In the Case of García-Asto and Ramírez-Rojas,

The Inter-American Court of Human Rights (hereinafter "the Inter-American Court," "the Court" or "the Tribunal"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 53(2), 55, 56, and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), delivers the following Judgment.

I. INTRODUCTION OF THE CASE

1. On June 22, 2004, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the State of Peru (hereinafter "the State" or "Peru") originating in petition Nos. 12.413 and 12.423, received at the Secretariat of the Commission on November 9 and 12, 1998, in the cases of Wilson García-Asto and Urcesino Ramírez-Rojas, respectively. On August 14, 2003, the Commission ordered joinder of the cases into case file No. 12.413.

2. The Commission filed the application pursuant to Article 61 of the American Convention, for the Court to determine whether the State had committed the alleged violations of human rights to the detriment of Wilson García-Asto and Urcesino Ramírez-Rojas, as embodied in Articles 7(2), 7(3), 7(4), 7(5), and 7(6) (Right to Personal Liberty); 8(1), 8(2), 8(2)(f), and 8(5) (Right to Fair Trial) and 9 (Rule of freedom from ex post facto laws) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of said treaty, allegedly committed "in the context of [the] criminal proceeding[s] brought against them […] for the crime

of terrorism." Moreover, the Commission requested the Court to declare that the State had violated the obligation established in Article 2 (Duty to Adopt Domestic Provisions) of the Convention "for having adopted legal rules in violation of the American Convention and for having failed to fully adapt said rules to the rights and freedoms established in [said treaty] in relation to the crime of terrorism."

3. The Commission stated in the application that Wilson García-Asto and Urcesino Ramírez-Rojas were detained in 1995 and 1991, respectively, by the Peruvian National Police (hereinafter "PNP" or the "National Police") without an arrest warrant and without being in flagrante delicto. The suspects were held incommunicado and the investigation, prosecution, and trial were conducted by "faceless" prosecutors and judges under the provisions of Decree-Law No. 25.475 of May 5, 1992, and with serious restrictions and restraints to exercise their right to defense. The Commission stated that the alleged victims, in light of illegally obtained evidence and unduly weighed and assessed evidentiary items offered by the defense, were sentenced to twenty and twenty-five years' imprisonment, respectively, as alleged "perpetrators of the crime of terrorism." Wilson García-Asto was convicted of the crime of "terrorism" under Articles 4 and 5 of Decree-Law No. 25.475 by judgment delivered on April 18, 1996, and affirmed on July 14, 1997. Urcesino Ramírez-Rojas was convicted of the crime of "terrorism" under Articles 319 and 320 of the Criminal Code of 1991 by judgment delivered on September 30, 1994, and affirmed on August 24, 1999.

4. Furthermore, the Commission referred to judgment of January 3, 2003 delivered by the Constitutional Court of Peru on the constitutionality and unconstitutionality of certain provisions of antiterrorist laws in force in Peru. Pursuant to the foregoing, the Commission asserted that the State issued Legislative Decrees Nos. 921 to 927 in February 2003, vacating the condemnatory judgments, the prosecution's case and certain aspects of the proceedings instituted against Wilson García-Asto and Urcesino Ramírez-Rojas. Nevertheless, the Commission considered that some of the violations committed in the first trial still persisted in the new proceedings and stated that, even though the State had amended antiterrorist laws as from 2003, in the instant case said amendments "ha[d] not redressed the violations suffered by the [alleged] victims, but rather ha[d] made them to prevail." Moreover, the Commission pointed out in the application that "Wilson García-Asto and Urcesino Ramírez-Rojas ha[d] been held in custody since their detention, that is, for nine and thirteen years, respectively."

5. Lastly, the Commission requested the Court that, under Article 63(1) of the Convention, order the State to adopt various pecuniary and non pecuniary reparation measures, and pay the costs and expenses arising from the proceeding of the instant case before the domestic courts and the Inter-American System for the Protection of Human Rights.

II. COMPETENCE

6. The Court has jurisdiction to hear the instant case pursuant to Articles 62 and 63(1) of the American Convention, as Peru has been a State Party to the Convention since July 28, 1978 and accepted the contentious jurisdiction of the Court on January 21, 1981.

III. PROCEEDING BEFORE THE COMMISSION

7. On November 9, 1998, Celia Asto-Urbano, Wilson García-Asto's mother, filed a petition against the State of Peru before the Inter-American Commission, which was later supplemented by briefs of May 24, 1999; September 8, 1999; and October 29, 1999. On April 30, 2002, the Commission, in accordance with its Rules of Procedure, processed the application under No. 482/1998 VL and requested the State to furnish any pertinent information.

8. On November 12, 1998, Pedro Ramírez-Rojas, Urcesino Ramírez-Rojas' brother, filed a petition against the State of Peru before the Inter-American Commission, which was later supplemented by brief of May 18, 2001. On August 28, 2002 the Commission processed the application under No. 479/1998 VL and requested the State to furnish any pertinent information.

9. On April 4, 2002 the Commission, at the request of Wilson García-Asto's mother, Celia Asto-Urbano, adopted precautionary measures on behalf of her son and requested the State to take measures so that Mr. García-Asto undergo a medical examination and, in the event of an unfavorable diagnosis, he be provided with medical treatment.

10. On January 9, 2003, the Commission ordered that the case of Wilson García-Asto be opened under number 12.413 and admissibility issues be addressed during the discussions and the judgment on the merits.

11. On July 08, 2003, the Commission ordered that the case of Urcesino Ramírez-Rojas be opened under number 12.423 and admissibility issues be addressed during the discussions and the judgment on the merits.

12. On August 14, 2003, the Commission ordered the joinder of the cases of Wilson García-Asto and Urcesino Ramírez-Rojas into case file No. 12.413.

13. On March 11, 2004, the Inter-American Commission approved Report on admissibility and merits No. 27/04. In said report, the Commission concluded that it had "jurisdiction to hear the instant case and that the petition [was] admissible." Furthermore, it considered that the State should adopt the following recommendations:

1. According to the provisions of its domestic legislation, to adopt all such measures as may be necessary to redress in full the violations of the human rights of Wilson García-Asto and Urcesino Ramírez-Rojas as described in the […] report, in particular, to deliver a new judgment in full compliance with the rule of freedom from ex post facto laws, that cannot be in any way violated by discretionary and flexible judicial interpretations of criminal laws, and with due process and fair trial rules.
2. To adopt all such measures as may be necessary to amend Decree-Law No. 25.475 in order to bring its provisions in line with the American Convention on Human Rights.

14. On March 22, 2004, the Commission sent the report on admissibility and merits to the State, granting it a term of two months to inform about the measures adopted in compliance with the recommendations set forth therein. The State failed to submit an answer thereto.

15. On June 20, 2004, as a result of the State's failure to comply with the recommendations included in the report approved under Article 50 of the Convention, the Commission decided to submit the case to the Court.

IV. PROCEEDING BEFORE THE COURT

16. On June 22, 2004, the Inter-American Commission filed an application before the Court (supra para. 1), attaching documentary evidence thereto, and offering to submit testimonies of witnesses and expert witnesses as further evidence. The Commission appointed Freddy Gutiérrez, Florentín Meléndez, and Santiago Canton as delegates, and Ariel Dulitzky, Pedro E. Díaz, Manuela Cuvi, and Lilly Ching as legal counsels.

17. On August 5, 2004, in compliance with Article 35(1)(e) of the Rules of Procedure, the Secretariat of the Court (hereinafter "the Secretariat"), after a preliminary examination of the application by the President of the Court (hereinafter "the President"), served said application and the appendixes thereto on the representatives of the alleged victims and their next of kin (hereinafter "the representatives") and notified them of the term within which they were to submit a brief with their requests, arguments, and evidence (hereinafter "brief of requests and arguments").

18. On August 24, 2004, the Secretariat served the application and the appendixes thereto on the State, and notified it of the term within which it was to file an answer and appoint its agent to act in the proceedings. On September 23, 2004, the State appointed Felipe Villavicencio-Terreros as agent in the instant case.

19. On October 5, 2004, Carolina Loayza-Tamayo and Rosalía Uzátegui, Executive Director of the International Law Research and Legal Counseling Center (Centro de Investigación y Asistencia Legal en Derecho Internacional, hereinafter "IALDI"), as representatives, filed a brief of requests and arguments, attaching documentary evidence thereto. The representatives requested the Court that, in addition to ruling on the rights asserted by the Commission (supra paras. 1 and 2), it rule on the alleged violation of Article 5 (Right to Humane Treatment), 11 (Right to Privacy), 13 (Freedom of Thought and Expression), 17 (Rights of the Family), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection) of the Convention, and Articles 1, 2, and 6 of the Inter-American Convention to Prevent and Punish Torture.

20. On December 23, 2004, the State filed its answer to the application and its observations on the brief of requests and arguments and the documentary evidence attached thereto filed by the representatives.

21. On February 16, 2005, the representatives forwarded several documents which were produc[ed] after the date on which the brief of requests and arguments in relation to Urcesino Ramírez-Rojas were filed (infra para. 90).

22. On February 28, 2005, the Secretariat, on instructions from the President, required the State, as evidence to facilitate the adjudication of the case, to submit a copy of the judicial case files of the proceedings instituted before the domestic courts against the alleged victims, together

with a copy of the laws and regulations applicable to the proceedings instituted before the Peruvian courts against said persons.

23. On March 14, 2005, the State filed documentary evidence on the advances made in the criminal proceedings instituted against the alleged victims (infra para. 90).

24. On March 18, 2005, the President issued an Order whereby, under Article 47(3) of the Rules of Procedure, he required Celia Asto-Urbano and Urcesino Ramírez-Rojas, proposed as witnesses by the Commission, to give testimony through affidavits, which should be forwarded to the Court before April 11, 2005 and would be served upon the representatives and the State so that they could file the observations they might deem fit. Moreover, the President attached to the case file, as documentary evidence, the reports submitted by the expert witnesses appointed in the case of De La Cruz Flores against Peru, Mario Pablo Rodríguez-Hurtado, Carlos Rivera-Paz, and José Daniel Rodríguez-Robinson, who were proposed by the Inter-American Commission as expert witnesses in the instant case. Said evidence would be served upon the representatives and the State so that they could file the observations they might deem fit. Furthermore, the President called the Commission, the alleged victim's representative, and the State to a public hearing to be held on May 10, 2005 in the city of Asuncion, Paraguay, at the seat of the Supreme Court of Paraguay, in order to hear the testimonies of the witnesses proposed by the Commission as mentioned below (infra para. 87), and the parties' closing oral arguments on the merits, reparations, and costs. Likewise, by means of said Order, the President informed the parties that June 10, 2005 would be the deadline to submit their closing written arguments on the merits, reparations, and costs.

25. On April 11, 2005, the representatives submitted their observations on the reports of expert witnesses Mario Rodríguez-Hurtado, José Rodríguez-Robinson, and Carlos Rivera-Paz.

26. On April 12, 2005, the State submitted evidence to facilitate the adjudication of the case as requested by the President (supra para. 22), which consisted of the following documents: case file No. 069-03 against Urcesino Ramírez-Rojas for the "crime of terrorism;" case file No. 001-96 against Wilson García-Asto for the "crime against public peace –terrorism– to the detriment of the State," and the legal rules applied to the proceedings instituted before Peruvian courts against the alleged victims (infra para. 89). Furthermore, Peru informed that it was not in possession of "a written document cont[aining] the expert report" of Carlos Rivera-Paz, whereby it requested the Court to forward said document.

27. On April 13 and 18, 2005, the Inter-American Commission submitted the affidavits given by Celia Asto-Urbano and Urcesino Ramírez-Rojas, respectively.

28. On April 21, 2005, the Secretariat, on instructions from the President, forwarded the State a certified copy of the verbatim transcription of the expert opinion of Carlos Rivera-Paz given before the Court at the public hearing on the merits, reparations, and costs held on July 2, 2004 in the case of De La Cruz Flores, so that it could file the observations it might deem fit.

29. On April 27, 2005, the Inter-American Commission pointed out that the State, at the time it submitted the evidence to facilitate the adjudication of the case requested by the President

(supra para. 22), failed to include the testimony of "police officers Commander […] Juan de Jesús Vargas-Ramos and Juan Hilmer González-Sandoval […], in which they described the actions taken by the police in the property located at Urbanización Canto Rey, block 'K', third lot, in the District of San Juan de Lurigancho, and resulting in the detention of Urcesino Ramírez-Rojas, Héctor Aponte-Sinarahua or Arturo Guzmán-Alarcón and Isabel [C]ristina Moreno-Tarazona."

30. On April 28, 2005, the Secretariat, on instructions from the President, requested the State to forward the documentary evidence detailed by the Inter-American Commission in the brief of April 27, 2005 (supra para. 29).

31. On May 3, 2005, the State submitted the observations on the affidavits given by Urcesino Ramírez-Rojas and Celia Asto-Urbano.

32. On May 5, 2005, the representatives pointed out that they had no comments on the affidavits made Urcesino Ramírez-Rojas and Celia Asto-Urbano.

33. On May 10, 2005, the Court heard in public hearing the testimony of the witnesses proposed by the Commission, the arguments of the Commission, the representatives, and the State on the merits, reparations, and costs. There appeared before the Court: a) For the Inter-American Commission: Florentín Meléndez, delegate; Víctor Madrigal, Counsel; Pedro E. Díaz-Romero, Counsel; Manuela Cuvi-Rodríguez, Counsel; b) For the representatives: Carolina Loayza-Tamayo; and c) For the State: Felipe Villavicencio-Terreros, Agent; Julio César Cruz-Cahuata, Counsel; and César Azabache-Caracciolo, Counsel. Moreover, Wilson García-Asto and Pedro Ramírez-Rojas appeared as witnesses proposed by the Inter-American Commission. During the public hearing, the State produced various documents related to the proceedings brought against Wilson García-Asto before the domestic courts.

34. On May 17, 2005, the State filed its observations on the expert opinions of Mario Pablo Rodríguez-Hurtado and José Rodríguez-Robinson. Peru did not file any observations on the affidavit of Carlos Rivera-Paz (supra paras. 26 and 28).

35. On June 29, 2005, the Secretariat, on instructions from the President, informed the State that during the public hearing held in the instant case (supra para. 33), Judge Diego García-Sayán, a Peruvian national, became acquainted with certain circumstances that led him to disqualify himself from the case. Based on the foregoing, during the LXVII Regular Session of the Court, Judge García-Sayán filed a self-disqualification statement to hear the above-mentioned case with the President of the Court, under Articles 19 of the Statute of the Court and 19(2) of the Rules of Procedure. The President accepted the self-disqualification of Judge García-Sayán. Therefore, the State was notified that, according to Article 18 of the Rules of Procedure and the usual practice of the Court regarding Article 10(3) of its Statute, it was entitled to appoint a Judge ad hoc to hear the instant case.

36. On June 27, 28, and 30, 2005 the representatives, the Commission, and the State submitted their closing written arguments. The alleged victims' representatives submitted several documents as appendixes to their closing written arguments (infra para. 89).

37. On July 13, 2005, the Secretariat, on instructions from the President, requested the State, as evidence to facilitate the adjudication of the case, pursuant to Article 45 of the Rules of Procedure, to furnish the following documents: the records of the latest proceedings conducted in the case against Urcesino Ramírez-Rojas which had not been forwarded together with the brief of April 12, 2005 (supra para. 26), and the Code of Criminal Procedure in force at the time the events in the instant case took place. Moreover, the request filed on April 28, 2005 requiring the State to submit the documentary evidence detailed by the Inter-American Commission in the brief of April 27, 2005, was reiterated (supra para. 29). Furthermore, on instructions from the President and in compliance with Article 45(1) of the Rules of Procedure, the appendixes attached to the observations made by the State on the expert opinions of Mario Pablo Rodríguez-Hurtado and José Daniel Rodríguez-Robinson given in the case of De La Cruz Flores, as proposed by the State in the instant case, were incorporated into the body of evidence of the instant case. Lastly, that same day, the Secretariat, on instructions from the President, requested the representatives to submit the records of the latest proceedings conducted in the case instituted against Urcesino Ramírez-Rojas which might be in their possession.

38. On August 15, 2005, the representatives, in compliance with the request of the President of July 13, 2005, forwarded, as evidence to facilitate the adjudication of the case, the records of the latest proceedings conducted in the case instituted against Urcesino Ramírez-Rojas.

39. On August 19, 2005, the State appointed Jorge Santistevan de Noriega as Judge ad hoc for the instant case.

40. On September 6, 2005, the State forwarded the evidence to facilitate the adjudication of the case that had been requested by the President on July 13, 2005 (supra para. 37).

41. On September 12, 2005, the representatives forwarded, as the evidence to facilitate the adjudication of the case requested by the President on July 13, 2005 (supra para. 37), a copy of the records of the latest proceedings conducted in the case against Urcesino Ramírez-Rojas.

42. On October 19, 2005, the State forwarded, as the evidence to facilitate the adjudication of the case requested by the President on July 13, 2005 (supra para. 37), documentary evidence related to the state of the criminal proceedings conducted against Urcesino Ramírez-Rojas (infra para. 89).

43. On October 20, 2005, the Secretariat, on instructions from the President, requested the representatives, as evidence to facilitate the adjudication of the case, a copy of conclusive identity documents of Napoleón García-Tuesta, Julio Ramírez-Rojas, Santa Ramírez-Rojas, Obdulia Ramírez-Rojas, Marcelina Ramírez-Rojas, and Adela Ramírez-Rojas, and the death certificates of Daniel Ramírez and María Alejandra Rojas. That same day, the Commission was requested a copy of a conclusive identity document of Pompeya Ramírez-Rojas.

44. On November 11 and 16, 2005, the representatives forwarded the evidence to facilitate the adjudication of the case requested by the President on October 20, 2005 and attached the

identity document of Pompeya Ramírez-Rojas, which had been requested to the Commission (infra para. 89).

V. PRELIMINARY OBJECTION

Arguments of the State

45. During the first public hearing held in the instant case, the State argued that, in relation to the new proceedings instituted against the alleged victims, domestic remedies had not been exhausted. In its closing written arguments, the State asserted that it was not admissible that the Commission "fil[ed] with the Court a case that w[as] pending final resolution" in the domestic courts.

Arguments of the Commission

46. In this regard, the Commission pointed out in its closing written arguments that the issues about exhaustion of domestic remedies in the new proceedings was time barred and, as a result, "the State ha[d] implicitly waived the right to raise such objection; therefore, it w[as] not relevant to raise it at th[at] stage of the proceedings before the Court."

Argument of the representatives

47. In turn, the representatives asserted that "[a]ccording to Court precedents, the fact that the State is party to judicial proceedings pending resolution is not grounds for lack of jurisdiction."

Considerations of the Court

48. The Court notes that Article 46(1)(a) of the American Convention provides that, petitions or communications filed with the Inter-American Commission are admissible under Article 44 or 45 of the Convention if the remedies under domestic law have been pursued and exhausted.

49. In this regard, the Court has set clear criteria. Indeed, of the generally recognized principles of international law referred to in the rule on exhaustion of domestic remedies, the foremost is that the Respondent State may expressly or tacitly waive invocation of this rule. Secondly, in order to be timely, the objection that domestic remedies have not been exhausted should be raised during the first stages of the proceedings; otherwise, it will be assumed that the interested State has tacitly waived its use. Thirdly the State that alleges non-exhaustion of domestic remedies must indicate which domestic remedies should be exhausted and provide evidence of the effectiveness thereof. [FN1]

[FN1] Cf. Case of the Girls Yean and Bosico. Judgment of September 8, 2005. Series C No. 130, para. 61; Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 49; and Case of the Mayagna (Sumo) Awas Tingni Community. Preliminary Objections. Judgment of February 01, 2000. Series C No. 66, para. 53.

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50. The Court notes that the State raised an objection for non-exhaustion of domestic remedies for the first time during the public hearing held in the instant case. Therefore, as a result of having failed to contest this issue at the proper stage of the proceedings, the State tacitly waived its right to raise objections for lack of exhaustion of domestic remedies, wherefore the Court dismisses the argument related to this issue.

VI. PRELIMINARY CONSIDERATIONS

51. The Court finds it necessary to address two issues before going deep into the arguments of the parties and assess the evidence produced in the instant case, to wit: a) the acknowledgment by the State with regard to the events occurred before September 2005; and b) the alleged new events asserted by the representatives in their brief of requests and arguments.

a) Acknowledgment by the State with regard to the events occurred prior to September 2000

52. At the public hearing held on May 10, 2005 (supra para. 33) the State acknowledged the events occurred before September 2000, which had been detailed in the application filed by the Commission, "as that was precisely the time when democracy wa[s] restor[ed] in [Peru]."

53. Furthermore, when Pedro Ramírez-Rojas, Urcesino Ramírez-Rojas' brother, was examined, Peru stated that "it wish[ed] that the damage caused to his brother could be redressed." Afterwards, during the examination of Wilson García-Asto, Peru acknowledged "the responsibility of the State, among other things, for the situation of García-Asto prior to September 2000."

54. When the witnesses ended their testimonies, the State added that "the acknowledgment of responsibility ma[de] by the State w[as] global and general and appl[ied] to the consequences resulting from the application of the [19]92 laws within the territory of Peru."

55. Moreover, in response to the questions posed by the Court, the State asserted that the controversy concerning the events acknowledged had ended and that the acknowledgment covered the events detailed in the brief of requests and arguments filed by the representatives, except for those that "fell beyond the State's declaration" because they had been introduced as new facts in the proceedings before the Court (infra paras. 63 to 79).

56. In its closing written arguments the State pointed out that purpose of the acknowledgment related to the events alleged by the Commission and the representatives in the instant case was

> to acknowledge that the institutional scenario of the events occurred before September 2000 prevented the State from providing a reasonable defense that would alternatively allow determining the true conditions of treatment imposed on the [alleged] victims. This mere fact sufficed for the State to feel responsible for the violations declared by the [alleged] victims, in particular, by Mr. García-Asto.

57. In view of the foregoing, it should be noted that the Inter-American Court, exercising its contentious jurisdiction, applies and interprets the American Convention, and when a case is submitted to its jurisdiction, the Court has the power and authority to determine the international responsibility of a State Party to the Convention for any violations of the provisions thereof. [FN2]

[FN2] Cf. Case of the ""Mapiripán Massacre"". Judgment of September 15, 2005. Series C No. 134, para. 64.

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58. The Court, exercising its inherent authority of international protection of human rights, can establish whether an acknowledgment of international responsibility by a respondent State offers sufficient basis, in terms of the American Convention, to proceed or not with its hearing of the merits of the case and the determination of reparations. [FN3] To that effect, the Court shall analyze the situation in each particular case.

[FN3] Cf. Case of the ""Mapiripán Massacre"", supra note 2, para. 65; Case of Huilca Tecse. Judgment of March 03, 2005. Series C No. 121, para. 42; and Case of Myrna Mack-Chang. Judgment of November 25, 2003. Series C No. 101, para. 105.

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59. Taking into account the acknowledgment by the State of the events occurred before September 2000, which were detailed in the application filed by the Commission and the brief of requests and arguments filed by the representatives, the Court considers that the controversy raised over them has ended and declares that they occurred as stated under paragraphs 97(1) to 97(28), 97(53) to 97(55), 97(60) to 97(63), 97(67) to 97(86), 97(120) to 97(125), and 97(131) to 97(137) hereof.

60. The Court considers that the acknowledgment made by the State constitutes a positive contribution to the development of these proceedings and the effectiveness of the principles enshrined by the American Convention.

61. Therefore, the Court deems it relevant to include a chapter on the events of the instant case covering both the events acknowledged by the State (supra para. 59) and the events that are proven in the case file as having occurred after September 2000 (infra para. 98).

62. In the following chapters, the Court shall proceed to establish the legal consequences of the events acknowledged by the State which occurred before September 2000, in accordance with the American Convention and taking into account the allegations made by Peru at the public hearing and in its closing written arguments (supra paras. 33 and 36).

b) Alleged new events asserted by the representatives in their brief of requests and arguments

63. At the public hearing, Peru stated that there was a series of "detailed events" in the brief of requests and arguments filed by the representatives on which "the State ha[d] no opportunity to express an opinion," but it failed to indicate which events it was referring.

64. The representatives submitted to the consideration of the Court certain facts referred to the alleged violation of Article 5 (Right to Humane Treatment) of the Convention, to the detriment of the alleged victims, the alleged mistreatment suffered thereby during their preventive detention in police facilities, the prison regime applied thereto during the first months of imprisonment and the prison conditions of the different institutions where they were held in custody. Some of those events were included by the Commission in its application. However, the alleged mistreatment inflicted to Wilson García-Asto during his detention in police facilities in 1995 is still a contested issue, as it happens with the alleged events occurred at "Miguel Castro-Castro" Prison in Lima, Peru (hereinafter "Castro-Castro Prison") between May 6 and May 9, 1992, where Urcesino Ramírez-Rojas was held in custody.

65. In its closing written arguments the State alleged that

[a]t the hearing […] the allegations made by the Commission on the facts of the case [were] not challenged. After the testimonies, it stated that the failure to challenge the facts extend[ed] to the events alleged by the victims.

66. Nevertheless, Peru added that "neither García-Asto nor Ramírez-Rojas ha[d] filed a complaint or report with competent State authorities on [the new] facts [alleged by the representatives], not even after November 2001, and that, therefore, Peru ha[d] had no opportunity to formally assess whether the victims we[re] entitled to claim compensation."

67. Consequently, the State considered that "without prejudice to affirming the acknowledgment of the facts made according to the above referred statement, it still ha[d] the right to raise an objection for lack of exhaustion of domestic remedies which it assert[ed] […] as the merits of the case [sic]. The foregoing shall apply, according to the Commission, only to the new facts of the instant case, on which the State had no formal opportunity to make observations."

68. In its closing written arguments, the Commission stated that the representatives referred for the first time in the proceedings before the Court to the "bodily and psychological harassment and coercion inflicted on Wilson García-Asto while held in custody at the National Counter-Terrorism Department (Dirección Nacional Contra el Terrorismo) (hereinafter "the DINCOTE") in 1995." The Commission considered that those events were new facts "with which the representative of the [alleged] victim got acquainted after his release and that, therefore, could be considered by the Court as part of the facts of the instant case based on the rationale of the objection established in [its precedents] in relation to supervening events."

69. Moreover, the Commission noted that the facts presented by the representatives in connection with the political context prevailing between 1980 and 2001, as well as the events that took place in Castro-Castro Prison between May 6 and May 9, 1992, where Urcesino Ramírez-Rojas was held in custody, had not been included in the application. With regard to the

events occurred in Castro-Castro Prison in 1992, the Commission added that they "were the main facts of the application filed by the Commission against the State of Peru" before the Inter-American Court.

70. Finally, the Commission pointed out that the application facts, which were later specified, detailed or defined by the representatives, referred to the "prison regime applied to [the alleged victims] as detainees convicted of the crime of terrorism, and to the prison conditions […] of the penitentiaries where [they] were held in custody."

71. In turn, in their closing written arguments, the representatives asserted that "the particulars detailed by the [alleged victims] in the brief of requests, arguments, and evidence, refer[red] to the facts mentioned in a general way in the application filed by the Commission." Furthermore, the representatives considered that at the public hearing "the State acknowledged the facts contained both in the application of the Inter-American Commission and in the brief of requests [and] arguments."

72. Moreover, in their closing written arguments, the representatives pointed out that the "facts referred to by the State as new are the events associated with Wilson García-Asto's confinement in Yanamayo Prison [, in Puno (hereinafter "Yanamayo Prison")] and Challapalca," in the department of Tacna (hereinafter "Challapalca Prison") and that in their brief of requests and arguments they had included alleged violations of rights established by the Convention other than the violations alleged by the Commission in its application (supra para. 2).

73. With regard to the events of the instant case, the Court has already established that the parties "may argue violations of the Convention other than those alleged by the Commission, as long as such legal arguments are based upon the facts set out in the application" in order to explain, clarify or dismiss the facts contained in the application, or to answer the applicant's claims. [FN4] However, supervening facts which occurred or were known after the main pleadings and briefs of the proceedings (the application, the brief of requests and arguments, and the answer to the application) had been filed, may be argued at any stage of the proceedings before final judgment is delivered. [FN5]

[FN4] Cf. Case of the ""Mapiripán Massacre"", supra note 2, para. 57; Case of Moiwana Community, supra note 1, para. 91; and Case of De La Cruz-Flores. Judgment of November 18, 2004. Series C No. 115, para. 122.

[FN5] Cf. Case of the ""Mapiripán Massacre"", supra note 2, para. 57; Case of Moiwana Community, supra note 1, para. 91; and Case of the De La Cruz-Flores, supra note 4, para. 122.

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74. Furthermore, the Court has pointed out that the representatives of the alleged victims and/or their next of kin may argue violations of the Convention other than those alleged by the Commission in its application. [FN6] To that respect, the Court has considered that the alleged victims are "the holders of all of the rights enshrined in the Convention; thus, preventing them from advancing their own legal arguments […] [to claim new rights] would be an undue restriction upon their right of access to justice, which derives from their condition as subjects of

international human rights law. [FN7] Nevertheless, the Court has expressly noted that, with regard to rights claimed for the first time by the representatives of the alleged victims and/or their next of kin, the legal arguments "[must be] based upon the facts set out in the application." [FN8] Moreover, the Court has applied the iura novit curia principle "which international jurisprudence has repeatedly used in the sense that the judge has the power and even the obligation to apply the appropriate legal provisions in a case, even when the parties have not invoked them expressly. [FN9]

[FN6] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 57; Case of Gutiérrez-Soler. Judgment of September 12, 2005. Series C No. 132, para. 53; and Case of the Girls Yean and Bosico, supra note 1, para. 181.
[FN7] Cf. Case of the ""Mapiripán Massacre"", supra note 2, para. 57; Case of Gutiérrez-Soler, supra note 6, para. 53; and Case of Acosta-Calderón. Judgment of June 24, 2005. Series C No. 129, para. 142.
[FN8] Cf. Case of the ""Mapiripán Massacre"", supra note 2, paras. 57 and 59; Case of Gutiérrez-Soler, supra note 6, para. 53; and Case of the Girls Yean and Bosico, supra note 1, para. 181.
[FN9] Cf. Case of the ""Mapiripán Massacre"", supra note 2, para. 57; Case of the Girls Yean and Bosico, supra note 1, para. 203; and Case of Acosta-Calderón, supra note 7, para. 85.

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75. The Court notes that the alleged violation of Article 5 (Right to Humane Treatment) of the American Convention, claimed by the representatives, not only covers the alleged mistreatment suffered by the alleged victims while they were held in custody in police facilities, but also the prison conditions during their confinement in Peruvian penitentiaries.

76. The Court observes that the alleged mistreatment allegedly suffered by Wilson García-Asto during his confinement in police facilities was not mentioned in the proceedings brought before the Commission (supra para. 68), that it was not included in the facts detailed in the application filed with the Court (supra para. 70), and that it cannot be considered a supervening event in the light of the body of evidence. Therefore, said mistreatment will not be considered by the Court, as it is a new fact in the proceedings. Besides, the events detailed and clarified by the representatives in the proceedings before the Court are those that refer to the prison conditions to which the alleged victims were subjected during their confinement in several Peruvian penitentiaries.

77. The facts related to the events occurred in Castro-Castro Prison between May 6 and May 9, 1992, where Urcesino Ramírez-Rojas was held in custody, were not mentioned in the application filed by the Commission before the Court and, therefore, will not be considered by the Court.

78. Moreover, the Court shall not analyze the events occurred in Castro-Castro Prison in 1992, as said facts are the subject matter of a case brought by the Commission before the Court, wherein it is argued that Urcesino Ramírez-Rojas is an alleged victim as well.

79. Consequently, the acknowledgment made by the State with regard to the events occurred before September 2000 only comprises those facts which are the subject matter of the instant case and that were detailed in the application, without prejudice to those argued by the representatives which may allow explaining, clarifying or dismissing the facts contained in the application or answering the applicant's claims.

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80. The Court notes that this Judgment addresses two cases involving different parties and events which occurred, in certain aspects, in different years, and wherein different laws were applied in the proceedings brought before the domestic courts. Taking into account that both cases have been jointly conducted and that they will be addressed in the same judgment, the Court shall analyze the facts and arguments related to Urcesino Ramírez-Rojas and Wilson García-Asto separately.

VII. EVIDENCE

81. Before examining the evidence tendered, the Court will state, in light of the provisions set forth in Articles 44 and 45 of the Rules of Procedure, a number of points arising from Court precedents and applicable to the instant case.

82. Evidence is governed by the adversary principle, which embodies due respect for the parties' right to defense. This principle underlies Article 44 of the Rules of Procedure, inasmuch as it refers to the procedural stage at which evidence must be tendered so that equality among the parties may prevail. [FN10]

[FN10] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 71; Case of Raxcacó-Reyes. Judgment of September 15, 2005. Series C No. 133, para. 34; and Case of Gutiérrez-Soler, supra note 6, para. 37.

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83. In accordance with the usual Court practice, at the beginning of each procedural stage, the parties must state the evidence they intend to offer in the first written brief they submit. Furthermore, the Court or the President of the Court, exercising the discretionary authority under Article 45 of the Rules of Procedure, may ask the parties to supply additional items, as evidence to facilitate the adjudication of the case, without thereby affording a fresh opportunity to expand or complement their arguments, unless by express leave of the Court. [FN11]

[FN11] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 72; Case of Gutiérrez-Soler, supra note 6, para. 38; and Case of the Girls Yean and Bosico, supra note 1, para. 82.

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84. The Court has also pointed out before that, in admitting and assessing evidence, the procedures observed before this Court are not subject to the same formalities as those required in

domestic judicial actions and that the admission of certain items into the body of evidence must be effected paying special attention to the circumstances of the specific case, and bearing in mind the limits set by respect for legal certainty and for procedural equality for the parties. The Court has further taken into account international precedents, according to which international courts are deemed to have authority to appraise and assess evidence based on the rules of reasonable credit and weight analysis, and has always avoided rigidly setting the quantum of evidence required to reach a decision. This criterion is particularly valid with respect to international human rights courts, which enjoy ample authority when determining the international responsibility of a State for the violation of human rights, to assess the evidence submitted for their consideration concerning the pertinent facts, in accordance with the rules of logic and based on experience. [FN12]

[FN12] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 73; Case of Raxcacó-Reyes, supra note 10, para. 35; and Case of Gutiérrez-Soler, supra note 6, para. 39.

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85. Based on the foregoing, the Court shall now examine and assess the documentary evidence submitted by the Commission, the representatives, and the State, at different procedural stages, or the evidence requested by the President in order to facilitate the adjudication of the case, as well as the testimonial evidence submitted to the Court during the public hearing, which altogether constitutes the body of evidence in the instant case. In doing so, the Court will follow the rules of reasonable credit and weight analysis, within the applicable legal framework.

A) DOCUMENTARY EVIDENCE

86. The Commission has forwarded affidavits in response to the President's Order of March 18, 2005 (supra para. 24). Furthermore, the evidence tendered by the Commission included the expert witnesses' opinions and reports rendered before both a notary public and the Court in the Case of De la Cruz-Flores v. Peru, which, pursuant to the President's Order of March 18 2005 (supra para. 24) were admitted to the instant case as documentary evidence. Said testimonies and reports are summarized below.

TESTIMONIES

1. Urcesino Ramírez-Rojas, alleged victim

The alleged victim was confined in Castro-Castro Prison, Lima, Peru. He held a university degree in economics and was a supporter of Peruvian left-wing political parties. He worked at the Ministry of Economy and Finance as a financial adviser and planner for over twenty years. Then he worked as an adviser to the Congress of the Republic, in the Bi-Chamber Commission on Budgetary Affairs for six years. He retired in late July 1991. After his retirement, he carried out a personal research project, examining the role of the State in organizing and conducting the State's economy and the origin and development of political parties in Peru. As part of his work, he extended his study to armed groups such as Sendero Luminoso (hereinafter "Shining Path") and Movimiento Revolucionario Túpac Amaru (Tupac Amaru Revolutionary Movement,

hereinafter “MRTA”). In order to carry out this research, he stored economic and population-related documents in his computer. Furthermore, he intended to set up a consulting firm in association with Isabel Moreno-Tarazona.

On July 27, 1991, he was at home suffering from a bronchial condition and was entertaining Ms. Moreno-Tarazona. At about 7 p.m., several armed men wearing civilian clothes directly stormed into his bedroom and did not allow him to get out of bed. They told him that they were persecuting an individual from the forest, and that said individual had sneaked into his house. They told him that they would search the house, and forced him to get dressed and go down to the ground floor. They did not mind his telling them that he was sick and showing them the medicine he was taking.

No public prosecutor was present while they searched the house nor did they show him a search warrant issued by a judge ordering that his house be searched. He allowed them to conduct the search because he did not have anything to hide. He reported to the police that he was in possession of a series of files relating to political groups, including Shining Path. The men seized several books, a number of manuscripts which he had collected for his research project, and recordings of several lectures. At 6:30 a.m. of the following day, when the search of the house was over, a prosecutor arrived at the house to sign the search record. The witness declared that after the search they came up with a recording in support of Shining Path, which he was made to listen to in the presence of the prosecutor. The witness declared that he did not have any such type of recordings or subversive propaganda.

He was then taken to the DINCOTE facilities and confined in a cell located in the basement. He was held incommunicado for three days, during which his family feared that he might have disappeared. He was interrogated about his work and his family in the absence of a public prosecutor or his counsel. After being held incommunicado for a further thirteen-day term, he was transferred to the Palace of Justice, where he was beaten by police officers. He was then transferred to Castro-Castro Prison. The witness was held in custody as an accused person from August 1991 to September 1994, when the government, under the pressure exerted by congressmen, the press, and the witness’ next of kin, decided to prosecute him. He was taken to the Palace of Justice, where a room had been built for the trial of the inmates held in Castro-Castro Prison. In that room, the witness sat down behind a tinted-glass wall and communicated with the Court hearing the case by means of a microphone. His next of kin were not allowed to come into the room. Owing to hearing problems, the witness did not understand the questions made by the judge, whose voice had been distorted. His counsel was not allowed to repeat the questions to his client. After a short hearing, the judge read out his decision. The witness did not understand what the judge read out, and when he refused to sign the record, he was threatened with a criminal action against him on the grounds of obstructing justice. At the time he was being tried, the witness ignored what charges had been brought against him until he was provided with a copy of the decision convicting him.

Afterwards, the Constitutional Court (Tribunal Constitucional) rendered his trial null and void. After fourteen years in custody, the witness and a co-defendant were confronted at a hearing, after which supplementary statements were made in order to conduct the investigation. The requests so that the witness’ detention be replaced with his commitment to remain subject to the custody of the court were dismissed, with the last dismissal dating October 19, 2004. In the new proceedings, the witness was prosecuted under Article 322 of the Criminal Code, whereas in the first criminal proceedings, the witness was prosecuted under Article 320 of said code.

While in custody, the witness was subjected to a permanent condition of defenselessness. Police officers used to steal the inmates' belongings and beat Mr. Ramírez-Rojas. Furthermore, the witness suffered from health problems. He suffered from a prostate condition requiring surgery. On the day the last examination before surgery was to be conducted, around eighteen armed police officers took him to the doctor's office. The doctor, under the pressure of the Police Chief Officer, decided to postpone surgery for thirty more days. On the next day, he was transferred to Cajamarca Prison, where isolation was much stricter, wherefore the witness lost all family contact.

Regarding reparations, the witness pointed out that the Inter-American Court should take into consideration the pain and suffering experienced by his next of kin, his feelings of isolation, and the abandonment of his son, who was three years old at the time of his detention. His incarceration worsened the health condition of his mother, who died some years after his detention. Furthermore, Mr. Ramírez-Rojas' professional career was affected by his detention and trial, which ruined both his project to set up a consulting firm and his research work, on which he was planning to write a book.

2. Celia Asto-Urbano, mother of Wilson García-Asto

Wilson García-Asto, the witness' son, left his house on June 30, 1995, at noon. Celia Asto-Urbano started to worry when her son did not come back from night school. She called his brothers, who told her that Wilson was not with any of them; she also called a schoolmate of her son's, who told her that Wilson had not gone to his night classes, although he had to sit for an exam.

At about 11:30 p.m., the witness and her husband, the alleged victim's father, left their house in search of their son in hospitals and other places. They returned home at about 3 a.m., without having found him. They left their house again at 6 a.m., in order to find out about him at the Public Prosecutor's Office (Ministerio Público) and in the jail of the Palace of Justice, where they were recommended to look for him in the DINCOTE. When they got there, the witness and her husband found the name of the alleged victim written in the front desk register. Two police officers let them into a room to identify the detainee. The police officers told them that they would take the detainee outside and carry out a residence search. Faced with the threat that both the witness and her husband would be arrested if they did not allow the search to be conducted, Celia Asto-Urbano allowed them to proceed with the search because she was worried about her children who were at home, and because her son "does not do anything wrong."

Four police officers entered the house to conduct the search. One police officer stayed in the van with the alleged victim, who was tied up, hands and feet. The police went into the alleged victim's bedroom and searched his books, lifted up his bed, opened his chest of drawers, shook his belongings one by one, and called a prosecutor several times so that he would come over and sign the search record. After going over all the alleged victim's belongings, the police officers decided to seize his computer. They told the witness that they would return the computer the following day, but to that purpose she would have to sign a document. When she refused, they told her that if she did not sign the document, they would also arrest her and another of her sons, Gustavo, brother of the alleged victim. Mrs. Asto and her two sons who were in the house signed the document in the belief that they would return the computer. Next, they handed the document over to Wilson García-Asto, who had been held tied up in the van for about three hours, since they had started searching the house. They untied his hands and he signed the record, which

turned out to be the residence search record. Almost two hours later, two prosecutors arrived at the house. One of them signed the search record, and they all left the place taking the computer with them —which they never returned.

The alleged victim was held incommunicado for fifteen days in the jail of the Palace of Justice. He was then transferred to Castro-Castro Prison, where he was held incommunicado for thirty more days. After the period during which he was held incommunicado, he was only allowed to receive visitors once a week. He was allowed to receive food and beverages only once a week, through the police officers who were in charge of delivering the goods to detainees. In order to be able to visit the inmates, visitors had to queue long hours in the open, regardless of the weather conditions. Police officers meticulously scrutinized all objects visitors were carrying with them. Visitors were also searched by guards, who, while doing so, would mock the witness.

On July 2, 1999, the radio broadcasted news about an outburst of violence in Castro-Castro Prison, so the witness rushed to the place to check on her son. The witness found that tear-gas bombs had been thrown all over the area. When she got to the penitentiary, she was told that her son had been transferred, but no one told her where. Later, she found that he had been taken to Yanamayo Prison.

In order to visit her son at Puno, she had to set off on a Thursday to arrive on a Saturday on time to visit him for only one hour on Sundays, and she also had to seek accommodation. There were no means of transport that could take her up to the penitentiary and she had to walk for half a kilometer out in the cold, with all the things she was bringing to her son clinging from her back. After arriving at the penitentiary, she again had to go through an inspection of her things —she had to unwrap every package, and even peel the fruit she was carrying, which implied expenses. When she eventually managed to see her son, the witness declared that he was skinny, pale, and blue with cold.

The alleged victim was held in Yanamayo Prison until September 21, 2001. He was then transferred to Challapalca Prison, where he was held until August 21, 2002. This penitentiary did not have any means of communication and access to it was difficult. There was a place in the military base where the inmates' relatives were normally accommodated, but this place did not offer accommodation for relatives of prisoners accused of terrorism. Furthermore, the local town families who also offer accommodation did no want to accommodate relatives of prisoners accused of terrorism.

The witness' son was transferred to La Capilla Prison, located in Juliaca, where he was held until December 16, 2002, when he was transferred back again to Castro-Castro Prison.

Following the detention of her son, everyday life changed for the family. The alleged victim had started a small business which was run by the family. This business was the only source of income for them. Her son Wilson García-Asto was going to be the first professional graduate in the family. After the detention of her son, the other children stayed in the house to take care of the business, which funded the costs of the defense of the alleged victim.

In addition to the financial consequences, the imprisonment of her son affected the physical and mental health of all the family members. Her son Gustavo, the alleged's victim younger brother, started to complain that his eyes ached. The witness took him to several hospitals for a number of eye examinations. He was diagnosed with a condition affecting the nerves. Gustavo was very close to the alleged victim; they shared their bedroom and went to university together. After the detention of his brother, Gustavo dropped out of university because he was affected by his classmates' reaction. Moreover, the witness' daughter Elisa, the alleged victim's sister, also

suffered health problems —she used to complain that her leg and stomach ached. Like her brother, Elisa dropped out of university.

EXPERT EVIDENCE

1. José Daniel Rodríguez-Robinson, attorney-at-law

Legislative Decree No. 635 of April 3, 1991, enacted the Peruvian Criminal Code, which annulled the previous body of criminal rules and included in its Title XIV, Chapter II, "Crimes against Public Peace," containing the different types of crimes of terrorism. This anti-terrorist legislation described a crime based on danger, i.e. a conduct which was punishable because of the mere potential harm to the protected interest, no concrete harmful result being required. The description contained in Article 319 (crime of terrorism) of the 1991 Criminal Code amounted to an open-ended criminal definition, the purpose of which was to avoid the existence of impunity loopholes and let criminal courts, by way of interpretation of the rule, determine the scope of the criminal description. The Criminal Code referred to above established the following descriptions: terrorism, aggravated terrorism, collaboration with terrorism, membership in and affiliation with terrorist organizations, and disappearance of persons. This anti-terrorist legislation did no establish maximum penalties, with the exception of the crime of membership in a terrorist organization, which was punished with a maximum penalty of twenty years' imprisonment. The penalties for the crimes of terrorism were of considerable severity.

The basic description of the crime of terrorism as established in Article 2 of Decree-Law No. 25.475 did not greatly depart from the one contained in the 1991 Criminal Code, as it was still an open-ended description which embraced alternative conducts. Furthermore, actions such as collaboration were described as a separate crime, rather than being construed as 'aiding and abetting,' which understated the latter legal classification.

Among the differences between the Criminal Code of 1991 and Decree-Law No. 25.475 is the stiffening of penalties, as the latter even contemplated life imprisonment for the crime of aggravated terrorism, and included new criminal descriptions such as instigation of terrorist acts, terrorist advocacy, obstruction of justice by a terrorist act, and repeated terrorist acts. The main feature of the new legislation "w[as] that it could be used both for punishing acts that were actually criminal offenses and for overcriminalizing other activities which, from a reasonable stance, should not be considered to impair any protected legal right;" i.e., "the possibility was left dormant for any action not to the liking of the authoritarian regime to be construed as a terrorist act."

Decree-Law No. 25.475 aimed at establishing an "iron-hand system the purpose of which was exclusively to eradicate terrorism, but it also […] allowed for clear-cut excesses [which] w[ere] in violation of Human Rights."

Within the context of a constitutional motion filed against Decree-Laws Nos. 25.475, 25.659, 25.708, 25.880, and 25.744, the Constitutional Court of Peru passed a decision on January 3, 2003, wherein it referred to the anti-terrorist legislation and made some relevant explanatory notes thereon. Though it had been requested by the applicants, the Constitutional Court did not declare the unconstitutionality of Article 2 of Decree-Law No. 25.475, which described the crime of terrorism. The decision passed by the Constitutional Court (Tribunal Constitucional) established three modalities for the interpretation of the criminal description of terrorism, which

the expert considered to be wrong. In this respect, the judgment referred to above "di[d] not clear out the actual question raised by the constitutional [m]otion."

2. Mario Pablo Rodríguez-Hurtado, attorney-at-law

From 1981 to May 5, 1992, the anti-terrorist legislation included, but was not limited to, Legislative Decree No. 46 of 1981, and Articles 319 through 324 of the Criminal Code of 1991. Legislative Decree No. 46 revealed "infringements to the nullum crimen nulla poena sine lege praevia." In turn, the militarization of the country was deepened by Law No. 24.150 of 1985.

In the following years, Laws Nos. 24.651, 24.700, 24.953, and 25.301 reformed certain issues concerning the penalty established for the crime of terrorism as described by the Criminal Code of 1924, including those relating to the agency entrusted with conducting investigations, the possibility of holding detainees incommunicado, and the applicable penalties.

The Criminal Code of 1991, in spite of its "democratic criminal dogmatics," does not depart from the emergency criminal legislation regarding terrorism. Furthermore, it keeps the ample scope of its definitions for acts of collaboration and restricts procedural and penal system benefits in cases of illicit drug trafficking and terrorism.

In April 1992, the then President Fujimori launched a coup d'état and sought "to pacify the country within a legal framework which would guara[ntee] the application of stiff punishment to terrorists." In such circumstances, two Decree-Laws were passed: Decree-Law No. 25.475 of May 1992, which established the penalties for the crimes of terrorism and the procedures to be adopted regarding the investigation, prosecution, and trial thereof, and which is in force as of the date hereof; and Decree-Law No. 25.659 of August 1992, which established the crime of high treason, describing it as a crime of terrorism.

Decree-Law No. 25.475 "infringes the nullum crimen nulla poena sine lege praevia principle, as it does not comply with the requirement of restriction and certainty," without which it is not possible to ensure to citizens that they will not be prosecuted or convicted for an ill-defined or imprecise conduct. Article 2 of said Decree-Law defines the crime of terrorism, describing it rather vaguely; establishes many punishable conducts without attributing any type of quality or scale thereto; and makes reference to the commission of acts against various protected legal interests. Furthermore, the description of the means with which the act is committed is also vague, and so is the description of its consequences. The same criticism can be made with relation to Article 4 of Decree-Law No. 25.475, which describes the crime of collaboration with terrorism with an even broader "vagueness" than the rule until then in force. The term of imprisonment is the same for both perpetrators and aiders and abettors.

In turn, Decree-Law No. 25.475 did not guarantee due process of law, as it delegated the criminal investigation to the police, and restricted the participation of the Public Prosecutor's Office. In addition, said decree "restricts the participation of the defense counsel, bars release during the preliminary investigation proceedings except for unconditional release, and does not allow police officers who took part in the police investigation to give testimony as witnesses."

The Constitutional Court of Peru (Tribunal Constitucional del Perú) passed judgment on January 3, 2003, making reference to Decree-Law No. 25.475 and declaring unconstitutional only some Articles thereof. Concerning Article 2 of the above Decree-Law, which was not declared unconstitutional, it is not possible that a criminal text written with such faulty language —in an attempt to comprise as many conducts as possible— may be considered a rule "which allow[s]

citizens to know the content of said prohibition, so that they can distinguish that which is forbidden from that which is permitted."
Paragraph 78 bis of the Judgment "does not amend the vices of the criminal description under review, for if consideration is given to the concurrence of the three objective elements, i.e. the possible "modalities" of the crime […], in addition to the intent, the dilemma still remains whether such description relates to a plurality of acts or to a s[ingle] action the actual result of which —or the motive or purpose thereof— is ancillary to the intent."
In some paragraphs of its Judgment, the Constitutional Court reinterprets the prohibition of "offering the testimony of [those who] made the police report," and does not hold it unconstitutional. As for this, the appropriate course of action would be to eliminate "a device which is faulty from its roots" and "to promote its replacement with rules explicitly describing what is required by democratic substantive and procedural criminal law."
In turn, Legislative Decrees against Terrorism Nos. 921 through 927, of January and February 2003, enacted pursuant to the judgment of the Constitutional Court of January 3, 2003, have not overcome the material objections made to anti-terrorist legislation. The new Legislative Decrees have only set "maximum penalties" and empowered the National Chamber for Terrorism (Sala Nacional de Terrorismo) to review certain decisions founded on Article 2 of the above Decree-Law No. 25.475.

3. Carlos Martín Rivera-Paz, attorney-at-law

The anti-terrorist legal framework of Peru has existed since the early '80s, as part of the Criminal Code in force since 1924, and in April 1991, the crime of terrorism and other criminal descriptions punishing terrorism-related criminal acts were included. The legislation was radically reformed as from the coup d'état of 1992, when a new antiterrorist framework was set up, which was mainly characterized as emergency criminal legislation. This was a new system to the extent that it regulated the preliminary investigation into the terrorist event, provided for a new description of the crime and of various acts related to terrorism, laid down new criminal proceedings for cases of terrorism, and regulated penitentiary matters.
Other modifications were brought about with time, among which the most important ones were adopted in 1993 and 1994, when the system introduced the possibility to grant unconditional release to the accused in the preliminary stage of judicial proceedings (which was virtually prohibited before then); allowed filing protective remedies such as writs of habeas corpus (which was also prohibited before then in cases of terrorism); prohibited the public presentation of detainees charged with terrorism, which was a usual practice used by the DINCOTE; and introduced gradual modifications to the penitentiary system in connection with inmates convicted of terrorism and high treason. Furthermore, in late 1997, "faceless" courts were eradicated and a regular court system was set up in order to try these crimes, with the creation of the Superior Corporate Court for Terrorism (Sala Superior Corporativa para Casos de Terrorismo).
The most important features were the "ethereal and vague" description of the crime of terrorism; the new system of penalties; the extension of police powers beyond the control of judicial authorities or prosecutors; the modifications to procedures such as the cut-down on the powers of the Public Prosecutor's Office; the obligation imposed on criminal judges obligation to report crimes and initiate proceedings in all cases of terrorism; the imposition of summary proceedings; and a judicial system administered through "faceless" courts.

The DINCOTE was a specialized unit reporting to the Peruvian National Police, responsible for investigating events related to terrorism and the individuals involved with these events. The police not only investigated the facts, directed the investigations, was the prosecutor's de facto superior in command, and extended the terms to conduct the investigation, but also reached conclusions regarding the investigation and determined the criminal classification applicable to the allegedly committed offense. These powers were not properly controlled or supervised by the Public Prosecutor's Office or by the Judiciary, especially in times of "faceless" judges. The Public Prosecutor's Office grew down to be in charge of the formalities of the investigation, which distorted its constitutional powers.

On January 3, 2003, the Constitutional Court passed judgment holding that in the cases of the basic criminal description of terrorism contemplated in Article 2 of Decree-Law No. 25.475, a new interpretation was to be made of the crime of terrorism, in the sense that the perpetrator's intent must be a requirement for the commission of said act, without this reinterpretation implying the unconstitutionality of the foregoing Article 2.

The judgment passed by the Constitutional Court triggered the enactment of a number of Legislative Decrees. Among these was Legislative Decree No. 926, which ordered the annulment of the proceedings started on the grounds of terrorism before ordinary courts administered by "faceless" judges and prosecutors and of the proceedings started on the grounds of terrorism in which the parties were denied the possibility of making use of the challenges provided for in Article 13(h) of Decree-Law No. 25.475, and which also introduced the possibility to declare the unsustainability of the charges brought by the Superior Criminal Prosecutor's Office. It further established the standardization of proceedings, replacing the procedural rules of Decree-Law No. 25.475 with Peruvian ordinary procedural criminal rules.

Furthermore, Legislative Decree No. 926 of February 2003 established a sixty-day term for the National Chamber for Terrorism (Sala Nacional de Terrorismo) to declare the above-mentioned annulment. Upon the annulment of judgment and trial, and once the charges brought by the Superior Prosecutor had been declared unsustainable, the files would be immediately forwarded to the Superior Criminal Prosecutor's Office so that new charges be brought. The new proceedings would start once the annulment had been declared.

Trials in Peru are now public; it is possible to examine the witnesses, whether they are individuals who have witnessed terrorist events or police officers who have taken part in the preparation of police reports. It is also possible to examine plea-bargaining defendants, as well as to know their identities.

On assessing the performance of the National Chamber for Terrorism (Sala Nacional de Terrorismo), and in terms of the number of acquitted individuals, who had been previously convicted of terrorism or high treason, it is evident that the procedure for weighing the evidence adopted by that Chamber is a new one, different from the one adopted in the judgments rendered by "faceless" judges or military courts.

In accordance with Legislative Decree No. 926, the proceedings currently being conducted are based on police reports. Formerly, it was not possible to challenge the contents of a police report or the alleged evidence gathered or produced by the police during the preliminary investigation. In the new proceedings, it is possible to challenge said evidence during the preliminary investigation stage and at the oral proceedings.

The issue concerning the legal basis for the confinement of the accused after the annulments pursuant to Legislative Decree No. 926 is rather questionable. The Constitutional Court passed a decision holding that arrest warrants should be issued pursuant to the criminal procedural

legislation rather than the anti-terrorist legislation, specifically in accordance with Article 135 of the Criminal Procedural Code, setting out the extent and the circumstances in which a judge may issue a warrant of arrest, in conjunction with the provisions of Legislative Law No. 926, which determine that the annulment of proceedings, judgments, penalties, trials, and accusations shall not bring about the release of the accused. Pursuant to the Criminal Procedural Code, the maximum term of detention is 36 months next following the commencement of new proceedings. Therefore, as a matter of fact the term of detention suffered by detainees under the previous proceedings is not considered.

B) TESTIMONIAL EVIDENCE

87. At the public hearing held on May 10, 2005, the Court heard the testimonies of the witnesses offered by the Commission (supra para. 33). The Court shall now summarize the relevant parts of said testimonies:

1. Wilson García-Asto, alleged victim

He was detained on June 30, 1995, at a bus stop. As he was traveling to one of his relatives' house, an armed man came up to two individuals standing near the alleged victim. The witness was handcuffed, his pockets were searched and his belongings, his study notebook, his watch, and his personal documents were taken away from him. The police covered his face, forced him into a car and drove him to an office. Later, he was informed that he had been taken to the DINCOTE facilities, in Lima. The police officers showed him a record of personal search, and told him to sign said record. The witness read it to notice that the police officers had reported that he was carrying three subversive leaflets. When explaining that the leaflets were not his, the witness was violently slapped on his face.

On the following day, his parents went to the DINCOTE for information. That day, the police were going to conduct a search of the alleged victim's house. The witness' father objected to said search as it would be conducted in the absence of a prosecutor. Faced with the threat of being detained, the witness' mother got scared and told her husband to allow the search, as she believed that there was nothing to hide in her house, and that her son was innocent.

Four police officers went to the alleged victim's house to conduct the search while the witness remained outside in a van. After four hours, they made him come into the house, told him that they had finished the search, and that they would take his computer with them. The police officers asked him to sign the record of the search without allowing him enough time to read it and claiming that his family had already signed it. The witness saw the signature of his bother, her mother, and the signature of the police officers on the record. However, the witness insisted that he wanted to read it. Under the pressure exerted by the police officers, who told him not to delay the procedure any longer, Mr. García-Asto signed the record. Later, the police officers used the alleged victim's land-line telephone to call the prosecutor. Afterwards, two prosecutors arrived at the house, and one of them signed the record.

The witness never got to understand the charges brought against him, not even at the time of his conviction as he was found guilty by a "faceless" court communicating via loudspeakers. The only thing he understood was that a co-defendant had claimed that the witness was his support, and that the court sentenced him to twenty years' imprisonment. However, he never confronted his co-defendant, not event at the trial.

In the DINCOTE's facilities, the alleged victim was held incommunicado for fifteen days. He did not have the right to retain an attorney-at-law of his choice. No expert opinions or confrontation hearings were required or held. In July 1995, he was transferred to Castro-Castro Prison, where no medical assistance or legal advice was available. He was never informed of his rights.

In July 1999, he was transferred to Yanamayo Prison, which was quite distant from the place of residence of his next of kin. In that prison, he was not afforded adequate medical assistance. Whenever a doctor prescribed him some medicine, the pharmacy would only give him half the medication and tell him he would be given the other half later on, which never happened. Furthermore, there was no fixed schedule for meals, there was no way to heat them up, and there was no boiling water available. The alleged victim's next of kin who used to visit him had to undergo a personal search and empty the bags of food they were carrying. When the inmates demanded to be allowed to go out to the prison yard, police officers would always get them out when it was raining or hailing. As punishment, the police would beat inmates or throw them into a ditch with cold water and take them wet back to their cells.

In September 2001, he was transferred to Challapalca Prison. In order to transfer him they "used explosives to knock down the door [and] make holes in the walls." The police came in with a hose, teargas, nervous gas, and vomit gas. He spitted blackish saliva for the following fifteen days as the gas had gotten into his lungs. He was not allowed to take any of his belongings with him, -only the clothes he was wearing. When he reached Challapalca Prison, the police officers got him undressed and beat him. He was not allowed to eat or use the toilets. He did not have a spoon, a toothbrush, or a pair of socks. They left him in a cell in isolation, without a mattress or blankets. He had to sleep on cement flooring, although temperatures would drop as low as -24°C in winter. He spent five months without going out to the prison yard. Despite the fact that his health condition had taken a turn for the worse, he was not given medical assistance until the arrival of the representatives of the Inter-American Commission. He was not given adequate clothes or blankets; they gave him only two blankets when at least eight blankets were needed in order to cope with the weather. When visiting the facilities, the Red Cross gave him a blanket, so the director of the prison ordered him to return the two blankets he had been previously provided with.

The witness' next of kin used to visit him every two months at Challapalca Prison, which was located inside a military base. There were accommodation facilities inside the base for inmates' visitors, but the military authorities would not allow the relatives of prisoners convicted of terrorism to seek accommodation there. His next of kin had to seek accommodation in the nearest community.

The witness had to face many problems in order to establish his defense in said confinement units. The commencement of trial was put off several times, which is why the procedure took long. He was neither timely informed of summons to hearings nor of resolutions. His counsel encountered several obstacles in order to obtain a copy of the case file, and police officers were always very restrictive when his counsel would go to visit him. Rather than defending himself from the charges, he was made to prove his innocence.

The alleged victim was acquitted on August 6, 2004, and recovered his freedom. The prosecutor appealed the decision, alleging that there were indications of other charges relating to the same proceedings. At the time of his testimony, the witness did not know the outcome of the second trial.

After his discharge, the witness had problems to adjust to the family and university environments. When he was detained, he was attending his ninth term of IT engineering. At the time of his testimony, he was attending his tenth term of the same course of studies, but was undergoing many economic and psychological problems. Being an IT engineer was a family project rather than a personal one, and the economic income of the family was devoted to the defense of the alleged victim. His health condition was affected by his detention. The alleged victim suffered from acute stomachache, a bronchial condition, and the nerves.

2. Pedro Ramírez-Rojas, brother of the alleged victim

The witness' brother, Urcesino Ramírez-Rojas, is a member of the 'United Left' (Izquierda Unida) political party. At the moment of his detention, the alleged victim had quitted his job in Congress and was planning to set up a financial consulting firm in order to increase his income.
His brother was detained and charged with the crime of terrorism, though there was no conclusive evidence thereof. The police searched the alleged victim's house in the absence of a prosecutor. The papers and manuscripts found by the police officers in Urcesino Ramírez-Rojas' house were documents connected with the university and Congress, which the alleged victim was using to support his works. They also found two tapes, one containing a recording of a lecture on economic issues, and the other containing a recording of the General Secretary of Izquierda Unida political party. The content of the latter had been made known in newsletters made by such party and was publicly known, notwithstanding which it was "considered to be subversive."
The witness learnt of his brother's detention by his sister Filomena, who lived together with the alleged victim. Filomena told the witness that personnel wearing civilian clothes had taken him out of his house, and that she did not know where they had taken him. The witness had to look for his brother from one police station to another, until he was informed that his brother was held in custody at the DINCOTE facilities.
When the witness arrived at the DINCOTE he was not allowed to speak to his brother as he was held incommunicado. He told the Congressman with whom his brother was working what had happened to him. Said Congressman suggested that the witness should retain an attorney by the surname Calderón, who has been Urcesino Ramírez-Rojas' defense counsel so far. The witness had to pay for all the costs of the defense, health care, and other needs of the victim because the monthly payment of his retirement pension was not sufficient.
Urcesino Ramírez-Rojas was held incommunicado in the jail of the Palace of Justice for fourteen days. He was then transferred to Castro-Castro Prison. After a decision was passed against him, in September 1994, he was transferred to Cajamarca Prison. Later on, he was transferred to El Milagro Prison, in Trujillo. For the commencement of new proceedings, the victim was transferred again to Lima. Each transfer was very difficult for him. The alleged victim was mistreated in the prisons located in Castro-Castro, Cajamarca, and Trujillo. Particularly, in 1992 in Castro-Castro Prison there was an assault which lasted for six or seven days. Many inmates died in the incident. The alleged victim's next of kin did not know if he was still alive. The witness had to go daily to hospitals and the morgue, where he was asked to identify bodies. The alleged victim's next of kin were completely uncertain regarding his whereabouts.
The defense counsel filed a writ of habeas corpus and appeals for annulment, but all these petitions were overruled to the detriment of the alleged victim, who has not yet been discharged from prison.

Urcesino Ramírez-Rojas' family is made up of nine siblings: three brothers and six sisters. Before his detention, Urcesino Ramírez-Rojas lived with his mother, his son, his sister Filomena, and her son. His mother, who was ninety years old at the time of his detention, died in 1996. After the detention of the alleged victim, his son was taken to his mother's home, where he was mistreated, which is why the witness took him back to the home of his brother Urcesino Ramírez-Rojas, where he is now being looked after by Filomena, one of Urcesino Ramírez-Rojas' sisters. The alleged victim's son is now seventeen yeas old, and has found many obstacles in visiting his father in the penitentiaries. Since his father's detention, he has often been ill and has encountered great difficulty with his studies.
Just like the alleged victim's son, his brothers and sisters were affected by his detention, especially because of their fear of being detained. When the alleged victim's next of kin visited him, they always had to undergo considerable "hostilities." They were yelled at and threatened. During a visit to the penitentiary, his sister Marcelina was carrying a green coat, which was seized by the police, and both Marcelina and her son were detained. On the following day, the family members talked to an attorney and the police released them both. Since the detention of his brother, the witness has suffered from hypertension.

C) EVIDENCE ASSESSMENT

Documentary Evidence Assessment

88. In the instant case, as in others, [FN13] the Court admits the evidentiary value of those documents which were submitted by the parties at the appropriate procedural stage, which were neither disputed nor challenged, and the authenticity of which was not questioned.

[FN13] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 77; Case of Raxcacó-Reyes, supra note 10, para. 38, and Case of Gutiérrez-Soler, supra note 6, para. 43.

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89. The Court finds it helpful to consider the documents submitted by the representatives as their closing arguments (supra para. 36), as well as the evidence to facilitate the adjudication of the instant case as requested by the Court and submitted by the representatives on November 11 and 16, 2005 (supra para. 44) and by the State on April 12, 2005 (supra para. 26) and on October 19, 2005 (supra para. 42), as they have not been challenged, and their authenticity or certainty has not been questioned. Therefore, the Court shall admit them into the body of evidence of the instant case, pursuant to Article 45(1) of the Rules of Procedure.

90. In turn, the State (supra para. 23) and the representatives (supra para. 21) have filed documentary evidence regarding facts and events which occurred after the submission of the application, pursuant to Article 44(3) of the Rules of Procedure, and therefore, the Court shall admit them as evidence inasmuch as they have not been challenged, their authenticity has not been questioned, and they bear relationship with this instant case.

91. Regarding the affidavits given by Urcesino Ramírez-Rojas and Celia Asto-Urbano (supra para. 86), pursuant to the Order of the President of March 18, 2005 (supra para. 24), the Court

admits them into the body of evidence of the instant case insofar as they refer to the purpose stated in said Order and shall assess them applying thereto the standards of reasonable credit and weight analysis, taking into consideration the acknowledgment of facts made by the State and the observations filed by the parties (supra paras. 31, 32, and 52). As the Court has held, the testimonies of the alleged victims and/or their next of kin are useful insofar as they can supply additional information on the alleged violations and the consequences thereof. [FN14] Furthermore, the Court understands that the testimony of Urcesino Ramírez-Rojas cannot be assessed separately as it relates to an alleged victim who holds a direct interest in the outcome of the case; rather, it should be assessed as part of the whole body of evidence in the proceedings.

[FN14] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 81; Case of Raxcacó-Reyes, supra note 10, para. 39, and Case of Gutiérrez-Soler, supra note 6, para. 45.

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92. Regarding the statements not taken before a notary public made by expert witnesses Mario Pablo Rodríguez-Hurtado and José Daniel Rodríguez-Robinson, as proposed by the Commission (supra para. 86), the Court shall admit them as part of the whole body of evidence in the instant case, and shall assess them applying thereto the standards of reasonable credit and weight analysis. On other occasions, the Court has admitted sworn statements which were not given before a public official with authority to confer full faith and credit to the acts passed before him provided that the principles of legal certainty and procedural equality between the parties [FN15] are not impaired. The Court shall admit the expert opinion of Carlos Rivera-Paz, which was incorporated into the body of evidence in the instant case by Order of March 18, 2005 (supra para. 24) and shall assess it accordingly by the rules of sound judgment.

[FN15] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 82; Case of Yatama. Judgment of June 23, 2005. Series C No. 127, para. 115; and Case of the Serrano-Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 39.

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93. Regarding the press documents submitted by the parties, the Court has found that even though these documents lack evidentiary nature per se, they may be assessed insofar as they refer to public and notorious facts or statements given by State officials, or where they corroborate aspects related to the instant case. [FN16]

[FN16] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 79; Case of the Girls Yean and Bosico, supra note 1, para. 96, and Case of Yatama, supra note 15, para. 119.

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94. Furthermore, pursuant to Article 45(1) of the Rules of Procedure, the Court shall admit as part of the body of evidence of the instant case the Constitution of Peru of 1993, Decree-Laws Nos. 27.226 and 25.553, and the amendments to the Criminal Procedural Code which were not submitted by the State, as they are deemed helpful for the adjudication of the instant case.

Testimonial evidence assessment

95. The Court shall admit as evidence the testimonies given by Wilson García-Asto and Pedro Ramírez-Rojas at the public hearing held in the city of Asuncion, Paraguay, on May 10, 2005 (supra paras. 33 and 87), inasmuch as they are in accordance with the purpose established by the President in Order of March 18, 2005 (supra para. 24), and shall assess their contents as part of the whole body of evidence, applying thereto the standards of reasonable credit and weight analysis. As the Court has held, the testimonies of the alleged victims and/or their next of kin are useful insofar as they can supply additional information on the alleged violations and the consequences thereof. [FN17] Furthermore, the Court understands that the testimony of Wilson García-Asto cannot be assessed separately, as it relates to an alleged victim who holds a direct interest in the outcome of the instant case; rather, it should be assessed as part of the whole body of evidence.

[FN17] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 81; Case of Raxcacó-Reyes, supra note 10, para. 39, and Case of Gutiérrez-Soler, supra note 6, para. 45.

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96. Therefore, the Court shall assess the evidentiary value of the documents, statements, and expert opinions submitted in writing or produced before the Court. Furthermore, the evidence submitted throughout the stages of these proceedings has been incorporated into the same body of evidence as a whole.

VIII. PROVEN FACTS

97. In accordance with the acknowledgement made by the State regarding the facts prior to September 2000 (supra paras. 52 to 60) and with the body of evidence produced in the instant case, the Court finds the following facts to be proven: [FN18]

[FN18] Paragraphs 97(1) to 97(28), 97(53) to 97(55), 97(60) to 97(63), 97(67) to 97(86), 97(120) to 97(125), and 97(131) to 97(137) of this Judgment are undisputed facts which the Court deems to be established on the grounds of the acknowledgment made by the State regarding the facts prior to September 2000.

Background and legal context

97(1) The Criminal Code of Peru of 1991, enacted by Legislative Decree No. 635 of April 3, 1991, in Title XIV, Crimes against Public Peace, Chapter II, defines the crimes of terrorism (Article 319), aggravated terrorism (Article 320), collaboration with terrorism (Article 321), and membership in and affiliation with a terrorist organization (Article 322), among others criminal offenses.

97(2) Within the framework of the anti-terrorist legislation enacted in Peru, on May 5, 1992, Decree-Law No. 25.475 was enacted. Said decree, which established the "penalties for crimes of terrorism and the procedures regarding the investigation, prosecution, and trial thereof," defined the crimes of terrorism, collaboration with terrorism, and membership in and affiliation with a terrorist organization, and set forth the procedures for the investigation and trial of such crimes. The above-mentioned Decree repealed Chapter II of the Criminal Code of 1991 (supra para. 97(1)). In the same year Decree-Law No. 25.659 was enacted. Said Decree defined the crime of high treason, describing it as an aggravated form of the crime of terrorism as provided in Article 2 of Decree-Law No. 25.475. Article 6 of Decree-Law No. 25.659 established the inadmissibility of writs of habeas corpus for the crimes of terrorism and high treason. Said provision was amended by Decree-Law No. 26.248 enacted on November 25, 1993, which reestablished the admissibility of writs of habeas corpus, providing in its paragraph 4 that "writs of Habeas Corpus shall [n]ot be admissible where based on the same facts or grounds, the subject matter of pending legal proceedings or proceedings which have already been adjudicated."

97(3) The proceedings brought for crimes of terrorism, pursuant to Decree-Law No. 25.475, had the following characteristics, among others: the possibility that detainees be held incommunicado for up to the maximum periods provided by law, the restricted participation of the defense counsel before the detainee have given his statement, the inadmissibility of the release on bail of the accused during pre-trial investigation proceedings, the prohibition to offer as witnesses those persons who, by reason of their duties, took part in the police investigation, the Superior Prosecutor's obligation to bring charges "under responsibility," the trial of the case at closed hearings, the non-admissibility of challenges to the judges and judicial officers hearing the case, the participation of "faceless" judges and prosecutors, and the continuous solitary confinement of detainees during the first year of the prison sentences imposed.

97(4) Decree-Law No. 24.475 was amended by provisions which were subsequent to those referred to above, particularly by Law. No. 26.671, enacted on October 12, 1996, which provides the "Date as from which trial of crimes of terrorism as provided by Decree-law No. 25.475 shall be heard by competent judges under the legislation in force." Law No. 26.671 established that as from October 15, 1997 the provisions which did not allow knowing the identity of the judicial officers hearing the case would be invalid.

97(5) As a result of a constitutional motion submitted by Marcelino Tineo-Silva and over five thousand citizens, on January 3, 2003 the Constitutional Court of Peru rendered judgment ruling on the constitutionality and unconstitutionality of various provisions, among which were Decree-Laws Nos. 25.475 (crime of terrorism) and 25.659 (crime of high treason), and related provisions thereto. [FN19]

[FN19] Cf. Judgment rendered by the Constitutional Court of Peru on January 3, 2003, wherein it ruled on a motion of constitutionality submitted by Marcelino Tineo-Silva and over 5,000 citizens, case file No. 010-2002-AI/TC Lima (case file of appendixes to the application, appendix 51, pages 374 to 443).

97(6) Said judgment was rendered by the Constitutional Court of Peru in the exercise of its powers as the supreme body empowered to interpret the Constitution and, therefore, it "endowed said provision with a different content, in line with the constitutional principles violated," in relation to the acts, means, and results referred to in Article 2 of Decree-Law No. 25.475, which describes the crime of terrorism. The Constitutional Court argued that the interpretative nature of said judgment aimed at "restricting the scope of the criminal legal description" provided in Article 2 of Decree-Law No. 25.475, without such interpretation resulting in the creation of further legal provisions. Furthermore, the Constitutional Court argued that, pursuant to the Peruvian Constitution and legislation, the judgments rendered by said court are deemed "to have the value of laws" and "are binding on all public authorities." [FN20]

[FN20] Cf. Judgment rendered by the Constitutional Court of Peru on January 3, 2003, wherein it ruled on a motion of constitutionality submitted by Marcelino Tineo-Silva and over 5,000 citizens, case file No. 010-2002-AI/TC Lima (case file of appendixes to the application, appendix 51, pages 374 to 443).

97(7) Regarding Article 2 of Decree-Law No. 25.475, which describes the crime of terrorism, the above-mentioned judgment of the Constitutional Court of Peru (supra para. 97(5)) declared said provision to be constitutional as it "conveys a message which allows citizens to know the content of the prohibition, so that they may distinguish that which is forbidden from that which is permitted […]. Within the reasonable margins of indetermination contained by this provision, the application of this mechanism should be orientated in the direction showed by the interpretative provisions of [the] judgment, whereby any interpretations departing from these guidelines breach the nullum crimen nulla poena sine lege praevia principle." [FN21] The judgment did not address Articles 4 and 5 of the above-mentioned Decree-Law, which describe the crime of collaboration with terrorism and that of membership in and affiliation with terrorist organizations.

[FN21] Cf. Judgment rendered by the Constitutional Court of Peru on January 3, 2003, wherein it ruled on the motion of constitutionality submitted by Marcelino Tineo-Silva and over 5,000 citizens, case file No. 010-2002-AI/TC Lima (case file of appendixes to the application, appendix 51, pages 374 to 443).

97(8) As a result of the judgment rendered by the Constitutional Court of Peru (supra para. 97(5)), the Executive Power issued Legislative Decrees No. 921, 922, 923, 924, 925, 926, and 927, aimed at regulating the effects of such judgment in relation to "the legal provisions pertaining to life imprisonment, […] setting the maximum penalties for the crimes described by Articles 2, 3, paragraphs (b) and (c), 4, 5, and 9 of Decree-Law No. 25.475, and […] regulating the procedures for processing motions for retrials and the proceedings referred to in the […] Judgment." [FN22]

[FN22] Cf. Judgment rendered by the Constitutional Court of Peru on January 3, 2003, wherein it ruled on a popular motion of constitutionality submitted by Marcelino Tineo-Silva and over 5,000 citizens, case file No. 010-2002-AI/TC Lima (case file of appendixes to the application, appendix 51, pages 374 to 443); and Legislative Decrees No. 921, 922, 923, 925, and 926 (case file of appendixes to the application, appendixes 52 to 58, pages 444 to 463).

97(9) Legislative Decree No. 926 set forth the annulment of judgments, oral proceedings, and, in some cases, the discontinuance of the prosecution's case in the proceedings started for the crime of terrorism and being heard by "faceless" judges and prosecutors. Regarding the effects of the above-mentioned annulment, Article 4 of Legislative Decree No. 926 provided that "[t]he annulment declared pursuant to this Legislative Decree shall not result in the freedom of the accused, nor in the suspension of the existing summonses." The first supplementary provision established that the "detention deadline pursuant to Article 137 of the Criminal Procedural Code in the proceedings where the [above-mentioned] Legislative Decree is applied, shall be calculated as from the date of the order providing the annulment." [FN23]

[FN23] Cf. Legislative Decree No. 926 (case file of appendixes to the application, appendix 57, pages 460 to 462).

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a) Facts regarding Wilson García-Asto

97(10) Wilson García-Asto, a Peruvian national, was born on February 22, 1970 and at the time the events described in the instant case occurred he was twenty-five years old and was in the last year of the course of studies of Systems Engineering at the School of Industrial and Systems Engineering of the National University of El Callao (Facultad de Ingeniería Industrial y de Sistemas de la Universidad Nacional del Callao).

Regarding the detention of Wilson García-Asto and the police investigation

97(11) On June 30, 1995, while he was at the bus stop, Wilson García-Asto was arrested by DINCOTE personnel, who did not show an arrest warrant. He was detained at the same time that Nicéforo Bartolomé Melitón-Cárdenas and María Beatriz Azcarate-Vidalón were also detained.

97(12) On the same June 30, 1995, the police issued a record following the personal search of Wilson García-Asto, wherein it was entered that the documents found on him were "three (3) subversive leaflets." The alleged victim refused to sign the record of personal search on the grounds that the leaflets were not his.

97(13) On the same June 30, 1995 Wilson García-Asto was transferred to the DINCOTE facilities, where he was held incommunicado until July 12, 1995, when he made a statement before the police.

97(14) On July 1, 1995, members of the Peruvian National Police conducted a search of the domicile of the alleged victim, who lived with his parents and siblings. The police did not have a search warrant and the search was conducted in the absence of the representative of the Office of the Public Prosecutor, who arrived when it was almost concluded. During the domicile search, a computer was seized. Likewise, a number of documents were seized as "subversive literature, including manuscripts, newspapers, leaflets, pamphlets, and other documents," as well as ninety-nine diskettes the content of which was not described, as they were not examined by the authorities. Wilson García-Asto's next of kin were forced to sign the record of the domicile search. Furthermore, the alleged victim was forced to sign the record without having read it, under the threat that his next of kin would be detained.

97(15) On July 11, 1995, Nicéforo Bartolomé Melitón-Cárdenas made a statement before the police, wherein he declared that he knew Wilson García-Asto. He did not ratify this statement, however, upon making a statement before the criminal judge during the pre-trial investigation proceedings (infra para. 97(22)).

97(16) On July 12, 1995, Wilson García-Asto made a statement before the police, wherein he declared that the documents listed in the record of personal search had not been seized from him and were not his.

97(17) On the same July 12, 1995, María Beatriz Azcarate-Vidalón made a statement before the police, wherein she denied knowing Wilson García-Asto.

97(18) On July 13, 1995, the PNP issued police report No. 071-D3-DINCOTE (hereinafter "police report No. 071"), wherein they stated that when Wilson García-Asto was detained, "the terrorist propaganda documents described in the pertinent record were allegedly in his possession." In addition, the Police described some documents which were allegedly stored in the hard disk of the computer seized from the alleged victim's domicile, pointing out that they were "for the exclusive use of the members of the PCP-SL" (Partido Comunista Peruano, Sendero Luminoso, hereinafter "Shining Path") and that other "encrypted documents" were stored in said computer which were to be examined later. In said police report Wilson García-Asto was charged with the alleged crime of terrorism, as it was allegedly "proven that he was a member of [Shining Path], operating for the 'Organized Support' of the Metropolitan Regional Committee Northern Area" of such organization. In their report, the police stated that the judicial bodies having jurisdiction to hear the case were the Forty-Third On-Duty Provincial Prosecutor (43 Fiscalía Provincial de Turno) and the Forty-Third On-Duty Magistrate's Court (43 Juzgado de Instrucción de Turno).

Regarding the criminal proceedings brought against Wilson García-Asto

97(19) On July 17, 1995, the Deputy Provincial Criminal Prosecutor in charge of the ad hoc Forty-Third Provincial Criminal Public Prosecutor's Office for Terrorism of Lima (Cuadragésima Tercera Fiscalía Provincial Penal ad hoc de Terrorismo de Lima) brought criminal charges against Wilson García-Asto as alleged perpetrator of the crime of disturbance of public peace (terrorism) against the State, under the provisions of Articles 4 and 5 of Decree-Law No. 25.475, offering as evidence police report No. 071 (supra para. 97(18)).

97(20) On July 17, 1995 the Judge presiding over the Forty-Third Criminal Court of Lima (Cuadragésimo Tercer Juzgado Penal de Lima), based on the charges brought by the Public Prosecutor's Office and the foregoing police report, issued an order so that pre-trial investigation proceedings be commenced against Wilson García-Asto for the crime of terrorism as described in Articles 4 and 5 of Decree-Law No. 25.475. At the same time, the Judge stated that it was "relevant to point out that giv[en] the nature of the crime under investigation and the special legislation regarding t[he] matter, paragraph (a) of Article 13 of Decree-Law [No. 25.475] w[as] to be strictly applied, whereby he […] issu[ed] an ARREST warrant."

97(21) On July 20, 1995 Wilson García-Asto made a statement during the pre-trial investigation proceedings before the Judge presiding over the Forty-third Criminal Court of Lima (Cuadragésimo Tercer Juzgado Penal de Lima), in the presence of his counsel, wherein he ratified that the documents seized therefrom were not his (supra paras. 97(12) and 97(18)). The alleged victim ratified in part his police statement, declaring that he had never worked for Shining Path, nor had he used his computer to draw documents for said organization, and that it was not true that he delivered them medicines, clothes or supplies.

97(22) On September 18, 1995, María Beatriz Azcarate-Vidalón gave testimony, wherein she ratified her police statement (supra para. 97(17)), in that she did not know Wilson García-Asto. For his part, in the testimony given on that same day by Nicéforo Bartolomé Melitón-Cárdenas, he did not ratify the statement he had made before the police (supra para. 97(15)) and made it clear that he did not know Wilson García-Asto and that said person was not a member of Shining Path.

97(23) On the same September 18, 1995, the DINCOTE forwarded a report to the Forty-Third Criminal Court of Lima (Cuadragésimo Tercer Juzgado Penal de Lima), attaching thereto 163 pages which allegedly were part of the information retrieved from the computer seized from Wilson García-Asto's domicile (supra para. 97(14)). The DINCOTE considered that from the "preliminary analysis" of such information, it might be concluded that it belonged to an alleged subversive group and determined that "therefore […] the holder thereof w[as] a member of such terrorist organization."

97(24) On February 2, 1996 a "faceless" prosecutor brought charges against Wilson García-Asto as perpetrator of the crime of terrorism as described in Articles 4 and 5 of Decree-law No. 25.475, and requested that a sentence of twenty years' imprisonment be imposed thereto.

97(25) On April 8 and 12, 1996 special hearings in the proceedings brought against Wilson García-Asto were conducted at the Castro-Castro Prison before the Special Chamber appointed by the Superior Court of Justice of Lima (Corte Superior de Justicia de Lima), made up of "faceless" judges.

97(26) On April 12, 1996 the alleged victim's defense counsel submitted to the Special Chamber made up of "faceless" judges a brief containing the closing arguments, wherein he challenged the validity of the police report as evidence for the prosecution, claiming, among other arguments, that the documents seized had not been examined by an expert witness and that the police had

not forwarded the judge hearing the case the analysis of the alleged encrypted information retrieved from the computer seized from the alleged victim.

97(27) On April 18, 1996, the Special Criminal Chamber of the Superior Court of Justice of Lima (Sala Penal Especial de la Corte Superior de Justicia de Lima), made up of "faceless" judges, convicted Wilson García-Asto, sentencing him to twenty years' imprisonment as perpetrator of the crime of terrorism against the State, as described in Articles 4 and 5 of Decree-Law No. 25.475, and to the payment of civil reparation. The Special Criminal Chamber (Sala Penal Especial) deemed that the documents found in the alleged victim's domicile proved that he "was an active member of the terrorist organization Shining Path." On that same day, after the hearing at which the sentence convicting Mr. García-Asto was read had been concluded, he submitted an appeal for annulment against said judgment. The Special Criminal Chamber found the appeal for annulment submitted by the alleged victim to be admissible.

97(28) On July 14, 1997 the Supreme Court of Justice of Peru (Corte Suprema de Justicia de Perú), also made up of "faceless" judges, dismissed the appeal for annulment submitted by Wilson García-Asto against the judgment of April 18, 1996.

Regarding the annulment of the judgment and new proceedings against Wilson García-Asto.

97(29) On November 20, the alleged victim's mother, Celia Asto-Urbano, filed a writ of habeas corpus on behalf of her son, against the judgments rendered by the Superior Court of Justice (Corte Superior de Justicia) and the Supreme Court of Justice of Lima (Corte Suprema de Justicia de Lima), on the grounds that judicial guarantees had been violated. [FN24]

[FN24] Cf. Order issued by the Forty-third Special Criminal Court of the Superior Court of Justice of Lima (Cuadragésimo Juzgado Especializado en lo Penal de la Corte Superior de Justicia de Lima) on November 27, 2002 (case file of appendixes to the application, volume 1, appendix 25, pages 194 to 196).

97(30) On November 27, 2002 the Forty-Third Special Criminal Court of the Superior Court of Justice of Lima (Cuadragésimo Juzgado Especializado en lo Penal de la Corte Superior de Justicia) ruled in the first instance, that the writ of habeas corpus submitted by Wilson García-Asto for the violation of due process was groundless. [FN25]

[FN25] Cf. Order issued by the Forty-third Special Criminal Court of the Superior Court of Justice of Lima (Cuadragésimo Juzgado Especializado en lo Penal de la Corte Superior de Justicia de Lima) on November 27, 2002 (case file of appendixes to the application, volume 1, appendix 25, pages 194 to 196).

97(31) On January 15, 2003 the Third Criminal Chamber of the Superior Court of Justice of Lima (Tercera Sala Penal de la Corte Superior de Justicia de Lima) repealed the judgment of

November 27, 2002, wherein the writ of habeas corpus submitted on behalf of Wilson García-Asto had been found to be groundless. [FN26] Said judgment, after recognizing that the proceedings to which the alleged victim had been subjected were in violation of such fundamental rights as due process, the right to be tried by a competent judge, and the right to know whether the judge hearing the case was competent, and further recognizing that he had been convicted by "faceless" judges, found the first criminal proceedings brought against him in the ordinary jurisdiction for the crime of terrorism against the State to be invalid as from the order issued for pre-trial investigation proceedings to be commenced. Therefore, it ordered that the case file be forwarded to the competent authorities within forty-eight hours, so that the pertinent legal steps be taken. [FN27]

[FN26] Cf. Judgment rendered by the Third Criminal Chamber of the Superior Court of Justice of Lima (Tercera Sala Penal de la Corte Superior de Justicia de Lima) on January 15, 2003 (case file of appendixes to the application, volume 1, appendix 26, page 200).
[FN27] Cf. Judgment rendered by the Third Criminal Chamber of the Superior Court of Justice of Lima (Tercera Sala Penal de la Corte Superior de Justicia de Lima) on January 15, 2003 (case file of appendixes to the application, volume 1, appendix 26, page 200).

97(32) On March 10, 2003, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) issued an order so that pre-trial investigation proceedings be commenced in the ordinary jurisdiction against Wilson García-Asto for the crime of membership in and affiliation with a terrorist organization as described in Article 5 of Decree-Law No. 25.475, on the grounds of the charges brought by the ad hoc Deputy Prosecutor in charge of the Forty-Third Provincial Criminal Public Prosecutor's Office for Terrorism of Lima (Cuadragésima Tercera Fiscalía Provincial Penal de Lima) on July 17, 1995 (supra para. 97(19)). The judge dismissed the order for pre-trial investigation proceedings to be commenced against the alleged victim for the crime of collaboration with terrorism as described in Article 4 of the same Decree-Law, on the grounds that "[l]ikening a person's conduct to the criminal offenses defined by the provisions of both Articles 4 and 5 was not consistent, as due to their incompatible nature they cannot coexist copulatively." [FN28]

[FN28] Cf. Order for pre-trial investigation proceedings to be commenced issued by the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delitos de Terrorismo) on March 10, 2003 (case file of appendixes to the application, volume 1, appendix 27, page 203).

97(33) Regarding the evidentiary procedures, the Public Prosecutor's Office requested, among other things, that the police be required to forward the results of the examination of the terrorist literature allegedly retrieved from the memory of the computer seized from Wilson García-Asto's domicile (supra para. 97(14)). In this regard, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) decided that it "w[as] not necessary" to request it at that moment, as during the investigation stage of the previous

proceedings the documents stored in that computer had been tendered and "though the examination thereof had n[ot] been forwarded, it was n[ot] relevant as the judges m[ight] request it in due time." [FN29]

[FN29] Cf. Order for pre-trial investigation proceedings to be commenced issued by the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delitos de Terrorismo) on March 10, 2003 (case file of appendixes to the application, volume 1, appendix 27, page 206).

97(34) Furthermore, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) issued an arrest warrant against Wilson García-Asto, based on the police report submitted by the Prosecutor, [FN30] on the grounds that taking into consideration that according to Article 135 of the Criminal Procedural Code the available evidence was sufficient to prove the possible commission of the crime charged, that the sentence likely to be imposed exceeded four years' imprisonment, and that in accordance with the "seriousness of the crimes charged and the legal consequences they would entail, the procedural risk was evident, it was to be assumed that, if released [,] the accused would tr[y] to escape justice or thwart the evidentiary procedures, as this is a natural defensive act." [FN31]

[FN30] Cf. Order for pre-trial investigation proceedings to be commenced issued by the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) on March 10, 2003 (case file of appendixes to the application, volume 1, appendix 27, page 205).

[FN31] Cf. Order for pre-trial investigation proceedings to be commenced issued by the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) on March 10, 2003 (case file of appendixes to the application, volume 1, appendix 27, page 205).

97(35) On March 24, April 10, April 24, May 9, and May 23, 2003 Wilson García-Asto made a statement at the Castro-Castro Prison during the pre-trial investigation of the new proceedings started against him. [FN32]

[FN32] Cf. Pre-trial investigation statement made by Wilson García-Asto at Castro-Castro Prison on March 24, 2003 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 2, page 3204); continued pre-trial investigation statement made by Wilson García-Asto at Castro-Castro Prison on April 10, 2003 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 2, page 3238); continued pre-trial investigation statement made by Wilson García-Asto at Castro-Castro Prison on April 24, 2003 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 2, page 3295); continued pre-trial investigation statement made by Wilson García-Asto at Castro-Castro Prison on May 9, 2003 (case file of evidence to facilitate the adjudication of the case

submitted by the State, volume 2, page 3319); and continued pre-trial investigation statement made by Wilson García-Asto at Castro-Castro Prison on May 23, 2003 (case file of evidence to facilitate the adjudication of the case submitted by the State , volume 2, page 3335).

97(36) On July 11, 2003 the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) ordered that a sixty-day extension be granted for pre-trial investigation proceedings to be commenced, as the investigation "was still incipient, and substantial evidentiary procedures had yet to be adopted in order to better elucidate the facts." [FN33]

[FN33] Cf. Order for pre-trial investigation proceedings to be extended issued by the First Special Criminal Court for Terrorism (Primer Juzgado Especializado Penal en Delito de Terrorismo) on July 11, 2003 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 2, page 3353).

97(37) On September 5, 2003 the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) placed on record that it was not possible to hear the testimony of Nicéforo Bartolomé Melitón-Cárdenas, as he had died on June 17, 2003. [FN34]

[FN34] Cf. Record of the death of Nicéforo Bartolomé Melitón-Cárdenas issued by the First Special Criminal Court for Terrorism (Primer Juzgado Especializado Penal en Delito de Terrorismo) on September 5, 2003 (case file of evidence submitted by the State to facilitate the adjudication of the case, volume 2, page 3473).

97(38) On September 9, 2003 María Beatriz Azcárate-Vidalón gave testimony at Chorrillos Prison, reiterating that she did not know Wilson García-Asto. [FN35]

[FN35] Cf. Testimony given by María Beatriz Azcárate-Vidalón on September 9, 2003 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 2, page 3477).

97(39) On October 21, 2003 the Peruvian National Police informed the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) that it was not possible to find the documents which were in the hard disk of the computer seized from Wilson García-Asto's domicile. [FN36]

[FN36] Cf. Official letter No. 3632-2003 issued by the Peruvian National Police on October 21, 2003 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 3, page 3595).

97(40) On November 21, 2003 the motion for release submitted on behalf of Wilson García-Asto on the grounds that his detention had exceeded the term set forth by law was found to be inadmissible by the National Chamber for Terrorism (Sala Nacional de Terrorismo), which considered that the duration of his detention was within the legal term provided for by Article 137 of the Criminal Procedural Code. [FN37]

[FN37] Cf. Order issued by the National Chamber of Terrorism (Sala Nacional de Terrorismo) on November 21, 2003 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 3, page 3611).

97(41) On January 5, 2004 the National Chamber for Terrorism (Sala Nacional de Terrorismo) ruled that there were sufficient grounds for oral proceedings to be commenced. [FN38]

[FN38] Cf. Order issued by the National Chamber on Terrorism (Sala Nacional de Terrorismo) on January 29, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 3, page 3627).

97(42) On April 6, 2004 the National Chamber for Terrorism (Sala Nacional de Terrorismo) requested the DINCOTE the computer seized from the alleged victim's domicile. [FN39] On April 13 and 20, 2004 the above-mentioned request to the DINCOTE was reiterated. [FN40]

[FN39] Cf. Order issued by the National Chamber on Terrorism (Sala Nacional de Terrorismo) on April 06, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 3, page 3815).

[FN40] Cf. Order issued by the National Chamber on Terrorism (Sala Nacional de Terrorismo) on April 13, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 3, page 3839); and order issued by the National Chamber for Terrorism (Sala Nacional de Terrorismo) on April 20, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 3, page 3865).

97(43) On April 27, 2004 the DINCOTE informed the National Chamber for Terrorism (Sala Nacional de Terrorismo) that despite the measures adopted, it had not been possible to "find the documents and the information seized" from the alleged victim. Regarding Wilson García-Asto's computer, it was reported that it was kept in custody at the Seized Property Management Unit

(Unidad de Administración de Bienes Incautados) and that a request had been made so that said equipment be directly forwarded to the pertinent judicial authorities. [FN41]

[FN41] Cf. Report No. 79 issued by the Peruvian National Police on April 27, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 3, page 3897).

97(44) On May 10, 2004 the DINCOTE informed the National Chamber for Terrorism (Sala Nacional de Terrorismo) that from the technical inspection carried out on the computer it resulted that "the power source of the CPU, w[as] not in operating conditions, apparently due to […] the fact that it was very old and it had not been used for a long time (humidity)." [FN42]

[FN42] Cf. Technical report No. 024 issued by the Peruvian National Police on May 10, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 3, page 3931).

97(45) On May 13, 2004 the National Chamber for Terrorism (Sala Nacional de Terrorismo) requested the DINCOTE to forward the analysis of the documents seized from the alleged victim's domicile, as well as that of the "encrypted" documents stored in Wilson García-Asto's computer memory. [FN43]

[FN43] Cf. Order issued by the National Chamber for Terrorism (Sala Nacional de Terrorismo) on May 13, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 3, page 4055).

97(46) On May 20, 2004 the DINCOTE informed the National Chamber for Terrorism (Sala Nacional de Terrorismo) that it did not have the analyses "aimed at deciphering the encrypted files which were stored in the hard disk memory of the computer seized" from the alleged victim's domicile. [FN44]

[FN44] Cf. Report No. 112 issued by the Peruvian National Police on May 20, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 3, page 4067).

97(47) On August 5, 2004 the National Chamber for Terrorism (Sala Nacional de Terrorismo) rendered judgment acquitting Wilson García-Asto and, therefore, ordering that he be released. As to the analysis of the documents retrieved from the computer seized from the alleged victim, the National Chamber pointed out that

though the police had been repeteadly required to forward said analysis, it [was] not possible to obtain it, nor was it possible to obtain the results of the deciphering, and after an expert examination had been made at the stage of the oral proceedings, the expert witnesses concluded that the type of information stored in the hard disk could not pos[sibly] be determined and that considering the risk that it m[ight] be later manipulated, such examination should have been made immediately after the equipment was seized. [FN45]

[FN45] Cf. Order issued by the National Chamber for Terrorism (Sala Nacional de Terrorismo) on August 05, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 4, page 4456).

97(48) On August 6, 2004 Wilson García-Asto was released. [FN46]

[FN46] Cf. Testimony given by Wilson García-Asto before the Inter-American Court on May 10, 2005; photographs of Wilson García-Asto's next of kin taken on the day he was released (case file of appendixes to the brief of requests and arguments, volume I, appendix 10, pages 1808 to 1812).

97(49) On August 18 and October 28, 2004 the Special Office of the Public Prosecutor for Terrorism of the Ministry of the Interior [FN47] (Procuradora Pública Especializada para Delitos de Terrorismo del Ministerio del Interior) and the Second Supreme Office of the Public Prosecutor in Criminal Matters of Lima (Segunda Fiscalía Suprema en lo Penal de Lima), [FN48] respectively filed an appeal for annulment against the judgment rendered on August 5, 2004 acquitting the alleged victim with the Supreme Court of Justice of the Republic.

[FN47] Cf. Appeal for annulment submitted by the Special Public Prosecutor for Crimes of Terrorism of the Ministry of the Interior on August 18, 2004 (case file of evidence submitted by the State to facilitate the adjudication of the case, volume 4, page 4484).

[FN48] Cf. Report No. 1714 -2004-2ºFSP-FN-MP issued by the Second Supreme Office of the Public Criminal Prosecutor of Lima (Segunda Fiscalía Suprema en lo Penal de Lima) on October 28, 2004 (case file on the merits, volume IV, page 974).

97(50) On February 8, 2005 Wilson García-Asto’s defense counsel submitted before the Supreme Court of Justice his written arguments regarding the appeal for annulment filed against the judgment of August 5, 2004. [FN49]

[FN49] Cf. Brief of arguments filed by Wilson García-Asto’s defense counsel regarding the appeal for annulment submitted before the Supreme Court on February 8, 2005 (case file on the merits, volume IV, page 823).

97(51) On February 9, 2005, the Supreme Court of Justice passed judgment on the appeal for annulment submitted by the Supreme Public Prosecutor and the Special Public Prosecutor (supra para. 97(49)), dismissing the annulment of the judgment appealed. [FN50]

[FN50] Cf. Judgment rendered by the Second Provisional Criminal Chamber of the Supreme Court of Justice of Lima (Segunda Sala Penal Transitoria de la Corte Suprema de Justicia del Perú) on February 9, 2005 (case file on the merits, volume IV, page 966).

97(52) By March 15, 2005, the judgment acquitting Wilson García-Asto (supra para. 97(47)) had neither been formally served thereon nor on his counsel. On that date, said judgment was forwarded to the alleged victim's representatives before the Court, as it had been submitted by the State as evidence to facilitate the adjudication of the case in the proceedings started before the Court. [FN51]

[FN51] Cf. Note from the Court Secretariat REF CDH-12.413/062 of March 15, 2005 (case file on the merits, volume III, page 703); and brief submitted by the representatives before the Court on April 20, 2005 (case file on the merits, volume IV, page 820).

Regarding Wilson García-Asto's detention

97(53) Wilson García-Asto was deprived of his liberty from June 30, 1995 to August 6, 2004, when he was released (supra para. 97(48)).

97(54) Since July 18, 1995 to July 20, 1999 Wilson García-Asto was confined at Castro-Castro Prison, located in Lima. Under the legislation then in force, during the first year of detention he was kept in solitary confinement and was allowed to go out to the prison yard for only half an hour, and visits were restricted only to his next of kin.

97(55) On July 20, 1999 Wilson García-Asto was transferred to Yanamayo Prison, located in Puno, at 3,800 meters above sea level, where he was confined up to September 21, 2001. [FN52] At Yanamayo Prison Wilson García-Asto was not given adequate medical care, the food was scarce, temperatures were extremely low, he had no access to work material or printed media, [FN53] and visits were restricted. [FN54]

[FN52] Cf. Certificate of criminal record of Wilson García-Asto issued by the National Penitentiary Institute on April 11, 2005 (case file on the merits, volume IV, page 869); and case file of precautionary measures ordered by the Inter-American Commission on behalf of Wilson García-Asto (case file of appendixes to the application, volume 3, appendix 64, page 1091).

[FN53] Cf. Statement given by Wilson García-Asto before the Inter-American Court of Human Rights on May 10, 2005; fact acknowledged by the State.
[FN54] Cf. Affidavit made by Celia Asto-Urbano on April 5, 2005 (case file of affidavits and comments thereon, page 5951); fact acknowledged by the State.

97(56) On September 21, 2001 Wilson García-Asto was transferred to Challapalca Prison, located in Tacna. [FN55] The alleged victim was confined there up to August 21, 2002. Said prison was at over 4,600 meters above sea level. [FN56] The local average temperature during most of the year is about 8º or 9º C during the day, dropping suddenly overnight as low as -20ºC. [FN57] The alleged victim was punished for five months, during which he was not allowed to go out to the prison yard. [FN58] He did not have clothes heavy enough to endure the local low temperatures. [FN59] The prison cells and hall had no heating and prisoners were not allowed to have heaters or portable stoves in their cells. [FN60] No drinking water, proper medical services or sports facilities were available at the prison. [FN61] The isolation imposed on Wilson García-Asto due to the distance at which the penitentiary was located and the difficulties in reaching the region prevented the alleged victim from having regular contact with his next of kin and from receiving specialized medical care in case of emergency. [FN62]

[FN55] Cf. Statement given by Wilson García-Asto before the Inter-American Court of Human Rights on May 10, 2005; and affidavit made by Celia Asto-Urbano on April 5, 2005 (case file of affidavits and comments thereon, page 5951).
[FN56] Cf. IACHR, report on the situation of human rights at Challapalca Prison, Department of Tacna, Republic of Peru, OAS/Ser.L/V/II.118. Doc. 3 of October 9, 2003 (case file of appendixes to the brief of requests and arguments, volume 1, appendix 5, page 1739); and Ombudsman's report of May 30, 1997 (case file of appendixes to the application filed by the Inter-American Commission, volume III, appendix 65, page 1101).
[FN57] Cf. IACHR, report on the situation of human rights at Challapalca Prison, Department of Tacna, Republic of Peru, OAS/Ser.L/V/II.118. Doc. 3 of October 9, 2003 (case file of appendixes to the brief of requests and arguments, volume 1, appendix 5, page 1739); and Ombudsman's report of May 30, 1997 (case file of appendixes to the complaint lodged by the Inter-American Commission, volume III, appendix 65, page 1101).
[FN58] Cf. Statement given by Wilson García-Asto before the Inter-American Court of Human Rights on May 10, 2005; this fact was not challenged by the State.
[FN59] Cf. Statement given by Wilson García-Asto before the Inter-American Court of Human Rights on May 10, 2005; this fact was not challenged by the State.
[FN60] Cf. IACHR, report on the situation of human rights at Challapalca Prison, Department of Tacna, Republic of Peru, OAS/Ser.L/V/II.118. Doc. 3 of October 9, 2003 (case file of appendixes to the brief of requests and arguments, volume 1, appendix 5, page 1743).
[FN61] Cf. IACHR, report on the situation of human rights at Challapalca Prison, Department of Tacna, Republic of Peru, OAS/Ser.L/V/II.118. Doc. 3 of October 9, 2003 (case file of appendixes to the brief of requests and arguments, volume 1, appendix 5, page 1745).
[FN62] Cf. Statement given by Wilson García-Asto before the Inter-American Court of Human Rights on May 10, 2005; and IACHR, report on the situation of human rights at Challapalca Prison, Department of Tacna, Republic of Peru, OAS/Ser.L/V/II.118. Doc. 3 of October 9, 2003

(case file of appendixes to the brief of requests and arguments, volume 1, appendix 5, page 1739).

97(57) On April 4, 2002 the Inter-American Commission adopted precautionary measures on behalf of Wilson García-Asto in order to avoid irreparable physical damage thereto, as he had prostate problems, had not been given any medical treatment, and since he was transferred to Challapalca Prison, his "condition h[ad] worsened due to the l[ack] of medical staff at that penitentiary." [FN63]

[FN63] Cf. Communication of the Inter-American Commission of April 4, 2002, wherein precautionary measures were adopted on behalf of Wilson García-Asto (case file of appendixes to the application, volume 3, appendix 65, page 1199).

97(58) On August 21, 2002 Wilson García-Asto was transferred to La Capilla Prison, located in the city of Juliaca, so that he may be given medical care. [FN64]

[FN64] Cf. Statement given by Wilson García-Asto before the Inter-American Court of Human Rights on May 10, 2005; and affidavit made by Celia Asto-Urbano on April 5, 2005 (case file of affidavits and comments thereon, page 5955).

97(59) On December 17, 2002 Wilson García-Asto was moved to Castro-Castro Prison, where he was kept until he was released. [FN65]

[FN65] Cf. Certificate of criminal record of Wilson García-Asto issued by the National Penitentiary Institute (Instituto Nacional Penitenciario) on April 11, 2005 (case file on the merits, volume IV, page 869).

Regarding Wilson García-Asto's next of kin

97(60) When Wilson García-Asto was arrested, he lived with his parents. Wilson García-Asto's parents were Celia Asto-Urbano and Napoleón García-Tuesta. His sister is Elisa García-Asto and his brother is Gustavo García-Asto. [FN66]

[FN66] Cf. Affidavit made by Celia Asto-Urbano on April 5, 2005 (case file of affidavits and comments thereon, page 5948).

97(61) The prolonged detention suffered by Wilson García-Asto and the proceedings to which he was subjected affected his conduct. [FN67] In addition, among other consequences suffered by Wilson García-Asto as a result of the foregoing are astigmatism, prostate syndrome, and sleep disturbances. [FN68]

[FN67] Cf. Testimony given by Wilson García-Asto on the consequences resulting from the facts described in the instant case (case file of appendixes to the brief of requests and arguments, volume 2, appendix 37, pages 1964 to 1965); and psychological report of Wilson García-Asto of September 15, 2004 (case file of appendixes to the brief of requests and arguments, volume 2, appendix 42, page 2000).
[FN68] Cf. Testimony given by Wilson García-Asto regarding the consequences resulting from the facts described in the instant case (case file of appendixes to the brief of requests and arguments, volume 2, appendix 37, pages 1964 to 1965); and psychological report on Wilson García-Asto of September 15, 2004 (case file of appendixes to the brief of requests and arguments, volume 2, appendix 42, page 2002).

97(62) Wilson García-Asto's mother devoted herself to the defense of his son. [FN69] As a result of having a next of kin in prison for the crime of terrorism the alleged victim's mother and next of kin were seen as terrorists by society, suffering insult and mistreatment. [FN70] Wilson García-Asto's father, Napoleón García-Tuesta, was also affected by the situation to which his son was subjected, thus suffering from deep depression and high blood pressure. [FN71]

[FN69] Cf. Affidavit made by Celia Asto-Urbano on April 5, 2005 (case file of affidavits and comments thereon, page 5956).
[FN70] Cf. Affidavit made by Celia Asto-Urbano on April 5, 2005 (case file of affidavits and comments thereon, page 5953).
[FN71] Cf. Testimony given by Napoleón García-Tuesta on September 16, 2004 (case file of appendixes to the brief of requests and arguments, volume 2, appendix 39, pages 1973 to 1975).

97(63) The situation undergone by Wilson García-Asto as a result of his detention and transfer to different prisons caused psychological suffering to his next of kin, particularly to his brother and sister. [FN72] His younger brother, Gustavo García-Asto, suffered from a tendency to anxiety, emotional instability, and lack of social confidence, [FN73] which led him to drop out of university. [FN74] His sister Elisa suffered from depression and melancholy, as well as from lack of self-confidence. [FN75] His mother and his sister Elisa García-Asto would be mocked and humiliated by the prison wardens when they visited the alleged victim. [FN76]

[FN72] Cf. Psychological reports on Elisa and Gustavo García-Asto of September 15, 2004 (case file of appendixes to the brief of requests and arguments, volume 2, appendix 43 and 44, pages 2005 to 2013).

[FN73] Cf. Psychological report on Gustavo García-Asto of September 15, 2004 (case file of appendixes to the brief or requests and arguments, volume 2, appendix 44, page 2010); and affidavit made by Celia Asto-Urbano on April 5, 2005 (case file of affidavits and comments thereon, page 5959).
[FN74] Cf. Affidavit made by Celia Asto-Urbano on April 5, 2005 (case file of affidavits and comments thereon, page 5960).
[FN75] Cf. Psychological report on Elisa García-Asto of September 15, 2004 (case file of appendixes to the brief of requests and arguments, volume 2, appendix 43, page 2005); and affidavit made by Celia Asto-Urbano on April 5, 2005 (case file of affidavits and comments thereon, page 5960).
[FN76] Cf. Affidavit made by Celia Asto-Urbano on April 5, 2005 (case file of affidavits and comments thereon, page 5953); and written statement submitted by Elisa García-Asto (case file of appendixes to the brief of requests and arguments, volume 2, appendix 34, pages 1945 to 1951).

97(64) After being released, Wilson García-Asto reassumed his studies at the university. [FN77]

[FN77] Cf. Affidavit made by Celia Asto-Urbano on April 5, 2005 (case file of affidavits and comments thereon, page 5960).

97(65) Wilson García-Asto's next of kin incurred different expenses resulting directly from the facts of the instant case, among them, the expenses caused by the medical services administered to the alleged victim, [FN78] the payment made to the Universidad del Callao as partial payment of the registration fee, [FN79] supplementary meals, [FN80] travel and lodging expenses incurred during the visits made by his mother, brother, and sister to Yanamayo, Challapalca and Juliaca Prisons, [FN81] attorney's fees for the legal advice received regarding the proceedings conducted between 1995 and 2003 [FN82] and expenses incurred to send mail and faxes abroad. [FN83]

[FN78] Cf. Payment receipt for medical services administered to Wilson García-Asto and his next of kin (case file of appendixes to the brief of requests and arguments, volume II, appendix 53, pages 2101 to 2114); payment receipts for clinical tests performed on Wilson García-Asto (case file of appendixes to the brief of requests and arguments, volume II, appendix 54, pages 2116 to 2118); payment receipts for the medicines purchased in 2004 (case file of appendixes to the brief of requests and arguments, volume III, appendix 55, pages 2122 to 2133); and payment receipts for medical consultation fees regarding Wilson García-Asto (case file of appendixes to the brief of requests and arguments, volume III, appendix 57, pages 2147 to 2151).
[FN79] Cf. Receipts of the payment made by Wilson García-Asto to the Universidad del Callao as part of the registration fee (case file of appendixes to the brief of requests and arguments, volume II, appendix 51, pages 2085 to 2095).

[FN80] Cf. Receipts of payments for the expenses incurred regarding food and other items supplied to Wilson García-Asto (case file of appendixes to the brief of requests and arguments, volume II, appendix 49, pages 2075 to 2079).
[FN81] Cf. Travel and lodging expenses incurred by his next of kin during the family visits to Wilson García-Asto (case file of appendixes to the brief of requests and arguments, volume II, appendix 40, pages 1977 to 1989).
[FN82] Cf. Receipts of payment for expenses incurred as attorney's fees for legal advice and expert examinations regarding the criminal proceedings brought against Wilson García-Asto between 1995 and 2003 (case file of appendixes to the brief of requests and arguments, volume II, appendix 47, pages 2024 to 2046).
[FN83] Cf. Receipts of payment for mailing expenses regarding the proceedings brought against Wilson García-Asto (case file of appendixes to the brief of requests and arguments, volume II, appendix 48, pages 2048 to 2073).

97(66) Wilson García-Asto retained José Diómedes Astete-Virhuez, Gloria Cano-Legua, Jorge Alberto Olivera-Vanini, Vestí Francisca Rey-Utor, and Heriberto M. Benítez-Rivas to act as defense counsels in the various proceedings brought against him before the domestic courts. [FN84] Furthermore, counsel Carolina Loayza-Tamayo has incurred several expenses regarding the processing of the case started against Wilson García-Asto both before the domestic and international courts. [FN85]

[FN84] Cf. Contracts for services and receipts of payment of attorney's fees of legal counsels retained by Wilson García-Asto's next of kin to represent him before the domestic courts (case file of appendixes to the brief of requests and arguments, volume 2, appendix 47, page 2024).
[FN85] Cf. Expenses incurred abroad (case file of appendixes to the brief of requests and arguments, volume II, appendix 48, page 2048).
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b) Regarding Urcesino Ramírez-Rojas

97(67) Urcesino Ramírez-Rojas, a Peruvian national, was born on July 24, 1944 and was forty-seven years old when the events described in the instant case occurred.

97(68) Urcesino Ramírez-Rojas is an economist who worked at the Ministry of Economy and Finance of the Republic of Peru and as Parliamentary Advisor to the Congress of the Republic of Peru. He was a supporter of the political party 'National Revolutionary United Left' (Unidad Nacional de Izquierda Revolucionaria).

97(69) Urcesino Ramírez-Rojas, benefiting from the economic incentives awarded to civil servants by the Peruvian government to promote their retirement, retired in June 1991. After his retirement, he was planning to set up a consulting agency to offer advice services to small and mid-size companies and, at the same time, to do research, which is why he had been setting up a data base containing economic, financial, and other information on Peru for several years.

Regarding the detention of Urcesino Ramírez-Rojas and the police investigation

97(70) On July 27, 1991, Urcesino Ramírez-Rojas was arrested at his domicile by members of the DINCOTE, while he was sick. At that moment, a former fellow university student, Isabel Cristina Moreno-Tarazona, was also arrested at Urcesino Ramírez-Rojas' domicile. The on-duty Prosecutor was not present when the police entered his house without an arrest warrant.

97(71) That same day, Héctor Aponte-Sinarahua, who was held to be the military leader of Shining Path and was being investigated by local authorities, was arrested in an area adjacent to the residence of the alleged victim.

97(72) On July 27, 1991, a search was carried out at the residence of Urcesino Ramírez-Rojas. The related record mentioned the seizure of manuscripts and literature referred to an alleged subversive organization, several cassettes containing conferences on the history, economy and politics of Peru, as well as a computer and a typewriting machine.

97(73) At the police premises, Urcesino Ramírez-Rojas remained incommunicado for three days and was not allowed to speak to an attorney or his next of kin.

97(74) On August 2 and 5, 1991, Urcesino Ramírez-Rojas made a police statement in the presence of his attorney and stated that he was arrested while he was sick resting in his bedroom, that he first met Héctor Aponte-Sinarahua when the latter was taken to his residence by the police, and that the documents seized were related to his job and he denied having carried out terrorist activities or being related in any manner whatsoever to subversive groups. Urcesino Ramírez-Rojas claimed that those documents were academic and were part of a database on various political parties of Peru that he used as working material, in his position as advisor to Congress, during political debates between the representatives of political parties, who requested information on the different doctrines and political groups, as well as for the purposes of a personal investigation in progress entitled "The State and the Economy of Peru" ("El Estado y la Economía en el Perú"). The alleged victim denied being the owner of a cassette with songs supporting the organization Shining Path.

97(75) On August 2, 1991, Héctor Aponte-Sinarahua made a statement before police authorities where he explained that he went to the residence of Urcesino Ramírez-Rojas "to purchase homemade […] bread," since a taxi driver had told him that he would find that kind of bread in his house.

97(76) On August 8, 1991, the DINCOTE issued Police Report No. 153, wherein it was stated that Héctor Aponte-Sinarahua had been arrested at the residence of Urcesino Ramírez-Rojas, together with Isabel Cristina Moreno-Tarazona, and that the presence of the arrested individuals at the residence of Ramírez-Rojas "was merely aime[d]at holding a so-called 'coordination meeting' to plan actions in support [of the organization Shining Path]." Therefore, the aforementioned Police Report accused Urcesino Ramírez-Rojas, among others, of having committed the crime of terrorism, "as his relation [to the organization Shining Path] has been fully proven." In said Police Report it was stated that "manuscripts and literature of subversive content" were seized from the residence of Urcesino Ramírez-Rojas, together with cassettes

related to left-wing political parties of Peru and the organization Shining Path. The aforementioned report further indicated that the financial and economic information about Peru stored in the hard disk of the alleged victim's personal computer constituted evidence of the alleged relation between Urcesino Ramírez-Rojas and Shining Path. In addition, the Police Report accused Héctor Aponte-Sinarahua, among others, of having committed the crime of terrorism, homicide, theft, and document forgery. Moreover, the aforementioned report indicated that the authorities competent to hear the case were the Forty-Sixth Provincial Criminal Public Prosecutor's Office of Lima (Cuadragésima Sexta Fiscalía Provincial Penal de Lima) and the Forty-Sixth Criminal Magistrate's Court of Lima (Cuadragésimo Sexto Juzgado de Instrucción de Lima).

Regarding the first proceedings brought against Urcesino Ramírez-Rojas

97(77) On August 9, 1991, the Special Provincial Public Prosecutor's Office for Terrorism of Lima (Fiscalía Especial de Terrorismo de Lima) filed a complaint against Urcesino Ramírez-Rojas et al. for the crime of terrorism and theft against the State et al.

97(78) On August 9, 1991, the Forty-Sixth Magistrate's Court of Lima (Cuadragésimo Sexto Juzgado de Instrucción de Lima) ordered that criminal investigation be commenced against Urcesino Ramírez-Rojas, Isabel Cristina Moreno-Tarazona, Héctor Aponte-Sinarahua, and other three individuals who had not yet been arrested, including the alleged leader of the organization Shining Path, Manuel Rubén Abimael Guzmán-Reinoso, for the "crime of terrorism and property theft to the detriment of the State [et al.]." In that judicial order, an arrest warrant against Urcesino Ramírez-Rojas was issued. To that date, Urcesino Ramírez-Rojas had been held in custody at police premises for fourteen days.

97(79) On December 26, 1991 and February 15, 1992, Urcesino Ramírez-Rojas requested the Forty-Sixth Magistrate's Court of Lima (Cuadragésimo Sexto Juzgado de Instrucción de Lima) that he be released on bail, pursuant to the provisions of Article 201 of the Criminal Procedural Code then in force, on the grounds of his innocence and the fact that the charges against him were not based on sufficient legal grounds as they had been brought on the basis of assumptions.

97(80) On January 17, 1992, the Forty-Third Magistrate's Court of Lima (Cuadragésimo Tercer Juzgado de Instrucción de Lima) assumed jurisdiction over the case.

97(81) On June 17, 1992, the Forty-Third Magistrate's Court of Lima (Cuadragésimo Tercer Juzgado de Instrucción de Lima) held that the commission of the crime of terrorism had been proven, as well as the criminal liability of Urcesino Ramírez-Rojas et al.

97(82) On January 22, 1993, the Public Prosecutor's Office brought criminal charges against Urcesino Ramírez-Rojas et al. "as perpetrator[s] of the crime of [t]errorism against the State [et al., and proposed] to the Criminal Chamber that a sentence of thirty years' imprisonment be [imposed thereon] […]." Furthermore, the Public Prosecutor's Office held that the merits of the case were not sufficient to commence proceedings against Urcesino Ramírez-Rojas et al., for the crime of theft to the detriment of the State.

97(83) On September 30, 1994, after holding private hearings and having received the parties' conclusions of fact and of law, the Special Criminal Chamber for Terrorism of the Superior Court of Justice of Lima (Sala Penal Especializada de Terrorismo de la Corte Superior de Justicia de Lima), composed of "faceless" judges, sentenced Urcesino Ramírez-Rojas et al., to twenty-five years' imprisonment for the crime of terrorism to the detriment of the State and various persons, pursuant to the provisions of Article 320 of the Criminal Code in force as of 1991, for a series of illegal acts committed in 1987, 1988, 1989, and 1990. The judgment was rendered based on the information and evidence contained in Police Report No. 153 of August 8, 1991, and in Police Report No. 175 of September 16, 1991. The Special Criminal Chamber for Terrorism dismissed the innocence claims of Urcesino Ramírez-Rojas, and sustained the "insufficiency of said allegations […] as they we[re] not supported by any other evidence which prov[ed] his innocence."

97(84) On September 30, 1994, Urcesino Ramírez-Rojas' legal counsel filed a petition for annulment before the Special Criminal Chamber for Terrorism of the Superior Court of Justice of Lima.

97(85) On August 8, 1995, after hearing the arguments of the alleged victim's legal counsel, the Supreme Court of Justice of Peru (Corte Suprema de Justicia de Perú), composed of "faceless" judges, rejected the motion for annulment of the judgment rendered on September 30, 1994, convicting Urcesino Ramírez-Rojas et al. for the crime of terrorism against the State. Moreover, the aforementioned Court annulled the part of the judgment whereby Urcesino Ramírez-Rojas et al. were convicted for the crime of terrorism against several individuals, holding that "as regards crimes of terrorism, the injured party is the State exclusively."

97(86) On January 10, 1996, Urcesino Ramírez-Rojas filed a motion for review before the Administrative Chamber of the Supreme Court of Justice (Sala Administrativa de la Corte Suprema de Justicia) regarding the judgment rendered on August 8, 1995. Said motion was decided three years and seven months later, on August 24, 1999, when it was dismissed.

Regarding the annulment of the first proceedings and new proceedings against Urcesino Ramírez-Rojas.

97(87) On September 19, 2002, the Seventh Criminal Court of Lima (Séptimo Juzgado Penal de Lima) ruled favorably on the writ of habeas corpus filed on behalf of the alleged victim by his brother, Pedro Ramírez-Rojas. The judgment set forth that the proceedings carried out against Urcesino Ramírez-Rojas had violated his right to be heard by a competent judge and, consequently, his individual freedom. [FN86]

[FN86] Cf. Judgment rendered by the Seventh Criminal Court of Lima (Séptimo Juzgado Penal de Lima) on September 19, 2002, File 18-02 RDT-HC (case file of exhibits to the application, volume 1, appendix 45, pages 336 to 338).

97(88) On October 24, 2002, the First Criminal Corporate Chamber for Ordinary Proceedings involving Non-detained Defendants of the Supreme Court of Justice of Lima (Primera Sala Penal Corporativa para Procesos Ordinarios con Reos Libres de la Corte Superior de Justicia de Lima), upon ruling on a motion for appeal filed by the Attorney General's Office (Procuraduría Pública), revoked the judgment of the Seventh Criminal Court (Séptimo Juzgado Penal), which had held that the writ of habeas corpus on behalf of the alleged victim had sufficient legal grounds. [FN87] Pedro Ramírez-Rojas filed a motion for exceptional review of the aforementioned judgment with the Constitutional Court (Tribunal Constitucional). [FN88]

[FN87] Cf. Judgment rendered by the First Criminal Corporate Chamber for Ordinary Proceedings for Non-detained Defendants (Primera Sala Penal Corporativa para Procesos Ordinarios con Reos Libres) on October 24, 2002, File No. 408-02/HC (case file of appendixes to the application, volume 1, appendix 46, pages 340 to 342).
[FN88] Cf. Judgment rendered by the Constitutional Court on March 27, 2003, on File No. 0513-2003-HC/TC (case file of appendixes to the application, volume 1, appendix 47, pages 347 to 349).

97(89) On March 27, 2003, the Constitutional Court reversed the judgment rendered by the First Criminal Corporate Chamber for Ordinary Proceedings involving Non-detained Defendants of the Supreme Court of Justice of Lima (Primera Sala Penal Corporativa para Procesos Ordinarios con Reos Libres de la Corte Superior de Justicia de Lima) of October 24, 2002, and amended it upon sustaining in part the writ of habeas corpus filed on behalf of Urcesino Ramírez-Rojas, dismissing "the part of the writ request[ing] his release since […], given that the annulment of some parts of the criminal proceedings did not affect the order for the commencement of criminal investigation proceedings, the arrest warrant issued thereunder recover[ed] full legal effect." The Court further ordered:

that the procedural effects of the condemnatory judgment be annuled, together with all previous procedural steps, including the prosecutor's case, in accordance with Article 2 of Legislative Decree No. 926; and to REJECT the request for release. [FN89]

[FN89] Cf. Judgment rendered by the Constitutional Court on March 27, 2003, on File No. 0513-2003-HC/TC (case file of appendixes to the application, volume 1, appendix 47, pages 347 to 349).

97(90) On May 13, 2003, the National Chamber for Terrorism (Sala Nacional de Terrorismo) vacated the proceedings brought against Urcesino Ramírez-Rojas, heard by judges whose identity was kept secret, and dismissed the prosecutor's case against the alleged victim. The aforementioned Criminal Chamber further ordered that all proceedings be sent to the appropriate Criminal Court so that it proceeded pursuant to law. [FN90]

[FN90] Cf. Order of the National Chamber for Terrorism (Sala Nacional de Terrorismo) of May 13, 2003, File 69-03 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5369 to 5383).

97(91) On June 24, 2003, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) assumed jurisdiction over the case brought against Urcesino Ramírez-Rojas. [FN91]

[FN91] Cf. Prosecutorial pleading of the First Special Provincial Public Prosecutor's Office for Terrorism (Primera Fiscalía Provincial Especializada en Delitos de Terrorismo) of January 21, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5435 to 5457).

97(92) On July 31, 2003, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) issued a Supplementary Report in accordance with the order of May 13, 2003 (supra para. 97(90)), which "render[ed] all procedures from page 760 onwards Void and the charges brought by the prosecutor on pages 761 to 766 Insufficient," and made observations regarding the measures adopted in the criminal investigation carried out during the first proceeding and those still pending. [FN92]

[FN92] Cf. Supplemental report issued by the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) on File 500-03, of July 31, 2003 (case file of appendixes to the application, appendix 49, pages; case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5385 to 5391).

97(93) On September 25, 2003, the First Superior Prosecutor's Office for Terrorism (Fiscalía Superior Especializada en Delitos de Terrorismo) stated in its prosecutorial pleading that "the defendants were allegedly members, at a hierarchical level, of a terrorist organization" (in bold in the original) [FN93] and requested that the investigation stage be extended for forty-five days so that further procedures may be adopted.

[FN93] Cf. Prosecutorial pleading No. 141-2003-1 FSEDT-MP/FN issued by the First Special Superior Prosecutor's Office for Terrorism (Primera Fiscalía Superior Especializada en Delitos de Terrorismo) of September 25, 2003 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5393 to 5396).

97(94) On October 13, 2003, the National Chamber for Terrorism (Sala Nacional de Terrorismo) granted "as an exception" a 45-day term extension of the investigation stage so that procedures specified by the Superior Prosecutor may be adopted. [FN94]

[FN94] Cf. Order of the National Chamber for Terrorism (Sala Nacional de Terrorismo) of October 13, 2003 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, page 5399).

97(95) On November 3, 2003, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delitos de Terrorismo), in compliance with the "orders issued by the National Chamber for Terrorism (Sala Nacional de Terrorismo)," granted the motion for the investigation stage to be extended for a 30-day term so that certain procedures could be adopted, including the confrontation of the alleged victim with the co-defendant, Isabel Cristina Moreno-Tarazona, on November 24, 2003. [FN95]

[FN95] Cf. Order of the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delitos de Terrorismo) of November 3, 2003 (case file of appendixes to the brief of requests and arguments, appendix 18, pages 1846 to 1847; and case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5401 to 5405).

97(96) On December 6, 2003, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) ordered that "an attachment be levied on the defendants' assets in a manner sufficient to guarantee the eventual payment of civil damage," and clarified the provisions of order of November 3, 2003, in that the extension granted regarding the investigation stage would be for 45 rather than thirty days. [FN96]

[FN96] Cf. Order of the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) in Case File 500-03, issued on December 6, 2003 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5427 to 5433).

97(97) On January 21, 2004, the First Provincial Special Prosecutor's Office for Terrorism (Primera Fiscalía Provincial Especializada en Delitos de Terrorismo) issued a report wherein it specified the procedures adopted to that date and those which had not yet been carried out, including the confrontation of Urcesino Ramírez-Rojas with Isabel Cristina Moreno-Tarazona. The aforementioned document mentioned that on November 17, 2003 the Security Director of the Northern Region stated that Urcesino Ramírez-Rojas could not be transferred "due to insufficiency of funds." Furthermore, it was also stated that on December 12, 2003, the National Penitentiary Institute stated that "the transfer of the inmate h[ad] been approved but, due to budgetary restrictions, it h[ad] not taken place." [FN97]

[FN97] Cf. Report of the First Special Provincial Court for Terrorism (Primera Fiscalía Provincial Especializada en Delitos de Terrorismo) of January 21, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5435 to 5457).

97(98) On January 26, 2004, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado para Delitos de Terrorismo), "[b]ased on the order issued by the National Chamber for Terrorism (Sala Nacional de Terrorismo) [on October 13, 2003 (supra para. 97(94)], ordered that the investigation stage be extended for 45 days so that the procedures requested by the Superior Prosecutor [on September 25, 2003 (supra para. 97(93)] may be adopted." [FN98]

[FN98] Cf. Final supplemental report of the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delitos de Terrorismo) of January 26, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5459 to 5467).

97(99) On February 2, 2004, Urcesino Ramírez-Rojas' legal counsel filed a brief with the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especial para Delitos de Terrorismo), stating that the confrontation of the alleged victim with Isabel Cristina Moreno-Tarazona was not carried out because Ramírez-Rojas had not been transferred to the city of Lima. [FN99]

[FN99] Cf. Brief filed by Urcesino Ramírez-Rojas' legal counsel with the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especial de Terrrorismo) of February 2, 2004 (record of appendixes to the brief of requests and arguments, volume 1, appendix 18, pages 1849 to 1851).

97(100) On March 12, 2004, the National Chamber for Terrorism (Sala Nacional de Terrorismo) granted a thirty-day term extension regarding the investigation stage so that the procedures requested by the Superior Prosecutor in his report of March 8, 2004 may be adopted. [FN100]

[FN100] Cf. Order to extend the investigation stage issued by the National Chamber for Terrorism (Sala Nacional de Terrorismo) on File 69-03 of March 12, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, page 5477); and report of the Third Special Superior Prosecutor's Office for Terrorism (Tercera Fiscalía Superior Especializada en Delitos de Terrorismo), issued on March 8, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, page 5469 to 5475).

97(101) On March 17, 2004, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delitos de Terrorismo) requested, among other things, that the confrontation of Urcesino Ramírez-Rojas with the defendant Isabel Cristina Moreno-Tarazona be carried out on April 1, 2004, and that the post-mortem examination reports on various persons regarding the events occurred from 1987 to 1989, be requested to the appropriate morgues. [FN101]

[FN101] Cf. Order to extend the investigation stage issued by the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado para delitos de Terrorismo) on File No. 500-03 of March 17, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5479 to 5487).

97(102) On April 1, 2004, the confrontation of Urcesino Ramírez-Rojas with Isabel Cristina Moreno-Tarazona was carried out at the Castro-Castro Prison. [FN102]

[FN102] Cf. Confrontation procedure between Urcesino Ramírez-Rojas and Isabel Cristina Moreno-Tarazona carried out on April 1, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5489 to 5493).

97(103) On April 23, 2004, the First Special Provincial Prosecutor's Office for Terrorism (Primera Fiscalía Provincial Especializada en Delitos de Terrorismo) issued a report stating, among other things, that the competent authorities had failed to send the post-mortem examination reports requested by the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado para Delitos de Terrorismo) (supra para. 97(101)). Lastly, the First Provincial Prosecutor's Office (Primera Fiscalía Provincial) held that the term established in the proceedings had expired. [FN103]

[FN103] Cf. Report (without numbered) issued by the First Special Provincial Prosecutor's Office for Terrorism (Primera Fiscalía Provincial Especializada en Delitos de Terrorismo) on File 500-2003 on April 23, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5519 to 5539).

97(104) On April 27, 2004, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado para Delitos de Terrorismo) issued a final report to grant a 30-day term extension regarding the investigation stage. [FN104]

[FN104] Cf. Final report submitted regarding the extension of the investigation stage issued by the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado para Delitos

de Terrorismo) on File No. 500-03 of April 27, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5541 to 5555).

97(105) On August 2, 2004, the Second Special Superior Prosecutor's Office for Terrorism (Segunda Fiscalía Superior Especializada en Delitos de Terrorismo) requested that an extraordinary term of ten days be granted regarding the investigation stage in order to incorporate the alleged victim and the co-defendant, Isabel Cristina Moreno-Tarazona, as alleged perpetrators of the crime of terrorism as defined and punished in accordance with Article 322 of the Criminal Code of 1991. Furthermore, it was requested that the alleged victim and the co-defendant made their statements for the purposes of the investigation "regarding the events alleg[ed] in the new charges as investigated hereunder." The Second Prosecutor's Office recognized that the proceedings had gone through "several extensions of the original term" and based its request for extension of the investigation term on the need to adapt the criminal definition to the questionable conduct, and on the fact that it "was the first time that it ha[d] jurisdiction over [said] proceedings." [FN105]

[FN105] Cf. Report No. 192-2004-2 FSEDT-MP-FN issued by the Second Special Superior Prosecutor's Office for Terrorism (Segunda Fiscalía Superior Especializada en Delitos de Terrorismo) on File No. 69-03 of August 02, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5557 to 5565).

97(106) On August 11, 2004, the National Chamber for Terrorism (Sala Nacional de Terrorismo) granted, as an exception, a ten-day term extension regarding the investigation stage so that the procedures requested by the Superior Prosecutor in the report of August 2, 2004 be adopted. Furthermore, the above Chamber sent to the judge hearing the case the request made by Urcesino Ramírez-Rojas' legal counsel so that the arrest warrant be turned into an order to appear, and urged the judge to rule on said motion. [FN106]

[FN106] Cf. Order to extend the term for investigation issued by the National Chamber for Terrorism (Sala Nacional de Terrorismo) on August 11, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5567 to 5569).

97(107) On August 19, 2004, the First Special Provincial Prosecutor's Office for Terrorism (Primera Fiscalía Provincial Especializada en Delitos de Terrorismo) filed a supplemental criminal complaint against the alleged victim and Isabel Cristina Moreno-Tarazona, as it considered that their conduct fell under the provisions of Article 322 of the Criminal Code of 1991. [FN107]

[FN107] Cf. Report No. 72 issued by the First Special Provincial Prosecutor's Office for Terrorism (Primera Fiscalía Provincial Especializada en Delitos de Terrorismo) on File No. 500-

03 of August 19, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5571 to 5577).

97(108) On August 25, 2004, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado para Delitos de Terrorismo) decided to grant a 10-day term extension regarding the investigation stage in order to incorporate, among others, Urcesino Ramírez-Rojas and Isabel Cristina Moreno-Tarazona as defendants for the crime of terrorism against the State, in accordance with the legal crime definition contained in Article 322 of the Criminal Code of 1991. [FN108]

[FN108] Cf. Order issued by the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado para Delitos de Terrorismo) on File 500-03, of August 25, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5579 to 5595).

97(109) On September 1, 2004, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado para Delitos de Terrorismo) denied the request to convert the arrest warrant into an order to appear submitted by Urcesino Ramírez-Rojas on July 13, 2004. The Judge considered that no new events had occurred to that moment that altered the legal status of the alleged victim to grant a "modification of the coercive measures adopted and [stated] that since the events reported are plausible, as shown by the police investigation documented in the police report, and given the significance of the events, the arrest warrant d[id] comply with all legal requirements; therefore, the personal coercive measure should continue in full force." [FN109]

[FN109] Cf. Order issued by the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado para Delitos de Terrorismo) of September 01, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5597 to 5605).

97(110) On September 3, 2004, Urcesino Ramírez-Rojas' legal counsel filed a writ of habeas corpus against the Judge in charge of the First Special Criminal Court for Terrorism of Lima (Primer Juzgado Penal Especial de Terrorismo de Lima) on the grounds that it had impaired his client's freedom upon arbitrarily ordering his arrest. [FN110]

[FN110] Cf. Writ of habeas corpus filed by Urcesino Ramírez-Rojas' legal counsel with the On-Duty Criminal Court on September 3, 2004 (case file of appendixes to the brief of requests and arguments, volume 1, appendix 27, page 1896).

97(111) On September 13, 2004, Urcesino Ramírez-Rojas' legal counsel filed with the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado para Delitos de Terrorismo) a motion for appeal regarding the order of September 1, 2004, which denied the request for conversion of the arrest warrant into an order to appear (supra para. 97(109)). The alleged victim's legal counsel stated that there was new evidence, such as witness testimonies, to prove that the arrest of the alleged victim was fully unjustified. [FN111] The First Special Court (Primer Juzgado Especializado) granted the aforementioned request and, once the new evidentiary items had been filed regarding the motion, the proceedings were submitted to the National Chamber for Terrorism (Sala Nacional de Terrorismo). [FN112]

[FN111] Cf. Motion for appeal filed by Urcesino Ramírez-Rojas' legal counsel with the Judge in charge of the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especial en Delito de Terrorismo) on September 13, 2004 (case file of appendixes to the brief of requests and arguments, volume 1, pages 1890 to 1892).
[FN112] Cf. Order of the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado para Delitos de Terrorismo) issued on September 13, 2004 (case file of appendixes to the brief of requests and arguments, volume 1, appendix 26, page 1894).

97(112) On September 16, 2004, the Twenty-Sixth Special Criminal Court of Lima (Vigésimo Sexto Juzgado Especializado en lo Penal de Lima) dismissed the writ of habeas corpus filed by Urcesino Ramírez-Rojas' legal counsel on September 3, 2004, (supra para. 97(110)) as it considered, inter alia, that:

pursuant to the first transitory provision of Legislative Decree No. 926, the detention time limit as set forth in Article 137 of the Criminal Procedural Code is calculated as from the date of issuance of the annulment order [,…] pursuant to the aforementioned Annulment Order [,] to date [,] only sixteen months and two days have elapsed, no excess regarding the arrest or infringement of the rules of due process having been incurred by the Judge […]. [FN113]

[FN113] Cf. Order issued by the Twenty-Sixth Special Criminal Court of Lima (Vigésimo Sexto Juzgado Especializado en lo Penal de Lima) on September 16, 2004 (case file of appendixes to the brief of requests and arguments, volume 1, appendix 27, pages 1900 to 1907).

97(113) On November 2, 2004, the Second Special Superior Prosecutor's Office for Terrorism (Segunda Fiscalía Superior Especializada en Delitos de Terrorismo) brought charges against Urcesino Ramírez-Rojas, Isabel Cristina Moreno-Tarazona, Arturo Guzmán-Alarcón or Héctor Aponte-Sinarahua and Manuel Rubén Abimael Guzmán-Reinoso "for having committed a crime against Public Peace –Terrorism- to the detriment of the State" and requested that twenty-five years' imprisonment be imposed upon Urcesino Ramírez-Rojas, in accordance with Article 320 (1), (2), and (4) and Article 322 of the Criminal Code of 1991, in force as of the date of occurrence of the events attributed to the alleged victim. Furthermore, the Superior Prosecutor's Office held that the charges brought against the defendants, contained in Article 320

(5) and (6) of the Criminal Code, had not been proven. Moreover, it also stated that no individual should be considered injured, as the only injured party for the crimes under analysis in the instant case is the State, wherefore, the case should be closed in that regard as well. [FN114]

[FN114] Cf. Report No. 225-2004-2 FSEDT-MP-FN issued by the Second Special Superior Prosecutor's Office for Terrorism (Segunda Fiscalía Superior Especializada en Delitos de Terrorismo) on File No. 69-03 of November 02, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5687 to 5721).

97(114) On November 19, 2004, the National Criminal Chamber (Sala Penal Nacional) confirmed the order appealed on September 1, 2004, of the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) (supra para. 97(109)), which dismissed the request filed by Urcesino Ramírez-Rojas for conversion of the arrest warrant, on the grounds that there "we[re] no elements to challen[ge] the sufficiency of the evidence considered by the A quo to order the appellant's arrest. To that effect, the investigation procedures carried out were insufficient; therefore, it is necessary to exceptionally resort to an arrest warrant as a necessary measure to enable the appropriate development of the proceedings." [FN115]

[FN115] Cf. Order No. 216 issued by the National Chamber for Terrorism (Sala Nacional de Terrorismo) on November 19, 2004 (case file of affidavits and comments, pages 6015 to 6017).

97(115) On December 15, 2004, the National Criminal Chamber (Sala Penal Nacional), through order No. 062, thoroughly described the charges brought against Urcesino Ramírez-Rojas, Isabel Cristina Moreno-Tarazona, Manuel Rubén Abimael Guzmán-Reinoso, and Héctor Aponte-Sinarahua or Arturo Guzmán-Alarcón, and stated that "based on the aforesaid,[…] Urcesino Ramírez-Rojas and Isabel Cristina Moreno-Tarazona, also parties to these […] proceedings, had not involvement in the events attributable to Héctor Aponte-Sinarahua or Arturo Guzmán-Alarcón in Alto Huallaga from June 1987 and July 1989 […]." Based on the foregoing, the National Criminal Chamber ordered that the proceedings initiated against Aponte-Sinarahua or Guzmán-Alarcón for the acts committed in the Alto Huallaga zone be no longer joined as only the latter was involved. Furthermore, the National Criminal Chamber ordered joinder of the cases identified under No. 121-95 and 69-03 into File No. 667-03, on the grounds that both cases involved the defendant Manuel Rubén Abimael Guzmán-Reinoso, who was accused of being the highest leader of the organization Shining Path. The National Criminal Chamber stated that case No. 69-03 was related to events attributable to Manuel Rubén Abimael Guzmán-Reinoso, Urcesino Ramírez-Rojas, Isabel Cristina Moreno-Tarazona, and as regards Héctor Aponte-Sinarahua or Arturo Guzmán-Alarcón, only to the following events: "a) having been intercepted at the residence of [Urcesino] Ramírez-Rojas […] when together with the latter and Moreno-Tarazona, they were [e]valuating the terrorist actions carried out and planning to perform further subversive actions; b) […] attacking the House of Government with a 'car bomb' on August 13, 1990; c) having an explosive device seized from his residence in the district of

Rímac; and d) having forged a Voting Record." The National Criminal Chamber ordered that the aforementioned case be sent to the Superior Criminal Prosecutor's Office (Fiscalía Superior Penal) "to is[sue] the pertinent prosecutorial pleading." [FN116]

[FN116] Cf. Order No. 062 issued by the National Criminal Chamber (Sala Nacional de Terrorismo) on File No. 667-03 (joinder of files 121-95 and 69-03) on December 15, 2004 (case file of evidence to facilitate the adjudication of the case submitted by the State, volume 6, pages 5753 to 5777).

97(116) On June 2, 2005, Urcesino Ramírez-Rojas filed a brief with the National Criminal Chamber (Sala Penal Nacional) requesting to be released on bail. [FN117]

[FN117] Cf. Brief filed by Urcesino Ramírez-Rojas with the National Criminal Chamber (Sala Penal Nacional) requesting to be released on bail, on June 2, 2005, (case file of evidence to facilitate the adjudication of the case submitted by the representatives, page 63544).

97(117) On June 24, 2005, the National Criminal Chamber (Sala Penal Nacional) reversed the de-joinder of the proceedings brought against Manuel Rubén Abimael Guzmán-Reinoso, as requested by the Public Prosecutor's Office (Ministerio Público). [FN118]

[FN118] Cf. Order issued by the National Criminal Chamber (Sala Penal Nacional) on File No. 667-03 on June 24, 2005 (case file of evidence to facilitate the adjudication of the case submitted by the representatives, page 6367).

97(118) On September 1, 2005, the National Criminal Chamber (Sala Penal Nacional) rejected the request for release on bail filed by Urcesino Ramírez-Rojas, holding that the aforementioned request was funded on innocence assumptions and that the requirements set forth in Article 182 of the Criminal Procedural Code of 1991 were not complied with. Said request was processed in a separate case file from that of the main proceedings on File No. 667-03-B. [FN119]

[FN119] Cf. Judgment rendered by the National Criminal Chamber (Sala Penal Nacional) on File No. 667-03 "B", on September 1, 1995 (case file on the merits, volume V, page 1372).

97(119) Urcesino Ramírez-Rojas has been deprived of his freedom since his arrest in July 1991 (supra para. 97(70)).

Regarding the imprisonment conditions of Urcesino Ramírez-Rojas

97(120) After his arrest, on July 28, 1991, Urcesino Ramírez-Rojas was taken to a dark cell in the basement of the DINCOTE facilities, which only had a small orifice as entrance. He was kept there for three days in isolation, incommunicado, and without any blankets. On the third day, he could talk to an attorney retained by his next of kin.

97(121) On August 10, 1991, Urcesino Ramírez-Rojas was taken to "the confinement room of the Palace of Justice."

97(122) On August 13, 1991, he was taken to Castro-Castro Prison until September 30, 1994. During the first year he was held in said prison, Urcesino Ramírez-Rojas remained locked in his cell for twenty-three hours and a half every day. The cells were fully closed and had only a small opening to pass on food. Until 1992, Urcesino Ramírez-Rojas lived with six other inmates and visits were restricted to his next of kin once a week. Since 1992, the alleged victim lived with two other inmates and visits were restricted to his next of kin for half an hour every thirty days.

97(123) On October 1, 1994, Urcesino Ramírez-Rojas was taken to Huacariz Prison, in Cajamarca. Given the distant location of said prison, he was not visited by his next of kin.

97(124) Urcesino Ramírez-Rojas' physical and psychological health deteriorated as a consequence of the conditions in which he was kept deprived of his freedom. [FN120]

[FN120] Cf. Testimony rendered on April 8, 2005, by Urcesino Ramírez-Rojas before a notary public (affidavit) (case file of affidavits and comments, page 5995 to 5997); and testimony rendered on June 19, 2004, by Urcesino Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume 1, appendix 16, page 1836).

97(125) In 1998, while he was detained in Huacariz Prison, in Cajamarca, Urcesino Ramírez-Rojas underwent prostate surgery. In February 1999, he was diagnosed with acute epididymitis of his left testicle; therefore, he was hospitalized again.

97(126) On November 6, 2000, Urcesino Ramírez-Rojas was transferred to El Milagro de Trujillo Prison. [FN121]

[FN121] Cf. Testimony rendered on April 8, 2005, by Urcesino Ramírez-Rojas before a notary public (affidavit) (case file of affidavits and comments, page 5994); and testimony rendered on June 19, 2004, by Urcesino Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume 1, appendix 16, page 1837).

97(127) The Health Board of El Milagro de Trujillo Prison diagnosed Urcesino Ramírez-Rojas with bronchial asthma, hypertension, and chronic gastritis. [FN122] Considering the

severity of the alleged victim's bronchitis, the physician responsible for the aforementioned medical report recommended that "given the climate of the region, the inmate should be transferred to a warmer place and thus be allowed to recover from his asthmatic condition. [FN123] Notwithstanding this recommendation, Urcesino Ramírez-Rojas was kept at El Milagro Prison for two more years until February 2004 (supra para. 97(124)).

[FN122] Cf. Medical report issued without date by the Health Board of El Milagro de Trujillo Prison (case file of appendixes to the brief of requests and arguments, volume III, appendix 76, page 2240).
[FN123] Cf. Medical report issued without date by the Health Board of El Milagro de Trujillo Prison (case file of appendixes to the brief of requests and arguments, volume III, appendix 76, page 2240).

97(128) In November 2000, the alleged victim was diagnosed with "hypereclesterilemia and atherosclerosis," and was put on a strict special nutritional diet. [FN124]

[FN124] Cf. Medical report No. 441-00 of November 16, 2000, submitted by physician Víctor M. Bravo-Alva to the manager of El Milagro de Trujillo Prison (case file of appendixes to the brief of requests and arguments, volume III, appendix 75, page 2238).

97(129) On March 1, 2004, Urcesino Ramírez-Rojas was transferred to Castro-Castro Prison, where he has stayed to date. [FN125]

[FN125] Cf. Testimony of April 8, 2005, rendered by Urcesino Ramírez-Rojas before a notary public (affidavit) (case file of affidavits and comments, page 5994).

97(130) Urcesino Ramírez-Rojas suffered economic losses as a result of being detained for more than fourteen years to the date of this Judgment. His arrest prevented him from carrying out and developing his consulting and research projects, [FN126] and caused him psychological and moral damage, thus impairing his emotional soundness. [FN127]

[FN126] Cf. Testimony of September 21, 2004, rendered by Pedro Ramírez-Rojas (case file of appendixes to the brief of request and arguments, volume III, appendix 61, page 2168); and testimony rendered by Urcesino Ramírez-Rojas on June 19, 2004 (case file of appendixes to the brief of requests and arguments, volume 1, appendix 16, page 1837).
[FN127] Cf. Testimony rendered on April 8, 2005, by Urcesino Ramírez-Rojas before a notary public (affidavit) (case file of affidavits and comments, page 5979); and testimony rendered on June 19, 2004, by Urcesino Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume 1, appendix 16, page 1836).

Regarding the damage caused to Urcesino Ramírez-Rojas' next of kin

97(131) Daniel Ramírez and María Alejandra Rojas, [FN128] Urcesino Ramírez-Rojas' parents, died on January 9, 1980, and March 8, 1996, respectively. [FN129] Urcesino Ramírez-Rojas has eight siblings, [FN130] Pedro, Pompeya, Filomena, Julio, Santa, Obdulia, Marcelina, and Adela, all of them Ramírez-Rojas. Urcesino Ramírez-Rojas has a child, Marco Antonio Ramírez-Álvarez. [FN131]

[FN128] Cf. Testimony of April 8, 2005, rendered by Urcesino Ramírez-Rojas before a notary public (affidavit) (case file of affidavits and comments, page 5979).
[FN129] Cf. Death certificates of María Alejandra Rojas and Daniel Ramírez (case file on the merits, volume V, pages 1411 and 1412).
[FN130] Cf. Identity documents of Pedro, Pompeya, Filomena, Julio, Santa, Obdulia, Marcelina, and Adela, all of them Ramírez-Rojas (case file of evidence to facilitate the adjudication of the case submitted by the representatives on November 11, 2005, pages 6519 to 6526); testimony of April 8, 2005 rendered by Urcesino Ramírez-Rojas before a notary public (affidavit) (case file of affidavits and comments, page 5979); and testimony of September 21, 2004 rendered by Pedro Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume 1II, appendix 61, page 2167).
[FN131] Cf. Testimony of September 12, 2004, rendered by Marcos Ramírez-Álvarez (case file of appendixes to the brief of requests and arguments, volume 3, appendix 60, page 2164).

97(132) At the time of his arrest, Urcesino Ramírez-Rojas lived with his sister, Filomena Ramírez-Rojas; his mother, María Alejandra Rojas; and his nephew, Edwin Álvarez-Ramírez. [FN132]

[FN132] Cf. Statement of August 2, 1991, rendered by Urcesino Ramírez-Rojas before the DINCOTE (case file of evidence to facilitate the adjudication of the case submitted by the State, volume V, page 4557); and testimony of September 12, 2004, rendered by Filomena Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume 2, appendix 35, page 1953).

97(133) The relatives who would visit the alleged victim at the penitentiary were subjected to humiliating treatment, for the mere fact of being relatives of a person charged with the crime of terrorism. [FN133]

[FN133] Cf. Testimony of September 12, 2004, rendered by Filomena Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume II, appendix 35, pages 1953 to

1954); and statement rendered before a notary public (affidavit) by Celia Asto-Urbano on April 5, 2005 (case file of affidavits and comments, page 5951).

97(134) The physical, psychological, and emotional condition of Urcesino Ramírez-Rojas' son and siblings was impaired as a result of having a next of kin arrested, accused, and prosecuted for the crime of terrorism. At the time he was arrested, Urcesino Ramírez-Rojas provided economic and moral support to his family. [FN134]

[FN134] Cf. Testimony of June 19, 2004, rendered by Urcesino Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume I, appendix 16, page 1837); and testimony rendered without specified date by Julio Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume III, appendix 59, page 2160).

97(135) Filomena Ramírez-Rojas, a sister of Urcesino Ramírez-Rojas, would undergo a personal search which violated her privacy when entering the penitentiary to visit her brother, and was stigmatized for having a brother accused of committing acts of terrorism. As a result of these events and the arrest of her brother, the physical and psychological health of Filomena Ramírez-Rojas deteriorated, and she suffered from nervous problems and insomnia. Filomena Ramírez-Rojas was entrusted with the care and support of Urcesino Ramírez-Rojas' son. [FN135]

[FN135] Cf. Testimony of September 12, 2004, rendered by Filomena Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume II, appendix 35, page 1953).

97(136) Marcelina Ramírez-Rojas, also a sister of Urcesino Ramírez-Rojas, was arrested when she went to the penitentiary to take her brother, Urcesino Ramírez-Rojas, a green coat, under the allegation that they were planning his escape, which made his next of kin fearful of visiting him. [FN136]

[FN136] Cf. Testimony of September 12, 2004, rendered by Filomena Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume II, appendix 35, pages 1953 to 1954).

97(137) Urcesino Ramírez-Rojas' son, Marcos Ramírez-Álvarez, lost his father at the age of three; therefore, he suffered from a series of psychological disorders and difficulties to adjust to the school environment. This resulted in his poor academic performance and, consequently, he failed to pass the last school year three consecutive times. [FN137]

[FN137] Cf. Testimony of September 12, 2004, rendered by Marcos Ramírez-Álvarez (case file of appendixes to the brief of requests and arguments, volume III, appendix 60, page 2164); testimony of June 19, 2004, rendered by Urcesino Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume 1, appendix 16, page 1836); testimony of September 12, 2004, rendered by Filomena Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume II, appendix 35, page 1953); and psychological report of October 19, 2004, issued by psychologist Soledad Valverde-Manrique on Marcos Ramírez-Álvarez (case file of documents issued after the submission of the brief of requests and arguments, page 2330).

97(138) Pedro Ramírez-Rojas had to undertake the legal defense of his brother and was the only member of the family who, after being laid off from work, had some means to afford the related expenses. [FN138]

[FN138] Cf. Testimony of September 21, 2004, rendered by Pedro Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume III, appendix 61, page 2168).

97(139) The suffering and pain endured by the alleged victim's mother, María Alejandra Rojas, deepened after learning about the circumstances surrounding the detention of her child. [FN139] Mrs. Rojas died in March 1996, and Urcesino Ramírez-Rojas was not allowed to attend her burial. [FN140]

[FN139] Cf. Testimony rendered on April 8, 2005, by Urcesino Ramírez-Rojas before a notary public (affidavit) (case file of affidavits and comments, page 5979); and testimony rendered on June 19, 2004, by Urcesino Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume 1, appendix 16, page 1837); and testimony of September 12, 2004, rendered by Filomena Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume II, appendix 35, page 1953).

[FN140] Cf. Death certificate of María Alejandra Rojas (case file on the merits, volume V, page 1411); testimony of April 8, 2005, rendered by Urcesino Ramírez-Rojas before a notary public (affidavit) (case file of affidavits and comments, page 5979); and testimony of September 21, 2004, rendered by Pedro Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume III, appendix 61, page 2168).

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97(140) Urcesino Ramírez-Rojas and his next of kin retained Andrés Calderón-Mendoza to undertake the defense of Ramírez-Rojas in the domestic jurisdiction. Furthermore, Carolina Loayza-Tamayo incurred various expenses as a result of the proceedings brought against Urcesino Ramírez-Rojas, both in the domestic and international jurisdiction. [FN141]

[FN141] Cf. Statement of payments made for legal advisory services received by Urcesino Ramírez-Rojas (case file of appendixes to the brief of requests and arguments, volume III, appendix 62, page 2174); and statement of expenses incurred in the international jurisdiction (case file of appendixes to the brief of requests and arguments, volume III, appendixes 65 and 67).

IX. ARTICLES 7 AND 25 OF THE AMERICAN CONVENTION (RIGHT TO PERSONAL FREEDOM AND TO A FAIR TRIAL) REGARDING ARTICLE 1(1) THEREOF

Arguments of the Commission

98. As to the alleged violation of Article 7 of the Convention, the Inter-American Commission stated that:

a) The State violated Articles 7(1), 7(2), 7(3), 7(4), 7(5), and 7(6) of the Convention, regarding Article 1(1) thereof, to the detriment of Wilson García-Asto and Urcesino Ramírez-Rojas;
b) Urcesino Ramírez-Rojas and Wilson García-Asto were arrested without an arrest warrant issued by a competent authority and without observance to the rules of due process of law;
c) The initial violation of Urcesino Ramírez-Rojas' freedom did not cease in September 2000, but continued as at that moment no "final judgment had been rendered which definitely affect[ed] such right;"
d) The detention of both alleged victims became illegal, violating Articles 7(1) and 7(2) of the Convention, as it did not take place in flagrante delicto as authorized by the Peruvian Constitution and the Peruvian law; instead, it was the result of the whims of Police officers who sought to justify their intervention in evidentiary circumstances they could not establish, as they are not judicial authorities. Neither did they have a written warrant issued by a judge, as required by the Political Constitution of Peru;
e) The detention of Urcesino Ramírez-Rojas becomes arbitrary, and, consequently, in violation of Article 7(3) of the Convention, in light of the new jurisprudential and legal developments of anti-terrorist legislation of Peru, the Judgment of January 3, 2003 rendered by the Constitutional Court, and Legislative Decree No. 926 of February 2003;
f) Article 4 of Legislative Decree No. 926 of February 19, 2003 violates "the rights of the defendants to be tried within a reasonable time or be released pending trial, as the new legislation -to the effects of provisional freedom- does not take into account the number of years that those people for whom annulment of judgment has been declared remained in custody;"
g) The way in which the actual time of deprivation of freedom is computed to create a fiction of a new preventive detention by virtue of new proceedings is arbitrary and violates the guarantee of Article 7(3) of the American Convention in a current and continuous manner. The term of almost fourteen years during which Urcesino Ramírez-Rojas has been held in custody, without a final judicial decision, is not relevant for the State of Peru, apart from being in itself "excessive, unreasonable, and disproportionate;"
h) The accused, whose innocence is presumed, must enjoy the exercise of physical freedom, while their deprivation must be ordered only in those cases where the success of the criminal proceedings is at stake, either because there is an intent to hamper the evidentiary activity or to

avoid the application of punishment. This orientation is not reflected in the judicial decisions adopted along the new proceedings brought against Urcesino Ramírez-Rojas, and as a result, the violation of the right to freedom referred to in Article 7(5) of the American Convention also becomes evident;

i) The Peruvian Judge had the power and the obligation to grant freedom ex officio, through conditional release, which could take place at any time, upon confirming that the charges brought against the defendant were not sufficiently solid;

j) The only appropriate remedy available at the domestic level to request the freedom of Urcesino Ramírez-Rojas, considering the state of the indictment, "is the request for the reversal of the court order […], or the alteration of the arrest warrant by one of restrictive appearance." This remedy of reversal of court order "is the one which has been repeatedly exhausted by Urcesino Ramírez-Rojas' defense counsel, a remedy which has not been sustained as the judge hearing the case has refused to consider the new evidence existing in the proceedings;"

k) The State of Peru has accepted the solitary confinement imposed for the term during which the defendants were detained in the police station: Wilson García-Asto for twelve days, in application of the provisions of Article 12(c) and (d) of Decree-Law No. 25.475, and Urcesino Ramírez-Rojas, for fourteen days until they were brought before a judge. Said circumstances violate Article 7(5) of the Convention;

l) The solitary confinement, which was authorized in Decree-Law No. 25.475 for a term of fifteen days, is clearly excessive, in violation of what is set forth in Article 7(3) of the Convention;

m) The alleged victims were deprived of the right to appear before a competent judge or court so that the latter would decide, forthwith, on the legality of their arrest or detention. These facts confirm a violation of Article 7(6) of the Convention; and n) During the processing of the internal proceeding against Urcesino Ramírez-Rojas, and during the detention and the processing of the proceeding against Wilson García-Asto until his conviction, the restrictions imposed to the habeas corpus remedy constituted a violation of Article 7(6) of the Convention.

Arguments of the representatives

99. With respect to the alleged violation of Article 7 of the Convention, the representatives pointed out that they agreed with the arguments presented by the Commission in its complaint and added that:

a) The alleged victims remained in custody as a consequence of their detention by police officers, in conditions which did not comply with those established by the State Constitution beforehand and of a guilty verdict delivered in proceedings where the guarantees of a fair trial were not observed;

b) The new proceedings against Wilson García-Asto were commenced one month and twenty-five days after the annulment of the first proceedings against him, wherefore, during the term between January 15, 2003 and March 10, 2003, the alleged victim was arbitrarily deprived of his freedom "without a condemnatory judgment, without proceedings, and without an indictment sustaining the arrest warrant;"

c) In the case of Urcesino Ramírez-Rojas the National Chamber for Terrorism (Sala Nacional de Terrorismo), "on May 13, 2003, that is, one month and sixteen days after the Constitutional Court (Tribunal Constitucional) had declared the nullity of the oral proceedings

and of the prosecutor's case against him, declared again the oral proceedings and the prosecutor's case to be null. However, the proceedings were restarted […] on July 24 2003, […] that is, two months and twelve days after declaring the oral proceedings and the prosecutor's case to be null. During the term between March 27, and May 10, 2003, [Urcesino Ramírez-Rojas] remained in custody without a condemnatory judgment, without an indictment, but with a preventive arrest warrant from August 9, 1991;"

d) It is not admissible that people who were prosecuted by the State in violation of due process of law, as in the case of the alleged victims, and whose trial or oral proceedings were declared to be null, should remain per se deprived of their freedom based only on the application of provisions which do not take into account that they have recovered their quality of defendants, and which disregard the time during which they have already remained deprived of their freedom; and

e) The State of Peru has violated the right to judicial protection as set forth by the American Convention to the detriment of the alleged victims "by reason of the restrictions to access to justice of fact and of law, in the domestic jurisdiction, for the protection and restitution of their violated rights."

Arguments of the State

100. With respect to the alleged violation of Article 7 of the Convention, the State pointed out that:

a) "Reasonable terms have been respected in the case of Ramírez-Rojas, and the case of García-Asto has already concluded;"

b) The deprivation of the alleged victims' freedom "does not correspond to only one proceeding of provisional detention, but also to the new proceedings being conducted as the previous ones were annulled;"

c) "The transition from one proceeding to another does not necessarily have to result in the automatic release of the petitioners, as it corresponds to the ordinary judges to define the legal situation in their capacity as defendants in that transition, considering that their preventive detention has been ordered by virtue of the requirements of Article 135 of the Code of Criminal Procedure of 1991;"

d) In the new respective trials, it is not denied to the victims "that within the context of their right to defense they may request the respective change of the arrest measure;"

e) The annulment of a trial does not necessarily have to result in the automatic release of the defendant;

f) The cases of Ramírez-Rojas and García-Asto are just two cases among more than 2,000 which have to be reviewed as a result of the Judgment of the Inter-American Court in the Case of Castillo-Petruzzi et al and the Judgment of the Constitutional Court of January 3, 2003; and

g) "There are empirical reasons (the concurrence of more than 2,000 pending cases) and institutional reasons (the tendency to impartiality) which prevent the revision process of currently pending cases from being organized based on ex officio decisions."

Considerations of the Court

101. Article 7 of the American Convention states 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.
3. No one shall be subject to arbitrary arrest or imprisonment.
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.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.
[…]

102. Article 25(1) of the Convention states that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
[…]

103. Article 1(1) of the Convention sets forth that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

a) Regarding the detention of Wilson García-Asto on June 30, 1995

104. The Court has pointed out that, according to Article 7(1) of the Convention, the protection of liberty safeguards "both the individuals' physical liberty and their personal safety, in a context in which the lack of guarantees may result in the subversion of the rule of law and in the deprivation of the minimum forms of legal protection against detainees." [FN142]

[FN142] Cf. Case of Acosta-Calderón, supra note 7, para. 56; Case of Tibi. Judgment of September 7, 2004. C Series No. 114, para. 97; and Case of the Gómez-Paquiyauri Brothers. Judgment of July 8, 2004. C Series No. 110, para. 82.

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105. Regarding sub-paragraphs (2) and (3) of Article 7 of the Convention as to the prohibition against illegal or arbitrary detention or arrest, the Court has stated that:

[a]ccording to the first of said provisions [Article 7(2) of the Convention] 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 the law established pursuant thereto (material aspect), and with strict observance of the proceedings objectively defined therein (formal aspect). In the second case [Article 7(3) of the Convention], there is a condition according to which no one shall be arbitrarily arrested or imprisoned for reasons and methods which –though qualified as legal- may be deemed to be incompatible with the respect for fundamental rights of the individual, due, among other things, to their unreasonable, unforeseeable, or disproportionate nature. [FN143]

[FN143] Cf. Case of Acosta-Calderón, supra note 7, para. 57; Case of Tibi, supra note 142, para. 98; and Case of the Gómez-Paquiyauri Brothers, supra note 142, para. 83.

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106. The Court understands that preventive detention is the most serious measure that can be applied to someone accused of a crime, wherefore its application must be exceptional, as it is limited by the principles of nullum crimen nulla poena sine lege praevia, presumption of innocence, need, and proportionality, which are essential in a democratic society. [FN144] In this regard, the Court has stated that preventive detention is a precautionary measure, and not a punitive one. [FN145]

[FN144] Cf. Case of Acosta-Calderón, supra note 7, para. 74; Case of Tibi, supra note 142, para 106; and Case of the Juvenile Reeducation Institute. Judgment of September 2, 2004. C Series No. 112, para. 228.

[FN145] Cf. Case of Acosta-Calderón, supra note 7, para. 75; Case of Tibi, supra note 142, para. 180; and Case of Suárez-Rosero. Judgment of November 12, 1997. C Series No. 35, para. 77.

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107. With respect to the illegal and arbitrary detention of Wilson García-Asto, in its answer to the application, the State pointed out that said detention was carried out according to the Peruvian Constitution of 1993, in force at the time of his detention, and which in Article 2, subparagraph (24)(f), regarding personal liberty and security, stated that:

No one shall be detained except with a written order issued by the Judge or by police authorities in case of flagrante delicto.

The detainee shall be brought before the competent court, within twenty-four hours or in the term allowed by distance.
These terms do not apply to the cases of terrorism, espionage, or illegal drug trafficking. In these cases, police authorities may effect the preventive detention of the people allegedly involved for a term no longer than fifteen running days. Notice shall be served upon the Public Prosecutor's Office and the Judge, who may assume jurisdiction before the expiration of the above-mentioned term.

108. However, as already pointed out, after submitting the answer to the application, the State accepted the facts which occurred prior to September 2000 (supra paras. 52 to 60). According to the facts established by the Court, Wilson García-Asto was detained on June 30, 1995 by the DINCOTE personnel while we was at a bus stop and some "subversive" documents were allegedly among his belongings (supra paras. 97(11) and 97(12)). The Court considers that said detention was illegal, as it was effected without an arrest warrant issued by a competent judge, and not under circumstances of flagrante delicto, which is contrary to the requirements established in the Peruvian Constitution in this regard (supra para. 107).

109. Furthermore, the Court has stated that Article 7(5) of the Convention sets forth that any person who is detained shall be promptly brought before a judge, as an appropriate means to prevent arbitrary and illegal arrests. The immediate judicial control is a measure which tends to prevent detentions from being arbitrary or illegal, considering that in a democratic state, the judge is to guarantee the rights of the detainee, authorize the adoption of precautionary or coercive measures where they are strictly necessary, and see that, in general, the accused is treated consistently with the presumption of innocence. [FN146] The mere knowledge by a judge that a person is detained does not imply compliance with that guarantee, as the detainee must appear personally and make his statement before the judge or a competent authority. [FN147]

[FN146] Cf. Case of Acosta-Calderón, supra note 7, para. 78; Case of Tibi, supra note 142, para. 114; and Case of the Gómez-Paquiyauri Brothers, supra note 142, para. 96.
[FN147] Cf. Case of Acosta-Calderón, supra note 7, para. 78.
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110. In the case of Wilson García-Asto, he was placed in the custody of the competent judicial authority only seventeen days after his detention (supra paras. 97(11) and 97(20)).

111. The Court further considers that Article 6 of Decree-Law No. 25.659 of 1992, in force at the time the proceedings against the alleged victims were instituted, denied the persons charged with terrorism-related crimes and high treason the possibility of filing protective remedies (supra para. 97(2)). Said provision was amended by Decree-Law No. 26.248, enacted on November 25, 1993 (supra para. 97(2)) which allowed, in principle, filing protective remedies on behalf of the persons accused of being involved in the commission of crimes of terrorism. The amended text set forth, inter alia, that the "Special Criminal Judge for Terrorism w[as] competent to take up the writs of Habeas Corpus, [and] in his absence, the ordinary Criminal Judge." Nevertheless, the amended provision set forth that "[said writs of habeas corpus] would not be admissible where

based on the same facts or grounds, the subject matter of pending legal proceedings or proceedings which have already been adjudicated."

112. The Court has considered that "writs of habeas corpus and amparo remedies (constitutional guarantees for the protection of civil rights) are essential judicial guarantees for the protection of certain rights which suspension is prohibited by Article 27(2) [of the Convention] and which, in addition, are useful to preserve lawfulness in a democratic society." [FN148]

[FN148] The Habeas Corpus Under Suspension of Guarantees (Articles 27(2), 25(1), and 7(6) of the American Convention on Human Rights). Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 42; and cf. Case of Acosta-Calderón, supra note 7, para. 90; Case of Tibi, supra note 142, para. 128; Case of the Gómez-Paquiyauri Brothers, supra note 142, para. 97; and Judicial Guarantees in Emergency Situations (Articles 27(2), 25, and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A, No. 9, para. 33.

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113. This Court has established that the protection of a person against the arbitrary exercise of public power is the main purpose of human rights international protection. [FN149] In this regard, the lack of effective domestic remedies renders a person defenseless. Article 25(1) of the Convention sets forth, in broad terms, the obligation of the States to provide all individuals under their jurisdiction an effective legal remedy against acts which violate their fundamental rights. [FN150]

[FN149] Cf. Case of Acosta-Calderón, supra note 7, para. 92; Case of Tibi, supra note 142, para. 130; and Case of the Juvenile Reeducation Instititute, supra note 144, para. 239.
[FN150] Cf. Case of Acosta-Calderón, supra note 7, para. 92; Case of Tibi, supra note 142, para. 130; and Case of 19 Tradesmen. Judgment of July 5, 2004. Series C No. 109, para. 194.

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114. The effectiveness of Article 6 of Decree-Law No. 25.659 at the time when Wilson García-Asto was arrested, and during the processing of the first proceedings brought against him, legally prohibited the possibility of filing writs of habeas corpus. The Court understands that the amendment introduced by Decree-Law No. 26.248 did not benefit the alleged victim, as his case was the "matter of pending proceedings."

115. By virtue of the foregoing, and considering the partial acknowledgement of the facts by the State, the fact that this was not a case of flagrante delicto, and the lack of a judicial arrest warrant against Wilson García-Asto, the fact that he was brought before the competent judicial authority only seventeen days after his arrest, and that he was deprived of the possibility to recourse to a competent judge or court so that the latter would decide without delay on the lawfulness of his arrest or detention, as well as the lack of legal protection, this Court declares that Peru has violated Articles 7(1), 7(2), 7(3), 7(5), 7(6), and 25 of the Convention to his

detriment, in relation to Article 1(1) thereof, at the time of his arrest and during the first judicial proceedings brought against him.

116. The above violations are prior to and independent of the fact that the Peruvian courts, by means of a judgment rendered on January 15, 2003 (supra para. 97(30)) regarding a writ of habeas corpus filed by Wilson García-Asto's next of kin, annulled the judgment and the first proceeding against him.

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b) Regarding the preventive detention of Wilson García-Asto as from the annulment of the first proceedings against him

117. On January 15, 2003 the Criminal Chamber of the High Court of Lima (Sala Penal de la Corte Superior de Lima) declared the nullity of the criminal proceedings instituted in the ordinary jurisdiction before "faceless" judges against Wilson García-Asto (supra para. 97(30)). As a consequence of the annulment of the first proceedings against him, on March 10, 2003, the First Special Criminal Court for Terrorism (Primer Juzgado Especializado Penal en Delito de Terrorismo) issued an order for pre-trial proceedings to commence before the ordinary courts against him for the crime of membership in and affiliation with a terrorist organization, as defined in Article 5 of Decree-Law No. 25.475, and issued an arrest warrant against Wilson García-Asto based on the police report attached by the Prosecutor (supra paras. 97(32) and 97(34), stating that, pursuant to Article 135 of the Criminal Procedural Code, there were sufficient evidentiary elements of the alleged commission of the crime charged.

118. As to the provisional detention of Wilson García-Asto, the Court considers that the Peruvian Constitution of 1993, in force when the new proceedings against the alleged victim were commenced, in Article 2, subparagraph (24)(b), regarding personal liberty and safety, states that:

b) No forms of restrictions to personal liberty are allowed, except for the cases established by the law. […]

119. On the other hand, the Criminal Procedural Code of Peru, applicable during the detention of the alleged victim in the new proceedings instituted against him, in Article 135 as amended by Law No. 27.226 published on December 17, 1999, sets forth the requirements necessary for a judge to issue the arrest warrant: a) that there is sufficient evidence involving the defendant as perpetrator or abettor of a crime; b) that the penalty to be imposed exceed four years, and c) that there are evidentiary elements to conclude that the defendant intends to escape justice or thwart the evidentiary procedures. Furthermore, said provision states that the penalty set forth by the law does not constitute a valid criterion to establish the intention to escape justice. Finally, said Article states that the change of the arrest warrant shall proceed whenever "new investigation acts challenge the sufficiency of the evidence which gave rise to that measure."

120. For its part, Article 137 of the Criminal Procedural Code, as amended by Law No. 27.553, published on November 13, 2001, sets forth that the term of detention shall be no longer

than "nine months in ordinary proceedings and eighteen months in special proceedings, provided that the requirements stated in Article 135 of the Criminal Procedural Code are fulfilled. In the case of crimes […] of […] terrorism […], the term of detention shall be doubled," thus amounting to a total of 36 months. Furthermore, said rule sets forth that upon expiration of the above mentioned term, "without a first-instance judgment having been passed, the immediate release of the defendant shall be granted."

121. With respect to release on bail, Article 182 of the Criminal Procedural Code sets forth that the defendant who is held in custody may request so whenever "new elements added to the record of the proceedings allow reasonably foreseeing that:" 1. the prison term imposed shall not exceed four years, or that the defendant has been held in custody for a term longer than two thirds of the penalty requested by the Public Prosecutor in the indictment; 2. the possibility that the defendant escapes justice or thwarts the evidentiary procedures has disappeared, and 3. the defendant fulfills the bail imposed or, if appropriate, the insolvent offers a personal bail.

122. In turn, regarding release, Article 4 of Legislative Decree No. 926 of February 20, 2003, set forth that "[t]he annulment declared according to [said] Legislative Decree shall not result in the release of the defendants, nor shall it entail the suspension of the existing summonses."

123. The first supplementary provision of Legislative Decree No. 926, consistent with Article 4 thereof, set forth that the detention time limit provided in Article 137 (supra para. 120) of the "Criminal Procedural Code in the proceedings to which [said] Legislative Decree is applied [,] shall be calculated as from the date of issuance of the order declaring the annulment."

124. The annulment of the criminal proceedings instituted against Wilson García-Asto and heard by "faceless" judges was ordered on January 15, 2003 by the Third Criminal Chamber of the High Court of Justice of Lima (Tercera Sala Penal de la Corte Superior de Justicia de Lima), which revoked the decision of November 27, 2002, declaring the writ of habeas corpus filed on his behalf to be groundless, and ordering that the case file be forwarded to the competent authority within forty-eight hours, so that the pertinent legal steps be taken (supra para. 97(31)). However, only on March 10, 2003 did the First Special Criminal Court for Terrorism (Primer Juzgado Especializado Penal en Delito de Terrorismo) ordered the commencement of the investigation proceedings in the new trial instituted against Wilson García-Asto, wherein the precautionary measure of imprisonment was ordered (supra para. 97(34)). During that term of one month and twenty-five days, the alleged victim was deprived of freedom without having been neither sentenced nor prosecuted.

125. By virtue of the foregoing, the Court considers that during the term between January 15, 2003 and March 10, 2003, Wilson García-Asto was arbitrarily deprived of freedom, in violation of Article 7(3) of the Convention.

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126. The Court is aware of the legislative changes advanced by Peru so as to grant new proceedings to the persons who were tried for terrorism by "faceless" judges or in trials before the military jurisdiction (supra paras. 97(5) to 97(9)). However, upon analyzing the

precautionary measure of deprivation of freedom imposed upon the alleged victim, the Court shall analyze whether the State has proceeded in accordance with the provisions of the Convention regarding the exceptional application of deprivation of freedom in the instant case.

127. The Court notes that the First Special Criminal Court for Terrorism (Primer Juzgado Especializado Penal en Delito de Terrorismo), in the order for pre-trial proceedings to be commenced issued on March 10, 2003, upon stating the grounds for alleging procedural danger in the case of Wilson García-Asto as the basis for ordering the precautionary measure of preventive detention, stated that:

[g]iven the seriousness of the charges and the legal consequences they would entail, it [w]as to be assumed that the defendant, if released, [would] try to escape justice or thwart the evidentiary procedures, as this is a natural defensive act.

128. Article 135 of the Code of Criminal Procedure set forth that "the penalty provided for in the Law for the crime charged would not constitute a sufficient criterion to establish the intent to elude justice." However, the First Specialized Court assumed that the defendant would try to elude the action of justice due to the "seriousness of the facts charged and the legal consequences that their evidence would entail." To that respect, this Court notices that in this case the First Criminal Court Specialized in the Crime of Terrorism did not submit enough arguments to maintain the detention of Wilson García-Asto.

129. Consequently, the State breached the obligation stated in Article 7(3) of the Convention to the detriment of Wilson García-Asto in the second proceedings instituted against him.

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c) Regarding the detention of Urcesino Ramírez-Rojas on July 27, 1991

130. In this section, the Court refers to the considerations presented in paragraphs 103 to 106, 109, 111 to 114, 119 to 123, and 126 of this Judgment.

131. As to the lawfulness and arbitrariness of the detention of Urcesino Ramírez-Rojas, the State, in its answer to the application, stated that said detention was carried out according to the Peruvian Constitution of 1979, in force at the time of his detention, which in Article 2, subparagraph (20)(g), stated that:

No one shall be detained except with a written order issued by the Judge or by police authorities in case of flagrante delicto.
In all cases, the detainee must be brought before a competent court within twenty-four hours or in the term allowed by distance.
These terms shall not apply to the cases of terrorism, espionage or illegal drug trafficking. In these cases, police authorities may effect the preventive detention of the persons allegedly involved for a term which shall not exceed fifteen running days. Notice shall be served upon the Public Prosecutor's Office and the Judge, who may assume jurisdiction before the expiration of the above-mentioned term.

132. However, as it has already been pointed out, after the submission of the answer to the application, the State acknowledged the facts occurred prior to September 2000 (supra paras. 52 to 60). Urcesino Ramírez-Rojas was detained at his domicile on July 27, 1991 by the DINCOTE personnel while he was sick and under no circumstances which could be deemed as flagrante delicto (supra para. 97(70)). Furthermore, the detention was not effected following a written arrest warrant, but on the mere suspicion of the DINCOTE agents, who were persecuting another person who was near Urcesino Ramírez-Rojas' house (supra paras. 97(70) and 97(71)). The alleged victim was brought before a competent judicial authority only thirteen days after his detention (supra para. 97(78)).

133. As to the alleged violation of Articles 7(6) and 25 of the Convention for the alleged restrictions to the writ of habeas corpus, the Commission pointed out that despite the fact that Urcesino Ramírez-Rojas was detained before the enactment of Decree-Law No. 25.659 (supra para. 97(2)), the proceedings instituted against him regarding the facts related hereto was the one contemplated in Article 6 of said Decree. As already pointed out, the State acknowledged the facts prior to September 2000 (supra paras. 52 to 60). Based on the foregoing considerations regarding the restrictions to the writ of habeas corpus in effect at the time the alleged victims were tried (supra paras. 111 to 114), the Court considers that Urcesino Ramírez-Rojas was deprived of the right to resort to a competent court so that it may decide on the lawfulness of his detention without delay.

134. In view of the foregoing, and taking into account the partial acknowledgement of the facts by the State (supra paras. 52 to 60), the absence of acts which may be deemed as flagrante delicto, and the lack of an arrest warrant ordering the detention of Urcesino Ramírez-Rojas, the fact that he was brought before the competent judicial authority only thirteen days after his detention, and the restrictions he faced in order to file a writ of habeas corpus at the time he was tried, the Court considers that the State has violated Articles 7(1), 7(2), 7(3), 7(5), 7(6), and 25 of the Convention to his detriment, in relation to Article 1(1) thereof, at the time of his detention and during the first judicial proceedings instituted against him.

135. The above violations are precedent to and independent of the fact that the Peruvian courts, by means of the judgment rendered on March 27, 2003 (supra para. 97(89)), regarding the writ of habeas corpus filed by his next of kin, annulled the judgment and some steps of the proceedings brought against him, based on the provisions of the judgment rendered by the Constitutional Court on January 3, 2003 and Legislative Decree No. 926 of February 19, 2003 (supra paras. 97(5) to 97(9)).

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d) Regarding the preventive detention of Urcesino Ramírez-Rojas as from the annulment of the first proceedings against him

136. On March 27, 2003, the Constitutional Court (Tribunal Constitucional) declared the writ of habeas corpus on behalf of Urcesino Ramírez-Rojas partially sustained, dismissing "the claim to the extent that it request[ed] his release, on the grounds that […] as the nullity of some stages

of the criminal proceedings did not affect the order to commence the pre-trial proceedings, […] the arrest warrant issued therein recover[ed] all its effects," and pointed out that "the annulment of the procedural effects of the condemnatory judgment, as well as those of the precedent procedural acts, including the prosecution's case, wo[uld] be subject to Article 2 of Legislative Decree No. 926; [and it found] [the] request for release from prison to be INADMISSIBLE" (supra para. 97(89)).

137. The annulment of the criminal proceedings instituted in the ordinary courts against Urcesino Ramírez-Rojas and heard by "faceless" judges was ordered on May 13, 2005 by the National Chamber for Terrorism (Sala Nacional de Terrorismo), which stated that the case was to be remitted to the corresponding Criminal Court "so that it proceed[ed] pursuant to law" (supra para. 97(90)). However, from the evidence of the instant case it results that it was only on June 24, 2003 that the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delitos de Terrorismo) took up the case against Urcesino Ramírez-Rojas (supra para. 97(91)).

138. The Commission and the representatives claimed that the preventive detention of Urcesino Ramírez-Rojas turned into an arbitrary detention as it was not based on sufficient legal grounds so that said restrictive measure could remain in effect (supra paras. 98 and 99).

139. The Court shall analyze whether the judicial authorities, in light of the provisions of the Convention, gave sufficient legal grounds to sustain the need to keep the alleged victim in custody. In this regard, the Court notes that the arrest warrant that the Peruvian courts took into account upon analyzing the motion filed by the defendant so that his detention be replaced with his commitment to appear before the court as required, was ordered by the Forty-Sixth Magistrate's Court of Lima (Cuadragésimo Sexto Juzgado de Instrucción de Lima), on August 9, 1991 (supra paras. 97(78) and 97(89)).

140. On September 1, 2004, the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) declared the motion submitted by Urcesino Ramírez-Rojas' counsel on July 13, 2004 so that his detention be replaced by his commitment to appear before the court to be inadmissible (supra para. 97(109)). Upon analyzing the case, the Judge of the First Criminal Court (Primer Juzgado Penal) considered that the Judge of the Sixty-Sixth Magistrate's Court of Lima (Cuadragésimo Sexto Juzgado de Instrucción de Lima) had issued an arrest warrant against Urcesino Ramírez-Rojas according to the requirements set forth in Article 135 of the Criminal Procedural Code, that is, as there was sufficient evidence to involve the defendant as perpetrator or abettor in the commission of the crime, the sanction to be imposed exceeded the term of four years' imprisonment, and "given the seriousness of the facts, it w[as] foreseeable that the defendant w[ould] try to escape justice, thus thwarting the evidentiary procedures."

141. The First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) declared that

from the analysis of the proceedings to date, it is not concluded that there are new acts which render the situation of the petitioner invalid in such a way that he deserves a change of the

coercion measure; furthermore, as there is truthfulness in the facts claimed - as it derives from the police investigation stated in the police report-, and considering the seriousness of the facts, the arrest warrant is in conformity with the Law, reason for which the personal coercion measure has to continue […]

142. On November 19, 2004, the National Chamber for Terrorism (Sala Nacional de Terrorismo), upon deciding upon the motion of appeal regarding the decision dated September 1, 2004 rendered by the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo) (supra para. 97(114)), confirmed said decision reiterating that "there w[ere] no elements that w[ould] challenge the sufficiency of the evidence considered by the A quo in order to issue the arrest warrant against the petitioner, thus resulting insufficient to that effect the pre-trial proceedings, which makes it necessary to exceptionally apply the arrest warrant, as a personal guarantee in order to allow the proper development of the case." [FN151]

[FN151] Cf. Order No. 216 issued by the National Chamber for Terrorism (Sala Nacional de Terrorismo) on November 19, 2004 (case file of affidavits and comments thereon, pages 6015 to 6017).

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143. By virtue of the foregoing, it arises that the First Special Criminal Court for Terrorism (Primer Juzgado Penal Especializado en Delito de Terrorismo), after more than fourteen years of the issuance of said precautionary measure, did not submit sufficient arguments to maintain Urcesino Ramírez-Rojas' detention.

144. In view of the foregoing, the State has violated Article 7(3) of the Convention, in relation to Article 1(1) thereof, to the detriment of Urcesino Ramírez-Rojas in the second proceeding instituted against him.

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

Arguments of the Commission

145. With respect to the alleged violation of Article 8 of the Convention, the Inter-American Commission stated that:

a) The prosecutors and the judges who participated in the prosecution of Wilson García-Asto and Urcesino Ramírez-Rojas bore a secret or "faceless" identity, according to Article 15, subparagraph (1) of Decree-Law No. 25.475;
b) The independence of these judges was affected as said positions were vested in temporary officers, and it was further affected by the lack of impartiality which was more evident as the defendants could not know the identity of the judges so as to challenge the objectivity of their actions;
c) In the case of Urcesino Ramírez-Rojas, such situation became even more serious as he was tried and sentenced by a court established ex post facto to the facts with which he was

charged. The legislation which gave rise to this jurisdiction dates of August 5, 1992 and the facts for which he was related to the investigation proceedings took place on July 27, 1991, when the jurisdiction laid in the ordinary judges;

d) More than thirty-eight months passed from the detention of Urcesino Ramírez-Rojas until he was convicted by the first instance judgment, more than 48 months from the arrest until the confirmation of the second instance judgment and more than eight years in the aggregate from his detention until the judgment was confirmed through the dismissal of the motion for review;

e) "The indictments, the reports to move to oral proceedings or the lists of charges and the condemnatory judgments passed by "faceless" courts against Wilson García-Asto and Urcesino Ramírez-Rojas were based on the evidence provided by the police reports issued by the DINCOTE;"

f) In the first instance judgment of September 30, 1994 against Urcesino Ramírez-Rojas, the violation of the right to presumption of innocence of the alleged victim becomes evident "as it dismisses the arguments and the evidence asserted by the counsel, stating that "the same... become non-admissible as that [referring to his innocence] has not been related (sic) to any other piece of evidence showing his innocence;"

g) In the prosecutions to which the alleged victims were subjected, "the counsel did not have the chance to examine the police officers who participated in the elaboration of the police reports which were used as the basis for justifying the charges against him, as [Article 13(c) of Decree-Law No. 25.475] set forth that the police officers who made and wrote them were exempted from appearing in the proceeding;"

h) The alleged victims were tried at closed hearings, in violation of the right set forth in Article 8(5) of the American Convention;

i) When construing Article 8 of the Convention "it must be understood that the right to a fair trial recognized in Article 139(5) of the Peruvian Constitution encompasses the right of the persons under the jurisdiction of the State of Peru to a reasoned judgment which includes its arguments of fact;"

j) In the first proceedings instituted against the alleged victims "the right to presumption of innocence was violated with respect to the evidence used to convict [them]; which is relevant in the new proceedings;"

k) "In the new trial, the gathering of all the evidence for the prosecution and for the defense was not ordered, as if commencing the summary proceedings again. That would have been necessary to correct all the procedural errors which had vitiated the original proceedings before the 'faceless' judges;"

l) "The court has incurred significant delay in the execution of some evidence-related proceedings [,for instance], [t]he confrontation of [Urcesino] Ramírez-Rojas with his co-defendant [Ms.] Moreno-Tarazona;"

m) It was not possible to access the memory of the computer seized from Wilson García-Asto in the new proceeding, "as it was broken due to humidity and lack of use. The police report on the analysis of those documents did not appear either;"

n) In the case of Wilson García-Asto "[t]he manipulation of evidence as well as the non-existence of the police reports which were used as a basis to describe the alleged seized documents as "subversive," show a violation of the custody chain that any judicial officer is obliged to observe in order to preserve the evidence during the proceeding;" and

o) "[E]ven though it is true that García-Asto was acquitted in the new proceedings […], it is also true that had there been an analysis by the Prosecutor and the examining Judge after the

annulment of the previous proceedings –and of the order for the commencement of the pre-trial proceedings of March 10, 2003 which provisionally defined his legal situation–, the [alleged] victim would not have been submitted to new proceedings. In fact, there was no evidence on the materiality of the conduct charged; however, the judge refused to review it when he denied its practice."

Arguments of the representatives

146. With respect to Article 8 of the Convention, the representatives stated that they agreed with the arguments submitted by the Commission in its complaint, and added that:

a) The State of Peru had violated the alleged victims' right to a fair trial when advancing proceedings against them by secret judges; when denying Urcesino Ramírez the right to be heard within a reasonable time; "when denying them the right to be presumed innocent; to examine the persons who issued the judicial reports against them and the persons who testified against them; [as well as] to be given a reasoned decision;"
b) The violation of the right to a fair trial set forth in the Convention to the detriment of the alleged victims has to be "construe[d] in the light of Article 3, common to the four Geneva Conventions, in accordance with Article 29 (a), (b), and (c) of the Convention;"
c) "Decree-Law 25.475 adopt[ed] in 1992, violat[ed] the standards of a fair trial provided for in the Constitution. […] Consequently, when applying said legislation and prosecuting and convicting the alleged victims according to it, the State violated [their] right to a fair trial and to the judicial guarantees referred to in Article 8 of the Convention;"
d) The State did not offer the alleged victims, within a reasonable time, a new trial in which the rules of due process were observed;
e) In the case of Urcesino Ramírez-Rojas, "although criminal proceedings against him were commenced again twenty-seven months ago […], they are still at the investigation stage as joinders have been ordered and extensions have been repeatedly granted, although Article 220 of the State C[riminal Procedural Code] restricts so;" and
f) The right to defense enshrined in Article 8(2)(c) of the Convention assumes being given proper and timely notice of the decisions rendered by the jurisdictional authority. Wilson García-Asto was served on the Supreme Court decision of February 9, 2005 which confirmed his acquittal on May 10, 2005, during the hearing summoned by the Inter-American Court in the city of Asunción, Paraguay, through the State agent.

Arguments of the State

147. With respect to Article 8 of the Convention, the State pointed out that:

a) In the proceedings instituted against the alleged victims "it is clear that the judges hearing their respective proceedings held such position long before their appointment as judges with secret identity; consequently, jurisdiction is not infringed;"
b) The fact of keeping the judge's identity under cover was legitimate, "considering that the intimidating activity or actions of the terrorists related to the defendants who were free constituted a latent threat for the judges and their families;"

c) "The enactment of Law No. 26.671 tacitly annulled Article 15 of Decree-Law No. 25.475, as well as all other provisions which implicitly prevented the defendant from getting to know the identity of the Judge;"
d) In the case of Urcesino Ramírez-Rojas "there has not been an undue delay, as this is a legal concept evidently undetermined or open;"
e) "[I]n the criminal proceedings, the Police Report only has the status of a preliminary Report, which under no circumstances leads to an absolute relation with the Judge. Nonetheless, according to Article 72 of the Criminal Procedural Code of Peru of 1940, it also has evidentiary value only when the Public Prosecutor's representative has participated therein;"
f) "Legislative Decree No. 922 of February 12, 2003 states the rules of evidence, of procedure, and other rules applicable to the prosecution of [the alleged victims] for the crime of Terrorism;"
g) "The proceedings for terrorism against the [alleged victims] wo[uld] also be processed according to the rules of the Ordinary Proceedings, which in Peru are governed by the Criminal Procedural Code in force since 1940;"
h) Stating that the new legislation enacted by virtue of the Judgment of January 3, 2003 rendered by the Constitutional Court and the new ordinary rules of procedure in force violate the American Convention "without discriminating specifically the case of [Mr.] García-Asto and [Mr.] Ramírez-Rojas [,] suggests a generic claim;"
i) "[T]he exclusionary rule does not justify setting aside –as a consequence of the annulment of the proceedings– of all physical evidentiary elements and documents of a judicial proceeding, without first differentiating those which are independent of or are not related to the infringements committed from those which are legally contaminated. The exclusionary rule entails no consequences as a result of the annulment of a criminal case, and does not apply to pre-trial proceedings or the indictment, but to the criminal judgment;"
j) The debates on the exclusionary rule and presumption of innocence concern the reasonability of already rendered judgments;
k) When requesting that all evidence for the prosecution and for the defense be gathered as if commencing the investigation proceedings again, "[t]he Commission seeks that rules which can only be applied to the trial hearings and to the judgments be applied to the preliminary or investigation stage, which only purpose is to prepare the indictment [.] This criticism would be valid and reasonable if it were made regarding the trial and it were claimed that during the trial the incriminating evidence was not processed again;" and
l) The assessment of the evidence material is a matter of domestic jurisdiction, that is, of the Peruvian Judicial Power, which is set forth in Article 283 of the Code of Criminal Procedure, an analysis of which shall have to be consciously carried out.

Considerations of the Court

148. Article 8 of the American Convention sets forth that:

1. 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.

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

[…]

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

[…]

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;

[…]

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

a) Regarding the alleged violations of Article 8 of the Convention to the detriment of Wilson García-Asto

i) First proceedings instituted against Wilson García-Asto

149. The Court has considered proven the fact that Wilson García-Asto was tried by "faceless" courts (supra paras. 97(27) and 98(28)), which made it impossible for him to know the identity of the judge and, consequently, to assess his capacity, to know if there were grounds for objection, and to exercise a proper defense before an independent and unbiased court. [FN152] Furthermore, his trial was not made public. In this regard, the Court notes that every defendant has the right to have a public trial. [FN153]

[FN152] Cf. Case of Lori Berenson-Mejía. Judgment of November 25, 2004. Series C No. 119, para. 147; Case of Cantoral-Benavides. Judgment of August 18, 2000. Series C No. 69, para. 127; and Case of Castillo-Petruzzi et al. Judgment of May 30, 1999. Series C No. 52, para. 133.

[FN153] Cf. Case of Lori Berenson-Mejía, supra note 152, para. 198; Case of Cantoral-Benavides, supra note 152, paras. 146 and 147; and Case of Castillo-Petruzzi et al, supra note 152, para. 172.

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150. In this case, the Court remarks that the judgment of January 15, 2003 rendered by the Third Criminal Chamber of the Superior Court of Lima (Tercera Sala Penal de la Corte Superior de Justicia de Lima) acknowledged that the proceedings brought against Wilson García-Asto violated fundamental principles such as that of due process; the right to be heard by a competent, independent, and impartial judge; the right to know if the judge was competent; and the right not to be tried by "faceless" judges, and it further declared the first criminal proceeding instituted against him in the ordinary courts for the crime of terrorism against the State to be null (supra para. 97(31)).

151. By virtue of the foregoing, and taking the partial acknowledgment of the facts by the State into account (supra paras. 52 to 60), the Court considers that during the first criminal proceeding instituted against Wilson García-Asto, the State violated the right to a due process of law, to be tried by a competent, independent and impartial judge, and the right to the publicity of

the criminal proceedings, according to Articles 8(1), 8(2) and 8(5) of the Convention, in relation to Article 1(1) thereof.

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152. The Court has previously remarked that among the prerogatives which must be granted to those who have been accused is the right to examine witnesses against and for them, under the same conditions and with the purpose of exercising their defense. [FN154]

[FN154] Cf. Case of Lori Berenson-Mejía, supra note 152, para. 184; and Case of Castillo-Petruzzi et al, supra note 152, para. 154.

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153. In the instant case, Article 13(c) of Decree-Law No. 25.475 set forth that "those who by virtue of their official duties participated in the elaboration of the Police Report shall not be proposed as witnesses [d]uring the [i]nvestigation and at the [t]rial." By virtue of the foregoing, Wilson García-Asto could not examine the police officers who participated in the elaboration of the police reports which were used as grounds for the charges brought against him.

154. The Court considers, as it has done before, and taking into account the acknowledgement of the facts prior to September 2000 by the State, that Article 13(c) of Decree-Law No. 25.475 applied to the instant case, prevented the exercise of the right to examine the witnesses whose testimonies supported the charges against the alleged victim. [FN155] In view of the foregoing, the State has violated Article 8(2)(f) of the Convention, in relation to Article 1(1) thereof, to the detriment of Wilson García-Asto.

[FN155] Cf. Case of Lori Berenson-Mejía, supra note 152, para. 183; and Case of Castillo-Petruzzi et al, supra note 152, para. 153.

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ii) Second proceedings instituted against Wilson García-Asto

155. With respect to the second proceedings instituted against Wilson García-Asto, the representatives pointed out that, as they were not served notice of the judgment of August 5, 2004 which acquitted the alleged victim (supra para. 97(47)), this having been read only "in a public act" on the date it was issued, the alleged victim's counsel, in the domestic jurisdiction, could not refer to said document at the time of presenting his oral and written arguments before the Supreme Court on February 7 2005, in relation with the appeal for annulment filed by the Public Prosecutor's Office against the above-mentioned acquittal (supra paras. 97(49) and 97(50)). This situation was not contested by the State. In this regard, the Court considers that said conduct violated the right to defense and the right to be heard, with the due guarantees, by a

competent judge or court, as enshrined in Article 8(1) and 8(2), subparagraph (c) of the Convention, in relation to Article 1(1) thereof.

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156. The Court does not consider it necessary to give an opinion with respect to the other arguments submitted by the Commission and the representatives on the alleged violation of Article 8 of the Convention regarding the production and assessment of the evidence in the second proceedings instituted against Wilson García-Asto, as the violation of his rights has not been proven.

b) Regarding the alleged violations of Article 8 to the detriment of Urcesino Ramírez-Rojas

157. Urcesino Ramírez-Rojas was convicted on September 30, 1994 by the Special Criminal Chamber for Terrorism of the Superior Court of Lima (Sala Penal Especializada de Terrorismo de la Corte Superior de Justicia de Lima), a court composed of "faceless" judges, according to Article 15, subparagraph (1) of Decree-Law No. 25.475 (supra para. 97(83)). Said judgment was confirmed on August 8, 1995 by the Supreme Court of Justice of Peru (Corte Suprema de Justicia del Perú), which was also made up of "faceless" judges (supra para. 97(85)). The hearings held during said proceedings were not open to the public. On May 13, 2003, the National Chamber for Terrorism (Sala Nacional de Terrorismo) declared the nullity of the proceedings instituted against Urcesino Ramírez-Rojas by judges with secret identity (supra para. 97(90)).

158. By virtue of the foregoing, taking the above-mentioned considerations into account (supra para. 149), as well as the partial acknowledgement of the facts by the State (supra paras. 52 to 60), the Court considers that during the first criminal proceedings instituted against Urcesino Ramírez-Rojas, the State violated the right to a due process; to be tried by a competent, independent and impartial judge; and to the publicity of the criminal proceedings, according to the provisions of Articles 8(1), 8(2) and 8(5) of the Convention, in relation to Article 1(1) thereof.

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159. Principle 36 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment of the United Nations states that:

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense. [FN156]
[…]

[FN156] U.N., Body of Principles for the Protection of All persons under any form of Detention or Imprisonment, adopted by the General Assembly in its Res/43/173 of December 9, 1988, Principle 36.

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160. The Court has pointed out that the principle of presumption of innocence is a tenet of fair trial. In the instant case, said judicial guarantee was not respected by the State. The first instance judgment of September 30, 1994 against Urcesino Ramírez-Rojas dismissed the arguments and the evidence submitted by the latter, pointing out that "the same […] we[re] inadmissible as that[, in reference to his innocence,] [had] not been related [sic] to any other piece of evidence sup[porting] his innocence" (supra para. 97(83)). When presuming the guilt of Urcesino Ramírez-Rojas and requesting, in turn, that Urcesino Ramírez-Rojas himself show his innocence, the State violated the right to presumption of innocence as enshrined in Article 8(2) of the Convention, in relation to Article 1(1) thereof.

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161. As pointed out in paragraphs 153 and 154 herein, Article 13(c) of Decree-Law No. 25.475 applied to this case, prevented the exercise of the right to examine the witnesses on whose testimonies the charges against the alleged victim are based. Due to the foregoing, and based on the acknowledgement of the facts prior to 2000, the Court considers that the State has violated Article 8(2)(f) of the Convention, in relation to Article 1(1) thereof, to the detriment of Urcesino Ramírez-Rojas.

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162. As to the analysis of the reasonable time in the first proceedings instituted against Urcesino Ramírez-Rojas, the Court notes that more than 38 months went by from the arrest of the alleged victim (supra para. 97(70)) until he was convicted in the first instance (supra para. 97(83)), more than 48 months from the arrest until the judgment in the second instance was confirmed (supra para. 97(85)) and more than 8 years in the aggregate from the arrest until the dismissal of the motion for review filed before the Supreme Court of Justice (supra para. 97(86)). As a consequence of the acknowledgement of these facts by the State, the Court considers that such delay per se constituted a violation of the right of Urcesino Ramírez-Rojas to be heard within a reasonable time as enshrined in Article 8(1) of the Convention. [FN157]

[FN157] Cf. Case of the Yakye Axa Indigenous Community. Judgment of June 17, 2005. Series C No. 125, para. 86; Case of the Moiwana Community, supra note 1, para. 160; and Case of the Serrano-Cruz Sisters, supra note 15, para. 69.

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163. Furthermore, the Commission and the representatives claimed that in the new proceedings instituted against Urcesino Ramírez-Rojas there has been significant delay in the adoption of some evidentiary procedures, and although the criminal proceedings against him restarted on May 13, 2003, in August, 2005, at the time of presenting the closing arguments, that

is, 27 months after restarting the criminal proceedings, they were still at the preliminary stage (supra paras. 145(l) and 146(e)).

164. More than fourteen years have passed since the detention of Urcesino Ramírez-Rojas on July 27, 1991. The Court recognizes that during that term Urcesino Ramírez-Rojas has remained deprived of freedom in several roles: as detainee, as defendant, and as convict.

165. In accordance with Article 202 of the Criminal Procedural Code in force at the time of instituting the new proceedings against the alleged victim, the investigation had to last four months, being it possible to extend such term for up to sixty additional days and, according to that same provision, in the case of complex proceedings, for up to eight additional non-extendable months. In the same way, Article 220 of the above-mentioned procedural code, provided that the Superior Prosecutor could request an extension of the term only one time and always before the beginning of the oral proceedings.

166. As stated above, the Court considers that a long delay may per se constitute a violation of the principle of due process (supra para. 162). Notwithstanding the foregoing, in order to assess the reasonability of the second proceedings instituted against Urcesino Ramírez-Rojas according to the terms of Article 8(1) of the Convention, the Court takes three elements into account: a) the complexity of the matter, b) the procedural activity of the interested party, and c) the conduct of the judicial authorities. [FN158]

[FN158] Cf. Case of Acosta-Calderón, supra note 7, para. 105; Case of the Yakye Axa Indigenous Community, supra note 157, para. 65; and Case of the Moiwana Community, supra note 1, para. 160.

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167. Based on the background presented in the chapter referring to Proven Facts, the Court recognizes that this is a complex case and that this must be taken into consideration to assess the reasonability of the term. The case file of Urcesino Ramírez-Rojas does not show that he took actions to delay the case. However, the Court remarks that at the time the closing arguments were presented in the instant case (supra para. 36), said investigation was still at its preliminary stage after twenty-seven months of the beginning of the new process.

168. Furthermore, the Court remarks that the delay in the new criminal proceedings instituted against Urcesino Ramírez-Rojas analyzed herein was not a consequence of the complexity of the case, but of the systematically delayed proceedings on the part of the State authorities. In the instant case, the authorities in charge of the investigation requested an extension of the term for the preliminary proceedings several times (supra paras. 97(93) to 97(96), 97(98), 97(100), 97(104) to 97(106) and 97(108)). Although his criminal proceedings restarted on May 13, 2003, twenty-seven months after they were still at the preliminary investigation stage.

169. On the other hand, on November 3, 2003, the First Special Criminal Court for Terrorism ordered a confrontation between Ramírez-Rojas and Isabel Cristina Moreno-Tarazona to be conducted on November 24 of that same year (supra para. 97(95)). Said procedure was not

carried out within the requested term as, for an alleged "lack of funds," it was not possible to transfer the alleged victim to from the place where he was detained (supra para. 97(97)). Finally, on April 1, 2004, the above-mentioned confrontation was carried out at Castro-Castro Prison (supra para. 98(102)), more than five months after having been ordered for the first time.

170. During the public hearing of the instant case, the State requested that the Court considered that the case against Urcesino Ramírez-Rojas was "one of the two thousand cases which were annulled at the same time as part of the same process after the Judgment of the Constitutional Court in 2003." To that respect, the Court recognizes the difficult circumstances undergone by Peru. However, the conditions of a country, without considering how hard they might be, do not generally release a State Party to the American Convention from the legal obligations set forth in that treaty, [FN159] except in the cases therein established.

[FN159] Cf. Case of the Moiwana Community, supra note 1, para. 153; Case of the Serrano-Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 118; and Case of Bámaca-Velásquez. Judgment of November 25, 2000. Series C No. 70, para. 207.

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171. In light of the foregoing, the Court considers that despite the proven complexity of the new criminal proceedings instituted against Urcesino Ramírez-Rojas in the instant case, the actions of the competent State authorities have not been compatible with the principle of reasonable time. The Court considers that the State must take into account the time Urcesino Ramírez-Rojas has remained in custody so as to conduct the new proceedings in an efficient way.

172. In view of all the foregoing, the Court concludes that the State has violated, to the detriment of Urcesino Ramírez-Rojas, the right to be tried within a reasonable time as set forth in Article 8(1) of the American Convention.

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173. The Court notes that the other arguments submitted by the Commission and the representatives with respect to Article 8 of the Convention to the detriment of Urcesino Ramírez-Rojas relate to issues which shall have to be decided in the new proceedings which are currently pending. As for that matter, the Court considers that it has no jurisdiction to take the place of the national judge in the assessment of the efficiency of the evidence of a particular case. [FN160]

[FN160] Cf. Case of Lori Berenson-Mejía, supra note 152, para. 174.

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174. As previously pointed out, the State "is obliged, by virtue of the general duties to respect the rights and adopt domestic provisions (Articles 1(1) and 2 of the Convention) and such

measures as may be necessary to guarantee that violations as the ones declared in the […] judgment do not oc[cur] again in its jurisdiction." [FN161]

[FN161] Cf. Case of De la Cruz-Flores, supra note 4, para. 117; Case of Castillo-Petruzzi et al, supra note 152, para. 222; and Case of Suárez-Rosero, supra note 145, para. 106.

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175. In this regard, it is the duty of the State to guarantee that in the new proceedings brought against Urcesino Ramírez-Rojas the requirements of due process of law are met, with full guarantees regarding the hearing and defense of the defendant.

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

Arguments of the Commission

176. In relation to the alleged violation of Article 9 of the Convention, the Inter-American Commission stated that:

a) The sentences imposed on Wilson García-Asto and Urcesino Ramírez-Rojas, "as well as the new proceedings br[ought] against them on the basis of the application of the same rules [...], under the reinterpretations [required] from Peruvian judges by the judgment rendered by the Constitutional Court on January 3, 2003, violate the nullum crimen nulla poena sine lege praevia principle;
b) The interpretation of the definition of the crime of terrorism made by the Constitutional Court of Peru in its judgment of January 3, 2003 "provides no solutions for the serious deficiencies and flaws that have persisted in the definition of the crime of terrorism since it was drafted, inasmuch as it preserves its repressive nature and continues to imperil protected rights and guarantees;"
c) The crime of terrorism as defined in Articles 4 and 5 of Decree-Law No. 25.475 and the crime defined in Articles 319 and 320 of the Criminal Code of 1991 contain "criminal definitions intrinsically linked to [the] definition of Article 2 of Decree-Law No. 25.475;"
d) "The definition of the crime of terrorism set forth in Article 319 of the Criminal Code of 1991 and the one included in Article 2 of 1992 Decree [Law No.] 25.475, in describing said conduct, guide the interpretation of other criminal rules defining different types of conduct [...]. A separate judicial interpretation of each norm to indeterminately subsume the conduct of the accused and convicted person indefinitely not only violates the non bis in idem principle, but also entails serious consequences for due process and the right to freedom;"
e) In the first proceedings conducted against him, Urcesino Ramírez-Rojas was sentenced to twenty five years' imprisonment for the "crimes of aggravated terrorism, committed in his capacity as chief, leader, or head, and extortionate abduction," as defined in Article 320(1) and 320(5) of the Criminal Code of 1991, following a series of criminal acts that occurred in 1987, 1988, 1989, 1990, and between May and August 1991;
f) The simultaneous application of the provisions related to aggravated terrorism as contained in Article 320 and those related to membership in and affiliation with a terrorist

organization as provided in Article 322 of the Peruvian Criminal Code, "constitutes a seeming concurrence of criminal definitions which are mutually exclusive by reason of specificity; therefore, only one of them is to be applied; otherwise, the non bis in idem principle would be violated, as well as the nullum crimen nulla poena sine lege praevia principle enshrined in Article 9 of the Convention;"

g) In the first proceedings conducted against him, Wilson García-Asto was convicted by a judgment entered on April 18, 1996 by the Special Criminal Chamber for Terrorism of the Superior Court of Justice of Lima (Sala Penal Especial de Terrorismo de la Corte Superior de Lima), which was composed of "faceless" judges, of the crime of collaboration with terrorism, as defined in Article 4 of Decree-Law No. 25.475, and of the crime of terrorist membership in and affiliation with a terrorist organiztion as defined in Article 5 thereof, which are incompatible;" and

h) New proceedings were instituted against Wilson García-Asto for the crime of affiliation with a terrorist organization as established in Article 5 of Decree-Law No. 25.475.

Arguments of the representatives

177. In relation to Article 9 of the Convention, the representatives pointed out that they endorsed the arguments included in the Commission's application and added that:

a) Article 320 of the Criminal Code of 1991 established "a gradation of sentences in relation to the conduct described in Article 319 thereof, that is, it w[ould] be necessary to apply the basic definition, which [...] violates the international standards of the nullum crimen nulla poena sine lege praevia principle;"

b) Article 2 of Decree-Law 25.475 "includes an open-ended definition of the crime of terrorism;"

c) "[I]n formulating the definitions contained in [Article 5 of Decree-Law No. 25.475], it was intended to go beyond the perpetration of concrete criminal acts, without emphasizing their commission. Hence, this legal provision establishes a substantial change from a criminal system based on the crime committed, which punishes the individuals' illegal conduct, to a system based on the perpetrator." The "expansion of substantive criminal law [...], was also reflected in the definition of the so-called acts of collaboration with terrorism" included in Article 4 of Decree-Law No. 25.475;

d) Through the creation of the crime of collaboration with terrorism "an attempt is made to anticipate the commission of criminal acts falling within the category of terrorism, which finally leads to the criminalization of acts that, according to legal textbooks and opinions, are preparatory of said crime;"

e) In order to criminally establish the existence of the crime of terrorism in any of its forms, acts of collaboration, or affiliation with a terrorist organization, it is necessary to take into consideration the basic definition of the crime of terrorism included in Article 2 of Decree-Law No. 25.475;

f) Decree-Law No. 25.475 "insofar as it establishes minimum sentences without specifying the legally accepted maximum of applicable sentences, violates the 'nulla poena, sine lege' principle;"

g) Decree-Law No. 25.475 "does not differentiate among the acts committed by the perpetrator, co-perpetrator, accessory, instigator, aider, and abettor, or doer, which made it

impossible to establish punishment proportional to the degree of responsibility of the perpetrator of the crime within the subversive organization;"

h) "Legislative Decree [No.] 921 of [J]anuary 2003 establish[ed] that the legally accepted maximum sentence for the crimes defined in Articles 2, 3 (b) and (c), 4, and 5 was five years more than the minimum sentence;"

i) The State violated Article 9 of the Convention in relation to Article 24 thereof to the detriment of the alleged victims, inasmuch as "law-makers did not [...] include any criterion to differentiate between [those convicted of drug trafficking] and those convicted [of terrorism] when granting penal benefits;"

j) Article 3 of Legislative Decree [No.] 927 provides that "the sentence may be served by working or studying, at a rate of one day of sentence for seven days of effective labor;" and

k) "Article 4 of Law No. 26320 on the crime of drug trafficking" establishes [that] the sentence may be served by working or studying at a rate of one day of the sentence imposed for five days of effective labor or study.

Arguments of the State

178. In relation to Article 9 of the Convention, the State expressed that:

a) The Constitutional Court has remedied the objections to the so-called anti-terrorist legislation, as well as to the provisions set forth by subsequent Legislative Decrees No. 921, 922, 923, 924, 925, 926, 927;

b) "The Constitutional Court did not rule on Article 319 of the Criminal Code as said Article was repealed by Article 22 of Decree-Law No. 25.475;"

c) The Constitutional Court, in its Judgment of January 3, 2003, "proved that it was perfectly admissible to bring some of the challenged provisions into line with the principles underlying the Political Constitution of Peru, which is why it did not declare the basic definition of the crime of terrorism (as established in Article 2 of Decree-Law No. 25.475) unconstitutional, inasmuch as it held that it was in keeping with Article 2 (24) (d) of the [...] Constitution;"

d) The crime of terrorism "may take different criminal forms which cannot be reduced to a single and definite presumption; hence, it is out of order to rely on a single definition of the crime of terrorism. Instead, a series of possibilities and descriptions sharing the same purposes should be contemplated. In accordance with the foregoing, it was legitimate for the exceptional provisions adopted by the State of Peru to be somehow general when regulating the crime of terrorism, as is generally accepted by legal textbooks and opinions on criminal law;"

e) "The petition contains a priori unfavorable judgments of one of the Powers of the State of Peru, which is the Judiciary; and the State considers that, in relation to the new proceedings brought against [the alleged victims], the resulting judgments should be awaited to determine whether they abide by the guarantees and guidelines imposed by the Decision rendered by the Constitutional Court on January 3, 2003, which the State of Peru deems to be respectful of Human Rights, both at the substantive and procedural level;"

f) The crimes for which the alleged victims were prosecuted in the first proceedings and for which they have been prosecuted in the new proceedings are "autonomous in relation [to the] criminal definition set forth in Article 2 of Decree-Law No. 25.475;" and

g) The "crime of terrorist association is but a special description [,] in connection with terrorism [,] of the crime of membership in a terrorist organization established in Article 317 of the Peruvian Criminal Code."

Considerations of the Court

179. Article 9 of the American Convention provides 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.

180. Article 2 of the Convention establishes 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.

181. Article 2(24)(d) of the 1993 Constitution of Peru establishes that:

No one shall be prosecuted or convicted of an act or omission not previously described by law, in an express and unequivocal manner, as a punishable offense; nor shall any punishment not provided for by law be applied.

182. The Peruvian legislation, with regard to the instant case, sets forth different types of crimes, to wit: terrorism, [FN162] aggravated terrorism, [FN163] terrorist collaboration with terrorism, [FN164] which, in turn, contemplates several hypotheses, and membership in and affiliation with a terrorist organization. [FN165]

[FN162] Cf. Article 2 of Decree-Law No. 25.475; and Article 319 of the Criminal Code of 1991.
[FN163] Cf. Article 320 of the Criminal Code of 1991.
[FN164] Cf. Article 4 of Decree-Law No. 25.475; and Article 321 of the Criminal Code of 1991.
[FN165] Cf. Article 5 of Decree-Law No. 25.475; and article 322 of the Criminal Code of 1991.

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183. The crime of terrorism was defined in Article 319 of the Criminal Code of 1991, in force until May 5, 1992, and thereafter, in Article 2 of Decree-Law No. 25.475 (supra paras. 97(1) and 97(2)). Pursuant to said Articles, any person who "causes, creates or maintains a state of intimidation, alarm or fear among the population or a sector thereof" or who "carries out acts against life, physical integrity, personal freedom and security [...] or property, the security of public buildings, means of communication or transport [...], power or transmission towers [...] or

any other property or service, using weapons, explosive materials or devices, or any other means capable of causing havoc or serious disturbance to public order" commits the crime of terrorism.

184. Article 320 of the Criminal Code of 1991, after describing the elements of the crime of aggravated terrorism established that it was punishable with:

1.- At least fifteen years' imprisonment if the agent acts in his/her capacity as member of an organization that makes use of the crime of terrorism (as defined in Article 319) to achieve whatever goals said organization may have.
At least twenty years' imprisonment if the agent is the chief, leader or head of the organization.
2.- At least eighteen years' imprisonment if, as a result of the crime, people are injured or public or private property is damaged.
3.- At least twenty years' imprisonment if minors are made to take part in the commission of the crime.
4.- At least twenty years' imprisonment if the damage caused to public or private property precludes, in part or in all, the provision of essential services to the population.
5.- At least twenty years' imprisonment when, in furtherance of terrorist goals, people are blackmailed or kidnapped so that detainees are released from prison, or when any other wrongful advantages are exacted from authorities or individuals, or when, also in furtherance of terrorist goals, a national or foreign air, water or land means of transport is hijacked, or its route altered, or when the extortion or kidnapping is aimed at obtaining money, property or any other advantage.
6.- At least twenty years' imprisonment if, as a result of the commission of the acts described in Article 313, serious injuries or death are caused, provided that the agent was able to foresee said results.

185. Pursuant to Article 4 of Decree-Law No. 25.475, anyone who "voluntarily obtains, collects, assembles or facilitates any type of property or devices, or carries out acts of collaboration, which in any way promote the commission of the crimes included in [said] 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 may be considered "acts of collaboration," to wit:

a. Furnishing documents and information on individuals and property, facilities, public and private buildings, and any other information which specifically contributes to or facilitates the activities of terrorist elements or groups.
b. Assigning or using any type of accommodation or other means which could be used to hide individuals or serve as a warehouse for weapons, explosives, propaganda, supplies, medicines, and other belongings related to terrorist groups or their victims.
c. Willfully transporting individuals who belong to terrorist groups or are linked to their criminal activities, as well as providing them with any kind of assistance to help them escape.
d. Organizing courses or leading centers of indoctrination and training of terrorist groups, operating under any cover.
e. Manufacturing, acquiring, holding, stealing, storing or supplying weapons; ammunition; explosive, asphyxiant, flammable, toxic or other substances or objects that might cause death or

injury. Possessing, holding or hiding weapons, ammunition or explosives belonging to the Armed Forces and the Peruvian National Police constitutes an aggravating circumstance.
f. Any type of economic action, help, or mediation carried out voluntarily with a view to financing the activities of terrorist elements or groups.

186. Pursuant to Articles 322 and 5 of the Criminal Code and Decree-Law No. 25.475, respectively, the crime of membership in and affiliation with terrorist organizations may be imputed to:

Article 322 of the Criminal Code of 1991
Those who are members of an organization made up of two or more people to instigate, plan, promote, organize, disseminate or commit direct or indirect terrorist acts provided for in this Chapter, shall be punished with no less than ten years' imprisonment and no more than twenty for the mere fact of joining the group or association.
Article 5 of Decree-Law No. 25.475
Those who are members of a terrorist organization, for the mere fact of being a member thereof shall be punished with at least twenty years' imprisonment and subsequent disqualification for the term established in the judgment.

187. The Court has held that under the Rule of Law, the principle of freedom from ex post facto laws governs the actions of all State agencies, in relation to their respective duties, particularly when they must exercise their punitive power. [FN166]

[FN166] Cf. Case of Fermín Ramírez. Judgment of June 20, 2005. Series C No. 126, para. 90; Case of Lori Berenson-Mejía, supra note 152, para. 126; and Case of De la Cruz-Flores, supra note 4, para. 80.
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188. Concerning the nullum crimen nulla poena sine lege praevia principle of criminal law, the Court has asserted that definitions of crimes must clearly describe the criminalized conduct, establishing its elements, and the factors that distinguish it from other forms of conduct that are either not punishable or punishable with non-criminal measures. [FN167]

[FN167] Cf. Case of Fermín Ramírez, supra note 166, para. 90; Case of Lori Berenson-Mejía, supra note 152, para. 125; and Case of De la Cruz-Flores, supra note 4, para. 79.
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189. The American Convention requires States to make every effort to apply criminal sanctions with strict respect for people's basic rights, after carefully ascertaining the actual existence of illegal conduct. [FN168]

[FN168] Cf. Case of Fermín Ramírez, supra note 166, para. 90; Case of De la Cruz-Flores, supra note 4, para. 81; and Case of Baena Ricardo et al. Judgment of February 2, 2001. Series C No. 72, para. 106.

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190. In this regard, it is incumbent upon the criminal judge, upon applying criminal law, to strictly abide by the provisions thereof and be extremely rigorous when likening the accused person's conduct to the criminal definition, so as not to punish someone for acts that are not punishable under the legal system. [FN169]

[FN169] Cf. Case of Fermín Ramírez, supra note 166, para. 90; and Case of De la Cruz-Flores, supra note 4, para. 82.

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191. Pursuant to the principle of non-retroactivity of unfavorable criminal laws, the State must not exercise its punitive power by applying, retroactively, criminal laws that impose heavier penalties, establish aggravating circumstances or create aggravated definitions of the crime. Likewise, this principle implies that a person may not be convicted of an act that, at the time of its commission, was not criminalized or punishable. [FN170]

[FN170] Cf. Case of De la Cruz-Flores, supra note 4, para. 105; Case of Ricardo Canese. Judgment of August 31, 2004. Series C No. 111, para. 175; and Case of Baena Ricardo et al., supra note 168, para. 106.

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192. The Court shall now proceed to analyze the alleged violation of Article 9 of the Convention to the detriment of Wilson García-Asto and Urcesino Ramírez-Rojas, in connection with the compatibility of Peruvian legislation on terrorism and the rule of freedom from ex post facto laws as established in the American Convention, and shall subsequently analyze the proceedings conducted against the alleged victims.

a) Criminal definitions related to terrorism in the Peruvian legislation

193. Legal provisions defining the crimes of collaboration with terrorism, membership in and affiliation with a terrorist organization and aggravated terrorism are applicable in the instant case. As regards the basic definition of terrorism, the Court has taken cognizance of the interpretation made by the Constitutional Court of Peru in its judgment of January 3, 2003 of the basic definition of the crime of terrorism as established in Article 2 of Decree-Law No. 25.475 which, pursuant to the Peruvian law, is binding upon all state authorities, (supra para. 97(6)).

194. In relation to the basic definition of the crime of terrorism as established in Article 2 of Decree-Law No. 25.475, it is to be noted that the Court has found no reasons to conclude that Article 9 of the Convention was violated, inasmuch as said criminal definition sets forth the elements of the criminalized conduct, differentiating it from acts which are either not punishable

or punishable with non-criminal sanctions, and that it does not infringe other provisions set forth by the American Convention. The Court holds the same criterion as regards Articles 319 and 320 of the Criminal Code of 1991, which refer, respectively, to the crimes of terrorism and aggravated terrorism, as charged to Urcesino Ramírez-Rojas in the first proceedings.

195. This Court has already explained [FN171] that the definition of the crime of collaboration with terrorism (as established in Article 4 of Decree-Law No. 25.475) charged to Wilson García-Asto in the first proceedings conducted against him, does not infringe Article 9 of the American Convention. This criterion can also be applied to the crime of membership in or affiliation with a terrorist organization (as defined in Article 322 of the Criminal Code of 1991) charged to Urcesino Ramírez-Rojas in the second proceedings conducted against him, and to Article 5 of Decree-Law No. 25.475, charged to Wilson García-Asto in the second proceedings conducted against him. The Court finds that said criminal definitions do not infringe the provisions of Article 9 of the American Convention, for they set forth the elements of the criminalized conduct, differentiating it from acts which are either not punishable or punishable with non-criminal sanctions, and neither do they infringe other provisions of the Convention.

[FN171] Cf. Case of Lori Berenson-Mejía, supra note 152, para. 127.

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196. The Court shall now analyze whether the State has violated the rule of freedom from ex post facto laws to the detriment of the alleged victims when, in the first proceedings conducted against them, it applied the provisions of Articles 319 and 320 of the Criminal Code of 1991 to Urcesino Ramírez-Rojas and of Articles 4 and 5 of Decree-Law No. 25.475 to Wilson García-Asto.

b) Regarding the first criminal proceedings against Wilson García-Asto

197. In the first proceedings brought against Wilson García-Asto, the crimes of collaboration with terrorism and membership in and affiliation with terrorist organizations (as established in Articles 4 and 5 of Decree-Law 25.475, respectively) were invoked and applied, and provided the grounds for the condemnatory judgment rendered on April 18, 1996 by the Special Criminal Chamber for Terrorism of the Superior Court of Justice of Lima (Sala Especial de Terrorismo de la Corte Superior de Lima) (supra para. 97(27)). Said conviction and the proceedings giving rise thereto were declared null and void on January 15, 2003 (supra para. 97(31)). Nonetheless, the Court notes that said judgment resulted in the violation of Wilson García-Asto's human rights, which violation was not remedied by the annulment of said judgment and falls within the Court's jurisdiction. [FN172]

[FN172] Cf. Case of De la Cruz-Flores, supra note 4, para. 83.

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198. In the case under consideration, the judgment of April 18, 1996 (supra para. 97(27)) held that Wilson García-Asto had ostensibly helped an alleged member of the organization Shining Path to fix a floppy disk, that he "worked on the transcription of documents," and that he "actively participated" in said group. In view of the foregoing, the Special Chamber for Terrorism (Sala Especial de Terrorismo) concluded that

the behavior of the defendant w[as] described and punished in Articles 4 and 5 of Decree-Law No. 25.475.

199. The Court notes that collaboration with terrorism and membership in and affiliation with terrorist organizations are crimes that, owing to their characteristics, are mutually exclusive and incompatible. Along these lines, on March 10, 2003, upon issuing an order so that pre-trial investigation proceedings be commenced in the ordinary jurisdiction in the second proceedings brought against Wilson García-Asto for the crime of membership in and affiliation with terrorist organizations, the First Special Criminal Court for Terrorism (Primer Juzgado Especializado Penal en Delito de Terrorismo) (supra para. 97(32)) expressed that:

[…] in the [crime of] membership in and affiliation with terrorist organizations, what is punished is the mere fact of being a member of an organization, irrespective of whether or not activities are performed [.] […] A collaborator, instead, is a person who does not belong to the organization […]. The main difference between a member of a terrorist organization and a collaborator lies [in] that the former belongs to the organization and performs 'intraneus' (insider) acts, whereas the latter may be any person who is not a member of the organization and performs 'extraneus' (outsider) acts.

200. The Court believes that asserting that both the definitions of the crime of collaboration with terrorism and that of membership in and affiliation with terrorist organizations (as established in Articles 4 and 5 of Decree-Law No. 25.475, respectively) are applicable to the same conduct, is incompatible with the nullum crimen nulla poena sine lege praevia principle enshrined in the Convention, since said criminal definitions are mutually exclusive and incompatible.

201. Furthermore, Article 4 of Decree-Law No. 25.475 describes numerous and different forms of criminal conduct constituting the crime of collaboration with terrorism. In its judgment, the national court failed to specify which of those forms of conduct were imputable to the alleged victim to hold him responsible for the crime. [FN173]

[FN173] Cf. Case of De la Cruz-Flores, supra note 4, para. 89.

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202. In view of the foregoing, taking into consideration that the State acknowledged the facts which occurred prior to September 2000 (supra paras. 52 to 60), the Court considers that the State violated the nullum crimen nulla poena sine lege praevia principle enshrined in Article 9 of the American Convention to the detriment of Wilson García-Asto, upon convicting him of both

the crime of collaboration with terrorism and membership in and affiliation with a terrorist organization in the first proceedings conducted against him.

c) Regarding the second criminal proceedings against Wilson García-Asto

203. The second proceedings conducted against Mr. García-Asto were commenced on January 15, 2003 (supra para. 97(31)), after the first proceedings were annulled. In the new proceedings, the defendant was charged with the crime of membership in and affiliation with terrorist organizations as defined in Article 5 of Decree-Law No. 25.475 (supra para. 97(32)). These proceedings resulted in the acquittal of the alleged victim on January 5, 2004.

204. In view of the foregoing (supra para. 195), the Court has not found sufficient evidence to conclude that Article 9 of the American Convention was violated, to the detriment of Wilson García-Asto, when Article 5 of Decree-Law No. 25.475 was applied in the new proceedings conducted against him.

d) Regarding the first criminal proceedings against Urcesino Ramírez-Rojas

205. Two criminal proceedings were brought against Urcesino Ramírez-Rojas in the ordinary jurisdiction. The first proceedings were conducted before "faceless" judges who sentenced him to twenty-five years' imprisonment in a judgment rendered on September 30, 2004 by the Superior Court of Justice of Lima (Corte Superior de Justicia de Lima), wherein he was found guilty of the crime of aggravated terrorism as defined in article 320, subparagraphs (1) and (5) of the Criminal Code of 1991, for a series of criminal acts occurred in 1987, 1988, 1989 and 1990 (supra para. 97(83)). Moreover, Urcesino Ramírez-Rojas was charged with "taking part in a coordination meeting held by leaders of the Regional Committee and the armed posts of the terrorist organization Shining Path," and "having a large number of subversive documents in his house;" it was further asserted that, in relation to his work at the Ministry of Finance and later at the National Congress, "it sho[uld] be understood that, availing himself of the position he occupied in these institutions, he acted as an infiltrator[,] with the sole purpose of […] gathering information, learning about movements [and] planning meetings, which meant everything for the terrorist organization Shining Path."

206. In this respect, the Court considers, as it has noted before, [FN174] that, for the sake of legal certainty, it is essential that punitive norms exist and be known, or can be known, before the act or omission that infringes them and is to be punished takes place. The description of an act as wrongful and the formulation of its legal effects must precede the conduct of the individual deemed to be liable for an infringement, insofar as before a form of conduct is described as a crime, it is not considered wrongful in criminal terms. Otherwise, individuals would be unable to make their conduct conform to an existing and certain legal system embodying social reproach and its consequences. These are the grounds of the principle of non-retroactivity of unfavorable punitive norms.

[FN174] Cf. Case of De la Cruz-Flores, supra note 4, para. 104; and Case of Baena Ricardo et al., supra note 168, para. 106.

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207. In relation to the non-retroactivity principle, the Court notes that in the first proceedings conducted against Urcesino Ramírez-Rojas, he was charged with certain acts that had occurred before the coming into force of the Criminal Code of 1991, that is, criminal acts that had taken place in 1987, 1988, 1989, and 1990 (supra para. 97(83)).

208. In view of the foregoing, taking into account that the State acknowledged the facts which occurred prior to September 2000 (supra paras. 52 to 60), the Court considers that the State violated the non-retroactivity principle enshrined in Article 9 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Urcesino Ramírez-Rojas, upon applying the Criminal Code of 1991 retroactively in the first proceedings brought against him.

e) Regarding the second criminal proceedings against Urcesino Ramírez-Rojas

209. The Court notes that, at present, new proceedings are being conducted against Urcesino Ramírez-Rojas, pursuant to Legislative Decree No. 926 (supra para. 97(9)).

210. In the second proceedings against Urcesino Ramírez-Rojas, the order so that pre-trial investigation proceedings be commenced in the ordinary jurisdiction was amended to include the crime of membership in and affiliation with a terrorist organization as defined in Article 322 of the Criminal Code of 1991 (supra para. 97(105)).

211. The Court has held that the State "must, in keeping with the general duty to respect rights and adopt domestic provisions (Art. 1(1) and 2 of the Convention), take the necessary steps to guarantee that violations such as those included in the […] judgment do not occur again within its jurisdiction." [FN175]

[FN175] Cf. Case of De la Cruz-Flores, supra note 4, para. 117; Case of Castillo-Petruzzi et al., supra note 152, para. 222; and Case of Suárez-Rosero, supra note 145, para. 106.

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212. Along these lines, it is incumbent upon the State to ensure that the new proceedings being conducted against Urcesino Ramírez-Rojas comply with the rule of freedom from ex post facto laws enshrined in Article 9 of the American Convention, including strict correlation between the type of conduct and the criminal definition.

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

Arguments of the Commission

213. As regards the alleged violation of Article 5 of the Convention, the Inter-American Commission has stated the following:

a) "In view of the acknowledgement of responsibility made by the State and the evidence produced in the proceeding before the Court, the Commission considers that the State has violated Article 5 of the American Convention regarding Article 1(1) thereof;"
b) The facts related to the "physical and psychological abuse endured by Wilson García-Asto while he was in custody at the DINCOTE facilities in 1995 [...] though they are [not] subsequent facts [...] they may be considered by the Court as part of the facts which are the subject matter of the instant case;" and
c) "The facts that had been stated, detailed or clarified by the representative, which facts were found in the complaint filed by the [Commission], are those referring to the manner in which the victims had been arrested, detained and tried both in the first proceedings and in the new proceedings, as well as those facts related to the pain and suffering endured by the victims due to the detention conditions in the different prison facilities where they were held. Consequently, pursuant to prior decisions of the Court [...] said facts are part of the facts of the instant case.

Arguments of the representatives

214. Regarding the alleged violation of Article 5 of the Convention, the representatives have alleged the following, to wit:

a) The alleged victims had to endure "acts of torture, and were subject to inhuman, degrading, and humiliating incarceration conditions;"
b) The lack of communication, and the subsequent solitary confinement that [Wilson García-Asto] h[ad] to endure for over a year according to the State legislation then in force, constitute, per se, violations to Article 5 of the Convention;"
c) The transfer of Wilson García-Asto to Yanamayo Prison at Puno and afterwards to Challapalca Prison in Tacna[,] made it difficult for [his] next of kin, who resided in Lima, to visit [him], though they managed to visit him in spite of the travelling problems, and the unfavorable weather and financial conditions;"
d) "[T]hough Urcesino Ramírez-Rojas w[as] not physically tortured, he suffer[ed] psychological abuse since police officers would daily go to [his] cell and to the cells of other detainees to intimidate [them];"
e) The State violated Article 5(1) of the Convention to the detriment of the alleged victims due to the incarceration conditions they had to endure;
f) The alleged victims "suffered torture and still have to endure inhuman, humiliating, and degrading treatment," which constitutes a violation of Article 5 in light of Article 2 of the Inter-American Convention against Torture, to which the respondent State is a party;
g) The State not only violated [the] right [of the alleged victims] to humane treatment within the scope of the Convention, but also those rights protected within the scope of Article 3 Common to the four Geneva Conventions;"
h) "[The] inhuman and humiliating treatment [the alleged victims had to endure] was not restricted to [themselves], but extended to [their] next of kin;"
i) "The facts alleged, as a whole, affected [the] family background [of the alleged victims]; [their] detention conditions[,] the constant transfers that turned visits almost impossible for their next of kin, as well as the conditions in which they were held, caused suffering and constant

worry to [their] next of kin; consequently, the State "has violated Article 5 regarding the rights of the family (Article 17);" and

j) The penitentiary system created by the anti-terrorist legislation has restricted the visits of the next of kin, which constitutes not only a violation of Article 5(3) of the Convention, but also a violation of Article 17 thereof.

Arguments of the State

215. Regarding the alleged violation of Article 5 of the Convention, the State has pointed out that since "neither García-Asto nor Ramírez-Rojas have filed with any competent State authorities, any complaint or report regarding these facts, not even after November 2001; and that, therefore, it has not had the opportunity to formally assess whether the victims were entitled to claim compensation [...], the State considers that notwithstanding the acknowledgement of the facts already established pursuant to the statement submitted, the State has the right to raise an objection for lack of exhaustion of domestic remedies, which it intends to assert now as merits of the case. The aforesaid shall apply to the extent that, pursuant to the Commission, [the allegations regarding the alleged violation of Article 5 of the Convention are based on] new facts, regarding which the State has not had the formal possibility to file its observations."

Considerations of the Court

216. Article 5 of the Convention states the following:

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 respect for the inherent dignity of the human person.
3. Punishment shall not be extended to any person other than the criminal.
4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons.

[...]

6. Punishment consisting of deprivation of liberty shall have the reform and social readaptation of the prisoners as an essential aim.

217. In view of the partial acknowledgement of the facts by the State (supra paras. 52 to 60,) and taking into consideration the Preliminary Considerations of this Judgment regarding the delimitation of the facts that are part of the instant case (supra paras. 63 to 80,) the Court shall proceed to analyze the alleged violation of Article 5 of the Convention.

218. The Court notes that in its complaint, the Commission has not included any arguments regarding the alleged violation of Article 5 of the American Convention, which has been alleged by the representatives. However, in the closing written arguments, the Commission has pointed out that "in light of the acknowledgment of responsibility of the State and the evidence produced throughout the proceeding before the Court, the Commission considers that the State has violated Article 5 of the American Convention regarding Article 1(1) thereof" (supra para. 213(a)).

219. The Court has clearly established in prior cases that the representatives may allege that there have been other violations other than those alleged by the Commission, provided that such legal arguments are limited to the facts (supra paras. 97(1) to 97(140) stated in the complaint. [FN176]

[FN176] Cf. Case of Gutiérrez-Soler, supra note 6, para. 53; Case of the Moiwana Community, supra note 1, para. 91; and Case of De la Cruz-Flores, supra note 4, para. 122.

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a) Regarding the alleged violation of Article 5 of the Convention to the detriment of Wilson García-Asto.

220. Pursuant to the then applicable laws, during the first year of detention, Wilson García-Asto was subject to solitary confinement conditions, was allowed to go to the prison yard for only half an hour, and a visits were restricted to his next of kin (supra para. 97(54)).

221. Pursuant to Article 5 of the Convention, all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. [FN177] In other instances, the Court has pointed out that detention conditions where prison facilities are overcrowded, inmates are subject to isolation in a small cell, with no ventilation or natural light, without beds for resting and without adequate hygiene, and suffering lack of communication or restrictions to visits, constitute a violation to humane treatment. Furthermore, as responsible for detention centers, the State must secure detainees that the conditions for the respect of their fundamental rights and dignity are met. [FN178]

[FN177] Cf. Case of Raxcacó-Reyes, supra note 10, para. 95; Case of Fermín Ramírez, supra note 166, para. 118; and Case of Caesar. Judgment of March 11, 2005. Series C No. 123, para. 96.

[FN178] Cf. Case of Raxcacó-Reyes, supra note 10, para. 95; Case of Fermín Ramírez, supra note 166, para. 118; and Case of Caesar, supra note 177, para. 96; In the same regard, cf. UN Standard Minimum Rules for the treatment of detainees, adopted by the First United Nations Congress on Prevention of Crime and Treatment of Offenders, held in Geneva in 1955, and approved by the Economic and Social Council in Resolutions 663C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977, Rules 10 and 11.

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222. The Court has stated that torture and cruel, inhuman or degrading punishment or treatment are strictly prohibited by International Human Rights Law. The prohibition against torture and cruel, inhuman or degrading punishment or treatment is absolute and non-revocable, even in difficult circumstances, such as wars, threatened wars, the fight against terrorism and or any other crimes, a state of siege or emergency, civil or domestic riots, the suspension of constitutional guarantees and rights, domestic political instability, or any other public emergency or danger. [FN179]

[FN179] Cf. Case of Caesar, supra note 177, para. 59; Case of Lori Berenson-Mejía, supra note 152, para. 100; and Case of De la Cruz-Flores, supra note 4, para. 125.

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223. Criminal punishment is an expression of the punitive power of the State and implies a detriment, deprivation or alteration of the rights of persons, as a consequence of an unlawful conduct. [FN180] However, the injuries, pain or physical damage suffered by persons while deprived of their liberty may constitute a form of cruel treatment or punishment when, due to the detention conditions, there is a detriment of the physical, mental or moral integrity, which is strictly forbidden according to Article 5(2) of the Convention. The situations described above are contrary to the "essential aim" of imprisonment sanctions, as stated in Article 5(6), i.e. "the reform and social readaptation of the prisoners." The Judicial authorities must take these circumstances into consideration at the time of applying or evaluating the punishment to be imposed. [FN181]

[FN180] Cf. Case of Lori Berenson-Mejía, supra note 152, para. 101.
[FN181] Cf. Case of Lori Berenson-Mejía, supra note 152, para. 101.

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224. The United Nations Committee against Torture stated that the detention conditions at Yanamayo Prison, where Wilson García-Asto was detained, at over 3,800 meters above sea level, amounted to cruel and inhuman treatment and punishment. The Committee considered that the State should close said penitentiary. [FN182]

[FN182] Cf. UN. Committee Against Torture. Inquiry under Article 20: Peru. 16/05/2001. A/56/44, paras. 144-193. (Inquiry under Article 20), paras. 183 and 184.

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225. Furthermore, in its Report on Challapalca Prison, which is located at over 4,600 meters above sea level, the Inter-American Commission considered that Peru should immediately close such penitentiary and transfer the inmates detained therein to other penitentiary centers close to the places of residence of their next of kin. [FN183] The isolation that Wilson García-Asto had to endure in said penitentiary, caused by the distance and difficulty to access such region, limited the possibility of receiving specialized medical assistance. This fact gave rise to the protective measures granted by the Commission to protect his health (supra para. 97(57)). Furthermore, the visits of his next of kin were restricted.

[FN183] Cf. ICHR, Report on the situation of human rights at the Challapalca Penitentiary, Department of Tacna, Republic of Peru, OEA/Ser.L/V/II.118. Doc. 3, dated October 9, 2003 (case file of appendixes to the briefs of requests and arguments, Volume 1, appendix 5, page 1739).

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226. The Court has pointed out that the lack of adequate medical assistance does not meet the minimum material requirements for humane treatment under Article 5 of the American Convention.

227. The Court considers that, pursuant to Article 5 of the American Convention, the State has the duty to provide detainees with regular medical examinations, assistance, and adequate treatment whenever required. In turn, the State must provide for detainees to be administered medical assistance by a medical doctor chosen by them or by their legal representatives or guardians. [FN184]

[FN184] Cf. Case of De la Cruz-Flores, supra note 4, para. 122; Case of Tibi, supra note 142, para. 157; and Case of Bulacio. Judgment of September 18, 2003. Series C No. 100, para. 131; In that regard, cf. UN Principles for the Protection of All Persons under any Form of Detention or Imprisonment, adopted by the General Assembly in Resolution 43/173, of December 9, 1988, Principle 24.

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228. The Court notes that, in spite of his prostate problems (supra para. 97(57)). Wilson García-Asto did not receive adequate and timely medical assistance in the Yanamayo and Challapaca Penitentiaries; this has caused a detriment to his health and is contrary to the humane treatment to which every human being is entitled pursuant to Article 5 of the American Convention.

229. Furthermore, the Court concludes that the detention conditions imposed to Wilson García-Asto, as well as the lack of communication, the cell isolation regime, and the restriction of visits by their next of kin amounted to cruel, inhuman, and degrading treatment which derived in the violation of his physical, mental, and moral integrity. Consequently, and taking into consideration the acknowledgement of the facts occurred prior to September 2000 made by the State (supra paras. 52 to 60,), the Court considers that the State is liable for the violation of Articles 5(1) and 5(2) of the Convention, in connection with Article 1(1) thereof, to the detriment of Wilson García-Asto.

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230. The Court has considered proven that Wilson García-Asto's next of kin have endured great pain and suffering and have been constantly worried as a consequence of the degrading and inhuman detention conditions suffered by the alleged victim, the isolation to which he was subject, the distance and inaccessibility of the different penitentiaries to which he was transferred. All of the above constituted a violation of the mental and moral integrity of the alleged victim's next of kin (supra paras. 97(62) and 97(63)).

231. Consequently, and considering the acknowledgement of the facts prior to September 2000 made by the State (supra paras. 52 to 60,) the Court considers that Peru is liable for the

violation of Article 5(1) of the Convention, regarding Article 1(1) thereof, to the detriment of Napoleón García-Tuesta, Celia Asto-Urbano, Gustavo García-Asto, and Elisa García-Asto.

b) Regarding the alleged violation of Article 5 of the Convention to the detriment of Urcesino Ramírez-Rojas

232. In this section, the Court shall refer to the general considerations stated in paragraphs 216 to 223 and 227 of this Judgment.

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233. The Court considers that the detention conditions imposed on Urcesino Ramírez-Rojas (supra paras. 97(120), 97(122), and 97(127)), as well as the lack of communication, the cell isolation regime, and the restriction of visits by his next of kin were all cruel, inhuman, and degrading treatments that derived in the violation of his physical, mental, and moral integrity. Consequently, and taking into consideration the acknowledgement of the facts prior to September 2000 made by the State (supra paras. 52 to 60), the Court considers that the State is liable for the violation of Articles 5(1) and 5(2) of the Convention, in connection with Article 1(1) thereof, to the detriment of Urcesino Ramírez-Rojas.

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234. As regards the detriment to the personal integrity of Urcesino Ramírez-Rojas' next of kin, the Court has considered proven that due to his detention, his family has suffered damage to their physical, mental, and moral integrity (supra paras. 97(133) to 97(139)).

235. In view of the foregoing, the Court concludes that the detention conditions imposed on Urcesino Ramírez-Rojas, the lack of communication, the cell isolation, and the restriction regarding visits by his next of kin, as well as the humiliating treatment to which they were subject when visiting him, were a violation of the mental and moral integrity thereof. Consequently, and considering the acknowledgement of the facts prior to September 2000 made by the State (supra paras. 52 to 60), the Court considers that Peru is liable for the violation of Article 5(1) of the Convention, regarding Article 1(1) thereof, to the detriment of María Alejandra Rojas; Pedro, Julio, Santa, Obdulia, Filomena, Marcelina, Adela, all of them Ramírez-Rojas, and Marco Antonio Ramírez-Álvarez.

XIII. ARTICLES 11, 13 AND 17 OF THE AMERICAN CONVENTION (PROTECTION OF PRIVACY, FREEDOM OF THOUGHT AND EXPRESSION AND RIGHTS OF THE FAMILY) REGARDING ARTICLE 1(1) THEREOF

Arguments of the Commission

236. The Commission did not file any arguments regarding Articles 11, 13, and 17 of the Convention.

Arguments of the representatives

237. As regards Articles 11, 13, and 17 of the Convention, the representatives pointed out the following:

a) The personal conditions of Wilson García-Asto and Urcesino Ramírez-Rojas, a university student and a left-wing political party supporter respectively, "were fundamental for [their] detention, prosecution, trial, and conviction for terrorism, and played also an important role for the qualification of [their] next of kin and themselves as "terruco;"
b) The State is liable for the violation of the right to privacy to the detriment of the alleged victims, since they "had to endure humiliating and degrading treatment, and we[re] qualified as terrorists without [their] liability being proven; they also suffered an arbitrary and unfair detention and were exposed to hate, public despise, harassment, and discrimination, all of which affected [their] mental health and self-esteem;"
c) The "degrading and humiliating treatment" that Wilson García-Asto, and consequently, directly or indirectly, all his next of kin, had to endure, constitutes a violation of Article 11(1) of the American Convention;
d) The detention conditions that Wilson García-Asto had to endure caused "serious damage to [his] self-esteem, and, consequently, to [his] mental health and to that of [his] next of kin. The fact of having a relative imprisoned for a crime of terrorism generated a stigma for the next of kin, who were repudiated, discriminated, and isolated by relatives and friends and by society as a whole;"
e) Urcesino Ramírez-Rojas was detained, investigated, tried and convicted of the crime of terrorism in violation of his "privacy, since the State arrested him in his house, without an arrest warrant and without being in flagrante delicto, and accused [him] as perpetrator of the crime of terrorism, without any other evidence than its own interpretations, which did not have any connection to the crime of which he was accused;
f) Urcesino Ramírez-Rojas was called "terrorist" or "terruño" when being accused as "perpetrator of the crime of terrorism, before he was fo[und] guilty in a trial, thus violating [his] right to privacy;"
g) The humiliating and degrading treatment that Urcesino Ramírez-Rojas and his next of kin had to endure, as well as "the humiliating and degrading treatment […] he still has to endure, have affected [his] mental health and self-esteem;"
h) The documents that the Police took from Urcesino Ramírez-Rojas, which were considered as "terrorist literature" are of an academic nature and could be part of any professional database. The exercise of a liberty recognized by the Convention, to express thoughts or participate in groups that have a common thought, "led the State to the violation of [his] Right to Privacy" as embodied in Article 11 of the Convention, regarding Article 13 thereof;
i) The conduct of Urcesino Ramírez-Rojas "only constituted the exercise of his right to search for and receive information." Exercising this right, and as a consequence of his parliamentary advisor status, he "received information regard[ing] the terrorist organization Shining Path;"
j) "The facts alleged, as a whole, also affected [the] family background [of the alleged victims]; [their] detention conditions[,] the constant transfers which made visits almost impossible for their next of kin, as well as the conditions in which they were held, caused

suffering and constant worry to [their] next of kin; consequently, the State "has violated Article 5 regarding the rights of the family (Article 17);" and

k) The penitentiary system established by the anti-terrorist laws restricted the visits to the direct next of kin, which constitutes not only a violation of Article 5(3) of the Convention, but also of Article 17 thereof.

Arguments of the State

238. The State has not filed any arguments regarding Articles 11, 13, and 17 of the Convention.

Considerations of the Court

239. Article 11 of the Convention states the following:

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.

240. Article 13 of the Convention states the following:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
[...]

241 Article 17 of the Convention states the following:

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the state.
[...]

242. The Court states that the arguments related to the alleged violation of Article 11 of the Convention to the detriment of Wilson García-Asto and Urcesino Ramírez-Rojas and their next of kin refer to the facts related to the arbitrary detention that they suffered, their subsequent prosecution and conviction in a trial which did not guarantee a due process of law, and to the incarceration conditions that they had to endure in the different penitentiaries where they were detained. The Court considers that, in the instant case, the legal consequences of said facts have already been examined in relation to Articles 5, 7, and 8 of the Convention, and therefore the Court considers that it is not necessary to make a decision in that respect.

243. As to the allegation filed by the representatives regarding the alleged violation of Article 11 of the Convention, regarding Article 13 thereof, to the detriment of Urcesino Ramírez-Rojas, the Court considers that the facts of the case are not contemplated within the scope of such Articles.

244. The representatives alleged that the detention conditions of Wilson García-Asto and Urcesino Ramírez-Rojas, and the transfers to penitentiary centers which were distant from their places of residence, which rendered visits by their next of kin difficult, caused suffering thereto and constitutes a violation of both Article 5 of the Convention and Article 17 thereof.

245. As regards the arguments of the representatives regarding the alleged violation of Article 17 of the Convention to the detriment of the alleged victims' next of kin, the Court considers that the facts alleged in that respect have been considered when examining the violation of the right to privacy of the next of kin in the instant case (supra paras. 230, 234, 235, and 236.)

XIV. REPARATIONS (APLICATION OF ARTICLE 63(1) OF THE CONVENTION) (OBLIGATION TO REPAIR)

246. The Court has pointed out on several occasions that it is a principle of International Law that any breach of an international obligation that causes damage, generates an obligation to provide an adequate reparation of such damage [FN185]. To such effect, the Court has based its considerations on Article 63(1) of the American Convention, which states the following:

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

[FN185] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 242; Case of Raxcacó-Reyes, supra note 10, para. 114; and Case of Gutiérrez-Soler, supra note 6, para. 61.

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247. As the Court has pointed out, Article 63(1) of the American Convention embodies an accepted tenet which constitutes one of the fundamental principles of modern international law regarding the responsibility of the States. Thus, when an illegal act attributable to a State occurs, the international responsibility of such State arises for the violation of an international norm, with the subsequent duty to repair and to cease the consequences of such violation. [FN186]

[FN186] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 243; Case of Raxcacó-Reyes, supra note 10, para. 114; and Case of Gutiérrez-Soler, supra note 6, para. 62.

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248. The reparation of the damage caused for the breach of an international obligation requires, whenever possible, the full restitution (restitutio in integrum) which consists of the reinstatement of the situation prior to the violation. If this is not possible, as in the instant case, this International Court must order the adoption of a series of measures that, apart from providing protection to the rights that have been violated, may remedy the consequences of such

violations, and further order the payment of compensation for the damages that have been caused. [FN187] It is also necessary that the State adopt positive measures in order to prevent the occurrence in the future of injurious acts as those addressed in the instant case. [FN188] The duty to repair, which is regulated in all the aspects (scope, nature, modality, and determination of beneficiaries) by international law, cannot be modified or breached by the State owing such duty by invoking provisions set forth in its domestic laws. [FN189]

[FN187] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 244; Case of Raxcacó-Reyes, supra note 10, para. 115; and Case of Gutiérrez-Soler, supra note 6, para. 63.
[FN188] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 244; Case of Raxcacó-Reyes, supra note 10, para. 115; and Case of Gutiérrez-Soler, supra note 6, para. 63.
[FN189] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 244; Case of Raxcacó-Reyes, supra note 10, para. 115; and Case of Gutiérrez-Soler, supra note 6, para. 63.

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249. The reparations, as the term indicates, consist of those measures tending to annul or mitigate the effects of the violations occurred. Their nature and amount shall depend on the damages, both pecuniary and non pecuniary, that have been caused. [FN190] In this sense, the reparations to be determined must bear a relationship to the violations that have been established in the previous chapters of this Judgment.

[FN190] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 245; Case of Raxcacó-Reyes, supra note 10, para. 115; and Case of Gutiérrez-Soler, supra note 6, para. 64.

A) BENEFICIARIES

Arguments of the Commission

250. The Commission stated that, given the nature of the instant case, the beneficiaries of the reparations that the Court shall order are the following:

a) Wilson García-Asto and his next of kin, Celia Asto-Urbano (mother), Napoleón García-Asto (father), and his siblings Elisa and Gustavo García-Asto. The next of kin must be considered beneficiaries since they have a close emotional bond with the victims and have been deeply affected by the facts occurred; and
b) Urcesino Ramírez-Rojas and his next of kin, his mother, Alejandra Rojas; his siblings Pedro, Julio, Santa, Obdulia, Filomena, Marcelina, Adela, and Pompeya Ramírez-Rojas; and his son Marco Antonio Ramírez-Álvarez. The next of kin must be considered beneficiaries since they have a close emotional bond with the victims and have been deeply affected by the facts occurred.

Arguments of the representatives

251. The representatives pointed out that the beneficiaries of the reparations are the following:

a) Wilson García-Asto, as a direct victim, and Celia Asto Urbano (mother), Elisa Garcia-Asto, Gustavo Garcia-Asto (siblings), Napoleón Garcia-Tuesta (father), his next of kin, who must be beneficiaries of the reparations arising from the violation of Article 5 of the Convention regarding Article 1(1) thereof; and
b) Urcesino Ramírez-Rojas as a direct victim, and Marcos Ramírez-Alvarez (son) and Santa, Pedro, Filomena, Julio, Obdulia, Marcelino, and Adela Ramírez-Rojas (siblings), his next of kin, who must be beneficiaries of the reparations arising from the violation of Article 5 of the Convention regarding Article 1(1) thereof.

Arguments of the State

252. The State has not submitted any arguments regarding the beneficiaries of the reparations.

Considerations of the Court

253. According to Article 63(1) of the American Convention, taking into consideration the acknowledgement of facts made by the State (supra paras. 52 to 60,) the Court considers Wilson García-Asto and Urcesino Ramírez-Rojas to be injured parties as victims of the violations of the rights embodied in Articles 5, 7, 9, 8, and 25 of the American Convention, regarding Article 1(1) thereof. Likewise, the following persons are considered beneficiaries as victims of the violation of Article 5 of the American Convention, regarding Article 1(1) thereof:

- Napoleón García-Tuesta (father), Celia Asto-Urbano (mother), Elisa and Gustavo García-Asto (siblings), all of them next of kin of Wilson García-Asto; and
- María Alejandra Rojas (mother –deceased-), Marcos Ramírez-Álvarez (son) and Santa, Pedro, Filomena, Julio, Obdulia, Marcelino, and Adela Ramírez-Rojas (siblings), all of them next of kin of Urcesino Ramírez-Rojas.

254. As regards Pompeya Ramírez-Rojas, sister of Urcesino Ramírez-Rojas, the Inter-American Commission has requested her inclusion as beneficiary of the reparations that may be ordered in this Judgment but has not made any further consideration in that respect, nor has it submitted any evidence to prove that Pompeya has suffered a material or immaterial damage as a consequence of the facts described in the instant case.

255. As regards the compensation that may be awarded to María Alejandra Rojas, mother of Urcesino Ramírez-Rojas, the Court has already pointed out that the right to receive compensation for the damages suffered by the victims until their death passes over to their heirs, and has further stated that as a common practice, legislation in most countries provides that the successors of a person are his or her children. [FN191]

[FN191] Cf. Case of the Serrano-Cruz Sisters, supra note 15, para. 146; Case of the Gómez-Paquiyauri Brothers, supra note 142, para. 198; and Case of Bulacio, supra note 184, para. 85.

B) PECUNIARY DAMAGE

Arguments of the Commission

256. Regarding pecuniary damage, the Commission pointed out the following:

I) As regards Wilson García-Asto:

a) Wilson García-Asto lived with his mother, Celia Asto-Urbano, and with his younger siblings Elisa and Gustavo García-Asto, his father, Napoleón García-Asto, being also part of his family background;

b) Due to his detention "Wilson García-Asto could not finish his studies in Systems Engineering at the School of Systems and Industrial Engineering of the National University of El Callao (Facultad de Ingeniería Industrial y de Sistemas de la Universidad Nacional del Callao). Wilson García-Asto provided financial support to his family in many ways and had plans to obtain a university degree that would allow him to provide a better financial support to his family;"

c) Wilson García-Asto's parents and siblings "have incurred expenses arising from the defense at trial and had to pay for his food, clothes, and medicine while he was in prison, as well as traveling and food expenses arising from the visits they made to such distant places as Challapalca and Yanamayo where he was imprisoned;" and

d) His release "does not constitute a complete reparation, given the seriousness of the violations committed against the victim and the time during which he remained deprived of his liberty."

II) As regards Urcesino Ramírez-Rojas:

a) Urcesino Ramírez-Rojas was 47 years old at the time of his detention, "he was an economist that had just retired from public service due to the economic incentives offered by the government to civil servants and had prospects to provide professional advisory services so that he may continue exercising his profession." He was single and his family consisted of his mother, who died in 1996, his siblings Pedro, Julio, Santa, Obdulia, Filomena, Marcelina, Adela, and Pompeya Ramírez-Rojas, and his son Marco Antonio Ramírez-Álvarez;

b) As a consequence of his detention, "he could not provide professional services as an economist and did not have any income as he may have expected to earn by offering the advisory services that he had planned to offer. He has also been isolated from his son, parents, and siblings; he could not attend his mother's funeral; and he could not raise his son, who was brought up by his sister Filomena and has been deprived of the presence and guidance of a father. Likewise, his brother Pedro had to cope with his defense before domestic and international bodies;" and

c) Urcesino Ramírez-Rojas' next of kin have incurred expenses in order to visit him.

Arguments of the representatives

257. Regarding the determination of pecuniary damage, the representatives pointed out that "the victims do not have any financial resources and this has made it impossible to technically determine the amounts of pecuniary damage, and therefore, the amounts stated are an estimate:"

I) As regards Wilson García-Asto

a) At the moment of his detention "he was in his last year at the university, was 25 years old, [was] about to gradua[te], and work[ed] giving private math classes to school children and by typing works on his computer, earning approximately US $ 200.00 (two hundred U.S. dollars;)"

b) Wilson García-Asto's next of kin have incurred expenses for an amount of US $ 13,023.50 (thirteen thousand twenty-three U.S. dollars and fifty cents) as consequential damages for the following expenses:

(i) medical expenses for an amount of US $ 567.24 (five hundred and sixty-seven U.S. dollars and twenty-four cents);

(ii) payment of reserve of registration fee at the National University of El Callao (Universidad Nacional del Callao) amounting to US $ 364.29 (three hundred and sixty-four U.S. dollars and twenty-nine cents);

(iii) expenses for the extra food taken to the penitentiaries where he was detained for an amount of US $ 1,209.71 (one thousand two hundred and nine U.S. dollars and seventy-one cents);

(iv) traveling expenses incurred by his mother and siblings, including transportation, lodging, and meals in order to visit him at Yanamayo, Challapalca and Juliaca Prisons, for an amount of US $ 1,765.14 (one thousand seven hundred and sixty-five U.S. dollars and fourteen cents);

(v) loss of the personal computer, accessories, and hard disk amounting to US $ 1,435.00 (one thousand four hundred and thirty-five U.S. dollars);

(vi) attorneys' fees incurred during the criminal proceedings from 1995 to 2003, for an amount of US $ 3,318.57 (three thousand three hundred and eighteen U.S. dollars and fifty-seven cents); and

(vi) expenses incurred to send mail and faxes abroad, amounting to US $ 303.49 (three hundred and three U.S. dollars and forty-nine cents).

II) As regards Urcesino Ramírez-Rojas

a) At the moment of his detention Urcesino Ramírez-Rojas was "retired, but he still had great expectations of engaging in consulting and research activities;"

b) In order to estimate the amount corresponding to loss of earnings suffered by Urcesino Ramírez-Rojas, "his professional profile, and his twenty years' experience working for the public administration sector should be taken into account, since they allowed him to acquire certain degree of recognition for the quality of the counseling services he provided to members of the Congress of the Republic;"

c) Even though the amounts charged by Urcesino Ramírez-Rojas for his services varied "depending on the degree of complexity and the subject matter dealt with, they could be estimated at approximately US $ 12,000.00 (twelve thousand U.S. dollars) a year. Taking into account that he was deprived of his freedom for thirteen years, the total amount of loss of earnings is US $ 156,000.00 (one hundred and fifty-six thousand U.S. dollars);"

d) In the particular case of Urcesino Ramírez-Rojas' brother, i.e. Pedro Ramírez-Rojas, "at the moment of [his] detention he was laid off from Banco de la Nación ("Bank of the Nation"). He had some savings which he invested to carry on sales of food supplies; however, due to [his]

detention, the business had to be closed owing to the permanent presence of police officers, which generated a feeling of insecurity for the family. After the business was closed, [his] brother Pedro considered investing his modest savings in setting up a hardware store. This project became unfeasible after [Urcesino's] detention, since he was forced to get involved in the defense of [his] brother, as Pedro was the only one of [his] siblings that due to his retirement had some means to provide for [his] welfare;"

e) Urcesino Ramírez-Rojas and his next of kin have incurred expenses for a total amount of US $ 13,436 (thirteen thousand four hundred and thirty-six U.S. dollars) as consequential damages arising from the following:

(i) the loss of a "typewriter;" the loss of financial, economic, and population information gathered throughout the years; more than 100 floppy disks, books, magazines, and audio-tapes; amounting to US $ 500 (five hundred U.S. dollars);

(ii) traveling expenses to visit the penitentiary centers of Cajamarca and Trujillo were paid by the International Red Cross; however, due to the high season, tickets rise 50 % or more and Urcesino Ramírez-Rojas or his siblings had to pay the difference. Taking into account that his siblings visited him monthly and that on each occasion two of them visited him, and that during the last quarter of the year the price of tickets was increased due to seasonal factors, the amount of the difference that the alleged victim and his siblings had to pay amounts to US $ 1,000 (one thousand U.S. dollars);

(iii) the traveling expenses incurred by the next of kin to go to police headquarters, judicial offices, and seats of the Office of the Public Prosecutor, and of the Ombudsman's office, as well as those expenses incurred in reaching the offices of non-governmental human rights organizations, and the offices of defense counsels amount to US $ 100 (one hundred U.S. dollars);

(iv) the expenses incurred in order to provide meals during his detention in the Castro-Castro, Huacariz, and El Milagro Prisons, which were partly covered covered by his severance pay, and by the lease of some family lands and by his siblings contributions, amount to US $ 5,495 (five thousand four hundred and ninety-five U.S. dollars);

(v) the traveling expenses incurred by his siblings to visit him at the Cajamarca and Trujillo Prisons amount to US $ 2,295 (two thousand two hundred and ninety-five U.S. dollars);

(vi) the expenses incurred by the alleged victim's siblings to buy hin medicines amount to US $ 1,061 (one thousand and sixty-one U.S. dollars);

(vii) attorneys' fees covering a 13-year period during which the first court trial convicted and sentenced him to serve twenty years in prison, and further covering the current judicial proceedings currently being held as a consequence of the invalidity of the former, which in the aggregate amount to US $ 1,053 (one thousand and fifty-three U.S. dollars;) and

(viii) expenses incurred to send mail and faxes abroad, amounting to US $ 1,932 (one thousand nine hundred and thirty-two U.S. dollars).

Arguments of the State

258. The State has not filed any arguments regarding pecuniary damage.

Considerations of the Court

259. The Court shall determine the pecuniary damage arising from the loss of income suffered by the victims and the expenses incurred by their next of kin as a consequence of the events occurred, [FN192] and shall fix a compensation amount to remedy the financial consequences of the violations occurred. For that purpose, the Court shall take into consideration the partial acknowledgement of responsibility made by the State and the evidence gathered in the instant case, as well as its prior decisions and the arguments filed by the Commission and by the representatives.

[FN192] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 265; Case of Raxcacó-Reyes, supra note 10, para. 129; and Case of Gutiérrez-Soler, supra note 6, para. 74.

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a) Loss of income

260. The Court considers proven that Wilson García-Asto was studying Systems Engineering by the time he was detained, and for that reason he could not complete his studies (supra para. 97(10).) Furthermore, the Court considers proven that Urcesino Ramírez-Rojas was an economist who was retired at the moment of his detention, and had planned to carry on activities related to rendering advisory services and conducting research projects (supra para. 97(69)).

261. The Court notes that there is not conclusive evidence in the records of the case that may allow the accurate determination of the earnings of the victims generated by the activities they developed at the time of their detention. In that respect, and considering the pension that Urcesino Ramírez-Rojas has been receiving and the research activities that he had been conducting before his detention, as well as the circumstances and characteristics of the instant case, the Court awards, in equity, the amount of US $ 30,000.00 (thirty thousand U.S. dollars) as compensation for loss of income, to be paid to Urcesino Ramírez-Rojas.

262. As regards Wilson García-Asto, the Court considers, pursuant to the acknowledgement of facts prior to September 2000 made by the State (supra paras. 52 to 60) and to the evidence submitted in the instant case, that it is proven that at the time of his detention he was completing his studies in systems engineering and that he would possibly graduate in 1996, and that at the time the facts occurred he did not have a stable job, but worked occasionally as a teacher and transcribed documents with a computer to get some money. In view of the aforesaid, Wilson García-Asto must receive a compensation for the earnings he would have received during the year after his detention, as well as for the earnings he would have earned as a systems engineer during his early professional years in Peru, covering the period of time from the moment of his detention up to his acquittal. Therefore, the Court awards, in equity, the amount of US $ 35,000.00 (thirty-five thousand U.S. dollars) as compensation for loss of income, to be paid to Wilson García-Asto.

b) Consequential damages

263. Taking into consideration the information received, the prior decisions of the Court, and the facts of the instant case, this Court considers that compensation for consequential damages

must also include the monthly expenses incurred by the victims and their next of kin during detention to cover meals and other personal expenses, as well as traveling expenses incurred by the next of kin to visit them at the different penitentiaries where they were detained. In that respect, the Court deems it appropriate to award, in equity, the amount of US $ 10,000.00 (ten thousand U.S. dollars) to be paid to each of the victims, Wilson García-Asto and Urcesino Ramírez-Rojas, as compensation for consequential damages.

C) NON PECUNIARY DAMAGE

Arguments of the Commission

264. As regards non pecuniary damage, the Commission pointed out the following:

a) Wilson García-Asto's next of kin "experience[d] deep moral suffering due to his arrest, trial, and conviction for the charges stated hereinabove, and for the detention conditions and the restricted visitation regime […] to which he was subjected. The family background and the emotional condition of the family members was so deeply affected that his siblings Elisa and Gustavo were unable to complete their studies, and suffered from depression and emotional distress. In spite of this, they visited their brother and supported their mother Celia who undertook responsibility for his defense;" and
b) Urcesino Ramírez-Rojas' next of kin "experienced emotional distress as a consequence of his detention."

Arguments of the representatives

265. As regards the determination of non pecuniary damage, the representatives pointed out the following:

I) As regards Wilson García-Asto:

a) He requests the following as compensation for non pecuniary damage: "compensation for the moral damage, adequate and qualified medical assistance to treat the impairment caused to his health, as well as measures of satisfaction and guarantees of non-repetition;"
b) He and his next of kin have suffered "humiliating and degrading treatment; on the one hand, since [his] arrest he h[ad] to face the stigma of being called and treated as a "terruco," he was insulted, and had to endure humiliating and degrading treatment by police officers during the whole investigation process and during the time he w[as] held in custody at the different penitentiary centers;"
c) His physical and mental health have deteriorated as a consequence of the detention conditions [...], as well as the cruel, inhuman, and degrading treatment which he a[llegedly] suffered;"
d) He h[as] to undergo periodical check-ups and specialized examination for the medical condition he suffer[s]: prostatic syndrome, dyspepsia, and sleep disturbances. Furthermore, he suffer[s] from post-traumatic stress and must receive emotional support therapy and psychological counseling, as well as participate in group therapy;"

e) He was a raw model for his brother Gustavo, since the latter took up the same course of studies;
f) The situation that Wilson García-Asto had to endure "due to [his] unfair and illegal detention, [his] transfers to different prisons, the humiliating and degrading treatment he receiv[ed] have caused [his] next of kin a series of psychological ailments that have had physical consequences, specially for [his] siblings;"
g) The reparation to be awarded to Wilson García-Asto for moral damage must comprise an economic compensation and measures of satisfaction, for the pain and suffering caused to the alleged victim, to his mother, Celia Asto-Urbano, his father, Napoleón García-Tuesta and his siblings, Elisa and Gustavo García-Asto, and the amounts must be fixed in a "fair and equitable" manner;
h) His detention "cause[d] serious harm to [his] personal and professional life, and his dreams and expectations had to be postponed, being it impossible for him to make them come true at present;"
i) He has "resumed [his] classes at the University, [...] it is very difficult for [him] to keep up with the rest of [his] classmates, the passing of time and the advancements made in the fields of science and technology become evident for [him];" and
j) The reparation that the State must provide "should consist of providing h[im] with the means to take up updating courses in [his] field of studies for a term of at least two years, in view of the damage caused to his professional expectations."

II) As regards Urcesino Ramírez-Rojas:

a) He requests the following as compensation for non pecuniary damage: "compensation for the moral damage, adequate and qualified medical assistance for the impairment caused to his health as well as measures of satisfaction and guarantees of non-repetition;"
b) His physical and mental health "have deteriorated as a consequence of his detention conditions [...], which is reflected by the different ailments he suffer[ed] and still suffer[s], especially respiratory illness: bronchitis and asthma, which are aggravated by [his] age;"
c) His son and siblings "have been emotionally affected by the impact caused due to his unfair arrest, prosecution, and trial for the crime of terrorism;"
d) He and his next of kin "have been victims of the social stigma caused by [his] arrest, prosecution, and trial for the crime of terrorism;"
e) His son, Marcos Ramírez-Álvarez, "spen[t] his childhood and teenage years without his father, which has had a deep psychological impact on him. This absence […] cause[d] changes in his personality and academic performance, causing him to repeat thrice his third High School year courses, as well as other disorders that may appear in his future development;"
f) His siblings "suffered and shared [his] anguish caused by the way in which the facts occurred, the conditions of [his] arrest and detention and the nature of the charges of which he was accused –terrorism-, the humiliating treatment given to visits and the stigmatization that they had to endure from neighbors, friends, and authorities;"
g) His brother, Pedro Ramírez-Rojas, "had to assume the responsibility for trying to get h[im] out of jail, being supported by [his] brother Julio and [his] sister Filomena, who has the custody of [his] son Marcos;"
h) [His] "life project got frustrated in view of the detriment to his personal and professional opportunities of advancement caused by [his] detention;"

i) Due to the hard rules he had to obey during his detention, Urcesino Ramírez-Rojas could not have access to books or magazines related to his profession. "In that sense, he could not [s]tay updated in the field of economics;"
j) The possibility to resume his life project as "counselor and researcher is considerably limited given the fact that Urcesino Ramírez-Rojas i[s] now sixty years old;" and
k) The reparation that the State should grant "for the damage caused to his life project, particularly to his professional development, must consist of providing him the means to take up updating courses within the field of [his] specialization for at least one year.

Arguments of the State

266. The State has not submitted any arguments as regards non pecuniary damage.

Considerations of the Court

267. The Court shall now address the non pecuniary injurious effects derived from the facts in the instant case. Non pecuniary damage may comprise both the pain and suffering caused to the direct victims and to their next of kin, the impairment of values which are significant to persons, as well as the non pecuniary damage caused by the modification of the living conditions of the victims or their next of kin. As it is not possible to assess an accurate amount to measure such damage, in order to provide for integral reparation to the victims, said damages could only be compensated in two ways. Firstly, with the payment of amounts of money or the delivery of goods or services susceptible of having a pecuniary value, which the Court may determine in its judicial discretion and in terms of equity. And secondly, by means of acts or works which may have a public impact, such as the dissemination of an official reproach for the violations of the human rights involved and a commitment to avoid such violations in the future, in an attempt to repair the reputation of the victims, the acknowledgement of their dignity or the relief of their next of kin. [FN193] The first aspect of the reparation of non pecuniary damage shall be analyzed in this section, and the second one shall be dealt with in the following section.

[FN193] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 282; Case of Gutiérrez-Soler, supra note 6, para. 82; and Case of Acosta-Calderón, supra note 7, para. 158.
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268. International case law has repeatedly shown that the judgment is per se a form of reparation. Notwithstanding, due to the circumstances of the instant case, the suffering that the facts caused to the victims, and the way they altered the lives of their next of kin, as well as the non pecuniary or immaterial damage they suffered, the Court deems it appropriate to order the payment of compensation, in equity, for non pecuniary damage. [FN194]

[FN194] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 285; Case of Raxcacó-Reyes, supra note 10, para. 131; and Case of Gutiérrez-Soler, supra note 6, para. 83.
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269. In order to fix the amount of compensation for non pecuniary damage in the instant case, it should be taken into consideration that, pursuant to the acknowledgement of the facts prior to September 2000 made by the State, it was proven that Wilson García-Asto and Urcesino Ramírez-Rojas were subjected to a special detention regime during their first year in prison, they remained in custody for a long time, they had been arrested without an arrest warrant or without being in flagrante delicto, they had to endure harsh detention conditions, and they did not have a due process of law. The Court considers that it can be presumed that such violations cause moral damage to those who suffer them. [FN195]

[FN195] Cf. Case of De La Cruz-Flores, supra note 4, para. 160; Case of Tibi, supra note 142, para. 244; Case of the "Juvenile Reeducation Institute," supra note 144, para. 300; and Case of the Gómez-Paquiyauri Brothers, supra note 142, para. 217.

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270. In view of the foregoing, the Court deems it appropriate to fix, in equity, the amount of US $ 40,000.00 (forty thousand United States dollars) as compensation for the non pecuniary damage caused, to be paid to each of the victims, i.e. Wilson García-Asto and Urcesino Ramírez-Rojas.

271. Furthermore, the Court deems it appropriate to fix, in equity, an additional sum to be paid to Urcesino Ramírez-Rojas as non pecuniary damage, amounting to US $ 10,000.00 (ten thousand United States dollars,) taking into consideration the detention conditions he had to endure and the fourteen years during which he was arbitrarily deprived of his liberty.

272. As regards Wilson García-Asto's next of kin, the detention and trial against him caused his parents, Napoleón García-Tuesta and Celia Asto-Urbano, and his siblings Elisa and Gustavo, great suffering, distress, and pain; causing a serious alteration of their living conditions to their detriment (supra paras. 97(62) and 97(63)). Particularly, Wilson García-Asto's mother and sister were actively involved in the efforts to get him out of jail (supra para. 97(62)).

273. Based on the foregoing, the Court considers that Wilson García-Asto's next of kin must receive compensation. Therefore, the Court fixes, in equity, the amount of US $ 25,000.00 (twenty-five thousand United States dollars) to be paid to Celia Asto-Urbano; the amount of US $ 25,000.00 (twenty-five thousand United States dollars) to be paid to Napoleón García-Tuesta; the amount of US $ 15,000.00 (fifteen thousand United States dollars) to be paid to Elisa García-Asto; and the amount of US $ 15,000.00 (fifteen thousand United States dollars) to be paid to Gustavo García-Asto.

274. As regards Urcesino Ramírez-Rojas' next of kin, his detention and trial caused suffering, distress, and pain to his mother María Alejandra Rojas (deceased), as well as to his siblings: Santa, Pedro, Filomena, Julio, Obdulia, Marcelino, and Adela Ramírez-Rojas; and have further seriously altered their living conditions to their detriment (supra paras. 97(134) to 97(139)). In particular, Pedro Ramírez-Rojas was deeply involved in the efforts made to set him out of jail (supra para. 97(138)); and his son, Marcos Ramírez-Álvarez, was deprived of the opportunity of

being raised and cared for by his father, and had to remain under the custody of Filomena Ramírez-Rojas (supra paras. 97(135) and 97(137)).

275. Based on the foregoing, the Court considers that Urcesino Ramírez-Rojas' next of kin must receive compensation. Therefore, the Court fixes, in equity, the amount of US $ 25,000.00 (twenty-five thousand United States dollars) to be paid to Pedro Ramírez-Rojas; the amount of US $ 25,000.00 (twenty-five thousand United States dollars) to be paid to Filomena Ramírez-Rojas; the amount of US $ 10,000.00 (ten thousand United States dollars) to be paid to each of Santa, Julio, Obdulia, Marcelino and Adela Ramírez-Rojas; the amount of US $ 5,000.00 (five thousand United States dollars) to be paid to María Alejandra Rojas (deceased); and the amount of US $ 25,000.00 (twenty-five thousand United States dollars) to be paid to the minor Marcos Ramírez-Álvarez.

D) OTHER FORMS OF REPARATION (MEASURES OF SATISFACTION AND GUARANTEES OF NON-REPETITION

276. In this section, the Court shall determine the measures of satisfaction tending to remedy non pecuniary damage; the Court shall further order measures that will have public effects. Said measures intend, inter alia, to acknowledge the victims' right to privacy and to disseminate a message of official reproach for the violations of the human rights committed, as well as to prevent future violations as those dealt with in the instant case. [FN196]

[FN196] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 294; Case of Gutiérrez-Soler, supra note 6, para. 93; and Case of Acosta-Calderón, supra note 7, para. 163.

Arguments of the Commission

277. As regards other forms of reparation, the Commission pointed out the following:

a) The Court should order the State "to adopt forthwith such measures as may be necessary to stop the violations of the human rights of Wilson García-Asto and Urcesino Ramírez-Rojas specified both in the instant application, and particularly, to provide a new trial in compliance with the principle of nullum crimen nulla poena sine lege praevia, which cannot be subject of judicial discretional and flexible interpretations of criminal laws, with the rights to a due process of law, and to a fair trial;"

b) Wilson García-Asto and Urcesino Ramírez-Rojas must "receive moral public reparation addressing their studies and professional activities, taking into account that as regards the latter, his activities in the public administration were made subject of criminal sanction to the detriment of his professional standing;" and

c) The Court should order the State "to modify completely and definitely the provisions of Decree-Law No. 25.475 which the Constitutional Court of Peru did not declare to be unconstitutional, which provisions have remained in force by the passing of the pertinent Legislative Degrees, and the pertinent provisions of the Criminal Code."

Arguments of the representatives

278. As regards the determination of the other forms of reparation, the representatives pointed out the following:

a) The State should "[c]ease and put an end to [the] violations of the alleged victims' human rights, specified both in the application filed by the Commission and in this Judgment, with the exception of the request made by the Commission to 'guarantee an new trial in compliance with the principle of nullum crimen nulla poena sine lege praevia; in this respect, the [alleged] victims request[ed] that the State guarantee that at the second proceedings at […] which they were be[ing] tried, the principle of nullum crimen nulla poena sine lege praevia be duly observ[ed] and that their rights to a due process and to procedural equality between the parties be protect[ed]. If the State does not provide guarantees or does not comply with them, the State has lost the right to prosecute us by bringing us to trial for the third time;"
b) "Since no danger could be proven to exist in order to support the request that [Urcesino Ramírez-Rojas] […] be kept in custody, it is requested that an order be issued for [his] release […] so that [he] may be set free after being held in custody for thirteen years;"
c) That the State be ordered to "make a public acknowledgement of international responsibility and vindication of [the alleged victims] and their next of kin;"
d) That the State be ordered "to publish in the Official Gazette and in any other nationwide newspaper and to transmit on the State television channel, for a single time, the pertinent excerpts of the judgment that the Court may render […] in the instant case;"
e) That the State be ordered "to conduct an investigation and to punish those responsible for the violation of the rights enshrined by the Convention;"
f) That the State be ordered "to adopt such measures as may be necessary to amend Decree-Law 25.475 so that it is rendered compatible with the American Convention;"
g) Wilson García-Asto "has to undergo periodical medical check-ups and a specialized examination given his health condition: prostatic syndrome, dyspepsia, and sleep disturbances, and post-traumatic stress," and needs emotional support therapy and psychological counseling; and
h) As regards Wilson García-Asto "the State must bear the costs and expenses arising from his university graduation and […] must grant him a scholarship to allow him to carry on postgraduate studies to get a master's degree or a doctor's degree in the field of his specialization."

Arguments of the State

279. The State has not submitted any arguments as regards other forms of reparation.

Considerations of the Court

a) Medical and psychological treatment for Wilson García-Asto

280. Upon the analysis of the arguments filed by the representatives, and the evidence produced in the instant case, it is established that the physical and psychological ailments of Wilson García-Asto extend to date (supra para. 97(61)). Therefore, the Court considers, as it has

stated on several other occasions, [FN197] that the reparations must also include psychological and medical treatment for the victim. In this sense, the Court deems that the State must provide medical and psychological assistance to Wilson García-Asto through its health services, including the delivery of medicines without any cost to the victim.

[FN197] Cf. Case of Gutiérrez-Soler, supra note 6, para. 101; Case of the Serrano-Cruz Sisters, supra note 15, paras. 197-198; and Case of Lori Berenson-Mejía, supra note 152, para. 238.

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b) Professional updating of Wilson García-Asto and Urcesino Ramírez-Rojas

281. The Court considers that the State must offer Wilson García-Asto the possibility to receive professional and updating training by granting him a scholarship that may allow him to complete his studies, as well as to receive professional training for the two years subsequent to his university graduation. Likewise, the State should offer Urcesino Ramírez-Rojas the possibility to receive professional and updating training by granting him a scholarship that may allow him to receive the professional updating training that he may choose for a term of two years.

c) Publication of the pertinent excerpts of the Judgment rendered by the Court

282. Furthermore, and as it has been ordered in prior cases, [FN198] the Court considers that the State must publish, as a measure of satisfaction, within a term of six months running as from service of notice of this Judgment, at least once, in the Official Gazette and in another nationwide newspaper in Peru, the sections "Proven Facts" without the corresponding footnotes (supra paras. 97(1) to 97(140)), as well as the operative paragraphs of this Judgment (infra para. 297.)

[FN198] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 318; Case of Raxcacó-Reyes, supra note 10, para. 136; and Case of Gutiérrez-Soler, supra note 6, para. 105.

E) COSTS AND EXPENSES

Arguments of the Commission

283. As regards the costs and expenses, the Commission pointed out that the Court, after hearing the alleged victims and their representatives, must make the pertinent decision.

Arguments of the representatives

284. As regards the determination of costs and expenses, the representatives pointed out the following:

a) "Several expenses had to be incurred in order to provide for the defense of the alleged victims in the criminal trials conducted against [them] for the crime of terrorism before the Peruvian courts; such expenses consisted of attorneys' fees, expenses for domestic judicial and penitentiary steps that had to be taken, as well as expenses related to the proceedings started before the international courts;"
b) The steps taken at the domestic level comprised, among others, "the filing of pleadings, motions, and appeals; the transportation of [their] next of kin and attorneys, among other persons, to various public offices; the taking of photocopies; the drafting and submission of communications addressed to the Executive and Legislative Powers, to the Office of the Public Prosecutor, and to the directors of penitentiary centers. All these expenses were borne by [the alleged victims] and [their] next of kin;"
c) Their legal representative, Carolina Loayza, since 2001 has made several presentations before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, which also generated expenses. She had to travel to take part in hearings called by the Inter-American Commission and the Inter-American Court; and she made visits to the penitentiary center;
d) "Said expenses must be reimbursed to [the] [alleged victims'] next of kin and [their] legal representative, Attorney Carolina Loayza, pursuant to her contribution to their legal defense;"
e) Carolina Loayza has not fixed an amount as attorney's fees "in advance between the parties, due to the financial hardship the victims and [their] next of kin were suffering, so that this may not be an impediment for the victims to resort to the Inter-American system;" and
f) The Court should fix "a reasonable and equitable amount of money as attorney's fees to be granted to their representative for the legal assistance rendered, since all work done must be compensated."

Arguments of the State

285. The State has not submitted any arguments as regards costs and expenses.

Considerations of the Court

286. As it has already been stated by the Court in prior cases, [FN199] costs and expenses are comprised within the concept of reparation as set forth in Article 63(1) of the American Convention, due to the fact that the steps undertaken by the victims' next of kin in order to get justice, both at the domestic and international levels, implies incurring expenses that must be compensated when the international responsibility of the State is declared by means of a condemnatory judgment. As regards the reimbursement of such costs and expenses, the Court must determine its scope, which comprises the expenses incurred to proceed in the domestic jurisdiction as well as those arising from the submissions made before the Inter-American system, taking into consideration the circumstances of the particular case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into consideration the expenses stated by the parties, provided that the quantum thereof is reasonable.

[FN199] Cf. Case of the "Mapiripán Massacre", supra note 2, para. 322; Case of Raxcacó-Reyes, supra note 10, para. 137; and Case of Gutiérrez-Soler, supra note 6, para. 116.
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287. The Court takes into consideration that the victims acted through several legal representatives at the domestic level and through Carolina Loayza-Tamayo to proceed both before the Inter-American Commission and the Inter-American Court. Therefore, the Court considers it equitable to order the payment of the sum of US $ 40,000.00 (forty thousand United States dollars) or its equivalent in Peruvian currency. US $ 20,000.00 (twenty thousand United States dollars) or its equivalent in Peruvian currency must be paid to each of the victims, i.e. Wilson García-Asto and Urcesino Ramírez-Rojas, as costs and expenses to be subsequently used to make the corresponding payments to their representatives to compensate the costs and expenses said representatives had incurred.

XV. METHOD OF COMPLIANCE

288. In order to comply with this judgment, the State shall pay compensation for pecuniary and non pecuniary damage and reimburse the costs and expenses incurred (supra paras. 261 to 263, 270, 271, 273, 275, and 287) within a year from the date notice of the judgment is served upon it. The remaining reparation measures ordered by the Court shall be complied with by the State within a reasonable time (supra paras. 280 and 281), or within the term specified in this Judgment (supra para. 282).

289. Any payment ordered to cover the costs and expenses resulting from the steps and procedures taken by the victim's representatives during the domestic proceedings and the international proceedings before the Inter-American System for the Protection of Human Rights shall be made to the benefit of Wilson García-Asto and Urcesino Ramírez-Rojas (supra para. 287).

290. The compensation awarded to María Alejandra Rojas, Urcesino Ramírez-Rojas' mother, for non pecuniary damage (supra para. 275) shall be paid in equal shares to her children, in accordance with paragraph 255 of this Judgment.

291. If the beneficiaries of compensation are unable to receive the payments ordered within the specified term due to causes attributable thereto, the State shall deposit said amounts into an account or certificate of deposit in the beneficiaries' name with a reputable Peruvian financial institution, in United States dollars and under the most favorable financial terms permitted by law and banking practice. If after ten years such compensation has not been claimed, these amounts shall be returned to the State together with accrued interest.

292. The State may discharge its pecuniary obligations by tendering United States dollars or an equivalent amount in Peruvian currency, at the New York, USA, exchange rate for both currencies, as quoted on the day prior to the day payment is made.

293. The amount of compensation awarded to the minor Marcos Ramírez-Álvarez shall be deposited by the State with a reputable Peruvian financial institution, in United States dollars,

within one year and maintained under the most favorable financial terms permitted by law and banking practice until he comes of age. The beneficiary may withdraw the money upon his coming of age or upon order of the competent authority so providing in the best interest of the minor. If the compensation remains unclaimed after ten years from the date the minor comes of age, the amount shall be returned to the State together with accrued interest.

294. The amounts awarded in this Judgment as compensation for pecuniary and non pecuniary damage and as reimbursement of costs and expenses shall not be affected, reduced, or conditioned for tax purposes, existing as of to date or which may be levied hereafter. Consequently, said amounts shall be paid in full to the beneficiaries in accordance with the provisions set forth in this Judgment.

295. Should the State fall into arrears, interest shall be paid on any amount due at the Peruvian bank default interest rate.

296. In accordance with its constant practice, the Court retains the authority which derives from its jurisdiction and the provisions of Article 65 of the American Convention, to monitor full compliance with this judgment. The instant case shall be closed once the State has fully complied with the provisions herein set forth. Within one year from the date of notice of this judgment, Peru shall submit to the Court a report on the measures adopted in compliance herewith.

XVI. OPERATIVE PARAGRAPHS

297. Therefore,

THE COURT,

DECIDES,

Unanimously,

1. To admit the State's acknowledgment of the events prior to September 2000, as set forth in paragraphs 52 to 60 hereof.

DECLARES,

Unanimously, that:

2. The State violated, to the detriment of Wilson García-Asto and Urcesino Ramírez-Rojas, the Rights to Personal Liberty, to a Fair Trial and to Judicial Protection as enshrined in Articles 7(1), 7(2), 7(3), 7(5), 7(6), 8(1), 8(2), 8(2)(f), 8(5), and 25 of the American Convention, in relation to Article 1(1) thereof, during the first proceedings brought against them, in accordance with paragraphs 104 to 115, 130 to 134, 149 to 154, and 157 to 162 of this Judgment.

By six votes to one, that:

3. The State violated, to the detriment of Wilson García-Asto and Urcesino-Ramírez-Rojas, the Right to Personal Liberty as enshrined in Article 7(3) of the Convention, in relation to Article 1(1) thereof, during the second proceedings instituted against them, in accordance with paragraphs 117 to 125 and 136 to 144 of this Judgment.

Ad hoc partially dissenting Judge Santistevan de Noriega.

Unanimously, that:

4. The State violated, to the detriment of Wilson García-Asto, the Right to a Fair Trial as enshrined in Article 8(1) and 8(2)(c) of the Convention, in relation to Article 1(1) thereof, during the second proceedings instituted against him, in accordance with paragraph 155 of this Judgment.

Unanimously, that:

5. The State violated, to the detriment of Urcesino Ramírez-Rojas, the Right to a Fair Trial as enshrined in Article 8(1) of the Convention, in relation to Article 1(1) thereof, during the second proceedings brought against him, in accordance with paragraphs 163 to 172 of this Judgment.

Unanimously, that:

6. The State violated, to the detriment of Wilson García-Asto and Urcesino Ramírez-Rojas, Article 9 of the Convention, in relation to Article 1(1) thereof, during the first proceedings instituted against them, in accordance with paragraphs 197 to 202 and 205 to 208 of this Judgment.

By six votes to one, that:

7. The violation of Article 9 of the Convention has not been proven, in accordance with paragraphs 179 to 195 of this Judgment.

Dissenting Judge Medina-Quiroga.

Unanimously, that:

8. The State violated, to the detriment of Wilson García-Asto and Urcesino Ramírez-Rojas, the Right to Humane Treatment as enshrined in Article 5(1) and 5(2) of the Convention, in relation to Article 1(1) thereof, in accordance with paragraphs 220 to 229, 232, and 233 of this Judgment.

Unanimously, that:

9. The State violated, to the detriment of Napoleón García-Tuesta, Celia Asto-Urbano, Elisa García-Asto, Gustavo García, María Alejandra Rojas, Marcos Ramírez-Álvarez and Santa,

Pedro, Filomena, Julio, Obdulia, Marcelino, and Adela Ramírez-Rojas, the rights enshrined in Article 5(1) of the Convention, in relation to Article 1(1) thereof, in accordance with paragraphs 230, 231, 234, and 235 of this Judgment.

Unanimously, that:

10. This judgment is, in and of itself, a form of redress, under the terms of paragraph 268 hereof.

AND RULES,

Unanimously, that:

11. The State shall provide free medical and psychological care to Wilson García-Asto through its health care services, including the provision of medicines free of charge, as set forth in paragraph 280 of this Judgment.
12. The State shall provide Wilson García-Asto and Urcesino Ramírez-Rojas with the opportunity for training and professional development through scholarships, as set forth in paragraph 281 of this Judgment.
13. The State shall pay Wilson García-Asto and Urcesino Ramírez-Rojas, within one year, the compensation for pecuniary damage specified in paragraphs 261, 262, and 263 of this Judgment, as set forth in paragraphs 288, 291, 292, 294, and 295 hereof.
14. The State shall pay to Wilson García-Asto and Urcesino Ramírez-Rojas, Napoleón García-Tuesta, Celia Asto-Urbano, Elisa García-Asto, Gustavo García, María Alejandra Rojas, Marcos Ramírez-Álvarez and Santa, Pedro, Filomena, Julio, Obdulia, Marcelino, and Adela Ramírez-Rojas, within one year, the compensation for non pecuniary damage specified in paragraphs 270, 271, 273, and 275 of this Judgment, as set forth in paragraphs 255, 288, 290, 291, 292, 293, 294, and 295 hereof.
15. The State shall pay, within one year, the amount awarded for costs and expenses incurred in the domestic proceedings and the international proceedings conducted before the Inter-American System for the Protection of Human Rights, pursuant to paragraph 287 of this Judgment, which shall be delivered to Wilson García-Asto and Urcesino Ramírez-Rojas, as set forth in paragraphs 289, 291, 292, 294, and 295 hereof.
16. The State shall publish in the Official Gazette and in another nationwide newspaper, within the term of six months and for a single time, the Section entitled Proven Facts, without footnotes, and the operative paragraphs of this Judgment, as set forth in paragraph 282 hereof.
17. The Court will monitor full compliance with this Judgment and deem the instant case closed once the State has fully complied with the provisions set herein. Within one year from the date of notice of this judgment, the State shall furnish the Court with a report on the measures taken in compliance herewith, as set forth in paragraph 296 above.

Judge Medina-Quiroga and ad hoc Judge Santistevan de Noriega informed the Court of the contents of their Dissenting Opinion and Dissenting-in-part Opinion respectively, which are appendixed hereto.

Sergio García-Ramírez

President

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

Jorge Santistevan de Noriega
Ad Hoc Judge

Pablo Saavedra-Alesandri
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 IN THE CASE OF GARCÍA-ASTO AND RAMÍREZ-ROJAS

REGARDING ARTICLE 9

1. I dissent from the majority opinion of the Court that held that Article 9 had not been violated, except in relation to some of the grounds invoked by the Inter-American Commission on Human Rights and by the victims' representatives. For clarification purposes, I would like to note here that there are two victims in the instant case, Wilson García-Asto and Urcesino Ramírez-Rojas, as a result of acts perpetrated by each of them, having no connection to one another, and that the alleged violations brought before the Inter-American Commission would have allegedly been the result of the application of various criminal provisions in two different proceedings instituted against each of them.

Case of Wilson García-Asto

2. On July 14, 1997, in the first proceedings instituted against him, Wilson García-Asto was convicted of the crimes of collaboration with terrorism and membership in and affiliation with a terrorist organization, as defined in Articles 4 and 5 of Decree-Law No. 25.475. The Court held that both crimes were mutually exclusive and incompatible based, inter alia, on the order to commence the pre-trial investigation in the second criminal proceedings instituted against Mr. García, which stated that being a member of a terrorist organization in itself amounts to terrorist association, whereas in the case of the crime of collaboration it is required that the person is not a

member of the organization (paragraph 199 of the majority judgment). Based on the foregoing, the Court found that Article 9 of the Convention had been violated. However, the two crimes he was charged with were not deemed to be incompatible with the principle of nullum crimen nulla poena sine lege praevia.

In relation to those crimes, in paragraph 195 of the judgment, the Court referred to paragraph 127 of the judgment rendered in the Case of Lori Berenson in order to affirm its finding that Article 4 of Decree-Law No. 25.475 does not violate Article 9 and to hold that "[t]his same finding extends to the crime of membership in or affiliation with a terrorist organization as defined in Article 322 of the Criminal Code of 1991, with which Urcesino Ramírez-Rojas was charged in the second proceedings brought against him, and to Article 5 of Decree-Law No. 25.475, with which Wilson García-Asto was charged in the second proceedings instituted against him." I dissented from the majority's opinion in the Case of Lori Berenson for the reasons stated therein.

3. In the second criminal proceedings, Mr. García was accused of the crime of membership in and affiliation with a terrorist organization, as defined in Article 5 of Decree-Law No. 25.475, which was held by the Court to be compatible with Article 9 of the Convention (paragraphs 203 and 204 of the majority judgment). On February 9, 2005, the Supreme Court of Justice of Peru entered a final judgment on the case, acquitting Mr. García.

4. In my Dissenting Opinion in the Case of Lori Berenson I pointed out that, as stated by the Court, the opinion on whether acts of collaboration exist "should be formed in relation to the definition of the crime of terrorism," given that the crime, despite being regarded as an autonomous crime under the Peruvian legal system, consists precisely in undertaking activities intended to collaborate with terrorism. This requires an analysis of Article 2 of Decree-Law No. 25.475, which defines terrorism.

In paragraph 194 of the judgment, the Court held, in reference to the aforementioned Article 2, that it does not violate Article 9 of the Convention "inasmuch as said statutory definition sets forth the elements of the criminal offense so that it can be distinguished from acts which are either not punishable or punishable with non-criminal sanctions, and does not infringe any other provision of the American Convention." I disagree with this decision as, in my opinion, the language of Article 2 fails to distinguish the conduct described therein from other crimes that carry a lesser criminal sanction. As a result, Articles 4 and 5 of the aforesaid Decree-Law are also affected. The reasons which explain my position are detailed below.

5. It should be noted that what defines terrorism is, as its name implies, the intent to create terror. If it is not intended to bring terror, the conduct described in the definition may well constitute crimes against persons or property, which carry the respective penalties. Thus, what distinguishes terrorism from other crimes and places it into a different category is its purpose, which makes it a veritable scourge. In order to combat terrorism, many countries, among them Peru, have adopted laws that define this scourge as a specific type or types of crime, carrying heavier penalties and entailing judicial procedures that are more rigorous and much less protective of individual rights, which have often met with criticism for deviating from International Human Rights Law.

6. The nullum crimen nulla poena sine lege praevia principle in Criminal Law, which requires that the punishable conduct be clearly specified, is of paramount importance when dealing with terrorism. This is necessary not only for individuals to know which acts are prohibited in order to avoid prosecution and punishment, but also because it limits the authority of the court to interpret the law in a context in which there is usually strong social condemnation of the alleged offender, which is most likely shared by the court. Around the world, there are well-known examples of the laxity with which the provisions governing different terrorist acts are interpreted and of the restriction imposed on the rights of the accused. This was especially true in the instant case insofar as the first criminal proceedings against Mr. García-Asto and Mr. Ramírez-Rojas were rendered null and void by the State itself due to gross violations of due process of law. However, the statutory definitions of the crimes applied to these cases were not abrogated.

7. Article 2 of Decree-Law No. 24.575 describes the basic crime of terrorism, to which Articles 4 and 5 thereof refer as follows:

"any person who causes, creates or maintains a state of intimidation, alarm or fear among the population, or in any segment thereof, commits acts against the life, physical integrity, health, freedom or safety of any person, or against property, the security of public buildings, any means of communication or transport, power or transmission towers, power plants or any other property or services, using weapons or explosive material or devices, or any other means capable of causing havoc or serious disturbance to peace or disruption of international relations or the safety of the public and the Government, shall be punished with no less than twenty years' imprisonment." (In bold in the original).

8. In the first place, I shall now turn attention to the main verbs defining the conduct that constitutes this crime. On the one hand, the crime is committed when a person "causes, creates or maintains" a state of intimidation, alarm or fear among the population, or in any segment thereof. On the other, whoever "commits acts" against the life, physical integrity, health, freedom or safety of any person, or against property or the safety of certain property, also engages in terrorism. These acts are independent of one another. In addition, they must be committed using any means capable of causing certain consequences: havoc or serious disturbance of the peace, or disruption of international relations or the safety of the public and the Government.

9. The description of the crime fails to make any reference to the voluntary aspect of the action, thus omitting something I believe to be much more important inasmuch as it is what distinguishes terrorism from other crimes: the notion that terrorism-related acts carry more severe penalties because they are committed, as their name implies, with the purpose of causing terror. Under the language of Article 2, it would be possible to hold, for instance, that damaging a means of transport with any means or devices capable of causing havoc constitutes terrorism. This interpretation shows the broad scope of the criminal definition and the ensuing discretion conferred upon the judge to turn a crime against property into terrorism, thereby seriously prejudicing the accused.

10. In my view, this reason is enough to hold that Article 2 of Decree-Law No. 24.575 does not comply with the nullum crimen nulla poena sine lege praevia principle required by Article 9

of the American Convention and, therefore, the same is true for Articles 4 and 5 of the aforesaid Decree. In addition, I believe that the foregoing is further supported by the decision delivered by the Constitutional Court of Peru after the facts giving rise to the proceedings and the condemnatory judgment against Mr. García-Asto.

11. On January 3, 2003, the Constitutional Court of Peru ruled on a constitutional motion filed regarding several articles of Decree-Laws Nos. 24.575 and 25.659. In its judgment, the Court held that the criminal offenses described in both Decree-Laws (terrorism and high treason or aggravated terrorism) "could indistinctly fall within one crime or the other, depending on the criteria of the Office of the Public Prosecutor and the respective judges," adding that the imprecise distinction between both crimes affected the legal status of the accused in many ways. The Court based this opinion on paragraph 119 of the judgment rendered by the Inter-American Court in the Case of Castillo-Petruzzi et al. and on the nullum crimen nulla poena sine lege praevia principle enshrined in Article 2(24)(d) of the Peruvian Political Constitution.

Given the decision made by the Constitutional Court, it would logically follow that these statutory definitions of crimes would be held unconstitutional so that new ones could be drafted in a manner such that they would fully comply with the principle requiring that the punishable conduct must be described in sufficient detail to avoid this kind of confusion. The Court, however, did not reach this conclusion. Rather, it found that, even though both statutory crime definitions were vague enough to allow for one or the other to be applied to the same conduct, the crime definitions contained in Decree-Law No. 25.659 were unconstitutional, and not those set out in Decree-Law No. 24.575.

12. In relation to Article 2 of Decree-Law No. 24.575, the Constitutional Court held that it was not unconstitutional, stating that the requirement that the law should be certain may not be understood as a condition requiring that concepts be drafted in perfectly clear and precise language, and that Criminal Law admitted the existence of open-ended definitions of crimes that "delegate the task of supplementing them to the courts through statutory construction" (paragraph 49). The Court then proceeded to point out that Article 2 provides for three elements.

a. In interpreting "the first element" formulated by the Constitutional Court as "frightening the population," the Court held that it was inadmissible to interpret such element without considering the general principle laid down in Article 12 of the Criminal Code, which provides that there is no punishment without criminal intent or negligence. Consequently, the Court found that the omission of this requirement in Article 2 was not sufficient to hold it unconstitutional since it must be regarded as incorporated into said provision. The Court adds that "[o]nly the implied rule could be held unconstitutional" (emphasis added), that is, the interpretative meaning that derives from the referred omission insofar as "provision" (the formulation of a legal precept) and "rule" (the interpretative meaning or meanings that may be derived from such formulation) are not the same. As a result, the Court resolved that:

"courts may not convict a person, under Article 2 of Decree-Law No. 24.575, for the mere fact that the legal interests specified therein have been damaged or put at risk, without taking into consideration his culpability" (paragraph 63), adding that Article 2 may only be applicable where the infringement of such legal interests "has been committed purposely;"

therefore, this article should be read as if the word "intentionally" were written before the verbs causes, creates or maintains.

b. In examining the second element, "acts against property or services," the Court proceeded to clarify some issues, for instance, that where Article 2 specifies "against the safety of … any means of communication or transport" "its scope" must "be limited to the types of conduct that constitute the crime against public safety involving means of transport or communication" (paragraph 72) and that the expression "against the safety of … any other property or services," must be interpreted "as referring only to property or services specifically protected by criminal statutes through the different definitions of crimes against public safety involving means of transport or communication" (paragraph 73). This certainly restricted the scope of application of the provision, which would now encompass fewer acts likely to be considered as falling within the definition of criminal offense.

In its analysis of the third element, the examination of the means described, the Court defined what must be understood by "weapons" and "any other means" as used in Article 2.

13. The Constitutional Court concluded that the language of Article 2 is vague "in relation to the need to specify the scope of the word 'acts'," which, for the purpose of giving a more accurate conceptual definition, must be understood as illicit acts (paragraph 77), stating that in addition to the requirement of intent, the three elements mentioned above must concur for an act to constitute the crime defined in Article 2 (paragraph 78 bis).

14. The considerations made by the Constitutional Court are binding upon all public authorities and, specifically upon the courts (paragraph 27). The decisions rendered by the Constitutional Court may be interpretative or amendatory, either by way of addition or substitution. Amendatory decisions by way of addition do not render a precept unconstitutional, but only the omission and, as a result, "the omission is to be regarded as incorporated into the provision" (paragraph 30). In turn, amendatory decisions by way of substitution only render a portion or part of the challenged statutory provision unconstitutional and, in addition, the provision is provided with a different content, in accordance with the constitutional principles that were breached. The decision of January 3, 2003 does not specify its nature, but it may be considered to be, at a minimum, amendatory by way of addition, insofar as it included a series of considerations that are binding upon the courts. The addition of these considerations is a further indication that the language of Article 2 could have provided a better definition of the crime.

In its arguments, the State itself maintained, in relation to the alleged violation of Article 9 of the Convention, that the Constitutional Court had remedied the challenges raised against the anti-terrorist legislation, as well as the provisions contained in subsequent Legislative Decrees No. 921, 922, 923, 924, 925, 926, and 927 (paragraph 178 of the judgment of the Inter-American Court).

15. Notwithstanding my view that the decision analyzed here does not resolve the objection raised in paragraph 9 of this opinion, in the sense that Article 2 does not require that the acts be committed with the intent to cause consequences that somehow imply terrifying the public or the Government; rather, intent is only incorporated as a requirement for the commission of the act (for example, intending to destroy a means of transport), the fact that Article 2 of Decree-Law No. 24.575 had not been supplemented by the considerations discussed above at the time it was

applied to Wilson García suffices to hold that it violated the nullum crimen nulla poena sine lege praevia principle.

16. From a different point of view, given that imprisonment is a restriction on the right to personal liberty, it is also reprehensible that the law fails to consider that restrictions must be proportionate and, therefore, so must be punishment. There must be proportionality between the severity of the offense and the ensuing punitive reaction; that is to say, the less serious the offense, the less severe the punishment and the less significant the participation of the accused in the crime, the less severe the punishment. Article 4, which defines and punishes collaboration -a crime that, by the lawmaker's decision, is independent of aiding and abetting, which usually carries a lesser punishment-, imposes the same minimum penalty as that imposed on the perpetrator. It would be the responsibility of the State to justify such restriction, which, at first glance, seems to violate the principle of proportionality of restrictions on human rights and, therefore, the proportionality of punishment.

17. Finally, it should be noted that the nullum crimen nulla poena sine lege praevia principle not only refers to the need to describe, as clearly as possible, the conduct underlying a criminal charge of terrorism or other related crimes, but also requires that the punishment be within the statutory range. Articles 2, 3, and 4 of Decree-Law No. 24.575 establish the minimum penalties, but not the maximum penalties, thus giving courts full discretion to increase such punishment but not to reduce it, according to the specific circumstances of the case. The fact that several Decree-Laws, one of which established the maximum limits of the penalties established in Articles 2, 4, 5, and 9 of Decree-Law No. 24.575, were subsequently enacted is a clear indication that this situation violated the nullum crimen nulla poena sine lege praevia principle in relation to punishment.

Case of Urcesino Ramírez-Rojas

17. On September 30, 1994, in the first proceedings brought against him, Urcesino Ramírez-Rojas was convicted of aggravated terrorism, as described in Article 320(1)(o) and 5(o) of the Criminal Code of 1991, although the facts underlying his conviction were committed between 1987 and 1990. The Court found that the conviction infringed the rule of freedom from ex post facto criminal laws as enshrined in Article 9 of the Convention (paragraphs 205 to 208 of the judgment), but did not violate the nullum crimen nulla poena sine lege praevia principle laid down in the same provision as it equated Articles 319 and 320 of the Peruvian Criminal Code with the aforementioned Article 2, which the Court deemed to be compatible with the American Convention (paragraph 194 of the majority judgment).

18. The condemnatory judgment against Mr. Ramírez was overturned by the Constitutional Court on March 27, 2003. On May 13 of the same year, National Chamber for Terrorism (Sala Nacional de Terrorismo) quashed the proceedings and on July 31 a court specialized in terrorism quashed all proceedings in the first trial, including the prosecutor's case and ordered that steps be taken in the new trial. In the new proceedings, which are still pending before Peruvian courts, the Special Superior Prosecutor's Office for Terrorism (Fiscalía Superior Especializada en Delitos de Terrorismo) brought charges against Mr. Ramírez for the crimes defined in Article 320(1), (2), and (4) and Article 322 of the Criminal Code of 1991.

19. As stated above, the Court found that Article 320 of the Criminal Code was compatible with Article 9 insofar as it was assimilated to Article 2 of Decree-Law No. 24.575 (paragraph 194). As regards Article 322, the Court followed the same reasoning used in relation to Article 4 of the aforesaid Decree-Law in order to decide that it was also compatible with the Convention.

20. The same arguments advanced above to conclude that Article 2 and, as a result, also Articles 4 and 5 of Decree-Law No. 24.575 violate the nullum crimen nulla poena sine lege praevia principle are, therefore, valid to support the same position in relation to Articles 320 and 322 of the Criminal Code of Peru of 1991.

REGARDING REPARATIONS TO URCESINO RAMÍREZ-ROJAS

I. As a result of being arbitrarily arrested

1. Upon examining the possible violations of the right to personal liberty of Mr. Ramírez-Rojas, the Court found that Peru violated Article 7(1), (2), (3), (5), and (6) of the Convention as he was arrested without a warrant, even though it was not a case of flagrante delicto. He was taken before a judge only thirteen days after his arrest, and he was denied the right to file a writ of habeas corpus (paragraph 134 of the judgment), all of which took place during the first proceedings brought against him, which extended from July 27, 1991, when he was arrested, to March 27, 2003, when the Constitutional Court rendered the decision whereby it sustained in part the action filed therewith by the detainee and ordered that the proceedings against which such action had been filed be quashed.

2. Mr. Ramírez-Rojas continued to be deprived of his liberty, on the basis of the 1991 arrest warrant, despite the decision rendered by the Constitutional Court, as the Court held that the annulment did not affect some stages of the criminal proceedings and that said warrant "was valid and retained its effect." The Constitutional Court remanded the case to the relevant Criminal Court so that the relevant procedures be taken; notwithstanding, the Criminal Court convened to hear the case only on June 24, 2003, without issuing a new arrest warrant which justified the deprivation of liberty, in accordance with Article 7 of the American Convention.

The Inter-American Court found that Peru violated Article 7(3) of the Convention insofar as during the period of time in which the arrest warrrant was in force, the courts failed to submit sufficient grounds to keep it in force (paragraph 143). In other words, in its judgment, the Court found that the deprivation of Mr. Ramirez's liberty, which has persisted to the date of the Inter-American Court's judgment and of this opinion, that is, over fourteen years, was arbitrary and continues to be so to the present day. The Court should have ordered that the violation be ceased, which would have resulted in the immediate release of Mr. Ramírez.

If after his release, the State considers that the required conditions to order his arrest in accordance with Article 7(2) and 7(3) are met, the relevant court should issue a warrant stating the grounds upon which the arrest is based. Even if the State shows that the arrest of Mr. Ramírez is justified under said provisions, it should also show that the time during which he has been confined conforms to the reasonability standard specified in Article 7(5) of the Convention.

Otherwise, the State may not arrest Mr. Ramírez again, under the provisions of the Convention, unless he is convicted and arrested to serve his sentence.

II. As a result of having been held in custody for a long time, under conditions that violated Article 5 of the Convention, and subject to proceedings that violated Article 8 thereof.

3. The Court decided not to order the State to take the necessary measures to ensure the immediate release of Mr. Ramírez. Rather, it ordered monetary reparation, with which I have concurred. However, even though the Court awarded monetary compensation, it should have considered the prison conditions, the duration of his imprisonment under such conditions, and the distress of being subject to proceedings in which he was denied the right to defend himself, to order, in addition, another form of relief.

4. During his imprisonment, Mr. Ramírez has been deprived of liberty: (i) approximately fifteen days (until August 10, 1991) in the basement of the Police Department (Dirección de Policía); (ii) two days in the jail of the Palace of Justice; (iii) three years and one and a half months in Castro-Castro Maximum Security Prison; (iv) six years and one month in Huacariz Prison, in Cajamarca; (v) three years and four months in El Milagro Prison, in Trujillo; and then (vi) transferred again to Castro-Castro Prison, where he is still awaiting trial.

5. Prison conditions in these places did not comply with the requirements laid down in Article 5(2). He was confined in a cell for twenty-three hours and a half a day for a year. Visits sometimes were authorized only at very infrequent intervals; on other occasions, the remote areas where the prisons were located made them impossible. Although the weather conditions prevailing in the area where one of the prisons where he was held was located took a heavy toll on his health and the medical report recommended that he be transferred to a place with warmer climate, he stayed there for over two years, with the resulting consequences for his health.

6. In sum, Mr. Ramírez has been, for over fourteen years, continuously and arbitrarily deprived of his liberty, under prison conditions that violate the American Convention, subject for several years to proceedings that violate Article 8 thereof and, to date, awaiting for final judgment to be rendered in the second proceedings brought against him. The severity of these violations should have been reflected in the reparations ordered by the Court in its judgment. I consider that, at least, the Court should have required, as a means of reparation, that the State, through its relevant bodies, order that, if Mr. Ramírez is convicted, for the purpose of service of sentence, each day spent in prison be computed as two days, in order to redress, to the extent possible, the gross violation committed by State officials to the detriment of Mr. Ramírez.

Cecilia Medina-Quiroga
Judge

Pablo Saavedra-Alessandri
Secretary

DISSENTING IN PART OPINION OF AD HOC JUDGE JORGE SANTISTEVAN DE NORIEGA IN THE CASE OF GARCÍA-ASTO AND RAMÍREZ-ROJAS

The duties that, in my view, an Ad Hoc Judge in an International Court must perform

I. In exercising international judicial functions, as an Ad Hoc Judge of this Court, I have endeavored to bring intimate knowledge to the distinguished judges who are members of the Court on the law in force in the country whose State is on trial, and on the practices that within its framework are being developed in order to make them compatible with the provisions of the American Convention and the Peruvian Constitution itself. Therefore, in the short but fruitful time that I have had the privilege to exercise such duty, I have set myself to share with the members of the Court the characteristics of the legal system that, amidst the democratic transition, governs the delicate situation of those persons who are on trial for crimes related to terrorist activities under similar circumstances to the two cases giving rise to this judgment. It should be noted that, in situations such as those regarding the victims in the instant case, the events in Peru took place a long time ago and those involved did not have, for a decade, access to fair trials under the previous regime, which imposed war justice, repeatedly condemned by international human rights bodies for the protection of human rights and by the different tiers of the State of Peru itself as soon as they were able to exercise their duties with sufficient autonomy and freedom.

II. [FN1]

With respect to Article 9 of the American Convention, the Court must take into account that the Decisions on Constitutionality rendered by the Constitutional Court of Peru have binding force and are part of the law of the land, and

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[FN1] See OMBUDSMAN'S OFFICE, Reports No. 9 of 1998 and No. 71 of 2003 concerning issues related to this matter at www.ombudsman.gob.pe

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III. In the context of the foregoing paragraph, I tried to convey to the members of the Court the importance of the Decision on Constitutionality delivered by the Constitutional Court of Peru on January 3, 2003 in Case No. 010-2002-AI/TC within the Peruvian legal system, given that it is part of domestic law, pursuant to the provisions of Article 9 of the American Convention on Human Rights. Indeed, I explained how, within the framework of the centralized judicial review system adopted by the Supreme Law of Peru, the decisions rendered by the Constitutional Court on constitutionality have the force of law and, consequently, become part of the legal system and are binding not only upon the judiciary but upon all State authorities as well, pursuant to the provisions of Article 204 of the Constitution, in line with Article 200(4) thereof and Article 35 of the Constitutional Court Organic Act No. 26.435.

IV. In addition, I made every effort to explain the clear role of "negative legislator" of the Constitutional Court in the European model, which has been gradually developed in Latin American constitutionalism, by means of which all norms enacted into law which, due to their spurious nature, disregard the principle of supremacy of the Constitution are set aside and removed from the legal system. However, said traditional role, which had its origin in Italian and

Spanish constitutionalism but which is equally being recognized in our system, [FN2] has evolved to recognized, albeit exceptionally, the role of "positive legislator" of the Court, capable of endowing norms that have not been removed from the legal system with a different content, which is compatible with the constitution and more aligned with the human rights enshrined in the American Convention.

[FN2] See. DIAZ REVORÍO, Javier. Las Sentencias Interpretativas del Tribunal Constitucional. Significado, tipología, efectos yb legitimidad. Análisis Especial de las Sentencias Aditivas (Interpretative Decisions of the Constitutional Court. Meaning, typology, effect, and legitimacy. Special Analysis of Amendatory Decisions by way of Addition). Valladolid: Nova Lex Press, 2001; also published by Palestra Press in Peru.

V. This is exactly the role played by the Constitutional when rendering the aforesaid decision on January 3, 2003. On that occasion, the legislative effect of the Court's finding removed from the Peruvian legal system the most disturbing aspects of the emergency law, inter alia, the unacceptable crime of high treason over which military courts had exclusive jurisdiction; anonymous or "faceless" judges; the curtailment of the right of those accused of crimes of terrorism to resort to the courts for the protection of constitutional rights; and the inhuman punishment and prison conditions.

VI. However, the Constitutional Court deemed it necessary to maintain the definitions of the crimes set out in Decree-Law No. 25.475 which were compatible with the Constitution and international human rights instruments, on condition that in applying the law the authorities of the State include criteria to better delimit those definitions which, due to their very nature, may be reasonably open-ended. [FN3]

[FN3] LAMARCA; Carmen, Tratamiento Jurídico del Terrorismo (Legal Regulation of Terrorism). Madrid: Centro de Publicaciones del Ministerio de Justicia, 1985.

Content of the Interpretative Decision of the Constitutional Court in relation to the basic definition of the crime under analysis in this judgment

VII. For illustration purposes, it is relevant to quote some excerpts of the interpretative decision which clearly reveal its legislative purpose

8.1. Scope and extent of the nullum crimen nulla poena sine lege praevia principle (Article 2(24)(d) of the Constitution)

44. The nullum crimen nulla poena sine lege praevia principle is enshrined in Article 2(24)(d) of the Peruvian Political Constitution "no person shall be charged with or convicted of an offense in respect of any act or omission which, at the time of such act or omission, was not expressly and unequivocally defined by law as a punishable offense (…)." This principle has

also been adopted in the most important instruments of International Human Rights Law (Universal Declaration of Human Rights, Article 11(2); American Convention on Human Rights, Article 9, International Covenant on Civil and Political Rights, Article 15).

45. The nullum crimen nulla poena sine lege praevia principle requires not only that criminal offenses be prescribed by law, but also that the prohibited conduct be clearly specified in the law. This is known as the requirement of specificity, which prohibits the enactment of ambiguous criminal legislation and which, under our Constitution, is an express obligation, pursuant to Article 2(24)(d), which provides that the statutory definition of the criminal conduct must be "express and unequivocal" (Lex certa).

46. (…) This "lex certa" requirement may not be understood, however, as a condition requiring that legal concepts be drafted in perfectly clear and precise language.

(…)

49. In this context, Criminal Law admits the existence of open-ended definitions of crimes which, on account of the lack of specificity, particularly regarding axiological concepts, delegate the task of supplementing them to the courts through statutory construction (in bold in the original).

63. (…) In other words, the interpretation that excludes all reference to the responsibility or culpability of the individual from the definition is unconstitutional. Therefore, the courts may not convict a person, under Article 2 of Decree-Law No. 25.475, only on the basis that the legal interests specified therein have been damaged or put at risk, without regard to culpability.

64. The principle of culpability is a guarantee and, at the same time, a limitation on the punitive power of the State; therefore, the applicability of Article 2 of Decree-Law No. 25.475 requires that the person acted with intent in infringing the legal interests specified in the criminal provision. Furthermore, the prohibition against punishment that is based only on strict liability is provided for in Article VII of the Introductory Title of the Criminal Code, pursuant to which "punishment requires the culpability of the offender. Any sort of strict liability is strictly prohibited."

65. Consequently, the Court finds that the implied rule derived from the phrase "any person who causes, creates or maintains" is unconstitutional insofar as it does not consider the subjective element - that is, the offender's intent as the element criminally punishable. Therefore, said phrase, by expanding the scope of Article VII of the Introductory Title of the Criminal Code to Article 2 of Decree-Law No. 25.475, shall remain the same and shall be interpreted as indicated above: "Any person who (intentionally) causes, creates or maintains a state of intimidation, alarm or fear among the population, or any segment thereof (…) (in bold in the original)."

(…)

77. Based on the foregoing, the Constitutional Court finds that the language of Article 2 of Decree-Law No. 25.475 conveys a message that allows citizens to know the content of the prohibition so that they can distinguish that which is forbidden from that which is permitted. The definition of the crime is only vague in relation to the need to specify the scope of the word "acts," which, for the purpose of giving a more accurate conceptual definition, must be understood as illicit acts (in bold in the original).

78. Consequently, Article 2 of Decree-Law No. 25.475 shall retain the existing language, which shall be interpreted in accordance with the foregoing paragraphs of this decision (…)

78bis. Finally, the Constitutional Court must point out that the crime defined in Article 2 of Decree-Law No. 25.475 requires the concurrence of the three elements contained therein, in

addition to the offender's intent. In effect, as described above, Article 2 sets out the definition of a crime that contains three objective elements, which must necessarily concur for the crime of terrorism to be committed. Where one of these elements is missing, the conduct under review will fall outside the scope of the definition of the crime."

Significant recognition of the interpretation of the law in force in Peru in the trial of cases involving crimes of terrorism by ordinary courts

VIII. It should be noted that the interpretation of the law in force in Peru offered by human rights experts recognizes the significant progress achieved in the exercise of the ius puniendi by the State as a result of the contribution made by the Constitutional Court's decision referred to above. In this regard, the Ombudsman's Office has made reference to:

"1. (…) Democratic criminal law, which implies respect for the criminal provisions set forth in the Constitution, the standards set by international human rights instruments, and compliance with the recommendations of the Inter-American Commission on Human Rights, (as well as) with the judgments rendered by the Inter-American Court of Human Rights and the Constitutional Court (bracketed text added for the purpose of style)."
2. Compliance with these requirements is not incompatible with the necessary efficiency to combat subversive activities, insofar as it is the only way to direct the criminal system towards a rational system which is fundamentally intended to convict the guilty and acquit the innocent. [FN4]

[FN4] OMBUDSMAN'S OFFICE, Report No. 71, pp. 12 – 13.

IX. The human rights community has also stated in this regard that:

"The decision rendered by the Constitutional Court on January 3, 2003, holding the Decree-Laws enacted during the authoritarian regime which seized power on April 5, 1992 unconstitutional -in part-, marks the beginning of a democratic criminal model and has been the most crucial element in the process of amending anti-terrorist legislation." [FN5]

[FN5] PROYECTO JUSTICIA VIVA National Chamber for Terrorism, The Work regarding Cases of Terrorism (Sala Penal Nacional, el Trabajo en los Casos de Terrorismo). Lima: Justicia Viva, March 2005, p.10.

X. Furthermore, I believe it is essential to make mention of the interpretative criteria set by the Permanent Criminal Chamber of the Supreme Court of Justice of Peru (Sala Permanente Penal de la Corte Suprema de la República) through its case law -to which I shall refer later in this opinion- as well as to the statements made, in his expert capacity, by the Peruvian attorney, Carlos Martín Rivera-Paz, -in the Case of De la Cruz-Flores, which was recently heard by this Court- whose testimony was admitted in the instant case as evidence to facilitate the adjudication

of the case. Said expert stated that, in relation to his analysis of competent judges and of the assessment of evidence made by such judges in the conditions now prevailing in Peru, there has been a significant change in recent proceedings (such as the one that resulted in Mr. García-Asto's acquittal and the one that is still pending against Mr. Ramírez-Rojas) if compared with the proceedings previously conducted by "faceless" judges, which were quashed by the Constitutional Court.

I concur with the majority of the Court in relation to the respect of the law in force for the nullum crimen nulla poena sine lege praevia principle embodied in Article 9 of the American Convention

XI. Thus, it seems logical to conclude -as the majority of the judges of this Court have- that the basic definition of the crime of terrorism as set out in Article 2 of the aforesaid Decree-Law, in light of the decision rendered by the Constitutional Court on January 3, 2003, does not violate the nullum crimen nulla poena sine lege praevia principle of criminal law contained in Article 9 of the American Convention. The Court holds this same criterion, with which I concur, with respect to Articles 319 and 320 of the Criminal Code of 1991, terrorism and aggravated terrorism, with the caveat noted above, I fully agree with the views expressed by legal experts [FN6] -which in turn are in line with the decision of the majority of the Court, based on the consideration set forth in paragraph 194 of this judgment- insofar as, this way, the basic definition of the crime establishes the elements of the criminalized conduct in a manner such that they may be distinguished from acts which are either not punishable or punishable with non-criminal sanctions.

[FN6] See. GAMARRA HERRERA, Ronald, in collaboration with Robert Meza. Terrorismo Tratamiento Jurídico (Terrorism, Legal Regulation). Lima: Instituto de Defensa Legal, 1996; and LAMARCA; Carmen, Tratamiento Jurídico del Terrorismo (Legal Regulation of Terrorism). Madrid: Centro de Publicaciones del Ministerio de Justicia, 1985.

XII. In this regard, I also fully concur with the operative part and the consideration set out in paragraph 195 of this judgment, in that the definitions of collaboration with and membership in and affiliation with a terrorist organization (Articles 4 and 5 of Decree-Law No. 25.475 and Article 322 of the Criminal Code of 1991) do not violate Article 9 of the American Convention, as per -as pointed out by the Honorable Judges- the criterion established by this Court in the Case of Lori Berenson (referred exclusively to the crime of collaboration), given that both definitions establish the elements of the criminalized conduct in a manner such that they may be distinguished from acts which are either not punishable or punishable with non-criminal sanctions.

Some elements of the Decision on Constitutionality and of the Decision adopted by the Supreme Court of Peru that, in my opinion, are missing in the Judgment rendered by the Inter-American Court to which this separate opinion is appended

XIII. For better understanding by this Honorable Court and the legal community, especially in the field of human rights, I would have preferred a more detailed mention of the content of the Decision on Constitutionality delivered by the Constitutional Court on January 3, 2003 -and partially transcribed in this opinion- as the Court has limited itself to simply taking account thereof.

XIV. Furthermore, it would have been extremely positive for this Court to admit, as evidence to facilitate the adjudication of the case, the content of Decision No. 3048-2004 rendered by Permanent Criminal Chamber of the Supreme Court of Justice of Peru (Sala Penal Permanente de la Corte Suprema de la República del Peru) on December 21, 2004 on the action to vacate the judgment of conviction for this type of crimes filed by defendant Alfonso Abel Dueñas-Escobar. Indeed, this final judgment -(ejecutoria suprema) as we call decisions rendered by a court of last resort which, therefore, become res judicata- constitutes a precedent binding upon all Peruvian courts. [FN7] Once again, the ruling of the Supreme Court establishes strict interpretation criteria which ensure that the law in force in Peru -which, as acknowledged by the judgment to which my separate opinion is appended, is compatible with the nullum crimen nulla poena sine lege praevia principle enshrined in Article 9 of the Convention- is to be applied, by order of the Supreme Court, within the limits of reasonability and proportionality, consistent with the respect for the fundamental rights enshrined in the Constitution and the human rights protected by the American Convention, as follows:

"Ninth: That, it should be noted that the basic description of the crime of terrorism —set out in Article 2 of Decree-Law No. 25.475—, contains a teleological element, that is, it requires a specific mens rea, which materializes in terms of its ultimate purpose –the specific subjective element- as the subversion of the political and ideological system established under the constitution, which, in a strict sense, is the protected legal interest, so that the prohibited conduct and raison d'être of the crime is, from a final stance, the violent overthrow or change of the existing constitutional system, as laid down by the decision rendered by the Constitutional Court on November 15, 2001 in the Matter of the Ombudsman's Office against Special Terrorism Legislation, Case No. 005-2001-AI/TC. In respecting the essence of the constitutional principles laid down by the decision rendered by the Constitutional Court on January 3, 2003, it is necessary to delimit the general scope of the aforesaid provision, which requires, from the point of view of the objective elements, that the perpetrator carry out the described act in either of two ways, that is, as the commission of illegal acts against individual legal interests -life, physical integrity, personal freedom and safety, and property- or as against collective legal interests – the security of public buildings, means of communication or transport, power or transmission towers, power plants or any other property or services. In addition, it requires, concurrently, that the offender use certain described means: catastrophic explosive material or devices and those which are capable of causing certain and serious damage; and, finally, it must cause concrete described results: havoc, serious disturbance of the peace and disruption of international relations or the safety of the public and the Government; along with the subjective element (the offender's intent), notwithstanding the required mens rea referred to above; that, as it concerns a statutory definition of a crime of significant importance, it is appropriate to accord this interpretation — which, essentially supplemented the interpretation given by the Constitutional Court— the status of binding precedent, in accordance with Article 301-A, paragraph (1) of the Criminal Procedural Code enacted by Legislative Decree No. 959." (underlined in the original).

Regarding the issue of the alleged arbitrary detention (Article 7(3) of the American Convention) in relation to the second proceedings brought against Urcesino Ramírez-Rojas, I concur with the rest of the Judges only in respect of the period of time he was held in custody without any legal grounds, which extended from May 13, 2003 to June 27, 2003, but I dissent from the rest of the Inter-American decision.

[FN7] In the operative part, the Permanent Criminal Chamber of the Supreme Court of Justice of Peru (Sala Penal Permanente de la Corte Suprema de la República) resolved: "TO ADOPT as binding precedent the legal basis set out in whereas clause number 9 of this final judgment, and to order its publication in the Peruvian Official Gazette…"

XV. As regards the violation of Article 7(3) of the American Convention by the State of Peru, in relation to Article 1(1) thereof, -which prohibits the State to deprive a person of his liberty for any reasons or methods that may be considered incompatible with the respect for his human rights-, I can only concur with the rest of the judges of this Honorable Court regarding the period comprised between May 13, 2003 and June 24, 2003. In effect, it has been established that (i) such was the period of time elapsed between the court ruling quashing the previous proceedings -upon the motion of the interested party and pursuant to the decision rendered by the Constitutional Court on January 3, 2003- and the date of the order to commence the pre-trial investigation in the second proceedings, under an arrest warrant; and (ii) the imprisonment of Urcesino Ramírez-Rojas during said period was not based on a court order or on a case of flagrante delicto -as required by the Peruvian Constitution and the American Convention. Consequently, the State violated Article 7(3) of the Convention only during said period. Thus, in my view, there has been a violation of the general principle of liberty embodied in Article 2(24) of the Peruvian Constitution -which corresponds to Article 7 of the American Convention-, which provides that any restriction on liberty must be strictly proportionate and specifically grounded on reasons of comparable or greater importance than liberty itself.

XVI. Notwithstanding the foregoing, I do not draw the same conclusion as the majority of the Court, in relation to the period beginning on June 24, 2003 with the Order to Commence the Pre-trial Investigation in the second proceedings, which, regrettable as it may be, are still pending; therefore, I do not agree with the consideration of the Court set out in paragraph 144 and the corresponding operative paragraph.

Jorge Santistevan de Noriega
Ad Hoc Judge

Pablo Saavedra-Alessandri
Secretary

San José, Costa Rica, November 25, 2005