyers, headed paper, newsletter El Tercer Ojo; various official stamps of officials of the Peruvian Electoral Register (11 in total); migratory movements on Lori

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Berenson's passport (Guatemala, El Salvador, Honduras, Panama, Peru, Colombia, Bolivia, Argentina, Uruguay, Venezuela).

88(56) On March 5, 2001, the National Terrorism Chamber issued a decision in which it ordered new measures before the start of the hearings in the oral proceeding and admitted the measure taken to obtain evidence submitted by the alleged victim's defense lawyer on February 28, 2001, which consisted in the appointment of a graphologist by one of the parties. [FN163]

[FN163] Cf. order issue by the National Chamber for Terrorism, Criminal Organizations and Groups on March 5, 2001 (file of probative evidence provided by the State, tome 7, folios 7146 to 7149). The procedures ordered by the court included: request for information from the Provincial Prosecutor for Family Matters regarding Lenín Gutiérrez Torres or Wilfredo Arroyo Gines; summoning Roberto Sánchez as a witness; official communication to the United States Consulate requesting general information on the journals, Modern Times and Third World Viewpoint; request to the forty-sixth Provincial Criminal Prosecutor of Lima for a report on the status of the complaint filed by the Peruvian National Journalists Association; request to the newspapers El Comercio and Expreso for any newspaper Articles published on terrorist acts perpetrated by MRTA; request to the Peruvian National Police for information on the experts who signed the ballistics reports and graphology reports; and official letter to the Supreme Military Council of Military Justice requesting the videos referred to in the judgment of the trial in the military jurisdiction; and communication to the alleged victim's lawyer of February 28, 2001 (file of probative evidence provided by the State, tome 7, folio 7142).

88(57) On March 14, 2001, the alleged victim's defense lawyer offered as evidence: a video of the presentation of Lori Berenson to the press and media on January 8, 1996, in which she was introduced as "A MEMBER OF THE M[RTA] TERRORIST MOVEMENT"; and a video of the visual inspection of the building located on Avenida Alameda del Corregidor on October 20, 2000, and requested that an official letter be addressed "to the Supreme Council of Military Justice requesting it to forward the original of the case file for treason against [Lori Berenson,] in order to verify that the trial complied with the norms of due process of law and to examine the proceedings of the military court, from a judicial perspective." [FN164]

[FN164] Cf. brief of March 14, 2001, offering evidence from the alleged victim's defense lawyer (file of probative evidence provided by the State, tome 8, folios 7154 and 7155).

Oral proceeding

88(58) On March 20 2001, the oral proceeding commenced. [FN165] The following procedures were executed in the corresponding hearings: [FN166] testimonial statements, [FN167], including that of Lori Berenson; [FN168] confrontations; [FN169] documentary evidence was received; [FN170] objections were filed against the evidence provided; [FN171] expert reports;

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[FN172] ratifications of expert reports; [FN173] exhibition and transcript of videos; [FN174] "summary and reading of probative evidence" collected in the pre-trial stage in the ordinary jurisdiction, [FN175] and also documents from the military jurisdiction; [FN176] the oral arguments of the parties; [FN177] and the objection to a member of the National Terrorism Chamber. [FN178]

[FN165] Cf. record of the hearing of March 20, 2001, in the trial against Lori Berenson before the National Chamber of Terrorism, Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 8, folios 7289 to 7302).

[FN166] Cf. videos provided by the State entitled "Videos of the Lori Berenson case" which contain the recording of the hearings of the oral proceeding on March 20, 22, 27 and 29; April 3, 4, 5, 9, 10, 11, 17, 18, 19, 20, 24, 25, 26 and 27; May 2, 4, 7, 10, 15, 17, 22 and 24; and June 1, 7, 8, 11 and 20, 2004 (file of probative evidence provided by the State, appendix 2, comprising 58 videos).

[FN167] Cf. statement made by Pacífico Abdiel Castrellón Santamaría before the National Chamber of Terrorism, Criminal Organizations and Groups on April 10, 11 and 17, 2001 (file of probative evidence provided by the State, tome 9, folios 7727 to 7736, 7743 to 7771 and 7784 to 7828, respectively); statement made by Roberto Sánchez Nonajulca before the National Chamber of Terrorism, Criminal Organizations and Groups on April 18, 2001 (file of probative evidence provided by the State, tome 9, folio 7857); statement made by Carlos Adolfo Guija Gálvez before the National Chamber of Terrorism, Criminal Organizations and Groups on April 18, 2001 (file of probative evidence provided by the State, tome 9, folios 7857 to 7864); statement made by Nelson Rojas Gonzáles before the National Chamber of Terrorism, Criminal Organizations and Groups on April 18, 2001 (file of probative evidence provided by the State, tome 9, folio 7873 to 7886); statement made by Pedro Isaac Sánchez Nonajulca before the National Chamber of Terrorism, Criminal Organizations and Groups on April 19, 2001 (file of probative evidence provided by the State, tome 9, folios 7900 to 7909); statement made by Epifanio Morales Mautino before the National Chamber of Terrorism, Criminal Organizations and Groups on April 19, 2001 (file of probative evidence provided by the State, tome 9, folios 7910 to 7915); statement made by Miguel Wenceslao Rincón Rincón before the National Chamber of Terrorism, Criminal Organizations and Groups on April 19, 2001 (file of probative evidence provided by the State, tome 9, folios 7915 to 7930); and statement made by Luis Alberto Díaz Asto before the National Chamber of Terrorism, Criminal Organizations and Groups on April 20, 2001 (file of probative evidence provided by the State, tome 9, folios 7933 to 7945).

[FN168] Cf. statement made by Lori Berenson before the National Chamber of Criminal Organizations and Groups on March 20, 22, 27 and 29 2001 (file of probative evidence provided by the State, tome 8, folios 7300 to 7301, 7313 to 73413, 7443 to 7446, 7478 to 7493, respectively) and on April 3, 4, 5, 9 and 10, 2001 (file of probative evidence provided by the State, tome 9, folios 7568 to 7592, 7597 to 7615, 7633 to 7666, 7668 to 7683 and 7699 to 7727, respectively).

[FN169] Cf. confrontation procedure between Lori Berenson and Pedro Isaac Sánchez Nonajulca before the National Chamber of Criminal Organizations and Groups on April 19, 2001 (file of probative evidence provided by the State, tome 9, folios 7908 to 7910); confrontation procedure between Luis Alberto Díaz Asto and Lori Berenson before the National Chamber of Criminal

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Organizations and Groups on April 20, 2001 (file of probative evidence provided by the State, tome 9, folios 7945 and 7946); confrontation procedure between Lori Berenson and Pacífico Abdiel Castrellón Santamaría before the National Chamber of Criminal Organizations and Groups on April 17, 2001 (file of probative evidence provided by the State, tome 9, folios 7828 to 7847); and confrontation procedure between Lori Berenson and Nelson Rojas Gonzalez before the National Chamber of Criminal Organizations and Groups on April 18, 2001 (folios 7884 to 7886).

[FN170] Cf. record of the hearing of March 20 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 8, folios 7289 to 7302); brief of the alleged victim's defense lawyer of March 14, 2001, offering evidence (file of probative evidence provided by the State, tome 8, folio 7154 and 7155); brief of the Public Prosecutor of March 14, 2001, offering a document published by the United States State Department on subversive groups at the global level (file of probative evidence provided by the State, tome 8, folios 7160 to 7247); brief of the Public Prosecutor of March 19, 2001, offering the police record of acts of indiscipline by Nancy Gilvonio Conde and Lori Berenson in the Chorrillos Prison (file of probative evidence provided by the State, tome 8, folio 7295); record of the hearing of March 22, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 8, folios 7308 to 7341); official letter 4758 from the Personnel Department of the National Police on the location of several members of the police force (file of probative evidence provided by the State, tome 8, folio 7309); official letter from the forty-sixth Provincial Criminal Prosecutor of Lima, advising that the complaint against Lori Berenson and Rosa Mita Calle for a crime against property (fraud) had been filed on February 2, 1996 (file of probative evidence provided by the State, tome 8, folio 7309); translation of the statement made by Rhoda Berenson before notary public on October 31, 2000 (file of probative evidence provided by the State, tome 8, folio 7351 to 7363); official letter 09229-2001-A-CSJL-R from the Supreme Court's coordinator for the National Civil Registry (RENIEC) to the National Chamber of Criminal Organizations and Groups on March 26, 2001 (file of probative evidence provided by the State, tome 8, folio 7436); official communication 1399 from the Head of INTERPOL Lima to the National Chamber of Criminal Organizations and Groups of March 26, 2001 (file of probative evidence provided by the State, tome 8, folio 7464); newspaper Articles from the daily newspaper Expreso between December 1994 and October 1995 (file of probative evidence provided by the State, tome 8, folios 7501 to 7561); record of the hearing of April 3, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 9, folios 7561 to 7592); official communication 156–2001 T of the National Judicial Police Department of March 20, 2001 (file of probative evidence provided by the State, tome 9, folio 7561); record of the hearing of April 27, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 9, folios 8195 to 8251); photographs submitted by the alleged victim's defense lawyer on trips she took for purposes of tourism (file of probative evidence provided by the State, tome 9, folio 8196); record of the hearing of March 10, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 10, folios 8494 to 8513); official communication 562 2001–JUS of May 3, 2001, of the National Human Rights Council of the Ministry of Justice (file of probative evidence

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provided by the State, tome 10, folio 8494); and letter from Salvador Sánchez, deputy of El Salvador, addressed to the President of the National Chamber of Criminal Organizations and Groups on May 3, 2001 (file of probative evidence provided by the State, tome 10, folio 8555).

[FN171] Cf. record of the hearing of March 20, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 8, folios 7289 to 7302); objection filed by the alleged victim's defense lawyer against the document presented by the Public Prosecutor on March 14, 2001 (file of probative evidence provided by the State, tome 8, folio 7291); brief of the Prosecutor of March 16, 2001, in which he filed an objection to the sworn statements in the documents submitted by the defense lawyer during the pre-trial investigation stage (file of probative evidence provided by the State, tome 8, folio 7293); record of the hearing of March 22, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 8, folios 7308 to 7341); objection filed by the alleged victim's defense lawyer against "report 105 and official letter No. 196" submitted by the Public Prosecutor (file of probative evidence provided by the State, tome 8, folio 7310); record of the hearing of March 29, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 8, folios 7469 to 7493); objection filed by the alleged victim's defense lawyer against the police investigation report (file of probative evidence provided by the State, tome 8, folio 7471); record of the hearing of April 3, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 9, folios 7564 to 7592); objection filed by the alleged victim's defense lawyer against official letter 156–2001 T of March 20, 2001, issued by the National Judicial Police Department (file of probative evidence provided by the State, tome 9, folios 7564 and 7566); record of the hearing of April 5, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 9, folios 7629 to 7666); brief submitted by the Public Prosecutor on April 5, 2001, filing an objection against the sworn statement in English made by Rhoda Berenson (file of probative evidence provided by the State, tome 9, folio 7629); objection filed by the alleged victim's defense lawyer against the testimony of Pacífico Abdiel Castrellón Santamaría (file of probative evidence provided by the State, tome 9, folios 7631); record of the hearing of May 24, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 10, folios 8644 to 8653); brief submitted by the Public Prosecutor filing an objection against "the documents submitted by the defense lawyer [...] in his brief of [May 21, 2001]" (file of probative evidence provided by the State, tome 10, folios 8644 and 8645).

[FN172] Cf. record of the hearing of April 26, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 9, folios 8068 to 8114); and graphology report requested by one of the parties presented to the National Chamber of Criminal Organizations and Groups by the experts Augusto Arbaiza Ramírez and Gilbert López Tardillo on April 24, 2001 (file of probative evidence provided by the State, tome 9, folios 8140-8188); and unnumbered expert report by one of the parties of April 24, 2001 (folio 8089).

[FN173] Cf. record of the hearing of April 25, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative

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evidence provided by the State, tome 9, folios 8051 to 8065); ratification of the expert report on forensic ballistics 3987/95 of December 4, 1995, by the experts, Alberto Pérez Romero and Federico Bruno Bandini Sabbagg (file of probative evidence provided by the State, tome 9, folios 8055 to 8065); record of the hearing of April 26, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 9, folios 8068 to 8114); ratification of the graphology reports of the experts Rafael Ayquipa Durand and Melvin Elmo Bazán Maguiña and Augusto Vargas Mormon and others (file of probative evidence provided by the State, tome 9, folio 8068); and ratification of graphology report 075/95 of December 21, 1995, by the experts, Rafael Ayquipa Durand, Melvin Elmo Bazán Maguiña and Augusto Vargas Mormon and others (file of probative evidence provided by the State, tome 9, folio 8071).

[FN174] Cf. record of the hearing of May 7, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 10, folios 8494 to 8513); record of the hearing of May 10, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 10, folios 8494 to 8513); transcript of the meeting between Mr. Montesinos and Mr. Dellepiane Massa in "video No. 884" (file of probative evidence provided by the State, tome 9, folios 8220 to 8224); transcript of a video containing a conversation between Mr. Montesinos and Eduardo Ferrero Costa (file of probative evidence provided by the State, tome 11, folios 8861 to 8863); transcript of the interview given by Lori Berenson to the US television channel CBS (file of probative evidence provided by the State, tome 10, folios 8516 to 8521); transcript of the interview given by Grimaldo Achahui Loaiza to the journalist Gerónimo Centurión of CNN (file of probative evidence provided by the State, tome 10, folios 8522 to 8526); transcript of the interview given by former General Juan Gonzáles Sandoval to the news program Panamericana Noticias (file of probative evidence provided by the State, tome 10, folios 8527 to 8532); transcript of the interview given by former General Juan Gonzáles Sandoval to the afternoon radio news programs in Peru (file of probative evidence provided by the State, tome 10, folios 8533 to 8538); transcript of the press conference of January 8, 1996, held in DINCOTE to present Lori Berenson to the national and international press (file of probative evidence provided by the State, tome 10, folios 8651 to 8657); and video of the visual inspection during the pre-trial proceedings in the ordinary jurisdiction of the building located on Avenida la Alameda del Corregidor (file of probative evidence provided by the State, tome 10, folio 8508).

[FN175] Cf. record of the hearing of May 15, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 10, folios 8560 to 8570), on this date, the testimonial statements of the following from tome III of the special appeal for review of res judicata, were examined and read: Jorge Gumucio Granier, Luis Giampietri Rojas, Jorge Luis Valdez Carrillo and Francisco Tudela; and the testimonies given before the ordinary jurisdiction by: Lucinda Rojas Landa and Nancy Gloria Gilvonio Conde; record of the hearing of May 17, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 10, folios 8577 to 8589), on this date, the testimonial statements of the following made before the ordinary jurisdiction were examined and read: Miguel Wenceslao Rincón Rincón, José Mego Arrieta, Lucy García López, Nancy Lidia Cuyubamba Puente, Rufino Miguel Romero Yompiri, Odón Leoncio Torres Bautista, Andrés Boris Zapata Ascona, Jaime Armando Ramírez Pedraza,

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Hernán La Chira Chambergo and José Barreto Boggiano; record of the hearing of May 22, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 10, folios 8623 to 8657), on this date, the testimonial statements of the following made before the ordinary jurisdiction were examined and read: Denis Javier Vargas Marín, Anselmo Revilla Jurado, Edgardo Garrido López and Juana Isabel Rengifo Rojas, and also the documents such as: the fraud complaint of the National Journalists Association of Peru, reports on the migratory movements of Lori Berenson, SERPOST reports, report of the National Journalists Association of Peru, a DINCOTE report, graphology report 3103; and record of the hearing of May 24, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 10, folios 8641 to 8653).

[FN176] Cf. record of the hearing of May 24, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 10, folios 8641 to 8653), on this date, the following documents, inter alia, were examined and read: photos of a seized maquette and weapons; police report 183-DIVICOTE II-DINCOTE regarding the police operation "Alacrán 95"; transcript of police report 182-DIVICOTE II; transcript of police report 2536-D 4; police report 187-DIVICOTE II; criminal record R–163–12 140; records of personal search and documentation seized during the domiciliary searches; legal medicine certificates; report 01–DAN–DIVICOTE II–DINCOTE; brief filed by the lawyer Achahui to the Army's Special Military Judge of the Judicial Zone; record of the statement of the lawyer Achahui before the members of the military court; brief filed by the lawyer Achahui before the Army's Special Military Court; police report No. 2657 – 95; series of photographs; final part of the continuation of the arraignment of Lori Berenson before the military jurisdiction; documents of appendixes III and IV of the evidence gathered in the military jurisdiction; and record of the hearing of June 1, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 10, folios 8724 to 8734).

[FN177] Cf. oral arguments of the Superior Prosecutor of June 5, 2001 (file of probative evidence provided by the State, tome 10, folios 8744 to 8749); continuation of the oral arguments of the Superior Prosecutor of June 7, 2001 (file of probative evidence provided by the State, tome 10, folios 8750 to 8762); arguments of the Public Prosecutor of June 7, 2001 (file of probative evidence provided by the State, tome 10, folios 8763 to 8770); continuation of the arguments of the Public Prosecutor of June 8, 2001 (file of probative evidence provided by the State, tome 11, folios 8801 to 8814); arguments of Lori Berenson's defense lawyer of June 8, 2001 (file of probative evidence provided by the State, tome 11, folios 8814 to 8833); continuation of the arguments of Lori Berenson's defense lawyer of June 11, 2001 (file of probative evidence provided by the State, tome 11, folios 8874 to 8912); and brief with the conclusions of Lori Berenson's defense lawyer of June 11, 2001 (file of probative evidence provided by the State, tome 11, folios 8913 to 8924).

[FN178] Cf. objection to the President of the National Chamber of Criminal Organizations and Groups raised by the alleged victim's defense lawyer in the oral proceeding during the hearing of May 2, 2001 (file of probative evidence provided by the State, tome 9, folio 8227).

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88(59) On May 4, 2001, the National Terrorism Chamber declared inadmissible the objection formulated by the alleged victim's lawyer to the President of this Chamber, [FN179] because this had been "filed during the continuation of the public hearing No. 19[, when] the objection should have been filed up to three days before the date of the hearing," in accordance with Article 40 of the Peruvian Code of Criminal Procedure. The same day, the alleged victim's defense lawyer filed an appeal for annulment of the National Terrorism Chamber's decision. [FN180]

[FN179] Cf. decision issued by the National Chamber of Criminal Organizations and Groups on May 4, 2001 (file of probative evidence provided by the State, tome 10, folios 8412 to 8416).
[FN180] Cf. record of the hearing of May 4, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 10, folio 8434).

88(60) On June 1, 2001, the Criminal Chamber of the Supreme Court of Peru declared that it could not annul the decision issued by the National Terrorism Chamber on May 4, 2001, and appealed by the alleged victim's defense lawyer. [FN181]

[FN181] Cf. order issued by the Criminal Chamber of the Supreme Court of Peru on June 1, 2001 (file of probative evidence provided by the State, tome 10, folio 8739).

88(61) On June 20, 2001, the document entitled "Cuestiones de hecho planteadas, discutidas y votadas en el proceso penal seguido contra la acusada Lori Helene Berenson Mejía, por el delito de terrorismo en agravio del Estado" [Facts alleged, discussed and voted in the criminal proceeding against the defendant, Lori Helene Berenson Mejía, for the crime of terrorism against the State] was read during the public hearing. [FN182] The sentence convicting the alleged victim was read during the same hearing. [FN183]

[FN182] Cf. document entitled "Cuestiones de hecho planteadas, discutidas y votadas en el proceso penal seguido contra la acusada Lori Helene Berenson Mejía, por el delito de terrorismo en agravio del Estado" issued by the National Chamber of Criminal Organizations and Groups on June 20, 2001 (file of probative evidence provided by the State, tome 11, folios 8956 to 8965); and Article 283 of Peruvian Code of Criminal Procedure (file of probative evidence provided by the State, tome 12, appendix 5, folios 9174 to 9342).
[FN183] Cf. record of the hearing of June 20, 2001, in the trial against Lori Berenson before the National Chamber of Criminal Organizations and Groups in file No. 154-2000 (file of probative evidence provided by the State, tome 11, folios 9057 to 9061); and video entitled "Lori Berenson case. June 20, 2001 (1)" (file of probative evidence provided by the State, appendix 2, consisting of 58 videos).

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88(62) The National Terrorism Chamber's judgment of June 20, 2001, convicting Lori Berenson, declared that the objections raised by the parties to several documents offered as evidence during the oral proceeding were inadmissible. [FN184] In the case of the police investigation report, a document contested by the alleged victim's defense lawyers, it stated:

that it [was] obvious that the […] objection not only contest[ed] the probative validity of the evidence submitted in the pre-trial investigation, but also its effects on the trial, owing to the statements made by [a] police agent […]; consequently, the significance of this police investiation report, as regards the nature, methods used and evidence provided in that report, could not be considered accessorily, but as an essential part of the proceeding, in the process to establish the facts, assess the evidence, interpret and, finally, apply the norms, which the Panel w[ould] carry out in due course. Therefore, the said objection [...] is inadmissible. [FN185] (The highlighting appears in the original.)

[FN184] Cf. judgment handed down by the National Chamber of Criminal Organizations and Groups on June 20, 2000 (file of appendixes to the application, tome 2, appendix 23, folios 662 to 739; and file of probative evidence provided by the State, tome 11, folios 8967 to 9045).
[FN185] Cf. judgment handed down by the National Chamber of Criminal Organizations and Groups on June 20, 2000 (file of appendixes to the application, tome 2, appendix 23, folios 662 to 739; and file of probative evidence provided by the State, tome 11, folios 8967 to 9045).

88(63) Regarding the alleged victim's defense lawyers objection to the "allegedly unlawful origin of the evidence submitted," the National Terrorism Chamber indicated that:

The defense alleged that the proceedings in the pre-trial and the judicial investigation in the military jurisdiction only produced 'inadmissible evidence', because they had not respected even the minimum rules of defense and jurisdictional control. However, even though the police investigation took place at the same time as the military court's jurisdictional investigation, it complied with the legal norms in force at the time, and although application of those norms was extremely restrictive and abusive, this did not make the evidence inadmissible, but meant that there were probative defects that had to be serenely assessed within the constitutional framework, because the police authority acted in the belief that it was duly complying with the law, but under the jurisdictional control that the military court should have exercised, so that this Panel [did] not waive its powers to assess legality when deciding the evidence that could or could not be incorporated into [the...] proceeding. [FN186]

[FN186] Cf. judgment handed down by the National Chamber of Criminal Organizations and Groups on June 20, 2000 (file of appendixes to the application, tome 2, appendix 23, folios 662 to 739; and file of probative evidence provided by the State, tome 11, folios 8967 to 9045).

88(64) Regarding the objection raised by the alleged victim's defense lawyer on "the unconstitutionality of the legislative framework in force for the punishment of subversive acts,

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which had been enacted in a critical context of violent circumstances with notorious functional restrictions for juridical agents," the National Terrorism Chamber stated:

first[, …] when times and situations change, legislation should also gradually eliminate restrictive norms; in this situation, the courts, via the broad control entrusted to them under the second part of Article 138 of the Constitution, should gradually cease to apply those provisions of the laws in force whose social legitimacy and constitutional grounds are no longer reasonable[; …] judges are not slaves to the literal meaning of the law, but by a comprehensive evaluation of the constitutional and sociological aspects, by adequate methods of interpreting the legislation[,] they arrive at an application of the law which is based more on criteria of rationality and social and legal fairness; and […] second[, …] [the Peruvian] system] has adopted the principle of proportionality; […] when it has determined the existence of criminal liability, it has been imposing sanctions well below the legal limits […]; in other words, [it cannot be said] that a proceeding is irregular merely because the definition of the crime is very open or contains very severe sanctions, since the norm establishes the framework of legality, but the Judiciary establishes the framework of justice [.] [FN187] (the highlights appear in the original)

[FN187] Cf. judgment handed down by the National Chamber of Criminal Organizations and Groups on June 20, 2000 (file of appendixes to the application, tome 2, appendix 23, folios 662 to 739; and file of probative evidence provided by the State, tome 11, folios 8967 to 9045).

88(65) When examining the probative evidence, the National Terrorism Chamber, in the sixteenth considering paragraph of the judgment of June 20, 2001, granted "full certainty of truth" to the seizure of "military uniforms" in the domicile of the alleged victim, even though the witness had made a statement (supra para. 88(58)) "clearly, sincerely and simply, concerning a series of details, during the oral hearing on the search […,] because the uniforms would always have been found there, whoever searched the building, and even though the legal formalities in force were complied with during the procedure." [FN188]

[FN188] Cf. judgment handed down by the National Chamber of Criminal Organizations and Groups on June 20, 2000 (file of appendixes to the application, tome 2, appendix 23, folios 662 to 739; and file of probative evidence provided by the State, tome 11, folios 8967 to 9045).

88(66) The judgment handed down by the National Terrorism Chamber on June 20, 2001, reached the "belief and certainty" that:

the defendant's degree of participation in these criminal acts corresponds to the definition of collaboration with terrorism, established and sanctioned by Article 4 of Decree Law [No. 25,475,] because her activities with Rosa Mita Calle in Congress, the ceding of her apartment in Calle La Técnica […] to hide Nancy Gilvonio Conde or Rosa Mita Calle, supplying information on Congress, and providing a place where the belongings of the MRT group could be left, are conclusively described in paragraphs (a) and (b) of the said norm; the type of collaboration

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described in paragraphs (d) and (f) of the said Article, relating to participation in the tasks of indoctrination and financing subversive activities, have not been proved; although these conclusions do not contradict the other evidence presented, read and debated in the hearing. [FN189]

[FN189] Cf. judgment handed down by the National Chamber of Criminal Organizations and Groups on June 20, 2000 (file of appendixes to the application, tome 2, appendix 23, folios 662 to 739; and file of probative evidence provided by the State, tome 11, folios 8967 to 9045).

88(67) However, the National Terrorism Chamber considered that it had not been totally convinced that the alleged victim "had reached the stage of becoming a member and an integral part of the MRTA organization." [FN190]

[FN190] Cf. judgment handed down by the National Chamber of Criminal Organizations and Groups on June 20, 2000 (file of appendixes to the application, tome 2, appendix 23, folios 662 to 739; and file of probative evidence provided by the State, tome 11, folios 8967 to 9045).

88(68) In relation to the applicable penalty, the National Terrorism Chamber indicated that, bearing in mind "the gravity of the results of her act of collaboration (armed confrontation, three deaths and hostage-taking); taking into account, nevertheless, that she did not participate in any armed or similar activity, […] the penalty to be imposed should be the lowest possible established in the norm, which was reasonable, despite its length." [FN191]

[FN191] Cf. judgment handed down by the National Chamber of Criminal Organizations and Groups on June 20, 2000 (file of appendixes to the application, tome 2, appendix 23, folios 662 to 739; and file of probative evidence provided by the State, tome 11, folios 8967 to 9045).

88(69) The judgment handed down by the National Terrorism Chamber on June 20, 2001, decided that for the "reasons stated, the aspects relating to the facts and the penalty having been described and voted on, and with the moral integrity authorized by Article 283 of the Code of Criminal Procedure," it ruled:

CONVICTING: LORI HELENE BERENSON MEJÍA, as perpetrator of the crime of terrorism, characterized by acts of collaboration against the State (described and sanctioned in paragraphs (a) and (b) of Article 4 of Decree Law 25,475), to TWENTY YEARS' IMPRISONMENT […] ESTABLISH[ING]: in one hundred thousand new soles the amount corresponding to the civil reparation that the defendant must pay to the Peruvian State; and, ABSOLVING LORI HELENE BERENSON MEJÍA from the charge of committing the crime of terrorism, characterized by acts of collaboration (referred to in paragraphs (d) and (f) of Article 4 of Decree Law 25,475) and

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association with terrorists (included in Article 5 of the said Decree Law) [FN192] (the highlighting appears in the original).

[FN192] Cf. judgment handed down by the National Chamber of Criminal Organizations and Groups on June 20, 2000 (file of appendixes to the application, tome 2, appendix 23, folios 662 to 739; and file of probative evidence provided by the State, tome 11, folios 8967 to 9045).

88(70) On July 3, 2001, the alleged victim's defense lawyer filed an appeal for annulment against the judgment delivered by the National Terrorism Chamber on June 20, 2001. [FN193]

[FN193] Cf. appeal for annulment of July 3, 2000, and its expansion of July 4, 2004, filed by the alleged victim's defense lawyer against the judgment of June 20, 2004 (file of probative evidence provided by the State, tome 11, folios 9082 to 9096).

88(71) On February 13, 2002, the Supreme Court of Justice of Peru, when examining the alleged victim's degree of participation, stated:

The defendant did not have functional control over the act, which is an element that defines the conduct of co-perpetrators. Consequently, the defendant should be considered a secondary accomplice or accessory under paragraph 2 of Article 28 of the Penal Code, since her collaboration consisted in causal support, without which it would also have been possible to meet the requirements of that type of crime, and this should be considered an extenuating circumstance pursuant to the final part of this provision. [FN194]

[FN194] Cf. judgment of the Transitory Criminal Chamber of the Supreme Court of Justice of February 13, 2002 (file of appendixes to the application, tome 2, appendix 24, folios 740 to 748; and file of probative evidence provided by the State, tome 11, folios 9106 to 9114).

88(72) Finally, the Supreme Court of Justice of Peru declared that "IT WOULD NOT ANNUL the appealed judgment of June 20, 2001, CONVICT[ING] LORI HELENE BERENSON MEJÍA as perpetrator of the crime of terrorism against the State characterized by acts of collaboration, described in paragraph (a) and (b) of Article 4 of Decree Law 25,475, to TWENTY YEARS' IMPRISONMENT […]" [FN195] (The highlighting appears in the original).

[FN195] Cf. judgment of the Transitory Criminal Chamber of the Supreme Court of Justice of February 13, 2002 (file of appendixes to the application, tome 2, appendix 24, folios 740 to 748; and file of probative evidence provided by the State, tome 11, folios 9106 to 9114).

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Detention conditions

88(73) When she had been found guilty by the military court, in the judgment of January 11, 1996 (supra para. 88(30)), Lori Berenson was transferred to the Yanamayo Prison, 3,800 meters above sea level, [FN196] from January 17, 1996, to October 7, 1998. [FN197]

[FN196] Cf. report of the Peruvian Ombudsman on the Yanamayo Prison, Puno, of August 25, 1999 (file of appendixes to the application, tome 2, appendix 26, folio 752).
[FN197] Cf. record of Lori Berenson's imprisonment issued by the Executive Office of the Prison Registry of the National Penitentiary Institute on June 20, 2002 (file of probative evidence provided by the State, tome 12, appendix 4, folio 9121).

88(74) While she was in the Yanamayo Prison, the alleged victim experienced the following conditions:

88(74)(i) She was subjected to the regime established for those processed for and/or convicted of terrorism and treason, which restricted the hours of access to the exercise yard and the visiting regime. [FN198] Lori Berenson was subjected to a regime of continuous solitary confinement in her cell for the first year and a half of her imprisonment (until July 1997), and she was only allowed out into the fresh air for half an hour a day; [FN199]
88(74)(ii) The cells had no interior light; every two cells there was florescent lighting in the corridor, and skylights that restricted the entry of sunlight; [FN200]
88(74)(iii) There was no heating and the climate was extremely cold all year round; [FN201]
88(74)(iv) Less food than normal was distributed, it was unhealthy, with little variety, and often cold when it arrived; the water used for drinking, cooking, bathing and washing clothes and bedclothes, and for the toilets was impure and very cold, scarce and of bad quality. It had to be stored in the cells, because there were not sanitary installations; [FN202]
88(74)(v) Due to these conditions, Lori Berenson suffered circulatory problems, swelling and other problems with her hands owing to the Reynaud's syndrome she developed. She also had problems with her vision, because there was no natural light in her cell. Lastly, she suffered digestive problems owing to difficulty in digesting food because of the altitude of the prison, and also throat problems; [FN203] and
88(74)(vi) There were no educational, training or work programs and access to information was restricted. [FN204]

[FN198] Cf. report of the Peruvian Ombudsman on the Yanamayo Prison, Puno, of August 25, 1999 (file of appendixes to the application, tome 2, folio 753).
[FN199] Cf. Article 3(b) of Decree Law 25,744 of September 21, 1992; testimony of Rhoda Berenson before the Inter-American Court of Human Rights during the public hearing held on May 7, 2004; and testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folio 9812).
[FN200] Cf. report of the Peruvian Ombudsman on the Yanamayo Prison, Puno, of August 25, 1999 (file of appendixes to the application, tome 2, folio 753); testimony of Rhoda Berenson

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before the Inter-American Court of Human Rights during the public hearing held on May 7, 2004; and testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folio 9812).
[FN201] Cf. report of the Peruvian Ombudsman on the Yanamayo Prison, Puno, of August 25, 1999 (file of appendixes to the application, tome 2, folio 754); testimony of Rhoda Berenson before the Inter-American Court of Human Rights during the public hearing held on May 7, 2004.
[FN202] Cf. report of the Peruvian Ombudsman on the Yanamayo Prison, Puno, of August 25, 1999 (file of appendixes to the application, tome 2, folio 755); and testimony of Rhoda Berenson before the Inter-American Court of Human Rights during the public hearing held on May 7, 2004.
[FN203] Cf. testimony of Rhoda Berenson before the Inter-American Court of Human Rights during the public hearing held on May 7, 2004; and testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folio 9812).
[FN204] Cf. report of the Peruvian Ombudsman on the Yanamayo Prison, Puno, of August 25, 1999 (file of appendixes to the application, tome 2, folio 755); and testimonial statement made by Lori Berenson before notary public on March 30, 2004 (affidavits and comments file, folio 9812).

88(75) As of 1997, as a result of the adoption of the "Regulation of the Daily Regime and the Progressivism of Treatment for Prisoners Processed and/or Sentenced for the Crime of Terrorism and/or Treason" [FN205] (supra para. 88(5)), the time Ms. Berenson was allowed to spend outside was extended to one hour.

[FN205] Cf. Supreme Decree 05-97-JUS of June 24, 1997 (file of probative evidence provided by the State, tome 12, folio 9371); and testimonial statement made by Walter Albán Peralta before notary public on May 8, 2004 (file on merits, tome IV, folios 1000 to 10014).

88(76) As of October 7, 1998, Lori Berenson's detention conditions were modified. On that date, she was transferred to the Socabaya Prison, where she remained until August 31, 2000, when she was sent to the Chorrillos Women's Prison. Finally, on December 21, 2001, the alleged victim was transferred to Huacariz Prison, where she is confined currently. [FN206]

[FN206] Cf. record of Lori Berenson Mejia's imprisonment issued by the National Penitentiary Institute, Executive Office of the Prison Registry Office, on June 20, 2002 (file of probative evidence provided by the State, tome 12, appendix 4, folio 9121).

Family situation

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88(77) Lori Berenson, a citizen of the Unite States, was born on November 13, 1969. She is the daughter of Rhoda and Mark Berenson and was 26 years of age when the facts occurred. [FN207]

[FN207] Cf. Lori Helene Berenson's passport (file of probative evidence provided by the State, tome 7, folio 6786); and Rhoda Berenson's passport (file of probative evidence provided by the State, tome 5, folio 5636).

88(78) The social and work-related relationships of Lori Berenson's next of kin have been affected. They have suffered pecuniary and non-pecuniary damage. [FN208]

[FN208] Cf. testimony of Rhoda Berenson before the Inter-American Court of Human Rights during the public hearing held on May 7, 2004.

Costs and Expenses

88(79) Lori Berenson and her next of kin have incurred different expenses related to the administrative and judicial procedures in Peru. Also, the alleged victim and her next of kin have been represented in the proceedings before the Commission and the Court by Ramsey Clark, Lawrence W. Schilling, Thomas H. Nooter and José Luis Sandoval Quesada, [FN209] who incurred expenditure during the proceedings before the inter-American jurisdiction.

[FN209] Cf. power of attorney granted by Lori Berenson to Ramsey Clark, Lawrence W. Schilling, Thomas H. Nooter and José Luis Sandoval Quesada (file of appendixes to the application, tome 2, appendix 27, folio 773).

VII. PRIOR CONSIDERATIONS

89. Now that the Court has defined the proven facts that it considers relevant in the instant case, it must examine the arguments of the Inter-American Commission, the representatives of the alleged victim, and the State, in order to determine whether the State has incurred international responsibility for the alleged violation of the American Convention.

90. First, the Court considers it necessary to examine some of the statements made by the parties to this proceeding. A first series of statements refers to the innocence or guilt of Lori Berenson with regard to the crimes she allegedly committed in Peru. In this regard, the State declared that the alleged victim was guilty of having perpetrated serious crimes that fell within the purview of acts of collaboration with terrorism.

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91. The Court is not empowered to rule on the nature and gravity of the crimes attributed to the alleged victim. It takes note of the State's allegations on these points and states, as on previous occasions, that a State "has the right and the obligation to safeguard it own security," [FN210] and that it must exercise this within limits and according to procedures that permit both public safety and the fundamental rights of the individual to be protected. There is a widespread recognition of the primacy of the human rights, which the State may not disregard or harm. [FN211] Nevertheless, the foregoing in no way justifies terrorist violence – whoever the protagonists – that harms individuals and society as a whole and merits the most energetic rejection. The Court emphasizes that its primordial function is to safeguard human rights in all circumstances. [FN212]

[FN210] Cf. Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 111; Case of Bámaca Velásquez. Judgment of November 25, 2000. Series C No. 70, para. 143 and 174; and Case of Durand and Ugarte. Judgment of August 16, 2000. Series C No. 68, para. 69.
[FN211] Cf. Case of Castillo Petruzzi et al., supra note 25, para. 204.
[FN212] Cf. Case of Castillo Petruzzi et al., supra note 25, para. 89.

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92. This Court is authorized to establish a State's international responsibility as a result of human rights violations, but not to investigate and punish the conduct of State agents or third parties who may have taken part in these violations. A human rights court is not an organ of criminal justice. On other occasions, the Court has noted that it does not have competence to establish the criminal liability of the individual. [FN213] This statement is applicable in the instant case. Consequently, the Court will determine the juridical consequences of the facts it considers proven. Also, within the framework of its competence, it will indicate whether or not the State is responsible for violating the Convention but abstain from examining the statements of the parties concerning the alleged criminal liability of the alleged victim, a matter that corresponds to the domestic courts.

[FN213] Cf. Case of the Gómez Paquiyauri Brothers, supra note 16, para. 73; Case of Hilaire, Constantine and Benjamin et al.. Judgment of July 21, 2002. Series C No. 94, para. 66; and Case of Bámaca Velásquez, supra note 210, para. 98.

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93. The second series of statements refers to the brief submitted by the State on July 22, 2002, entitled "Demanda sobre el informe 36/02 de la Comisión Interamerican de Derechos Humanos" [Complaint regarding report 36/02 of the Inter-American Commission on Human Rights] (supra para. 19), in which the State requested the Court to declare that Peru had complied with "the standards established in the Convention and the case law of the Court" in the trial of the Lori Berenson case in the domestic jurisdiction.

94. The Court does not deem it necessary to examine this claim in depth because, in an order issued on September 6, 2002, it decided to admit the Commission's application and the State's

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brief of July 22, 2002; the latter to be processed "within the same proceeding as the application submitted by the Commission" (supra para. 20). In its answer to the Inter-American Commission's application (supra para. 28), the State asked that the information contained in its brief of July 22, 2002, should be considered "an integral part" of its answer.

VIII. ARTICLE 5 OF THE AMERICAN CONVENTION IN RELATION TO ARTICLE 1(1) THEREOF (RIGHT TO HUMANE TREATMENT)

Arguments of the Commission

95. With regard to Article 5 of the Convention, the Commission argued that:

a) The system of continuous solitary confinement, the visiting regime and the physical conditions of detention comprised a violation of Article 5 of the American Convention, because they constituted cruel, inhuman and degrading treatment which violated the right to humane treatment;
b) The alleged victim served "2 years, 8 months and 20 days (from January 17, 1996, to October 7, 1998) of her sentence to life imprisonment in the Yanamayo [prison …], located at an altitude of around 4,000 meters above sea level, and characterized by an extremely cold climate[, where] her access to the open air was limited to half an hour a day during the first year and a half of her sentence, and then one hour a day, as of July 1997; and
c) the alleged victim was "subjected to a regime of continuous solitary confinement for a year and a half, which was longer than the time required by Article 3 of Decree Law No. 25,744."

Arguments of the representatives of the alleged victim

96 In their final written arguments, the representatives stated that they endorsed the arguments submitted by the Commission in the application brief in relation to Article 5 of the Convention, and added that Mr. Fujimori "had already used Lori Berenson for political ends, for his personal benefit, in the scandalous electoral campaign of April and May, 2000." The alleged victim "was a 'symbol fabricated' by Fujimori's hard line stance on terrorism, in clear violation of her rights under [A]rticles 5(1), 5(2), 11(1), 11(2) and 11(3) of the American Convention".

Arguments of the State

97. Regarding Article 5 of the Convention, the State:

a) Did not "dispute or contest the Commission's considerations on the prison regime to which [the alleged victim] was subjected in the Yanamayo Prison." This situation was resolved with her transfer, and the change in her prison regime after she left the Yanamayo Prison;
b) It proceeded in accordance with the standards established in the Convention and in the Court's case law when "on August 31, 2000, it modified Lori Berenson's prison regime [...] transferring her from the Socabaya prison […] to the Chorrillos Women's Prison" and when, "on December 21, 2001, it transferred Lori Berenson, who had then been convicted, [...] to the Huacariz Prison"; and

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c) Regarding the prison regime of the alleged victim, the characteristics of her current regime may be classified as "regular, because [...] they are applied to all prisoners in the country, without exception."

Considerations of the Court

98. Article 5 of the Convention establishes:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with regard for the inherent dignity of the human person.
[...]
6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

99. The Commission did not deal with Lori Berenson's detention conditions before her entry into the Yanamayo Prison on January 17, 1996, or after her transfer to the Socabaya Prison on October 7, 1998, either in its Report on merits No. 36/02 or in the application (supra paras. 15 and 18). Consequently, the Court will only examine whether the detention conditions in the Yanamayo Prison were incompatible with the provisions of Article 5 of the American Convention.

100. This Court has indicated that torture and cruel, inhuman or degrading punishment or treatment are strictly prohibited by international human rights law. [FN214] The prohibition of torture and cruel, inhuman or degrading punishment or treatment is absolute and non-derogable, even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and any other crimes, martial law or a state of emergency, civil commotion or conflict, suspension of constitutional guarantees, internal political instability or other public emergencies or catastrophes. [FN215]

[FN214] Cf. Case of Tibi, supra note 3, para. 143; Case of the Gómez Paquiyauri Brothers, supra note 16, para. 111; and Case of Maritza Urrutia, supra note 4, para. 89.
[FN215] Cf. Case of Tibi, supra note 3, para. 143; Case of the Gómez Paquiyauri Brothers, supra note 16, para. 111; and Case of Maritza Urrutia, supra note 4, para. 89.
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101. Penalties are an expression of the State's authority to punish and "imply impairment, deprivation or alternation of the rights of an individual, as a result of an unlawful conduct." [FN216] However, the injuries, sufferings, damage to health or prejudices suffered by an individual while he is deprived of liberty may become a form of cruel punishment when, owing to the circumstances of his imprisonment, there is a deterioration in his physical, mental and moral integrity, which is strictly prohibited by Article 5(2) of the Convention. Such situations are contrary to the "essential aim" of the penalty of imprisonment, as established in paragraph 6 of

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this Article; in other words, “the reform and social readaptation of the prisoners.” Judicial authorities must bear this in mind when applying or assessing the sanctions they establish.

[FN216] Cf. Case of Baena Ricardo et al.. Judgment of February 2, 2001. Series C No. 72, para. 106.

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102. According to Article 5 of the Convention, all persons deprived of their liberty shall be treated with regard for the inherent dignity of the human person. [FN217] On other occasions, the Court has indicated that detention in conditions of overcrowding, isolation in a small cell, with lack of ventilation and natural light, without a bed for rest, or adequate sanitary conditions, incommunicado or undue restrictions in the visiting regime, constitute a violation of the right to humane treatment. [FN218]Since the State is responsible for prison establishments, it must guarantee prisoners the existence of conditions that respect their fundamental rights and a decent life. [FN219]

[FN217] Cf. Case of Tibi, supra note 3, para. 150; Case of the “Juvenile Reeducation Institute”, supra note 3, para. 151; and Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 126.

[FN218] Cf. Case of Tibi, supra note 3, para. 150; Case of the “Juvenile Reeducation Institute”, supra note 3, para. 152; and Case of Cantoral Benavides, supra note 25, para. 89. Similarly, Cf. UN. Standard minimum rules for the treatment of prisoners, adopted by the First United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Geneva in 1955, and adopted by the Economic and Social Council in its resolutions 663C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977, Rules 10 and 11.

[FN219] Cf. Case of Tibi, supra note 3, para. 150; Case of the “Juvenile Reeducation Institute”, supra note 3, para. 152; and Case of Bulacio, supra note 217, para. 126.

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103. The Court has also established that “prolonged isolation and compulsory incommunicado are, in themselves, cruel and inhuman treatment, which harm the physical and moral integrity of the individual and the right to respect for the inherent dignity of the human person.” [FN220]

[FN220] Cf. Case of Maritza Urrutia, supra note 4, para. 87; Case of Bámaca Velásquez, supra note 210, para. 150; and Case of Cantoral Benavides, supra note 25, para. 83.

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104. Incommunicado may only be used exceptionally, taking into account its severe effects, because “isolation from the exterior world produces moral suffering and mental stress on any individual, which place him in an exacerbated situation of vulnerability, creating a real risk of aggression and abuse of authority in prisons.” [FN221]

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[FN221] Cf. Case of Maritza Urrutia, supra note 4, para. 87; Case of Bámaca Velásquez, supra note 210, para. 150; and Case of Cantoral Benavides, supra note 25, para. 84.

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105. On January 11, 1996, the military court delivered a first-instance judgment against Lori Berenson, sentencing her to life imprisonment for the crime of treason (supra para. 88(30)). This judgment was confirmed in the final instance on March 12, 1996 (supra para. 88(37)). The first-instance judgment established that she "would serve [her sentence] in the Yanamayo Prison," where she remained from January 17, 1996, to October 7, 1998 (supra para. 88(73)).

106. In relation to the imprisonment conditions in the Yanamayo Prison, located at 3,800 meters above sea level (supra para. 88(73)), it has been proved that Lori Berenson was kept in a regime of continuous solitary confinement for one year, in a small cell, without ventilation, natural light or heating, with inadequate food and deficient sanitary facilities (supra paras. 88(74)(i), (ii), (iii) and (iv)). [FN222] During the first year of detention, her right to receive visitors was severely restricted (supra para. 88(74)(i)). The medical care provided to the alleged victim was deficient (supra para. 88(74)(v)). Lori Berenson suffered circulatory problems and had Reynaud's syndrome (supra para. 88(74)(v)). She also had problems with her vision, because her cell was lit with artificial light.

[FN222] Cf. UN Investigation in relation to Article 20: Peru. 16/05/2001. A/56/44, paras. 144-193. (Inquiry under Article 20), paras. 183 and 184.

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107. The United Nations Committee against Torture has stated that the detention conditions in the Yanamayo Prison, which it knew because of its investigations, implied cruel and inhuman treatment and punishment. The Committee considered that the State should close this establishment. [FN223]

[FN223] Cf. UN Committee against Torture. Investigation in relation to Article 20: Peru. 16/05/2001. A/56/44, paras. 144-193. (Inquiry under Article 20), para. 183 and 184.

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108. The detention conditions imposed on the alleged victim in the Yanamayo Prison, as a result of the application of Article 20 of Decree Law No. 25,475 and Article 3 of Decree Law No. 25,744 by the military courts, constituted cruel, inhuman and degrading treatment, which violated Article 5 of the American Convention. Some of these conditions varied after a certain time, such as the continuous solitary confinement. However, this did not change the Court's previous conclusion.

109. Consequently, the Court concludes that the State violated Article 5(1), 5(2) and 5(6) of the American Convention, in relation to Article 1(1) thereof to the detriment of Lori Berenson.

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IX. ARTICLE 9 OF THE AMERICAN CONVENTION IN RELATION TO ARTICLE 1(1) THEREOF (FREEDOM FROM EX POST FACTO LAWS)

Arguments of the Commission

110. Regarding Article 9 of the Convention, the Commission argued that:

a) The State violated the right embodied in Article 9 of the Convention to the detriment of the alleged victim, "by convicting her of the crime of collaboration with terrorism established in Article 4(a) and (b) of Decree Law No. 25,475";
b) The civil trial against the alleged victim "was initiated based on a charge for the crime of terrorism, and with an order to open the pre-trial proceedings that required a new preliminary statement from the [alleged victim] and the processing of a new trial pursuant to Decree Law No. 25,475";
c) The definition of terrorism established in Article 2 of Decree Law No. 25,475, conceived 'in an abstract and ambiguous manner," and the definition of the category of collaboration with terrorism, referred to in Article 4 of this Decree Law, "are incompatible per se with the principle of legality embodied in Article 9 of the American Convention";
d) Acts of collaboration can never be considered autonomous categories of crime: they are related to the crime of terrorism, which "is extremely general";
e) Article 4 of Decree Law No. 25,475, which defines the crime of collaboration with terrorism, "in addition to reiterating the elements of Article 2 of that decree, with a systematic interpretation since they deal with the same legal structure, shares the serious defects that the Inter-American Court has indicated concerning the definition of the crime of terrorism, owing to its theoretical and ambiguous nature, and the failure to specify the conduct of the perpetrator in the definition";
f) Based on the principle of "the special nature of dealing with the issue of terrorism, Article [4 of Decree Law No. 25,475] excludes and disregards basic categories of general criminal law, such as that of complicity, described in Article 25, paragraph 2, of the Peruvian Penal Code, and this adversely and seriously affects the situation of those put on trial, as regards the level of responsibility and the penalty";
g) When deciding the appeal for annulment filed by the alleged victim's defense lawyer against the judgment of June 20, 2001, the Transitory Criminal Chamber of the Supreme Court of Justice of Peru stated, concerning how Lori Berenson's conduct adjusted to the crime of collaboration that she was charged with, which is established in Article 4 of Decree Law No. 25,475, that "the defendant should have been charged with being a secondary accomplice or accessory based on the second paragraph of Article 25 of the Penal Code";
h) The legal consideration of the Transitory Criminal Chamber of the Supreme Court of Justice of Peru "reflects the vagueness and ambiguity in the definition of collaboration with terrorism described in Article 4 of Decree Law 25,475." "It is Peru's maximum court of justice itself that adjusts [Lori] Berenson's behavior to complicity, which is a mechanism expanding the category, and not to an autonomous conduct as [...] the State attempts to demonstrate"; and
i) Since the principle of legality was not respected in the military and civil proceedings, this "impaired the right [of the alleged victim] to know what crime she was tried and sentenced for, and which jurisdiction should have heard her case."

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Arguments of the representatives of the alleged victim

111. Regarding Article 9 of the Convention, the representatives of the alleged victim argued that:

a) The purpose of the decree laws was to justify "the extreme State policies of arrest, detention, physical abuse, and prison sentences for individuals charged with acts of terrorism by the Peruvian National Police or by the Armed Forces";
b) Article 2 of Decree Law No. 25,475, which defines the crime of "terrorism" is "utterly vague and ambiguous";
c) Decree Laws Nos. 25,475 and 25,659 were "interrelated"; their provisions were "in keeping" with each other;
d) The crime of collaboration established in Article 4 of Decree Law No. 25,475 "is not an autonomous crime," it is an "accessory category" of the crime of terrorism established in Article 2 of this decree law; therefore, it is also defective, because it violates the principle of legality;
e) Article 4 of Decree Law No. 25,475 "depends on Article 2 [of the same Decree Law] for the definition of what constitutes an act of terrorism and for a determination of whether the acts of collaboration were with elements or groups involved in terrorist activities." Article 4 "does not contain any definition of terrorism or terrorist groups";
f) The classification of the crime of collaboration was introduced into Peruvian legislation in "1987 with Act 24,651";
g) This crime should be understood as a "type of complicity." In its judgment of February 13, 2002, the Transitory Criminal Chamber of the Supreme Court of Justice of Peru, when referring to the judgment of June 20, 2001, described the defendant "as a secondary or subsidiary accomplice" without "shared functional control of the act"; and
h) Peruvian legislation violates the principle of proportionality, by establishing the same minimum and maximum penalty for the crime of collaboration with terrorism as that applicable for terrorism. This excess penalization is retained in Legislative Decree No. 921.

Arguments of the State

112. With regard to Article 9 of the Convention, the State argued that:

a) Anti-terrorist legislation included four crimes: (i) "aggravated terrorism"; (ii) "terrorist attacks"; (iii) "terrorist association," and (iv) "terrorist collaboration." These crimes "are autonomous, even though they share common elements";
b) The problems of "ambiguity or lack of precision […] refer (i) to the absence of clear differences between crimes of aggravated terrorism and crimes of violence, and (ii) to the open structure of crimes of violence." Crimes of terrorist association and terrorist collaboration "do not admit to this type of criticism";
c) "The crime of terrorist collaboration constitutes a distinct and autonomous type of crimes of violence"; it has a "specific" criminal classification and "its penalization is different from the penalization of the crime of terrorist violence";
d) The defects that the Inter-American Court has identified in the general legislation on terrorism, and in the provisions on jurisdictions, cannot necessarily be transferred to the crime of

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terrorist collaboration, "which, even though it is penalized in the same body of laws, has distinct characteristics that make it necessary to differentiate it";
e) "[T]he compatibility of the crime of terrorist collaboration with the rights embodied in the [American] Convention cannot be established without considering the way in which the category in question is treated in Peruvian case law";
f) The "rules on collaboration" entered Peruvian legislation in 1987 with "the law of the Congress of the Republic [No.] 24,651 [which] is exactly the same as that contained in Decree Law [No.] 25,475";
g) "Any debate on the sufficiency or ambiguity of the rules under discussion, should be conducted with reference to the 1997 United Nations International Convention for the Suppression of Terrorist Bombing" which contains five behaviors "that may be classified as terrorist," including "collaboration with terrorist organizations"; and
h) When the proceeding against the alleged victim in the ordinary jurisdiction commenced, "the courts had already established the possibility of imposing sentences of less than the legal minimum." The sentence imposed on the alleged victim cannot be considered "the automatic result of the application of Decree Law No. 25,475".

Considerations of the Court

113. Article 9 of the American Convention establishes that:

No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

114. Lori Berenson was subjected to two criminal proceedings, one in the military jurisdiction and the other in the civil jurisdiction. First, the Court will refer to the application of the crime of treason in the military jurisdiction and, second, to the crime of collaboration with terrorism applied in the ordinary criminal jurisdiction.

115. Articles 1, 2 and 3 of Decree Law No. 25,659, and Articles 2 and 3 of Decree Law No. 25,475, define, respectively, the crimes of treason and of terrorism, and establish the penalty corresponding to each. The crime of collaboration with terrorism and its corresponding penalty are established in Article 4 of Decree Law No. 25,475.

116. It is relevant to emphasize that:

i) According to Article 2 of Decree Law No. 25,475, anyone who "incites, creates or maintains a state of anxiety, alarm or fear among the population or a sector of it" or who "carries out acts against life, personal safety [...] or patrimony, against the security of public buildings, highways [...], energy towers [...] or any other property or services, using weapons, explosive materials or devices, or any other means of causing commotion or serious disturbance of the public order" commits the crime of terrorism;

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ii) According to Article 1(a) of Decree Law No. 25,659, anyone who executes "the acts established in Article 2 of Decree Law No. 25,475, using the following methods: [...]car bombs or similar, explosive devices, weapons of war or similar, which cause the death of persons or injure their integrity [...] or damage public or private property," commits the crime of treason;
iii) Article 2 of the same Decree Law No. 25,659 included a description of the criminal participant in the crime of treason. When describing the participant, it referred to certain specific characteristics of the participant, such as being the leader or head of a terrorist organization or being a member of armed groups responsible for killing people;
iv) Article 2 of Decree Law No. 25,659 also referred to elements of conduct, such as: promoting "the damaging result" of the crime in question, "provid[ing], supply[ing], and distribut[ing] reports, information, plans, project and other documentation"; and
v) According to Article 4 of Decree Law No. 25,475, anyone who "voluntarily obtains, collects, assembles or facilitates any type of supplies or devices, or carries out acts of collaboration, which in any way promote the committing of the crimes included in [the same] decree law, or the achievement of the goals of a terrorist group" commits the crime of collaboration with terrorism. The norm then defines six categories of conduct that it identifies as "acts of collaboration"; these are:

a. The providing of documents and information on individuals and property, facilities, public and private buildings and any other that specifically contributes to or facilitates the activities of terrorist elements or groups.

b. The ceding or use of any type of accommodation or other means which could be used to hide individuals or serve as a deposit for weapons, explosives, propaganda, provisions, medicines, and other belongings related to terrorist groups or their victims.

c. The intentional transfer of individuals belonging to terrorist groups or linked to their criminal activities, and also the provision of any kind of assistance that helps them escape.

d. The organization of courses, or the management of centers of indoctrination and training for terrorist groups, operating under any cover.

e. The manufacture, acquisition, possession, theft, storage or supply of weapons, ammunition, explosive, asphyxiant, inflammable, toxic or other substances or objects that could cause death or injury. An aggravating circumstance is the possession and hiding of weapons, ammunition or explosives belonging to the Armed Forces and the Peruvian National Police.

f. Any form of financial activity, help or mediation carried out voluntarily in order to finance the activities of terrorist elements or groups.

117. In previous cases, the Court has considered that the definitions of the crimes of terrorism and treason used expressions common to both crimes, which were identical or coincided as regards typical conduct, the elements with which they were carried out, the objects or property against which they were carried out, and the effects they had on the whole of society. This detracted from the differentiation of the crime of treason and aligned this type of crime with that of terrorism, until it was even assimilated with the latter. [FN224] The similarity or identical nature of typical elements meant that conducts which could fall within the description of terrorism could also be considered treason, with the evident result that they could be heard by the military authorities, in summary proceedings, without guarantees, before "faceless" judges; thus, excluding them from the ordinary jurisdiction which heard cases of terrorism. [FN225]

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[FN224] Cf. Case of Cantoral Benavides, supra note 25, paras. 155 and 156; and Case of Castillo Petruzzi et al., supra note 25, para. 119.
[FN225] Cf. Case of Cantoral Benavides, supra note 25, para. 156; and Case of Castillo Petruzzi et al., supra note 25, para. 119.
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118. In this regard, the Court has stated that "[b]oth Decree Laws (25,475 and 25,659) refer[red] to conducts that were not strictly defined, so that they may be interpreted similarly for both crimes, in the view of the Ministry of the Interior and the corresponding judges [...] and 'of the Police [DINCOTE] themselves.'" [FN226]

[FN226] Cf. Case of Cantoral Benavides, supra note 25, para. 153; Case of Castillo Petruzzi et al., supra note 25, para. 119; and Case of Loayza Tamayo, supra note 25, para. 68.
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119. Consequently, as the Court has stated:

The fact that both have certain elements in common and the vague distinction between the two categories of crime is prejudicial to the defendant's legal situation on several counts: the applicable penalty, the court with jurisdiction, and the nature of the proceedings. Under Peruvian law, this criminal conduct is classified as treason and persons charged with this crime w[ould] be tried by a 'faceless' military tribunal. The trials w[ould] be summary proceedings in which the defendant w[ould] have fewer guarantees and, if convicted, w[ould] be sentenced to life imprisonment. [FN227]

[FN227] Cf. Case of Castillo Petruzzi et al., supra note 25, para. 119.
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120. The judgment convicting Lori Berenson handed down by the military court for the crime of treason and the other decisions adopted in this jurisdiction were based on legislation that was incompatible with the American Convention.

121. For the above reasons, the Court considers that the State violated Article 9 of the Convention, in relation to Article 1(1) thereof, to the detriment of Lori Berenson, by applying the procedural provisions of Decree Law No. 25,475 and the substantive provisions of Decree Law 25,659, which are incompatible with the Convention, in the investigation and the hearing of the trial by the military court.

122. The Court notes that, following the conclusion of Lori Berenson's trial in the civil jurisdiction, several principles mentioned in the preceding paragraphs concerning the applicable penalty, the court that should try the case, and the corresponding procedure, have been modified by the declaration of the unconstitutionality of the category of the crime of treason in the judgment handed down by the Constitutional Court of Peru on January 3, 2003 (supra para. 88(7)).

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123. This Court observes that this judgment of the State's Constitutional Court decided that the definition of the crime of terrorism was in keeping with the Peruvian Constitution.

124. The Court will now examine whether the definition of the crime applied in the alleged victim's case during the processing her trial before the civil jurisdiction violates the principle of legality.

125. Concerning the principle of legality in the penal sphere, the Court has indicated that crimes must be classified and described in precise and unambiguous language that narrowly defines the criminalized conduct, establishing its elements, and the factors that distinguish it from behaviors that are either not punishable or punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, which is particularly undesirable when it comes to ascertaining the criminal liability of individuals and punishing their criminal behavior with penalties that exact their toll on fundamental rights such as life or liberty. [FN228]

[FN228] Cf. Case of Ricardo Canese, supra note 3, para. 174; and Case of Cantoral Benavides, supra note 25, para. 157; and Case of Castillo Petruzzi et al., supra note 25, para. 121.

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126. Under the rule of law, the principles of legality and non-retroactivity govern the actions of all State organs, in their respective spheres of competence, particularly when they must exercise their powers to punish. [FN229]

[FN229] Cf. Case of Ricardo Canese, supra note 3, para. 177; and Case of Baena Ricardo et al., supra note 216, para. 107.

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127. The relevant Peruvian legislation in this case establishes different categories of crime, such as: terrorism, [FN230] treason, [FN231] and collaboration with terrorism. [FN232] In turn, the latter has various manifestations. The Inter-American Court has noted that the definition of the crime of treason is incompatible with the American Convention. [FN233] This category of crime was not considered as regards Lori Berenson in the ordinary criminal proceeding (supra para. 88(69)); nor was the crime of terrorism applied in that trial. However, some forms of collaboration with terrorism were invoked and applied, and the sentence handed down was based on them. According to Peruvian legislation, collaboration does not constitute a form of participation in terrorism, but rather, it is an autonomous crime committed by anyone who carries out specific acts which support terrorist activities. Evidently, the assessment of the existence, when applicable, of acts of collaboration, must be made in relation to the definition of terrorism. In the Court's opinion, the definition of the crime of collaboration with terrorism does not have the same defects that, at one time, were observed with regard to the crime of treason. This Court does not consider that these categories of crime are incompatible with the provisions of Article 9 of the American Convention.

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[FN230] Cf. Article 2 of Decree Law No. 25,475.
[FN231] Cf. Articles 1 and 2 of Decree Law No. 25,659.
[FN232] Cf. Article 4 of Decree Law No. 25,475.
[FN233] Cf. Case of Cantoral Benavides, supra note 25, para. 155; Case of Castillo Petruzzi et al., supra note 25, para. 119; and Case of Loayza Tamayo, supra note 25, para. 68.

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128. In view of the foregoing, and with regard to the trial and judgment in the civil court, the Court considers that it has not been proved that the State violated Article 9 of the American Convention to the detriment of the alleged victim, by applying Article 4 of Decree Law No. 25,475.

X. ARTICLE 8 OF THE AMERICAN CONVENTION IN RELATION TO ARTICLE 1(1) THEREOF (RIGHT TO A FAIR TRIAL)

Arguments of the Commission

129. The State violated the right to a fair trial embodied in Article 8 of the American Convention, to the detriment of the alleged victim, in the trial in the military jurisdiction and the trial in the ordinary criminal jurisdiction, because:

129(1) Regarding the trial before the military court

a) The violation of the right to a fair trial of the alleged victim "affected presumption of innocence, due process and the right to a defense," and had a bearing on "the validity of all the evidence collected in this context of violations to her human rights";
b) The trial of civilians by "faceless" military courts violates the right to be tried by an ordinary, competent, independent and impartial judge or court. When the judge's identity is unknown, "the possibility of determining his independence and impartiality are jeopardized; this was reinforced by the provisions of Article 13(h) of [D]ecree [Law No.] 25,475, which exclude[d] objections to the officials who act[ed] in [these] trials";
c) The exceptional brevity of the trial for the crime of treason, together with the other obstacles imposed on the lawyers, did not allow them to have a reasonable time to prepare an appropriate defense. Lori Berenson was not notified of the charges against her and she found out about them when the first-instance judge delivered judgment. Her lawyer was only "allowed approximately two hours to study a file of approximately 2,000 pages" and he could "never meet with his client freely and confidentially";
d) The evidence collected during both pre-trial investigations, the investigation by the Military Examining Judge and the DINCOTE investigation, "were obtained unlawfully." The fact that "most of the evidence was collected at the behest of the Military Examining Judge constitute[d] a defect per se that affect[ed] this evidence." These pieces of elements were incorporated into the DINCOTE police investigation report and assessed in the trial in the military jurisdiction;

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e) The irregularities that affected the procedures include: "the search of Lori Berenson's domicile, located at Calle Técnica No. 200, apartment 1101"; and the reconstruction (inspection) of the building at Avenida Alameda del Corregidor No. 1049, Molina la Vieja." These are "examples of the way evidence was collected […] during the preliminary investigation for the first trial." Also, the alleged victim was interrogated without the assistance and advice of a lawyer;
f) The alleged victim's defense lawyer "was not given the opportunity to cross-examine the other defendants, such as Miguel Rincón Rincón and Pacífico Abdiel Castrellón, regarding the statements against them concerning criminal acts […], these statements having been obtained […]irregularly in DINCOTE, without the presence of [Lori] Berenson's lawyer and under pressure";
g) Neither Lori Berenson nor her defense lawyer were allowed to be present during "the preparation of the case file." Nor were they allowed to submit any evidence in her favor, "including testimonies that could have helped her." The alleged victim was not given the opportunity to address the judge, "except when she was asked [...] if she proposed to file an appeal";
h) The right to appeal did not comply with treaty-based standards, because it was not presented "before an instance with appropriate judicial characteristics; for example, an instance that complied with the concept of the ordinary judge […] and owing to the curtailment of the regular procedural guarantees";
i) The alleged victim was tried "by secret judges in military barracks, to which the public did not have access, and even on some procedural occasions, she could not be present during the presentation of her own lawyer's arguments";
j) The judgment of the Supreme Council of Military Justice of August 18, 2000, and also of the Military Supreme Court of August 24, 2000, "declared the annulment of the judgment convicting Lori Berenson in the military jurisdiction, but did not declare the annulment of the preliminary investigation in that jurisdiction. Rather, a copy of the preliminary investigation was forwarded to the ordinary criminal jurisdiction"; and
k) The judgments of the military courts that annulled the judgment sentencing the alleged victim re-examined the facts; "however, they did not call those exonerating judgments acquittals, but […] annulments".

129(2) Regarding the trial before the civil court

a) There was no "clear and definite separation" between the military trial and the trial in the civil court, because the probative evidence collected for the former had a "transcendental probative role" in the latter, since it "constituted the basis for opening the preliminary investigation" and "was the grounds on which [the alleged victim] was convicted";
b) "The standard of the inter-American human rights system should be the exclusion of any probative material or evidence obtained in violation of human rights." Just as no one can be convicted if there is incomplete or insufficient evidence against them, "with more reason, no one can be convicted if the evidence against them is unlawful, because it has been obtained in violation of their human rights";
c) Even if the alleged victim's defense lawyer had requested that the evidence collected in the military jurisdiction should be assessed in the ordinary criminal trial, "this would not alter the Peruvian State's international responsibility, since the possible consent of the affected person

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does not validate violations to their human rights." The alleged victim's defense lawyer contested the use of the evidence collected in the military proceeding in the ordinary trial, but the objection was rejected in the judgment of June 20, 2001;

d) "In the new trial, no order was issued to investigate the evidence for and against the defendant, as if the preliminary investigation was being reinitiated. This would have been necessary to correct the procedural irregularities that had invalidated the original trial in the military court";

e) The judgment of June 20, 2001, convicting Lori Berenson, did not allow for a difference to be made "between the evidence gathered in the military trial in violation of [Lori] Berenson's human rights and the evidence gathered in the ordinary jurisdiction, which had not violated her rights";

f) The part of the judgment of June 20, 2001, setting out the facts, describes "one by one, the principal procedures included in the file of the military preliminary investigation";

g) The considerations of the judgment of June 20, 2001, indicated that the Prosecutor founded his charge on the fact that the alleged victim "was an active member of the MRTA terrorist organization" and that she had carried out a series of acts of collaboration which he considered "proved with the evidence described in the case file";

h) Although "the judge announce[d] that 'this Panel d[id] not waive its powers to assess legality in order to decide the type of evidence that c[ould] or c[ould] not be incorporated into the proceeding,' in reality, this legal assessment was never made";i) The fact that the police investigation report was admitted in the trial in the civil court, "retaining its probative value," is one more indication that the Peruvian State violated the right to a fair trial to the detriment of the alleged victim;

j) The judgment of June 20, 2001 "was characterized by the absence of clear and specific grounds. [It] merely referred to a series of facts, which it declare[d] had been 'objectively proved during the proceeding,' but did not describe the evidence on which the decision was made and, much less, assess the probative value accorded to it." The said judgment also "mention[ed] a series of facts, which it call[ed] 'elements to be elucidated,' and compare[d] them with testimony that had been obtained during the trial." Nonetheless, "the judge did not give a clear answer" to these questions either;

k) The document entitled "Cuestiones de hecho planteadas y discutidas y votadas en el proceso penal seguido contra la acusada Lori Helene Berenson Mejía, por el delito de terrorismo en agravio del Estado" [Questions raised, discussed and voted on in the criminal trial against the accused Lori Helene Berenson Mejía, for the crime of terrorism against the State], which contains 55 questions on the facts and the corresponding answers that determine whether the facts have been proved or not, contains "absolutely no reference to how the court reached that conclusion";

l) Under the Peruvian legal system, the statement of the grounds of a judgment is a constitutional guarantee. "This guarantee implies that the reasoning or the mental process of the judge by which he reached his conviction about the facts has to transcend the mind of the judge and be clearly expressed in the judgment, so that the defendant may know the grounds for his conviction and can appeal against it, and so that the superior court that hears the appeal or other remedies against the judgment may also know them"; and

m) Article 139(5) of the Peruvian Constitution establishes the right to "written grounds for judicial decisions" as does Article 285 of the Code of Criminal Procedure. The Constitutional Court has ruled similarly.

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Arguments of the representatives of the alleged victim

130. In relation to Article 8 of the Convention, the representatives of the alleged victim argued that:

130(1) Regarding the trial before the military court

a) The anti-terrorist legislation tended to "over-criminalize," "over-penalize," and "politicize" proceedings;
b) Article 12(a) of Decree Law 25,475 granted the police powers of investigation in a criminal trial; "it establishe[d] that [the police could] intervene without any of the restrictions established in their institutional regulations." This Article remained in force despite the judgment of the Constitutional Court of January 3, 2003;
c) In the trial before the military court, there were "unlawful sources of evidence." The alleged victim was detained "merely due to suspicion," without an arrest warrant or being caught in flagrante delicto, and she was taken to the building located "in La Molina where a police raid was carried out, without her detention [being] recorded, without being notified of the reason for her detention." The police detention lasted for more than 40 days, even though the Peruvian Constitution establishes a maximum of 15 calendar days;
d) The alleged victim was not permitted due confidentiality with her defense lawyer. He was not present during the "preliminary pre-trial interrogations";
e) Based on the special appeal for review of res judicata, the Supreme Council of Military Justice annulled the judgment of January 30, 1996, owing to an "evident error" which needed to be corrected, citing new evidence that "did not support the charge of leadership." From the point of view of the facts, the decision of the Supreme Council of Military Justice "was an acquittal";
f) The Supreme Council of Military Justice based its decision on lack of competence and not on an "acquittal" of the crime, "to avoid the consequences of violating the provisions of Article 8(4) of the Convention"; and
g) The alleged victim was tried in a civil court, "for the second time for the same facts, after having been acquitted by the Supreme Council of Military Justice." The military court remitted the case to the ordinary jurisdiction, merely changing the name of the crime with which the defendant had originally been charged to the crime of collaboration, based on the same facts.

130(2) Regarding the trial before the civil court

a) The absence of a clear definition of the criminal conduct "means that Decree Law [No.] 25,475 violates Article 8(1) and 8(2)(b), which require, respectively, a hearing to substantiate any accusation of a criminal nature and prior notification in detail to the accused of the charges against him";
b) The judgment against the alleged victim in the National Terrorism Chamber "was a complete failure" as regards impartiality and due process. "During the civil trial, the same invalid evidence and the testimony of co-accused witnesses obtained during the trial in the military jurisdiction were used." At the start of the trial before the civil court, "the examining judge […] received and adopted the case file of the military trial, and proceeded on the basis of those documents";

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c) In the ordinary jurisdiction, the only change was the sentence, which was reduced "from life imprisonment for her alleged role of leader of a subversive group[,] to 20 years' imprisonment for her alleged 'secondary collaboration' with this group";
d) In this case, it "was presumed that [Lori] Berenson was guilty, unless she could prove her innocence. She was obliged to make a testimonial statement." On the first day of the hearing, the alleged victim was kept in a type of "cage with bars, guarded by four soldiers." After she protested, following photographs and reports in the press, she was authorized to remain in front of "the cage." Following her detention in November 1995, the Peruvian press referred to the alleged victim as "the MRTA terrorist" or "la gringa terrorista";
e) In an interview published in the Spanish newspaper El País on April 22, 2001, Judge Ibazeta, President of the National Terrorism Chamber, stated that the verdict "will depend of whether her story convinces us." During the hearings, the Superior Prosecutor indicated that the alleged victim lied because, since she was "the accused," she was the person who "would benefit most from lies." During the hearings in the civil court "the negative and prejudicial comments" continued;
f) The National Terrorism Chamber that tried Lori Berenson in the ordinary jurisdiction "lacked competence, independence and impartiality". The judges and the judicial personnel who took part "had served in the Fujimori and Montesinos Government." The judges appointed "on a provisional basis" during the Fujimori administration were "prone to corruption and to complying with the State's wishes";
g) Judge Borda was a "provisional provincial judge […] dependent on the political authorities," who, during the presentation of evidence, "devoted himself to seeking evidence that did not correspond to the charge" and "obtain[ed] testimonies from the civil trials of the same witnesses who had testified in the military jurisdiction." This judge was dismissed from the judiciary after he had completed the pre-trial stage of the case;
h) The President of the Chamber, Judge Marcos Ibazeta, who presided the panel of three judges in the National Terrorism Chamber that convicted Lori Berenson, revealed to the media "his lack of independence and impartiality two years before he presided this trial," by criticizing the Inter-American Commission and the petitioners in this case; and, for this reason, the defense lawyers raised an objection to him;
i) Prosecutor Cavagnaro took part in the trial in the military jurisdiction and in the pre-trial investigation for the civil trial in the National Terrorism Chamber;
j) Within 16 months of the sentencing of Lori Berenson, "all except one of the eight individuals in key posts such as judges, prosecutors and State attorneys in Lori Berenson's civil trial were dismissed";
k) During the first months of the ordinary proceeding, from September 8, 2000, to January 19, 2001, which corresponded to the pre-trial investigation, Lori Berenson's lawyer did not have sufficient time to consult her and prepare her defense. "In general, they were only allowed to meet for less than 30 minutes a week." Supreme Decree 003-2001 of January 20, 2001, of the Ministry of Justice, established that defendants had an unrestricted right to meet with their defense lawyers. However, opportunities to consult freely with the defense lawyer "continued to be inadequate" during the stage of the public hearing of the trial before the National Terrorism Chamber;
l) The alleged victim had the minimum opportunity (less than an hour), to consult with her lawyer before making an official statement for 14 hours, on September 13, 14 and 15, 2000;

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m) The alleged victim's lawyer was only given two hours to examine "more than 2,000 pages of transcripts corresponding to the military case file." Even though, from this time on, the alleged victim's defense lawyer was present in the pre-trial investigation, Lori Berenson "was not present when the witnesses testified. […S]he was not available to her defense lawyer to help him […] by providing him with information he could not have obtained in any other way";
n) The alleged victim and her defense lawyer learned of the charges arising from the pre-trial investigation on March 16, 2001, "four days before the date of the first hearing, and the time was insufficient for the defense lawyer to make the necessary consultations and prepare himself for the new charges that had been filed";
o) The examining judge and the prosecutor "examined the key witnesses in the absence of [the alleged victim] and before the services of a lawyer could be obtained";
p) There was never equality with regard to access to key documents, almost all of them from the military trial, "which could only be inspected by [the alleged victim's] defense lawyer personally in the court's offices, provided that no one else was examining them at the time." The State attorney "knew about the charges that the prosecutor would present beforehand […], and also the order in which the witnesses would be called, and about other documents and information";
q) The defense lawyer was only provided with copies of the records or summarized transcripts on thee occasions, "even though 33 hearings were held over a period of three months. This situation, made it exceedingly difficult for the alleged victim's lawyer to examine the testimonial statements made before the court, and to prepare her defense";
r) Since the hearings were "very continuous" and ended after visiting hours, the defense lawyer was unable to discuss the evidence considered by the judge with the alleged victim;
s) The pre-trial investigation for the civil trial which began on August 28, 2000, "lasted more than the 30 days that, with an extension of 20 days, was established for it"; and
t) The public hearing of the civil trial began on March 20, 2001, a delay that "violated Articles 7(4) and 8(2) of the Convention".

Arguments of the State

131. Regarding Article 8 of the Convention, the State argued that:

a) The conditions under which the "military and police proceedings" against Lori Berenson were resolved by annulling the sentence and putting the alleged victim on trial in the ordinary jurisdiction;
b) There are no grounds in the Convention or in the Court's case law for concluding that the alleged victim's human rights were violated during the proceeding in the ordinary jurisdiction. During the civil proceeding, the gathering of evidence and its assessment de jure and de facto were carried out with "all guarantees of due process";
c) If probative value had been granted to the evidence obtained in the military jurisdiction, "there would have been sufficient elements" to convict the alleged victim for the categories of crime included in paragraphs 9(d) and 9(f) of Article 4 of Decree Law No. 25,475;
d) "The obligation to state the grounds on which the judgment is based cannot be considered one of the rights recognized to those accused of carrying out criminal acts under Article 8 of the Convention";

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e) Peru's criminal jurisdiction is regulated by the 1940 Code of Criminal Procedure. The charge filed by the Prosecutor requires an exceedingly formal prior investigation, which must be carried out by the examining judge. Once the charge has been presented, a court or criminal chamber receives the parties in an oral proceeding, to process the evidence admitted for and against the defendant;

f) Once the hearings have been completed, the parties' arguments are received, including the prosecutor's oral opinion, and the chamber adopts two decisions: a) "it agrees on the proven facts by vote and reads out the result of this vote in a public hearing" and b) "in a separate act, it delivers judgment, based on questions of fact that have been voted on previously";

g) As with jury verdicts, "questions of fact" are not grounded, but adopted using the "criterion of conscience." The vote on the questions of fact established in Articles 281 and 283 of the 1940 Code of Criminal Procedure, is a "different decision from the judgment, although connected to it." Under the Peruvian procedure, "the grounds for the judgment result from their correspondence with the facts voted on";

h) On June 20, 2001, the National Terrorism Chamber voted on 55 questions of fact and declared that they had been proved; the Chamber "sentenced the alleged victim in a separate act." The "unacceptable disregard" of this procedure in the application shows that the Commission did not know it existed, and was totally unaware of its procedural significance;

i) When the proceeding before the military court had been annulled, "the case file was sent to [a] new prosecutor, who filed a new complaint, drawn up according to his criteria and with no connection to the proceedings in the military trial." After the prosecutor's complaint was filed, "a new judge decided on the opening of the preliminary investigation in accordance with norms that had no relation to those applied during the military proceeding";

j) The National Terrorism Chamber, "when organizing the oral proceeding, made a clear difference between the probative procedures which took place during the hearings, the proceedings during the pre-trial investigation stage, and the records prepared before the start of the preliminary investigation";

k) The alleged victim's defense lawyer "requested the incorporation of the records from the military jurisdiction during the debates of the oral proceeding";

l) "[T]he procedures in force in Peru do not include any norm or mechanism that allows a judge or a chamber to refuse to add to his own case files, records and files prepared during the procedures carried out before the order to open the pre-trial investigation (in this case, prior to August 28, 2000). Nor is there any procedure that prevents requesting the reading and discussion of records prepared before the opening of the pre-trial investigation";

m) "There are no norms in the Convention or in other international instruments for the protection of human rights that make it obligatory to use one specific legal theory regarding the procedural consequences of defects" in the way evidence is processed;

n) "The specific regime for excluding evidence adopted by the courts of justice in each country, and the option they adopt, within the framework of the alternatives recognized by the relevant comparative law, is not an issue that can be decided under the rules of the American Convention";

o) "States have a valid possibility of opting between the absolute exclusion of contaminated evidence and all evidence related to it, and the rule that allows the content to be assessed independently of the penalty to be imposed on the accused, and between the rule on weighing the different interests and the rule that allows the evidence collected in procedures carried out in good faith by the police authorities to be assessed freely";

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p) The judgment handed down against the alleged victim used two complementary theories on the consequences of violations of the probative procedure: the "good faith theory" and the "theory of the independence of the consequences";
q) The "rule on the exclusion of evidence" refers exclusively to the prohibition to use in a judicial proceeding "evidence obtain in direct violation of the fundamental human rights of a person. It does not presume to exclude all evidence without distinction. It does not consider violations of the rule of competence to be a cause for excluding material that has previously been gathered, nor does it consider that the annulment of a proceeding should immediately result in an absolute prohibition to re-use the evidence that was gathered in order to open it";
r) There are no reasons to conclude that the rules established by the Convention and by the Court's case law make it obligatory "to invalidate all the evidence obtained by the police under certain conditions, without first differentiating between those procedures that are defective owing to human rights violations and the others that are not defective for the same reasons";
s) The defect of a "nullity per se" of the case records, based on an alleged nullity owing to context, has no basis in the Convention, not even in the theory of "the fruit of the forbidden tree";
t) "There is no basis for affirming that [Lori] Berenson […] was convicted as a result of the transferred evidence." The civil court "processed more than 100 pieces of evidence during the preliminary investigation, which is the judicial investigation; and during the trial, which is the adversarial procedure. The judge's opinion was based on these 100 pieces of evidence, which included testimonies, confrontations, expert reports, inspection by experts and discussion with experts, and the examination of documents";
u) The sentence handed down against the alleged victim "[was] supported by the evidence processed and incorporated into the proceeding, and […] the evidence [was] only used after it had been discussed and incorporated during the trial";
v) From the records of the sessions of the ordinary oral proceeding it can be seen that "abundant evidence" was produced at this stage of the proceeding, complying with the principles and procedural guarantees established in the Peruvian Constitution;
w) The invalidity of the records of the military proceeding cannot affect the possibility of cross-examining the individuals who testified before the military authorities again, or again discussing the physical and documentary evidence that they included initially;
x) The Commission does not distinguish between "the incorporation of the case records of what occurred before the trial in the civil court, from the incorporation of these records as documents that could possibly be verified in a criminal trial, with their possible incorporation as probative evidence";
y) The National Terrorism Chamber, which delivered judgment on June 20, 2001, "moved away from the position assumed in the charge concerning how the evidence should be dealt with during the trial, and took great care to differentiate the regime that should be applied to the procedures of the oral proceeding, to the proceedings during the preliminary investigation by the ordinary judge for criminal matters, and to all the other records prepared before the judicial proceeding opened on August 28, 2000";
z) "[I]t is not […] the intervention of the police in the preliminary procedures that should be questioned, according to the standard established by the Court, but rather specific procedures that may have contained direct and explicit violations of some of the rights recognized by the Convention";

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aa) The police investigation report did not constitute an element of proof, "because it lack[ed] the requirements of immediacy and contradiction that distinguish an probative procedure from a mere procedure of investigation. It is not even strictly a summary procedure." From the proceedings of the civil trial, it can be observed that the police investigation report was considered a "piece of evidence"; and
bb) "According to Peruvian legislation, the stage of the police investigation is not considered part of the preliminary investigation. The police investigation should not be confused with the pre-trial investigation which is carried out by the jurisdictional organ."

Considerations of the Court

132. In the case of the right to the judicial or procedural guarantees embodied in Article 8 of the Convention, this Court has stated that, during the trial, it is necessary for all the requirements to be fulfilled that "are designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof"; [FN234] in other words, the "prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending a judicial decision." [FN235]

[FN234] Cf. Case of Herrera Ulloa, supra note 4, para. 147; Case of Maritza Urrutia, supra note 4, para. 118; and Case of Myrna Mack Chang . Judgment of November 25, 2003. Serie C No. 101, para. 202.
[FN235] Cf. Case of Herrera Ulloa, supra note 4, para. 147; Case of Maritza Urrutia, supra note 4, párr. 118; and Case of Myrna Mack Chang , supra note 234, para. 202.
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133. The Court has established that "[i]n order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, the Court may have to examine the respective domestic proceedings," [FN236] to establish their compatibility with the American Convention. In light of the above, the domestic proceedings must be considered as a whole, including the rulings of the appellate courts. The role of the international court is to establish whether the proceedings as a whole, as well as the way evidence was incorporated, were in accordance with the Convention. [FN237]

[FN236] Cf. Case of Herrera Ulloa, supra note 4, para. 146; Case of Myrna Mack Chang , supra note 234, para. 200; and Case of Juan Humberto Sánchez, supra note 210, para. 120.
[FN237] Cf. Case of Juan Humberto Sanchez, supra note 210, para. 120; Case of Bámaca Velásquez, supra note 210, para. 189; and Case of the "Street Children" (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 222.
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134. Given the particularities of the case and the nature of the violations alleged by the Commission and the representatives of the alleged victim, as well as the arguments presented by the State, the Court will proceed to examine all the domestic judicial proceedings during the military criminal trial and in the ordinary criminal jurisdiction, to establish whether those proceedings were in accordance with the provisions of Article 8 of the Convention.

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135. The Commission and the representatives argued that, during the trial held in the exclusive military jurisdiction, the State violated the following rights and guarantees of due process of law established in the American Convention: an independent and impartial tribunal (Article 8(1)); presumption of innocence (Article 8(2)); defense (Article 8(2)(b), (c) and (d); examination of witnesses present in the court (Article 8(2)(f); the right to appeal the judgment to a higher judge or court (Article 8(2)(h); the right not to be subjected to a new trial for the same cause (Article 8(4)); and a public proceeding (Article 8(5)).

136. The Commission and the representatives argued that during the processing of the trial in the ordinary criminal jurisdiction, evidence was used that had been gathered during the processing of the military trial, and that the sentence convicting Lori Berenson in the ordinary jurisdiction lacked grounds, because the probative evidence on which the decision was based was not revealed, and there was no assessment of the weight granted to it.

137. The State declared that "it did not submit to the Court the matter arising from the trial of Lori Berenson Mejía by the military jurisdiction for aggravated terrorism[, because] the military jurisdiction's lack of competence to try [Ms.] Berenson Mejía [had already been declared] and the proceeding had been transferred to the ordinary jurisdiction." Without detriment to the foregoing, the Commission and the representatives submitted possible violations to Article 8 of the Convention to the detriment of the alleged victim during the military proceeding; the Court will therefore refer to these facts.

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A competent, independent and impartial judge

138. Article 8(1) of the Convention establishes that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

a) Criminal proceeding in the military jurisdiction

139. Article 173 of the 1993 Constitution of Peru established that:

In cases of crimes committed in the course of duty, members of the Armed Forces and the National Police are subject to the respective jurisdiction and to the Code of Military Justice. The provisions of the latter are not applicable to civilians, except in the case of crimes of treason and terrorism determined by law. The cassation referred to in Article 141 is only applicable when the death penalty has been imposed.
Those who violate the norms of obligatory military service are also subject to the Code of Military Justice.

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140. When examining the crime of treason, this Court noted that Decree Law No. 25,744 of September 21, 1992, referring to trials for this crime, granted DINCOTE competence to investigate, and determined that the trial would be held before military courts, even if the crime had been committed by civilians, under a very summary proceeding "in the theater of operations," as established in the Code of Military Justice. [FN238]

[FN238] Cf. Case of Cantoral Benavides, supra note 25, para. 111; and Case of Castillo Petruzzi et al., supra note 25, para. 127.

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141. It should be indicated, as in other cases, that the military jurisdiction is established to keep order and discipline among the armed forces. Accordingly, its application is reserved to soldiers who have committed a crime or fault in the exercise of their functions and under certain circumstances. [FN239] Article 282 of the 1979 Peruvian Constitution regulated the military jurisdiction in this way; but this situation was modified by Article 173 of the 1993 Constitution (supra para. 139). The transfer of competences from the ordinary courts to the military courts and the subsequent trying of civilians for the crime of treason in the latter courts, as in the instant case, excludes a competent, independent, and impartial tribunal, previously established by law from hearing these cases. The Court has said that "[w]hen the military courts assume jurisdiction over a matter that should be heard by the civil courts, the right to a competent, independent, and impartial tribunal, previously established by law is violated as is, a fortiori, due process"; this, in turn, is intimately linked to the right to access to justice itself. [FN240]

[FN239] Cf. Case of the 19 Tradesmen. Judgment of July 5, 2004. Series C No. 109, paras. 165 and 166; Case of Las Palmeras. Judgment of December 6, 2001. Series C No. 90, para. 52; and Case of Cantoral Benavides, supra note 25, para. 112.
[FN240] Cf. Case of Las Palmeras, supra note 160, para. 52; Case of Cantoral Benavides, supra note 160, para. 112; and Case of Castillo Petruzzi et al.. Judgment of May 30, 1999. Series C No. 52, para. 128.

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142. This Court has established that:

Under the democratic rule of law, the military criminal jurisdiction should have a very restricted and exceptional scope and be designed to protect special juridical interests associated with the functions assigned by law to the military forces. Hence, it should only try military personnel for committing crimes or misdemeanors that, due to their nature, harm the juridical interests of the military system. [FN241]

[FN241] Cf. Case of the 19 Tradesmen, supra note 239, para. 165; Case of Las Palmeras, supra note 239, para. 51; and Case of Cantoral Benavides, supra note 25, para. 113.

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143. The right to be judged by civil courts under legally established procedures constitutes a basic principle of due process of law. The State should not create "courts that do not apply duly established procedural norms in substitution of the jurisdiction that would normally correspond to the civil courts." [FN242]

[FN242] Case of Castillo Petruzzi et al., supra note 25, para. 129; Cf. Case of the 19 Tradesmen, supra note 239, para. 165; Case of Las Palmeras, supra note 239, para. 51; and Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Milan from August 26 to September 6, 1985, and confirmed by the General Assembly in resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985.

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144. This Court has also stated that due process "entails the intervention of an independent and impartial judicial organ, having the power to determine the lawfulness of measures adopted in a state of emergency." [FN243]

[FN243] Cf. Case of Tibi, supra note 3, para. 118; Case of Castillo Petruzzi et al., supra note 25, para. 131; Habeas Corpus in Emergency Situations (arts. 27(2), 25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 30; and Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 20.

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145. In a case such as this one, the impartiality of the judge is affected by the fact that the armed forces have the double function of combating the subversive groups with military means, and judging and imposing penalties on the members of these groups. On another occasion, this Court has indicated that:

Under the Statute of Military Justice, members of the Supreme Council of Military Justice, the highest body in the military judiciary, are appointed by the minister of the pertinent sector. Moreover, members of the Supreme Court of Military Justice decide who among their subordinates will be promoted and what incentives will be offered to whom; they also assign their functions. This alone is enough to call the independence of the military judges into question. [FN244]

[FN244] Cf. Case of Cantoral Benavides, supra note 25, para. 114; and Case of Castillo Petruzzi et al., supra note 25, para. 130.

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146. Consequently, the Court considers that the military tribunals that tried the alleged victim for treason did not meet the requirements implicit in the guarantees of independence and

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impartiality that Article 8(1) of the American Convention recognizes as essentials of due process of law. [FN245]

[FN245] Cf. Case of Cantoral Benavides, supra note 25, para. 115; and Case of Castillo Petruzzi et al., supra note 25, para. 132.

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147. In addition, because judges who preside over the treason trials are "faceless," defendants have no way of knowing the identity of their judges and, hence, of assessing their competence. Compounding the problem is the fact that the law does not allow these judges to be challenged. [FN246]

[FN246] Cf. Case of Cantoral Benavides, supra note 25, para. 127; and Case of Castillo Petruzzi et al., supra note 25, para. 133.

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148. Furthermore, after declaring that the special appeal for review of res judicata was admissible, the Supreme Council of Military Justice transferred the main case records to the Supreme Military Tribunal, which delivered judgment on August 24, 2000 (supra para. 88(44)).

149. In this regard, the Court has stated that, in doing so:

[…] the military tribunal acted ultra vires[,] usurped jurisdiction and arrogated to itself the powers of the regular judicial organs, inasmuch as Decree-Law 25,475 (crime of terrorism) stipulates that the aforesaid crime is to be investigated by the National Police and the Ministry of the Interior, and tried in the civil courts. Further, the regular judicial authorities were the only organs with the power to order the detention and imprisonment of the person accused. [FN247]

[FN247] Cf. Case of Loayza Tamayo, supra note 25, para. 61.

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150. In view of the above, the Court declares that the State violated Article 8(1) of the Convention, in relation to Article 1(1) thereof, by trying the alleged victim in the military jurisdiction for the crime of treason.

b) Criminal proceeding in the ordinary jurisdiction

151. On August 28, 2000, after having declared that the special appeal for review of res judicata was admissible, the Supreme Council of Military Justice forwarded a copy of the whole file against Lori Berenson to the Attorney General's office, so that the preliminary investigation in the ordinary criminal jurisdiction could be carried out, and also the trial before the National Terrorism Chamber, which delivered a judgment convicting her on June 20, 2001 (supra para. 88(69)). Then, on July 3, 2001, pursuant to the legislation in force in Peru, the alleged victim's

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defense lawyer filed an appeal for annulment against the judgment delivered by the National Terrorism Chamber (supra para. 88(70)), which was rejected by the Supreme Court of Justice on February 13, 2002 (supra para. 88(72)).

152. The Court considers that, during the civil proceeding, the alleged victim's right to be heard by a competent, independent, and impartial tribunal, previously established by law, was respected, in both the first and second instance.

153. The representatives of the alleged victim argued that the judges in the civil jurisdiction lacked independence and impartiality (supra para. 130(2)(f)). The Court observes that the alleged victim's defense lawyer filed an objection on May 2, 2001, which was rejected by the National Terrorism Chamber, because it had been "filed during the continuation of public hearing No. 19 (supra para. 88(59)). Article 40 of the Peruvian Code of Criminal Procedure established that this objection should have been "filed before the same tribunal, up to three days before the hearing was set." [FN248]

[FN248] Cf. Article 40 of the Peruvian Code of Criminal Procedure (file of probative evidence provided by the State, tome 12, folios 9174 to 9342).

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154. In this regard, the Human Rights Committee has indicated that:

The purpose of Article 5, paragraph 2(b) of the Optional Protocol is, inter alia, to direct possible victims of violations of the Covenant provisions to seek, first, satisfaction from the competent State Party and, also, based on individual complaints, to allow States Parties to examine the implementation of the provisions of the Covenant, in their territory and by their organs and, if necessary, to remedy the violations that occur before the Committee hears the matter. [FN249]

[FN249] Cf. UN. Human Rights Committee, T.K. vs France, (220/1987), report of November 8, 1989, para. 8(3).

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155. Consequently, This Court cannot hear this allegation of bias, because it was not raised at the appropriate time in the domestic jurisdiction.

156. In view of the above, this Court considers that it has not been proved that the State violated Article 8(1) of the Convention to the detriment of the alleged victim in relation to the trial against her in the ordinary jurisdiction.

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Presumption of innocence

157. Article 8(2) of the Convention stipulates that:

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Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. […]

a) Criminal proceeding in the military jurisdiction

158. During the military proceeding, DINCOTE exhibited Lori Berenson before the media as the perpetrator of the crime of treason, when she had not been duly prosecuted and convicted (supra para. 88(28)).

159. The European Court has stated that:

[the right to] the presumption of innocence may be infringed not only by a judge or court but also by other public authorities.
[…]
Article 6 paragraph 2 (of the European Convention) cannot therefore prevent the authorities from informing the public about criminal investigations in progress, but it requires that they do so with all the discretion and circumspection necessary if the presumption of innocence is to be respected. [FN250]

[FN250] Cf. Eur. Court H.R., case Allenet de Ribemont v France, judgment of 10 February 1995, Series A no. 308, paras. 36 and 38.
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160. The right to presumption of innocence, as it is understood from Article 8(2) of the Convention, requires that the State should not convict an individual informally or emit an opinion in public that contributes to forming public opinion, while the criminal responsibility of that individual has not been proved. [FN251]

[FN251] Cf. Case of Tibi, supra note 3, para. 182; Case of Ricardo Canese, supra note 3, para. 153; and Case of Cantoral Benavides, supra note 25, para. 120.
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161. Consequently, the Court considers that the State violated Article 8(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Lori Berenson, in the criminal proceeding in the military jurisdiction.

b) Criminal proceeding in the ordinary jurisdiction

162. The alleged victim's representatives stated that, during the processing of the civil trial, the right to presumption of innocence had not been respected (supra paras. 130(2)(d).

163. In this regard, the Court considers that, there are elements in the body of evidence before the Court, which prove that the right to presumption of innocence was respected in the

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processing of the proceeding in the ordinary criminal jurisdiction, in the pre-trial investigation and during the oral proceeding.

164. Consequently, this Court considers that it has not been proven that the State violated Article 8(2) of the Convention to the detriment of the alleged victim in relation to the trial against her in the ordinary jurisdiction.

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Adequate time and means for the preparation of the defense

165. Article 8(2) of the Convention establishes In this regard that:

2. […]. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

[...]

b. prior notification in detail to the accused of the charges against him;

c. adequate time and means for the preparation of his defense;

d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

a) Criminal proceeding in the military jurisdiction

166. Principle No. 8 of the Basic Principles on the Role of Lawyers concerning special safeguards in criminal cases, which establishes the standards for the adequate exercise of the defense in these cases, stipulates that:

All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials. [FN252]

[FN252] Cf. Case of Castillo Petruzzi et al., supra note 25, para. 139; and Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in La Havana (Cuba) from August 2, to September 7, 1990.

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167. The restriction of the task of the alleged victim's defense lawyer and the limited possibility of presenting evidence for the defense during the trial in the military jurisdiction has been demonstrated in this case (supra para. 88(27)). Indeed, the alleged victim was not informed fully and opportunely of the charges against her; the free and confidential communication between Lori Berenson and her defense lawyer was obstructed; the judges responsible for the proceedings for treason were unidentified or "faceless" officials, so it was not possible for Lori Berenson and her lawyer to know whether there were grounds for raising objections to them and to be able to prepare an adequate defense; and the alleged victim's lawyer only had access to the

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file the day before the delivery of the first-instance judgment. Consequently, the presence and action of the defense lawyer was a mere formality. It cannot be maintained that the alleged victim was defended adequately. [FN253]

[FN253] Cf. Case of Cantoral Benavides, supra note 25, para. 127; and Case of Castillo Petruzzi et al., supra note 25, para. 148.

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168. From the above, the Court concludes that the State violated Article 8(2)(b) 8(2)(c) and 8(2)(d) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Lori Berenson, in the proceeding in the military jurisdiction.

b) Criminal proceeding in the ordinary jurisdiction

b(1) Right to defense

169. The records before this Court concerning the trial in the civil jurisdiction, allow it to affirm that, during this stage, the alleged victim had the necessary means to prepare a defense with the intervention of a lawyer who could exercise his role according to the requirements of an adequate criminal defense.

170. Looking at the proceeding as a whole, it can be seen that the alleged victim was heard, as indicated, by a competent, independent and impartial tribunal, previously established by law, as corresponded to her case (supra para. 88(58)); she had access to a defense lawyer throughout the proceedings; the latter could cross-examine the witnesses during the pre-trial investigation and during the hearings of the oral proceeding, which was public, and could also provide evidence. The defense lawyer was able to raise objections and carry out confrontations, and he was able to appeal the judgment before a higher judge or court.

b(2) Evidence in the civil trial

171. Taking into account the characteristics of the military trial, about which this Court has already ruled, and also the arguments of the alleged victim's defense lawyers concerning the 'allegedly unlawful origin of the evidence adduced' and the 'unconstitutional nature of the legislative framework in force', this Court will only refer to the trial held directly before the civil court.

172. During the pre-trial investigation stage in the ordinary jurisdiction, procedures such as the following were carried out (supra para. 88(50)): testimonial statements of Lori Berenson and 30 other individuals; confrontation procedures; visual inspection; expert reports; ratification of expert reports; request for documentary evidence from different public and private entities, and incorporation of this evidence. Also, during the oral proceeding, the following probative procedures were carried out (supra para. 88(58)): testimonial statements, including that of Lori Berenson; confrontations; documentary evidence was obtained; expert reports; ratification of expert reports; exhibition and transcript of videos; "listing and examining of probative

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evidence." The procedures described above were designed to prove the facts on which the charges against Lori Berenson were founded in the trial against her in the ordinary jurisdiction.

173. On June 20, 2001, the National Terrorism Chamber issued a judgment (supra para. 88(69) convicting Lori Berenson. On July 3, 2001, her defense lawyer filed an appeal for annulment (supra para. 88(70)). On February 13, 2002, the Supreme Court of Justice of Peru rejected the appeal for annulment of the judgment delivered by the National Terrorism Chamber and confirmed the proceeding (supra para. 88(72)).

174. When examining the whole proceeding in the ordinary jurisdiction, it can be seen that the elements of evidence from the military trial were presented in it, and also elements of evidence gathered directly by the ordinary jurisdiction. The Court considers that the former evidence is inadmissible, taking into account the circumstances in which it was produced. At the same time, this Court notes that, as has been stated and confirmed, probative evidence was produced in the course of the civil proceeding that led to establishing the facts on which the trial and the corresponding judgment were founded. Evidently, the Court does not rule on the effectiveness of this evidence in this specific case, since this corresponds to the domestic jurisdiction.

b(3) Grounds for the judgment in the ordinary criminal jurisdiction

175. The Commission also argued that the grounds for the judgment convicting the alleged victim in the ordinary jurisdiction were not described, since the evidence on which this decision was based was not made explicit and its probative value was not examined (supra para. 129(2)(j)). The State indicated that, in Peru, "questions of fact" are not grounded, rather they are defined using the "criterion of conscience" and by means of a document which, pursuant to Article 281 of the Peruvian Code of Criminal Procedure, has previously been voted on by the judge (supra para. 131(g)), and which appears in the body of evidence of this case (supra para. 88(61)).

176. The concept of due process of law in criminal cases should include, at the very least, the minimum guarantees established in Article 8 of the Convention. By referring to them as minimum guarantees, the Convention assumes that additional guarantees may be necessary in specific circumstances to ensure a fair hearing. [FN254]

[FN254] Cf. Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 24.

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177. Article 139(5) of the Peruvian Constitution, which refers to the principles and rights of the jurisdictional function, requires:

[t]he written reasoning behind judicial decisions in all instances, except decisions on mere procedures, with specific mention of the applicable law and the factual grounds that support it.

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178. The Court notes that, when delivering judgment, the national tribunal adhered to the provisions of Articles 281 and 283 of the Code of Criminal Procedure. [FN255] These Articles state that:

Article 281
To deliver judgment, the Court shall previously set out and vote on each of the questions of fact, bearing in mind, when formulating them, the written conclusions of the prosecutor, the defense lawyers, and the civil party. Then a vote will be held on the penalty. Both decisions shall be stated in the judgment.

Article 283
The facts and the evidence that supports them shall be assessed using the criterion of conscience.

[FN255] Cf. Code of Criminal Procedure of Peru (file of probative evidence provided by the State, tome 12, folios 9174 to 9342).
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179. Therefore, the judgment delivered in the civil trial that convicted Lori Berenson (supra para. 88(69)) was formulated in accordance with the criteria for assessing the evidence and stating the grounds for the facts established in Peruvian legislation. The Inter-American Court will not rule on the choice of this system of assessing evidence, which is closely related to that observed in the trial by jury adopted by several legal systems.

180. Finally, the Court observes that, in several considering paragraphs of the judgment of June 20, 2001 (supra paras. 88(62) to 88(69)), the National Terrorism Chamber formulated its reasoning in relation to the evidence that it admitted and accepted to support the judgment.

181. In view of the above, this Court considers that it has not been proved that the State violated Article 8(2)(b), (c) and (d) of the Convention to the detriment of the alleged victim in relation to the trial against her in the ordinary jurisdiction.

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Right to examine witnesses

182. Article 8(2)(f) of the Convention stipulates:

2. […] During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
[...]
f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;

a) Criminal proceeding in the military jurisdiction

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183. The Court considers, as it has on previous occasions, that Article 13(c) of Decree Law No. 25,475 applied in this case, prevented exercising the right to cross-examine witnesses whose statements provided grounds for the charged against the alleged victim. [FN256] On the one hand, the cross-examination of the police and army agents who had taken part in the investigation procedures was disallowed. [FN257] On the other hand, as has been indicated (supra para. 88(27)), the fact that the defense lawyer did not intervene until the alleged victim had made her statement to the police, meant that he was unable to refute the evidence compiled and on record in the police investigation report. [FN258]

[FN256] Cf. Case of Castillo Petruzzi et al., supra note 25, para. 153.
[FN257] Cf. Case of Cantoral Benavides, supra note 25, para. 127; Case of Castillo Petruzzi et al., supra note 25, para. 153; and Article 13, paragraph (c) of Decree Law No. 25,475 (file of probative evidence provided by the State, tome 12, folios 9355 to 9368).
[FN258] Cf. Case of Castillo Petruzzi et al., supra note 25, para. 153.

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184. The Inter-American Court has indicated, as has the European Court, that the defendant has the right to examine witnesses who testify for and against him, in the same conditions, in order to defend himself. [FN259]

[FN259] Cf. Case of Castillo Petruzzi et al., supra note 25, para. 154; Eur. Court H. R., case of Barberà, Messegué and Jabardo, decision of December 6, 1998, Series A no. 146, para. 78; and Eur. Court H. R., case of Bönishc, judgment of May 6, 1985, Series A no. 92, para. 32.

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185. Imposing restrictions on the alleged victim and the defense lawyer violates this right, established in the Convention, and also their right to call witnesses who might shed light on the facts. [FN260]

[FN260] Cf. Case of Ricardo Canese, supra note 3, para. 166; and Castillo Petruzzi et al., supra note 25, para. 155.

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186. Consequently, the Court declares that the State violated Article 8(2)(f) of the Convention to the detriment of the alleged victim, in relation to Article 1(1) thereof, in the criminal proceeding in the military jurisdiction.

b) Criminal proceeding in the ordinary jurisdiction

187. The Court has established that, even though the restriction contained in Article 13(c) of Decree Law No. 25,475 was still in force in Peru, the alleged victim's defense lawyer had and exercised the right to examine the witnesses who testified during the pre-trial investigation stage

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and during the oral proceeding in the ordinary jurisdiction (supra paras. 88(50) and 88(58)), and also to present the witnesses he considered pertinent.

188. During the processing of the trial in the ordinary criminal jurisdiction, several police agents were summoned to testify at the request of the prosecutor (supra para. 88(51)) and the alleged victim's defense lawyer did not make any request In this regard. Only one of the police agents proposed by the prosecutor testified before the tribunal (supra para. 88(50)), and the defense lawyer raised no objection when the prosecutor waived the appearance of the others.

189. Consequently this Court considers that, in the instant case, it has not been proved that the State violated Article 8(2)(f) of the Convention to the detriment of the alleged victim in the trial against her in the ordinary jurisdiction.

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Right to appeal the judgment to a higher judge or court

190. Article 8(2)(h) of the Convention indicates:

2. […] During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

[...]

h) the right to appeal the judgment to a higher court.

a) Criminal proceeding in the military jurisdiction

191. The Court has observed in previous cases that the legislation applicable to crimes of treason has established the possibility of filing an appeal against the first-instance judgment and an appeal for annulment against the second-instance judgment. [FN261] Apart from these remedies, there is the special appeal for review of res judicata, based on the presentation of supervening evidence. In this case, the said appeals were filed by the alleged victim's defense lawyer. Lastly, there is the possibility of filing an appeal for annulment before the Supreme Court of Justice against decisions of the military courts with regard to civilians. However, this remedy, embodied in the 1993 Constitution, was only admissible in cases of treason when the death penalty had been imposed. [FN262]

[FN261] Cf. Case of Castillo Petruzzi et al., supra note 25, para. 160.
[FN262] Cf. Articles 141 and 173 of the 1993 Constitution of Peru.

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192. Nevertheless, trials against civilians in military courts for the crime of treason violate the guarantee of the competent, independent and impartial tribunal, previously established by law, stipulated in Article 8(1) of the Convention (supra paras. 88(13) to 88(37)). The Court has indicated that:

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The right to appeal the judgment, embodied in the Convention, is not satisfied merely because there is a higher court than the one that tried and convicted the accused and to which the latter has or may have recourse. For a true review of the judgment, in the sense required by the Convention, the higher court must have the jurisdictional authority to take up the particular case in question. It is important to underscore the fact that from first to last instance, a criminal proceeding is a single proceeding in various stages. Therefore the concept of a tribunal previously established by law and the principle of due process apply throughout all those phases and must be observed in all the various procedural instances. If the court of second instance fails to satisfy the requirements that a court must meet to be a competent, independent and impartial tribunal, previously established by law, then the phase of the proceeding conducted before it cannot be deemed either lawful or valid. [FN263]

[FN263] Cf. Case of Castillo Petruzzi et al., supra note 25, para. 161.

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193. In the instant case, the second-instance court was part of the military structure and, as such, did not have the independence necessary to act as or be a natural judge to try civilians. Therefore, although remedies, albeit very restrictive ones, did exist that could be used by defendants, there were no real guarantees that the case would be reconsidered by a higher court that satisfied the requirements of competency, impartiality and independence established in the Convention. [FN264]

[FN264] Cf. Case of Castillo Petruzzi et al., supra note 25, para. 161.

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194. In view of the above, the Court declares that the State violated Article 8(2)(h) of the Convention to the detriment of the alleged victim, in relation to Article 1(1) thereof, in the proceeding in the military jurisdiction.

b) Criminal proceeding in the ordinary jurisdiction

195. On July 3, 2001, the alleged victim's defense lawyer filed an appeal for annulment of the judgment delivered by the National Terrorism Chamber on June 20, 2001 (supra para. 88(70)). On February 13, 2002, the Supreme Court of Justice rejected the annulment of this judgment.

196. According to the decisions in this judgment with regard to Article 8(1) of the Convention (supra paras. 151 to 156), in relation to the conduct of the State authorities during the civil proceeding as a whole, the Court considers that it has not been proved that the State violated Article 8(2)(h) of the Convention to the detriment of the alleged victim in the trial against her in the ordinary jurisdiction.

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Public proceeding

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197. Article 8(5) of the Convention establishes that:

Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

a) Criminal proceeding in the military jurisdiction

198. The Court considers that it has been proved that military trials of civilians who had allegedly committed crimes of treason were held with "faceless" judges and prosecutors, and were subject to restrictions which meant that they violated due process. Such restrictions included the fact that these trials were held on military premises, to which the public did not have access. The trial proceedings, including the hearing on merits, were held in these circumstances of secrecy and isolation. Evidently the right to the public nature of the proceeding embodied in the Convention was not respected. [FN265]

[FN265] Cf. Case of Cantoral Benavides, supra note 25, paras. 146 and 147; and Case of Castillo Petruzzi et al., supra note 25, para. 172.

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199. In view of the above, the Court considers that the State violated Article 8(5) of the Convention to the detriment of Lori Berenson, in relation to Article 1(1) thereof, in the criminal proceeding in the military jurisdiction.

b) Criminal proceeding in the ordinary jurisdiction

200. Proceedings in the ordinary jurisdiction were held before identifiable judges, on premises to which the public had access. The hearings of the oral proceeding were publicized through the media. Hence, in the ordinary jurisdiction, the right to the public nature of the proceeding embodied in Article 8(5) of the Convention was respected.

Non bis in idem

201. With regard to the arguments of the representatives of the alleged victim concerning the violation, to the detriment of Lori Berenson, of the judicial guarantee that prohibits a person being tried twice for the same facts, the Court observes that the principle non bis in idem is included in Article 8(4) of the Convention as follows:

4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause.

202. The elements that compose the situation regulated by Article 8(4) of the Convention include "a first trial culminating in an acquittal by a non-appealable judgment." [FN266]

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[FN266] Cf. Case of Cantoral Benavides, supra note 25, para. 137.

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203. In this judgment (supra paras. 139 to 150), the Court has ruled that the application of military criminal justice to civilians violates the provisions relating to the competent, independent and impartial judge (Article 8(1) of the American Convention).

204. This determination is congruent with the reasoning of the Court in the Cantoral Benavides, Castillo Petruzzi et al., Cesti Hurtado, and Durand and Ugarte cases. [FN267] In the first three, this Court declared that military justice applied to civilians violates the norms of the American Convention as regards a competent, independent and impartial judge, and in the third case, it ruled on the limits to the natural competence of military justice.

[FN267] Cf. Case of Cantoral Benavides, supra note 25, para. 139; Case of Durand and Ugarte, supra note 210, para. 117; Case of Cesti Hurtado. Judgment of September 29, 1999. Series C No. 56, para. 151; and Case of Castillo Petruzzi et al., supra note 25, para. 128.

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205. In this case, according to the representatives, the first trial is constituted by the proceedings conducted by the military criminal court against Lori Berenson for the crime of treason.

206. In keeping with this, in the instant case, the violation of the principle of access to a competent, independent and impartial tribunal, previously established by law, is sufficient to determine that the procedures carried out and the decisions adopted by the authorities in the exclusive military jurisdiction in relation to Lori Berenson, did not constitute a real proceeding under Article 8(4) of the Convention.

207. Moreover, the alleged victim's defense lawyer filed a appeal for review of res judicata on December 7, 1999, before the Supreme Council of Military Justice (supra para. 88(38), which subsequently admitted this appeal (supra para. 88(43)), and forwarded the main case records to the Supreme Military Tribunal. The latter handed down its judgment on August 24, 2000, waiving competence and disqualified itself in favor of the ordinary jurisdiction, since there were facts that "indicated that the crime of terrorism had been committed, which was penalized by Decree Law No. 25,475, which fell within the competence of the ordinary jurisdiction" (supra para. 88(44)).

208. The trial in the military jurisdiction against Lori Berenson terminated with a non-appealable judgment delivered by the Supreme Council of Military Justice, which waived competence in favor of the ordinary jurisdiction, without ruling on merits. Consequently, since there had been no ruling on merits in the military jurisdiction, the essential element for declaring that the non bis in idem principle has been affected does not exist.

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209. Based on the above, the Court considers that, in the circumstances of the instant case, it has not been proved that the State violated Article 8(4) of the Convention to the detriment of the alleged victim.

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210. In light of the above, since the alleged victim was sentenced as the result of a civil trial, during which it has not been considered that Article 8 of the American Convention was violated, the Court considers that it is not in order for it to require Lori Berenson's liberation.

XI. ARTICLES 7 AND 11 OF THE AMERICAN CONVENTION (RIGHT TO PERSONAL LIBERTY AND RIGHT TO PRIVACY)

211. Regarding Articles 7 and 11 of the Convention, the representatives of the alleged victim argued that:

a) "The failure of Decree Law [No.] 25,475 to describe the crime of terrorism sufficiently clearly and specifically, so as to explain what is prohibited to the police, the prosecutors, the courts and the public[,] violates Article 7 [of the American Convention,] since there is no clear definition of what constitutes the criminal conduct";
b) Decree Law No. 25,475 "does not define the criminal acts clearly[; this] makes it impossible for the State of Peru to inform the defendant […] about the relevant provisions of the Constitution or the laws enacted pursuant to them;"
c) The State violates the right to personal liberty established in Articles 7(2) and 7(4) of the Convention when "it deprives any person of their physical liberty or detains a person under Decree Law [No.] 25,475";
d) The public hearing stage of the civil trial began on March 20, 2001, a delay which violated "Articles 7(4) and 8(2)(b) of the Convention"; and
e) Former President Fujimori "had already used Lori Berenson for political ends during the scandalous electoral campaigns of April and May, 2000." The alleged victim "was the 'symbol fabricated' by Fujimori's hard stance on terrorism, in clear violation of the rights conferred on her by Articles 5(1), 5(2), 11(1), 11(2) and 11(3) of the American Convention".

Considerations of the Court

212. Article 7 of the American Convention establishes that:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
[…]
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
[…]

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213. Article 11 of the American Convention stipulates:

1. Everyone has the right to have his honor respected and his dignity recognized.
2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.
3. Everyone has the right to the protection of the law against such interference or attacks.

214. The Court observes that the violations of Articles 7 and 11 were submitted by the representatives of the alleged victim in their brief with final arguments, so that the State did not have the procedural opportunity to present its arguments in that respect. Accordingly, the Court will not rule on the alleged violations of Articles 7 and 11 of the Convention, because they were not submitted at the appropriate procedural opportunity.

XII. VIOLATION OF ARTICLE 2 OF THE AMERICAN CONVENTION (DOMESTIC LEGAL EFFECTS)

Arguments of the Commission

215. With regard to the violation of Article 2 of the American Convention, the Commission argued that:

a) The State violated the obligation to adopt provisions of domestic law, established in Article 2 of the Convention, "by enacting and enforcing Decree Laws Nos. 25,475 and 25,659";
b) The fact that Decree Laws Nos. 25,475 and 25,659 are in force implies that the Peruvian State "has not taken adequate legislative measures to give effect to the rights embodied in the Convention"; and
c) It acknowledges that the judgment of the "Constitutional Court [of Peru of January 3, 2003,] and the subsequent legislative decrees constitute progress in the matter, although this does not mean that the adaptation of the said legislation is complete."

Arguments of the representatives of the alleged victim

216. Regarding the violation of Article 2 of the American Convention, the representatives of the alleged victim argued that:

a) "Further delay in eliminating all use of Decree Law [No.] 25,475 and in ending all the violations of the American Convention […] resulting from its previous and continuing enforcement, will cause great harm to the victims of such violations, the integrity of the laws, the legal system, the rights of the Peruvian people, and the cause of human rights in the hemisphere"; and
b) The promulgation of "seven laws modifying the anti-terrorist legislation" did not eliminate the defects of the norms used to try Lori Berenson before the civil court and were subsequent to her trial, so that they had no effect on the alleged victim's rights.

Arguments of the State

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217. Regarding the violation of Article 2 of the American Convention, the State argued that:

a) the Peruvian State "is in the midst of a transition process, which includes adapting its domestic legislation to the international standards established in the Convention and in the Court's case law; this process must be carried out over a reasonable period of time in order to continue with the regular procedures of a democratic State";
b) Compliance with the obligation to adapt domestic law to the Convention, cannot be "instantaneous," but involves complying "in accordance with constitutional procedures"; and
c) The State's conduct after November 2000 corresponds "to a genuine intention to comply fully with its international human rights obligations."

Considerations of the Court

218. Article 2 of the Convention provides that:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

219. The Court affirms, as it has on other occasions, that the general obligation, established in Article 2 of the American Convention entails the adoption of two types of measure:

On the one hand, derogation of rules and practices of any kind that imply the violation of guarantees in the Convention. On the other hand, the issuance of rules and the development of practices leading to effective enforcement of the said guarantees. [FN268]

[FN268] Cf. Case of the "Juvenile Reeducation Institute", supra note 3, para. 206; Case of the "Five Pensioners". Judgment of February 28, 2003. Series C No. 98, para. 165; and Case of Baena Ricardo et al., supra note 216, para. 180.
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220. In international public law, a universally accepted customary law establishes that a State, which has ratified a human rights treaty, must introduce the necessary modifications into its domestic law to ensure proper compliance with the obligations it has assumed. [FN269] The American Convention establishes the general obligation of each State Party to adapt its domestic law to the provisions of the Convention, in order to guarantee the rights it embodies. [FN270] This general obligation of the State Party implies that the measures of domestic law must be effective (the principle of effet utile). [FN271] This means that the State must adopt all measures to ensure that the provisions of the Convention are effectively fulfilled in its domestic legal system, as Article 2 of the Convention requires. [FN272]

[FN269] Cf. Case of the "Juvenile Reeducation Institute", supra note 3, para. 205; Case of Bulacio, supra note 217, para. 140; and Case of the "Five Pensioners", supra note 268, para. 164.

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[FN270] Cf. Case of the "Juvenile Reeducation Institute", supra note 3, para. 205; Case of Bulacio, supra note 217, para. 142; and Case of the "Five Pensioners", supra note 268, para. 164.
[FN271] Cf. Case of the "Juvenile Reeducation Institute", supra note 3, para. 205; Case of Bulacio, supra note 217, para. 142; and Case of the "Five Pensioners", supra note 268, para. 164.
[FN272] Cf. Case of the "Juvenile Reeducation Institute", supra note 3, para. 205; Case of Bulacio, supra note 217, para. 142; and Case of the "Five Pensioners", supra note 268, para. 164.
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221. The Court has indicated that the States Parties to the Convention may not enact measures that violate the rights and freedoms it recognizes. [FN273] This Court has also affirmed that "a norm may violate per se Article 2 of the Convention, whether or not it has been enforced in [a] specific case." [FN274]

[FN273] Cf. Case of the Gómez Paquiyauri Brothers, supra note 16, para. 71; Case of Baena Ricardo et al., supra note 216, para. 182; Case of Cantoral Benavides, supra note 25, para. 176; and International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (arts. 1 and 2 American Convention on Human Rights), Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 36.
[FN274] Cf. Case of "The Last Temptation of Christ" (Olmedo Bustos et al.). Judgment of February 5, 2001. Series C No. 73, para. 72; Case of Baena Ricardo et al., supra note 216, para. 183; and Case of Cantoral Benavides, supra note 25, para. 176.
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222. Furthermore, the Court finds, as it has on previous occasions, that the provisions of the emergency laws adopted by the State to deal with terrorism, in particular Decree Laws Nos. 25,475 and 25,659, enforced in the case of Lori Berenson during the military trial, violated Article 2 of the American Convention, because the fact that these decrees were enacted and in force in Peru at the time when the military trial against Lori Berenson was held, meant that the State had not taken proper domestic legal measures to give effect to the rights embodied in the Convention, despite having ratified it. [FN275]

[FN275] Cf. Case of Cantoral Benavides, supra note 25, para. 178; and Case of Castillo Petruzzi et al., supra note 25, para. 207.
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223. The Court has observed that, on the one hand, the judgment delivered by the Constitutional Court on January 3, 2003 (supra para. 88(7)) declared that the definition of the crime of treason contained in Decree Law No. 25,659 was unconstitutional and, on the other hand, procedural norms were issued for prosecuting terrorism. However, in this judgment, it is not in order to examine the scope of these reforms, because they do not affect Lori Berenson's legal status.

224. The judgment handed down against Lori Berenson in the military jurisdiction (supra para. 88(30)) was based on legislation that was incompatible with the American Convention. The

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proceedings of that trial violated the rights to judicial protection and to due process embodied in the Convention.

225. The Court notes that the State is implementing a process of reform in order to adapt its domestic legislation to the American Convention.

226. Consequently, the Court concludes that, when the military trial against Lori Berenson was held, the State failed to comply with the obligation established in Article 2 of the American Convention.

XIII. REPARATIONS APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION

Arguments of the Commission

227. In relation to Article 63(1) of the Convention, the Commission argued that:

a) Lori Berenson should be the beneficiary of the reparations ordered by the Court as a result of the violations that are declared;
b) The State should adopt the necessary measures under the provisions of its domestic law to ensure that the violations of Lori Berenson's human rights cease;
c) The State should guarantee Lori Berenson the enjoyment of her human rights that have been violated, and adopt pecuniary and non-pecuniary reparations;
d) As a guarantee of non-repetition, the State should modify Decree Laws Nos. 25,475 and 25,659, "given their [...] incompatibility with the Convention";
e) The State should be ordered "to pay the relevant costs incurred at the national level, and also those incurred at the international level by processing the case before the Commission and […] the Court"; and
f) The argument on admissibility presented by the State, namely, that it had not submitted "to the Court the matter of the compensatory rights that the Commission ha[d] calculated in favor of Lori Berenson […], because it considered that the procedural mechanisms which domestic legislation provides to all individuals to request reparation for any damages they allege they have suffered had been available to her and she had not used them," was totally time-barred and refers to matters that had already been decided, in both the report on admissibility and the report on merits."

Arguments of the representatives of the alleged victim

228. In relation to Article 63(1) of the Convention, the representatives of the alleged victim requested that:

a) The State should carry out an "immediate modification" of the Peruvian anti-terrorist legislation to adapt it to the norms of international law, in accordance with the American Convention;

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b) The State should conduct an investigation into the facts of the case, to identify and sanction those responsible for the unlawful acts committed against Lori Berenson, and adopt all measures of domestic law necessary to comply with this obligation;
c) The State should establish a precise legal definition of the term "terrorism." "Terrorist acts" should be prosecuted when they are committed by the State or any person or organization;
d) Peruvian legislation should establish a classification of "political prisoners", which complies with the requirements of international law;
e) The State should provide full information to the Peruvian people "that the propaganda campaigns of the Fujimori-Montesinos Government, relating to political violence, were only for political ends, and that these corrupt distortions of the truth were intended to manipulate public opinion, justify the State's violence, and punish the underprivileged sectors"; and also provide information "on the existence of the propaganda campaigns of the Fujimori-Montesinos Government and the support they had as regards Lori Berenson's detention, the charges and the trials";
f) Lori Berenson "[d]id not request any pecuniary reparation for [her] own benefit" and her family did not "request pecuniary compensation for its expenses and personal losses" because "they [did] not wish to increase the impoverishment of the [Peruvian] people";
g) "It was Fujimori and Montesinos who should have] compensated [Lori Berenson], on behalf of the Peruvian people," for the alleged violations against her. They requested that the State be called upon to transfer to the Inter-American Court the sum of "[US$]2,000,000 [(two million United States dollars)] from the assets that is has now or may acquire in the future of Mr. Fujimori or Mr. Montesinos, or other individuals who participated in their unlawful acts." This compensatory amount should be deposited in a special fund "set up for the benefit of the mistreated, excluded and poor of Peru, and should be distributed by the Church and by non-governmental organizations." This sum would correspond to legal expenses, travel, loss of earnings of the alleged victim's parents owing to their taking early retirement, loss of earnings and future expenses of Lori Berenson for medical and dental care, arising from her imprisonment in cruel, inhuman and degrading conditions;
h) As additional non-pecuniary reparation, "the corruption of justice and the brutality inflicted by the armed forces, the Peruvian National Police (PNP), and the prison personnel [should be prohibited], and those responsible should be separated from their positions in the correctional system and made accountable for their acts";
i) In addition to the amount indicated above, an "adequate sum" should be paid to Lori Berenson's parents for "more than eight years and a half of inhuman and health-destroying treatment, and also for the defamation endured by [Lori Berenson] over a period corresponding to more than a quarter of her life and that will affect her for the rest of her days"; and
j) The alleged victim be liberated after eight years and a half of "grave violations of her rights."

Arguments of the State

229. With regard to Article 63(1) of the Convention, the State argued that:

a) It does not agree with the item on reparation contained in Report 36/02, because it considers that the alleged victim "ha[d] full access to domestic channels to settle any additional

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claim related to her imprisonment conditions, or the conditions in which the police and military proceedings against her were conducted";
b) It was "inadmissible to order compensation in favor of Lori Berenson, and inadmissible to introduce a procedural opportunity not established in the Rules of Procedure for the Commission to substitute the petitioner" as regards reparations;
c) It had repaired the violations of Lori Berenson's human rights prior to the Commission's Report and had respected her human rights in the trial and judgment in the civil court; also " it was complying with its obligations under Article 1(1) of the American Convention, in relation [to Lori Berenson,]";
d) Lori Berenson "did not […] request compensation or any financial reparation from the Peruvian courts";
e) "[N]either the alleged victim, nor her defense lawyers, nor her next of kin have requested compensation or financial reparation in this case within the time established in Article 35(4) of the Rules of Procedure of the Court in force in 2002," nor "have they provided the Court with evidence of pecuniary damage";
f) "The Commission's request 'to order the Peruvian State to adopt the necessary measures to reform Decree Laws N[os.] 25,475 and 25,659 […]' [should be declared] inadmissible, because the State carried out these reforms as a result of the judgment of the Constitutional Court of January 3, 2003, delivered in case file No. 010-2002-AI/TC (Marcelino Tineo Silva and more than 5,000 citizens), and the legislative decrees promulgated to comply with it";
g) The Commission's request is inadmissible inasmuch as it proposes the payment of costs and expenses, because "the State has declared that it acknowledges its responsibility for the acts committed by its authorities prior to November 2000"; therefore, it requested the Court "to bear in mind that this case had not been brought owing to the State's reluctance to comply with its human rights obligations," but "the proceeding before the Court ha[d] been brought owing to the insistence of the Commission […] and the representatives of the alleged victim"; and
h) The fact that the case has been filed before the Court and that the State has defended its position in relation to the Commission's application "does not justify imposing the payment of procedural costs in favor of the alleged victim".

Considerations of the Court

230. As described in previous chapters, the Court has found that, at the time of the facts of this case, the State violated Articles 5 (Right to Humane Treatment) with regard to the detention conditions endured by Lori Berenson in the Yanamayo Prison, 8 (Right to a Fair Trial), 9 (Freedom from Ex Post Facto Laws) and 2 (Domestic Legal Effects) of the American Convention, in relation to the military trial, all in relation to Article 1(1) thereof, to the detriment of Lori Berenson. In its consistent case law, the Court has established that it is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to repair it adequately. [FN276] To this end, the Court has based itself on Article 63(1) of the American Convention, according to which:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure

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or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

[FN276] Cf. Case of Tibi, supra note 3, para. 222; Case of the "Juvenile Reeducation Institute", supra note 3, para. 257; and Case of Ricardo Canese, supra note 3, para. 192.

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231. The responsible State may not invoke provisions of domestic law to modify or fail to comply with its obligation to provide reparation, all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law. [FN277]

[FN277] Cf. Case of Tibi, supra note 3, para. 224; Case of the "Juvenile Reeducation Institute", supra note 3, para. 259; and Case of Ricardo Canese, supra note 3, para. 194.

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232. It is evident that the proceeding against Lori Berenson in the military jurisdiction was conducted on the basis of legislation that was incompatible with the American Convention, thereby violating the right to due process embodied in the Convention.

233. As has been said above (supra para. 222), the provisions contained in the emergency legislation adopted by the State to deal with the phenomenon of terrorism, in particular Decree Law No. 25,659, and the procedure regulated in Decree Law No. 25,475, which were enforced in the case of Lori Berenson during the military trial, violated Article 2 of the American Convention. The fact that these decrees had been promulgated and were in force in Peru when the facts occurred meant that, at the time of the trial, the State had not taken adequate measures in domestic legislation to give effect to the rights embodied in the Convention, even though the State had ratified the American Convention.

234. The Court notes that some provisions of Decree Law No. 25,475 have been reformed and that Decree Law No. 25,659 was declared unconstitutional in the judgment delivered by the Constitutional Court on January 3, 2003 (supra para. 88(7)). Furthermore, the Executive issued Legislative Decrees No. 921 of January 17, 2003, No. 922 of February 11, 2003, and Nos. 923 to 927 of February 19, 2003, which, among other provisions, contained the jurisprudential criteria set out in the said judgment (supra para. 88(8)). In this regard, the Court assesses and underscores the efforts made by the State in its recent legislative reforms, because these denote significant progress on the matter.

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235. As regards the other forms of reparation, the Court deems that, taking into account the findings of this judgment with regard to the military and the civil trials, and in accordance with international case law, this judgment constitutes per se a form of reparation. [FN278] However, the Court considers that it is important to order other specific measures of reparation.

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[FN278] Cf. Case of Tibi, supra note 3, para. 243; Case of the "Juvenile Reeducation Institute", supra note 3, para. 299; and Case of Ricardo Canese, supra note 3, para. 205.

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236. As has been proved (supra para. 88(73)), Lori Berenson was imprisoned in the Yanamayo Prison, at almost 3,800 meters above sea level, for two years and eight months, and kept for a year and a half under a regime of continuous solitary confinement, in a small cell, without ventilation, without natural light, without heating, with unhealthy food, deficient sanitary measures and inadequate medical care, which resulted in her health problems (supra para. 88(74)(v)). Also, during the first year of detention, her right to receive visits was severely restricted (supra para. 88(74)(i)).

237. The Court considers that the damage of a non-pecuniary nature caused to Lori Berenson is evident, because it is natural for any person subjected to cruel, inhuman or degrading treatment or punishment, such as that proved in this case, to suffer damage of a non-pecuniary nature. The Court considers that no evidence is required to reach this conclusion. [FN279]

[FN279] Cf. Case of Tibi, supra note 3, para. 244; Case of the "Juvenile Reeducation Institute", supra note 3, para. 300; and Case of the Gómez Paquiyauri Brothers, supra note 16, para. 217.

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238. The Court considers, as it as on other occasions, [FN280] that, taking into account the health problems that Lori Berenson endured, the compensation for non-pecuniary damage should include the need for psychological and medical treatment. Hence, it is considered pertinent to order the State to offer Lori Berenson adequate, specialized medical care.

[FN280] Cf. Case of Tibi, supra note 3, para. 249; Case of Molina Theissen. Reparations, supra note 4, para. 71; and Case of Myrna Mack Chang , supra note 234, para. 266.

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239. The Court observes that, at the domestic level, Lori Berenson was sentenced to pay the sum of S/.100,000.00 (one hundred thousand new soles) for civil reparation in favor of the State (supra para. 88(69)). In this regard, the Court considers that, owing to the pecuniary and non-pecuniary damage inflicted on Lori Berenson as a result of the violations that have been declared (supra paras. 109, 121, 150, 168, 186, 194, 199 and 226), the State should condone this debt as a form of reparation.

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240. Furthermore, and as it has ordered on other occasions, [FN281] the Court considers that, as a measure of satisfaction, the State should publish the section of this judgment entitled Proven Facts, without the corresponding footnotes, and the operative paragraphs, in the official gazette

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and another daily newspaper with national circulation in Peru, at least once, within six months of its notification.

[FN281] Cf. Case of Tibi, supra note 3, para. 260; Case of the "Juvenile Reeducation Institute", supra note 3, para. 315; and Case of Ricardo Canese, supra note 3, para. 209.

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241. The Court considers that the State should adopt immediately the necessary measures to adapt the detention conditions in the Yanamayo Prison to international standards and transfer any other prisoners who cannot be confined at the altitude of this prison owing to their health. In this regard, the State shall provide reports to this Court every six months on this adaptation, which shall be carried out within one year from notification of this judgment.

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242. With regard to expenses and costs, this Court must assess the amount prudently; they include those arising from the actions taken by the alleged victim's representatives in the domestic proceedings and before the inter-American system for the protection of human rights. Taking into account that the representatives have not submitted vouchers, this assessment must be made on the basis of principles of fairness. [FN282]

[FN282] Cf. Case of Tibi, supra note 3, para. 268; Case of the "Juvenile Reeducation Institute", supra note 3, para. 328; and Case of Ricardo Canese, supra note 3, para. 212.

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243. To this end, the Court considers that it is fair to order the payment of US$30,000.00 (thirty thousand United States dollars), to be given to Mark and Rhoda Berenson, for costs and expenses in the domestic proceedings and in the proceedings before the inter-American system for the protection of human rights.

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244. The State shall comply with its obligations by payment in United States dollars or an equivalent amount in Peruvian currency, using the rate of exchange between the two currencies in force on the market in New York, United States of America, the day before payment, to make the respective calculation.

245. The payment for costs and expenses established in this judgment shall not be subject to any current or future tax or charge. The State shall comply with the measures of reparation and the reimbursement of expenses ordered (supra paras. 238, 239 and 243) within six months of notification of this judgment, except with regard to the Yanamayo Prison, where the measures should be complied with according to the provisions of paragraph 241 of this judgment. Should

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the State fall in arrears, it shall pay interest on the amount owed, corresponding to bank interest on arrears in Peru.

246. If, due to causes that can be attributed to the beneficiaries of the payment of costs and expenses, they are unable to receive this within the said period of six months, the State shall deposit such amount in their favor in an account or a deposit certificate in a reputable Peruvian banking institution, in United States dollars or the equivalent in Peruvian currency, in the most favorable conditions permitted by legislation and banking practice. If, after ten years, the compensation has not been claimed, the sum shall be returned to the State, with the interest earned.

247. According to its consistent practice, the Court reserves the right, inherent in its competence, to monitor full compliance with this judgment. The case shall be filed when the State has fully implemented all the provisions of this judgment. Within one year of notification of this judgment, the State shall provide the Court with a first report on the measures taken to comply with it.

XIV. OPERATIVE PARAGRAPHS

248. Therefore,

THE COURT,

DECLARES:

Unanimously, that:

1. The State violated the right to humane treatment embodied in Article 5(1), 5(2) and 5(6) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Lori Berenson, owing to the detention conditions to which she was subjected in the Yanamayo Prison, in the terms of paragraphs 98 to 109 of this judgment.

Unanimously, that:

2. The State violated Articles 9, 8(1), 8(2), 8(2)(b), (c), (d), (f) and (h) and 8(5) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Lori Berenson, with regard to the trial in the military court, in the terms of paragraphs 113 to 121, 139 to 150, 158 to 161, 166 to 168, 183 to 186, 191 to 194 and 198 to 199 of this judgment.

By six votes to one, that:

3. It has not been proved that the State violated Articles 9, 8(1), 8(2), 8(2)(b), (c), (d), (f) and (h), 8(4) and 8(5) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Lori Berenson, with regard to the trial in the civil court, in the terms of paragraphs 124 to 128, 151 to 156, 162 to 164, 169 to 181, 187 to 189, 195 to 196 and 200 to 209 of this judgment.

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Dissenting Judge Medina Quiroga.

By six votes to one, that:

4. When conducting a military trial against Lori Berenson, the State failed to comply with the obligation established in Article 2 of the American Convention, in the terms of paragraphs 218 to 226 of this judgment.

Dissenting Judge Medina Quiroga.

AND ORDERS:

Unanimously, that:

1. The State shall adapt its domestic legislation to the standards of the American Convention, in the terms of paragraphs 233 and 234 of this judgment.

Unanimously, that:

2. This judgment constitutes per se a form of reparation, in the terms of paragraph 235 of this judgment.

Unanimously, that:

3. The State shall publish in the official gazette and in another daily newspaper with national circulation the section entitled “Proven Facts” and the operative paragraphs of this judgment, in the terms of paragraph 240 of this judgment.

Unanimously, that:

4. The State shall provide Lori Berenson with adequate, specialized medical care, in the terms of paragraph 238 of this judgment.

Unanimously, that:

5. The State shall condone the debt established against Lori Berenson for civil reparation in favor of the State, in the terms of paragraphs 239 and 245 of this judgment.

Unanimously, that:

6. The State shall immediately take the necessary measures to adapt the detention conditions of the Yanamayo Prison to international standards, transfer any other prisoners who, owing to their health, cannot be confined at the altitude of that penal establishment, and inform this Court every six months about this adaptation, in the terms of paragraph 241 of this judgment.

Unanimously, that:

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7. The State shall pay the amount established in paragraph 243 of this judgment to Rhoda and Mark Berenson for costs and expenses, in the terms of paragraphs 244 to 246 of this judgment.

Unanimously, that:

8. The State shall reimburse the costs and expenses in accordance with paragraph 243 of this judgment, within six months of notification of this judgment, as established in paragraph 245 of the judgment.

Unanimously, that:

9. The State may comply with its pecuniary obligations by payment in United States dollars or the equivalent amount in local currency, using the exchange rate between the two currencies in force on the New York, United States of America, market, the day before the payment, in order to make the respective calculation.

Unanimously, that:

10. The payment for costs and expenses established in this judgment may not be affected, reduced or conditioned by any current or future taxes or charges, in the terms of paragraph 245 of this judgment.

Unanimously, that:

11. Should the State fall in arrears, it shall pay interest on the amount owed corresponding to the bank interest on payments in arrears in Peru.

Unanimously, that:

12. If, due to causes that can be attributed to the beneficiaries of the payment of costs and expenses, they are unable to receive this within the said period of six months the State shall deposit such amount in their favor in an account or a deposit certificate in a reputable Peruvian banking institution, in the terms of paragraph 246 of this judgment.

Unanimously, that:

13. It shall monitor full compliance with this judgment and shall file the instant case when the State has fully implemented all its provisions. Within one year of notification of this judgment, the State shall provide the Court with a report on the measures taken to comply with it, in the terms of paragraph 247 hereof.

Judge Medina Quiroga informed the Court of her dissenting opinion and Judge Oliver Jackman informed the Court of his separate concurring opinion, both of which accompany this judgment.

Sergio García-Ramírez

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President

Alirio Abreu-Burelli
Oliver Jackman
Antônio A. Cançado Trindade
Cecilia Medina-Quiroga
Manuel E. Ventura-Robles

Juan Federico D.-Monroy
Judge ad hoc

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary

DISSENTING OPINION OF JUDGE MEDINA QUIROGA IN THE JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS OF NOVEMBER 25, 2004, IN THE CASE OF LORI BERENSON MEJÍA

REGARDING ARTICLE 9.

I. In this case and others, the Court has indicated the importance of the principle of legality, stating in paragraph 125 of this judgment that "crimes must be classified and described in precise and unambiguous language that narrowly defines the criminalized conduct, establishing its elements, and the factors that distinguish it from behaviors that are either not punishable or punishable but not with imprisonment. Ambiguity in describing crimes creates doubts and the opportunity for abuse of power, which is particularly undesirable when it comes to ascertaining the criminal liability of individuals and punishing their criminal behavior with penalties that exact their toll on fundamental rights such as life or liberty."

II. The Commission considered that the crime described in article 4 of Decree Law No. 25,475 and contested by the victim's representatives on the grounds described above, violated Article 9 of the American Convention. This called for the Court to examine it carefully and completely in order to decide whether the definition of the crime was compatible with Article 9 of the American Convention.

III. I agree with the Court's consideration that the crime described in article 4 of Decree Law No. 25,475 is an autonomous crime. I also agree that the opinion on whether acts of collaboration exist "should be formed in relation to the definition of the crime of terrorism."

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However, in my opinion, this affirmation requires the Court to rule on the definition of the crime of terrorism established in article 2 of Decree Law No. 25,475, because it was an essential element of the description of unlawful behaviors in article 4. I regret that the Court did not consider it necessary to examine this point.

IV. Examination of this element of the crime appears to be particularly necessary in light of what the national court that heard the Lori Berenson case, and other State bodies, said about it.

V. With regard to the allegation that the definition of the crime was unclear, the judgment of the National Terrorism Chamber of June 20, 2000, indicated: "we cannot say that a proceeding is irregular merely because the definition of the crime is very open or contains very severe sanctions, since the norm establishes the framework of legality, but the Judiciary establishes the framework of justice" (paragraph 88(64)).

VI. The judgment of the Constitutional Court of January 3, 2003, ruled on article 2 of Decree Law No. 25,475, which defined terrorism, and decided that this provision was not unconstitutional, and that "within the margins of reasonable ambiguity contained in this norm," the interpretation criteria established in its judgment would be binding for all legal agents. With this, the said Court appeared to consider that, in order to decide whether a conduct constituted terrorism (and, therefore, in order to determine whether there had been collaboration with terrorism), it was necessary to use certain criteria established in the judgment; this leads to the conclusion that the criteria were absent from the norm itself.

VII. In the testimony of Walter Albán Peralta, Ombudsman of the Republic of Peru, presented by the State, the Ombudsman stated that this judgment of the Constitutional Court "defined and annotated the interpretation of the prohibited conduct in the basic crime of terrorism," adding that the said Court "safeguarded the constitutionality of this norm by defining its objective elements and the open clauses, and by establishing clarifications that are incorporated into the text of this norm," which were intended to "provide sufficient guarantees in light of the principle of legality." These definitions, annotations and clarifications had not been made at the time of the judgment of the National Terrorism Chamber in the Lori Berenson case, because the Constitutional Court's judgment was handed down long after the final decision in that case.

VIII. Finally, responding to the objections on this point, the judgment of the National Terrorism Chamber indicated that "when times and situations change, legislation should also gradually eliminate restrictive norms; in this situation, the courts, via the broad control entrusted to them under the [...] Constitution, should gradually cease to apply those provisions of the laws in force whose social legitimacy and constitutional grounds are no longer reasonable [...]" (paragraph 88(64)).

IX. These decisions by the State show that, in its opinion, there were shortcomings in the description of the crime of terrorism – which, as has been said above, necessarily influenced the crime of collaboration with terrorism – shortcomings that do not appear to have been overcome either in the norm applied in the Berenson case nor in the final judgment handed down. Examination of the National Terrorism Court's judgment of June 20, 2000, does not undermine the objections raised by Ms. Berenson's defense lawyer, but attempts to affirm that the defects in

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the criminal law, in light of the Peruvian Constitution, could be changed "when times and situations change" and when the norms "are no longer reasonable," which did not appear to be the case at the date on which the said judgment was handed down.

X. Therefore, I cannot agree with the decision of the majority of the judges of this Court stated in operative paragraph 3, which relates to Article 9 of the Convention.

REGARDING ARTICLE 8 IN RELATION TO THE TRIAL AGAINST LORI BERENSON IN THE ORDINARY JURISDICTION

XI. For the reasons I will describe below, I dissent from the Court's decision which considered that, article 8 of the American Convention was not violated in the second trial against Ms. Berenson.

XII. Due process of law, embodied in article 8 of the American Convention, is a cornerstone of the system for the protection of human rights. It is the guarantee of all human rights, par excellence, and a requisite sine qua non for the existence of the rule of law, as the Court has insistently maintained in its case law, by stating that Article 8 contains the "series of requirements that must be observed by the procedural bodies so that a person may defend himself adequately against any act of the State that could affect his rights." [FN1]

[FN1] For example, Ivcher Bronstein case. Judgment of February 6, 2001. Series C No. 74. para. 102.

XIII. The Court's role in examining the application of this provision in a criminal trial is important, because its task is to ensure that the decision taken by the national court concerning the guilt or innocence of a defendant is made giving the latter all necessary guarantees to be able to defend himself, and to ensure that the greatest justice is done.

XIV. However, the Court's authority to review domestic trials is limited. When a matter reaches the Court, it has already been decided by the domestic courts. These courts have heard the case and gathered the corresponding evidence directly; consequently, the international organ, which intervenes a posteriori and does not take part directly and personally in gathering the evidence, cannot re-assess the evidence and judge the case anew.

XV. Bearing this in mind, the Inter-American Court, like all the other organs of international supervision, has taken and continues to take great care not to transform itself into one more court, and restricts its work to ensuring that the domestic proceedings have complied scrupulously with the obligations established in Article 8 of the Convention. The Court does not re-assess the evidence of the trial in question, in order to decide, for example, that a defendant in a criminal trial is innocent; rather, it considers whether the domestic courts that decided the case were independent and impartial, whether they have respected the obligation to, inter alia, grant adequate time and conditions for preparing the defense and give the parties the possibility of

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contesting the evidence submitted against them; in brief, whether there has been a violation of the basic procedural norms established in Article 8.

XVI. In this opinion, I will examine what I believe is one of the fundamental defects of the second trial against Ms. Berenson: the evidence that was admitted.

XVII. This Court has decided that paragraphs (b), (c), (d) and (f) of Article 8(2) of the Convention were violated in the trial against Ms. Berenson before the military court. A logical consequence of this is that the evidence submitted in this trial has no validity for this Court. The Court states this in paragraph 171, when it establishes that "[t]aking into account the characteristics of the military trial, about which this Court has already ruled, and also the arguments of the alleged victim's defense lawyers concerning the 'allegedly unlawful origin of the evidence adduced' and the 'unconstitutional nature of the legislative framework in force', this Court will only refer to the trial held directly before the civil court."

XVIII. Moreover, in this case, it is clear that evidence was admitted in the trial in the civil jurisdiction that had been gathered in the trial before the military court, and this Court does not consider such evidence valid. The complaint filed the Provincial Prosecutor ad hoc offered as proof "the significance of the evidence in the case files forwarded by the Exclusive Military Jurisdiction" (Proven facts, paragraph 88(47)). The Superior Prosecutor indicated that the facts described in the Prosecutor's Report of February 15, 2001, had been confirmed, inter alia, by the police investigation report and the records of the house search of two buildings from the trial before the military court. The report also offered as evidence four attachments with documentation from the same military trial (idem, paragraph 88(55)).

XIX. Lori Berenson's defense lawyers contested the validity of these elements of evidence in different ways, one of which was to ask that the file of the case before the military court should be submitted to the trial before the ordinary judge, "in order to verify that the trial complied with the norms of due process of law and to examine the proceedings of the military court, from a judicial perspective" (paragraph 88(57)). They also contested the veracity of the police deposition.

XX. The judgment of the National Terrorism Chamber declared that it was inadmissible to contest the police investigation report, because it considered that the report had been validated by the statements made before the Chamber by a police agent. Moreover, it stated that "the significance of this police investigation report, as regards the nature, methods used and evidence provided in that report, could not be considered accessorily, but as an essential part of the proceeding," that would be carried out "in due course" (paragraph 88(62)). From the point of view of due process and its requirements, I consider that the declaration of a police agent who had intervened in the elaboration of the police investigation report cannot validate that evidence in international law, because its defect is that the police investigation report contains the attestation of procedures that were carried out without any of the guarantees that would have permitted Ms. Berenson to ensure that everything stated therein was true.

XXI. When the defense contested the evidence submitted at the first trial, the National Terrorism Chamber indicated that "even though the police investigation took place at the same

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time as the military court's jurisdictional investigation, it complied with the legal norms in force at the time, and although application of those norms was extremely restrictive and abusive, this did not make the evidence inadmissible, but meant that there were probative defects that had to be serenely assessed within the constitutional framework"; in justification, it added that "the police authority acted in the belief that it was duly complying with the law, but under the jurisdictional control that the military court should have exercised (paragraph 88(63)). These considerations caused the Chamber to affirm that it did not waive its powers to assess legality to decide the evidence that could or could not be incorporated into the proceeding.

XXII. Following these affirmations, there is nothing in the judgment of the National Chamber to suggest that it excluded that evidence from its considerations when determining Ms. Berenson's guilt. To the contrary, everything indicates that the Chamber reserved the right to use it, because it only had probative defects and was not "inadmissible evidence."

XXIII. Bearing all of this in mind, I cannot agree with the statement made by the Court that "[t]aking into consideration the characteristics of the military trial, about which this Court has already ruled, and also the arguments of the alleged victim's defense lawyers concerning the 'allegedly unlawful origin of the evidence adduced' and the 'unconstitutional nature of the legislative framework in force [... it] will only refer to the trial held directly before the civil court." Separating the evidence in this way, implies that the Inter-American Court had the power and was able to distinguish between the evidence used to determine Ms. Berenson's guilt and the evidence that was not taken into account and, therefore, that it could determine that the trial in the civil court did not violate Article 8 of the Convention because it had only used admissible evidence.

XXIV. I disagree with this for two reasons. First, I consider that the Court did not have the power to distinguish between the evidence and reach the conclusion that, when determining Ms. Berenson's guilt, the judgment of the National Terrorism Chamber only used the evidence of the trial in the ordinary jurisdiction. In my opinion, this is transforming the Inter-American Court into a court of fourth instance, which is not permitted, either by the norms that regulate the Court or by its own abovementioned case law. Second, it is impossible to make this distinction in this case, given the way in which a criminal judgment is structured in Peru, which does not indicate specifically the evidence used to conclude which facts have been proved and which have not.

XXV. Consequently, I consider that the State violated Article 8(2) of the American Convention by allowing evidence to be introduced into the trial before the civil court that was not valid, because it did not comply with even the minimum requirements of this provision; and that it should be declared that, since the second trial against Ms. Berenson was tainted by a substantial defect concerning due process of law, the judgment is not valid and there is no justification for Ms. Berenson's imprisonment. The reparation should have been Ms. Berenson's liberation.

XXVI. Another point relating to Article 8 of the Convention is the existence in Decree Law No. 25,475 of article 13(c), which prevented the police agents who had issued the police investigation report being called on to testify. This provision directly violates the provision in Article 8(f) of the Convention. During the hearing on arguments, the State's representative indicated that "in his opinion," this was not applicable in practice. It is possible to suppose that in

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the trial in the civil court, Ms. Berenson's defense lawyers could have called on those agents and that this petition would have been admitted by the National Chamber. Indeed, the Prosecutor called on some of those agents, as is clear from paragraph 88(51) of this judgment; and we can suppose that, if the Prosecutor could make this petition, the defense lawyers could also have done so. But, it is also possible that the defense lawyers might have considered that, since they did not have the right to call on these agents to testify according to the provisions of article 13, there was no point in making the request. There is nothing in the case that allows us to reach one or other conclusion, so that I cannot agree with paragraph 187 of this judgment.

XXVII. Without detriment to this, and even supposing that not calling on those agents to testify was due to an omission on the part of the defense lawyers, I consider that the Court should have ruled in the sense that the applicable norm in this case was incompatible with Article 8(f) of the American Convention.

REGARDING REPARATIONS

XXVIII. Since the Court has decided that due process of law was not violated in the trial against Ms. Berenson in the civil court, the reparations it orders are only related to the proceedings before the military court and the conditions for part of the period during which she was detained. On this basis, I do not disagree with the reparations ordered by the Court, but I consider that they are insufficient.

XXIX. Ms. Berenson was detained on November 30, 1995, and, as of that time, a proceeding that violated Article 8 of the American Convention commenced, culminating in life imprisonment. The proceeding was only reverted on August 18, 2000, when the Supreme Council of Military Justice annulled the judgment and Lori Berenson's conviction, and waived the competence of the military jurisdiction in favor of the ordinary criminal jurisdiction. For almost five years, she was at the mercy of an authority that did not respect its international human rights obligations and this should be repaired. Moreover, for two years, eight months and twenty days, Ms. Berenson was subjected to detention conditions described in Chapter VIII of this judgment as cruel, inhuman and degrading treatment. Suffering cruel, inhuman and degrading treatment for almost three years of imprisonment was an unlawful aggravation of her imprisonment, which should be repaired specifically. I do not consider that a sum of money is sufficient reparation.

XXX. Consequently, I believe the Court should have established, in reparation, that the State, through the corresponding body, should order a significant reduction in the sentence that would truly repair, insofar as possible, the grave violation committed by State agents. This should have been based on objective criteria such as calculating two days of prison for each day she was imprisoned in inhumane conditions.

Cecilia Medina-Quiroga
Judge

Pablo Saavedra-Alessandri
Secretary

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SEPARATE CONCURRING OPINION OF JUDGE JACKMAN

I have voted in favor of the Court's decision in this case. However, I find Judge Medina's position with regard to adequate reparation very convincing and I hereby indicate my support for the solution she proposes in the last paragraph of her separate opinion; namely, the State should be ordered to reduce the duration of the term of imprisonment imposed on Lori Berenson, as suggested by Judge Medina.

Juez Oliver Jackman
Judge

Pablo Saavedra-Alessandri
Secretary

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