INTER-AMERICAN COURT OF HUMAN RIGHTS

TARAZONA ARRIETA ET AL. V. PERU

JUDGMENT OF OCTUBER 15, 2014
(Preliminary Objection, Merits, Reparations and Costs)

In the case of *Tarazona Arrieta et al.,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:*

Humberto Antonio Sierra Porto, President;
Roberto F. Caldas, Vice President;
Manuel E. Ventura Robles, Judge;
Eduardo Vio Grossi, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge;

also present,

Pablo Saavedra Alessandri, Secretary, and
Emilia Segares Rodríguez, Deputy Secretary,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") and to Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter "the Rules") delivers this Judgment, which is structured as follows:

* Pursuant to Article 19(1) of the Rules of the Inter-American Court, Judge Diego García-Sayán, a Peruvian national, did not participate in the deliberation of this Judgment. Judge Alberto Pérez Pérez also did not participate in the deliberation of this Judgment for reasons of *force majeure*.

CASE OF TARAZONA ARRIETA ET AL. V. PERU

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* – On June 3, 2013, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court of Human Rights (hereinafter "brief of submission") Case No. 11,581 *Tarazona Arrieta et al. against the Republic of Peru* (hereinafter "the State" or "Peru"). The Commission indicated that the case related to the deaths of Zulema Tarazona Arrieta (hereinafter also Ms. Tarazona Arrieta) and Norma Teresa Pérez Chávez (hereinafter also Ms. Pérez Chávez), as well as the injuries to Luís Alberto Bejarano Laura (hereinafter also Mr. Bejarano Laura), on August 9, 1994, "as a consequence of the shots fired by a member of the Army against a vehicle of public transport" in which the alleged victims were travelling.

2. *Procedure before the Commission.* – The procedure before the Commission was as follows:

a. *Petition.* – On January 22, 1996, the Association for Human Rights (Asociación Pro Derechos Humanos - APRODEH) and Víctor Tarazona Hinostroza and Santiago Pérez Vera (hereinafter "the petitioners" or "the representatives") lodged the initial petition before the Commission.

b. *Report on admissibility.* – On October 10, 2001, the Commission adopted Admissibility Report N° 83/01.[1]

c. *Merits Report.* – On November 8, 2012, the Commission adopted Merits Report N° 77/12 (hereinafter "the Merits Report") under the terms of Article 50 of the Convention, in which it reached a series of conclusions and made several recommendations to the State:

i. Conclusions. *The Commission concluded that the State was responsible for the violation of the following rights recognized in the American Convention:*

1) Right to life, to the detriment of Ms. Tarazona Arrieta and Ms. Pérez Chávez;
2) Right to personal integrity, to the detriment of Mr. Bejarano Laura;[2]
3) Rights to judicial guarantees and to judicial protection, to the detriment of the next of kin of Ms. Tarazona Arrieta and Ms. Pérez Chávez, and to that of Mr. Bejarano Laura, and
4) Right to personal integrity, to the detriment of the next of kin of Ms. Tarazona Arrieta and Ms. Pérez Chávez, and to that of Mr. Bejarano Laura.

ii. Recommendations. *Consequently, the Commission made a series of recommendations to the State "bearing in mind that a final criminal conviction has been handed down in the case and that the State has complied with the payment of moral redress imposed in the judgment of July 23, 2008, as a civilly responsible third person in the incident:"*

1) Make appropriate amends for the human rights violations established in the [Merits Report], with fair compensation for the 14-year delay in the judicial proceedings to the next of kin of Ms. Tarazona Arrieta and Ms. Pérez Chávez, and to Mr. Bejarano Laura;

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[1] In its Report, the Commission concluded that it was competent to hear the complaint presented by the petitioners and declared it admissible for the alleged violation of Articles 2, 4, 5, 8 and 25 of the American Convention, in relation to Article 1(1) thereof.

[2] The Commission, however, considered that the violation was partially remedied by the conviction of the accused of the incident by the competent court and by the enforced payment of moral redress to the victim.

2) Strengthen its capacity to conduct timely and duly diligent investigations of actions in which members of the Armed Forces use lethal force, and

3) Take the necessary measures to prevent similar events from occurring in the future, in accordance with the duty of prevention and the obligation of guaranteeing the fundamental rights recognized in the American Convention; in particular, through the implementation of human rights programs in its Armed Forces training schools.

d. *Notification to the State.* – The Merits Report was notified to the State on December 3, 2012, granting it two months to report on compliance with the recommendations. The State requested an extension of three months, which was granted. On May 20, 2013, the Commission requested that Peru present a progress report on compliance with the recommendations. On that same date, the State presented a report in which it considered, *inter alia*, that the recommendation to compensate the next of kin of the alleged victims in the Merits Report for the violation of judicial guarantees and judicial protection was "not viable."

e. *Submission to the Court.* – On June 3, 2013, the Commission submitted to the jurisdiction of the Court all of the facts and human rights violations described in its Merits Report. The Comission indicated that "before it decided on the merits, it had taken note of the final conviction by the courts that established the relevant responsibilities, as well as the payment of compensation, to the next of kin of […] Tarazona Arrieta and Pérez Chávez, and to Bejarano Laura" and thus considered that "the violation was remedied in part." The Commission informed that APRODEH had acted as a petitioner during the proceedings and had provided contact information.

3. *Requests of the Inter-American Commission*. – The Commission requested that the Court declare the international responsibility of Peru for the violation of the rights enumerated in the conclusions of its Merits Report. In addition, the Commission asked that the Court order the State to take certain reparatory measures that will be detailed and analyzed in the relevant chapter.

II
PROCEDURE BEFORE THE COURT

4. *Notification to the State and to the representatives.* – The submission of the case by the Commission was notified to the State and to the representatives on August 1, 2013.

5. *Brief with petitions, motions and evidence.* – On October 6, 2013, the representatives presented their brief with petitions, motions and evidence[3] (hereinafter "brief with petitions and motions"), as established in Articles 25 and 40 of the Rules.

6. *Answering brief.* – On January 3, 2014, the State presented its brief on preliminary objections and its answer to the brief of submission and to the brief with petitions and motions (hereinafter "answer" or "answering brief"),[4] as established in Article 41 of the Rules.

7. *Brief on observations to the preliminary objections.* – On February 11 and 13, 2014, the Commission and the representatives, respectively, presented their observations on the preliminary objections filed by the State.

8. *Accession to the Victims' Legal Aid Fund.* – By Order of January 22, 2014, the President of the Court approved the request filed by the alleged victims, through their representatives,

[3] The representatives transmitted their brief with petitions and motions by electronic mail. By communication received on October 16, 2013, they sent the original brief and annexes to the Court.

[4] The State transmitted its answering brief by electronic mail. On January 13, it sent the original brief and annexes to the Court. The State named Luis Alberto Juerta Guerrero, Specialized Public Prosecutor of Peru, as its Agent.

to accede to the Victims' Legal Aid Fund of the Court and also approved the necessary financial assistance for the presentation of a maximum of two statements and an expert witness, either at a hearing or by affidavit. Later, by Order of the President of March 26, 2014, assistance was granted to cover the necessary travel and lodging costs so that Mr. Bejarano Laura might appear at the public hearing to be held at the Court on May 22, 2014.

9. *Public hearing.* – By Order of the President of the Court of March 26, the parties were convoked to a public hearing[5] in order to receive their final oral arguments and observations on the preliminary objections and eventual merits, reparations and costs, as well as to receive the statements of the alleged victim, of a witness proposed by the State and of an expert offered by the Commission.[6] By communications of March 28 and April 21, 2014, the State and the Commission, respectively, informed the Court's Secretariat that the witnesses that had been offered would not be able to attend the public hearing and, therefore, requested that they be permitted to provide affidavits. The President, therefore, informed the parties and the Commission that Mr. Bejarano Laura would be the only witness in the public hearing.

10. *Final written arguments and observations.* – On June 23, 2014, the State and the representatives presented their final written arguments and annexes. That same day, the Commission presented its final written observations. On July 24 and 25, 2014, the representatives and the State, respectively, presented their observations on the annexes to the final written arguments. The Commission did not present observations to those arguments.

11. *Disbursements in application of the Victims' Fund.* – On September 19, 2014, the State sent its observations to the report on the disbursements made in application of the Victims' Fund, which was transmitted to it by the Court's Secretariat on September 12, 2014.

III
JURISDICTION

12. Peru ratified the Convention on July 28, 1978 and recognized the contentious jurisdiction of the Court on January 21, 1981. The State has filed two preliminary objections that allege that the Court does not have jurisdiction to hear the present case (*infra* para. 13). Therefore, the Court will first decide on the preliminary objections and then, if applicable, it will rule on the merits and the requested reparations.

IV
PRIOR CONSIDERATION

13. The State presented two preliminary objections, the first of which refers to the "inappropriateness of the representatives presenting new allegations and arguments that were not raised by the Commission in its Merits Report" and the second with respect to a claim of a "fourth instance," related to the claim of the review of domestic judicial decisions that had observed due process.

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[5] Attending the public hearing were: for the Commission, James Louis Cavallaro, Silvia Serrano Guzmán and Jorge Meza Flores; for the representatives, Gisela Astocondor Salazar and Jorge Antonio Abrego, and for the State, Luís Alberto Huerta Guerrero, Iván Arturo Bazán Chacón and Mauricio César Arbulú Castrillón.

[6] The witnesses convoked to declare in the public hearing were Luís Alberto Bejarano Laura, alleged victim; Pablo Talavera Elguera, witness proposed by the State, and Nubia Serrano Wittingham, expert offered by the Commission.

14. Regarding the first preliminary objection, the State maintained that the representatives were asking that "new acts and allegations" contained in the brief with petitions and motions be evaluated by the Court. The State argued that the "case before the Court is limited to the facts in the Merits Report," which "is the factual framework of the proceedings that establishes the limits of the claims." The State also indicated that the alleged new facts and arguments "were never debated nor discussed in the proceedings before the Commission" and it requested that the "new allegations and arguments" be "excluded and omitted in the decision on the merits."

15. The State specifically referred to the allegations of the representatives that are summarized as follows:

(i) The use of public force by the Armed Forces, governed by Legislative Decree N° 1095;

(ii) The sentence of Antonio Mauricio Evangelista Pinedo imposed by the National Criminal Chamber supposedly did not consider the seriousness of the infringed duties;

(iii) The next of kin of the alleged victims were not able to challenge the sentence, pursuant to Article 290 of the Code of Criminal Procedure;

(iv) The sentence was not proportional to the harm caused to the alleged victims;

(v) The sentence was not fully served, since Antonio Mauricio Evangelista Pinedo was granted limited freedom and only spent one year and six months in prison;

(vi) The next of kin of the alleged victims had no role in the proceedings that granted the limited freedom and requested a judicial review;

(vii) Only the direct perpetrator of the incident was tried and punished, ignoring that he responded to hierarchical superiors, state agents who did not effectively control their subordinates, and

(viii) There was no punishment for the failure to aid the victims of the gunshots.

16. The representatives maintained that the parts objected to by the State were within the factual framework, which contextualizes and clarifies the events included in the Merits Report. They added that "both parties had many opportunities to exercise their right to defense" on the matter and that it is "completely false that those events had not been debated in the relevant proceedings." For its part, the Commission considered that the arguments of the State were not in the nature of a preliminary objection, but rather dealt with a matter of substance and that the events or allegations pointed out by the State had a "direct relationship" to the factual framework in the Report. The representatives and the Commission indicated the relevant paragraphs in the Merits Report concerning each of the referred-to allegations (*supra* para. 15).

17. The Court considers that the State filed the preliminary objection with specific reference to some "new acts and allegations" included by the representatives in their brief with petitions and motions. However, it notes that the allegations to which the State refers relate to matters of law and not to new facts, so it is not an issue of admissibility nor of the jurisdiction of the Court that must be resolved as a preliminary objection, as was requested by the State.

18. The Court recalls that its consistent case law permits changing or varying the legal determination of the facts that are the object of a specific case within the context of a proceeding in the inter-American system and that the alleged victims and their representatives may invoke a violation of a right other than those included in the complaint or in the Merits Report, as long as it is related to the content of the Report because the alleged victims are beneficiaries of each right recognized in the Convention.[7]

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[7] *Cf. Case of the Five Pensioners v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 155 and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile. Merits, Reparations and Costs*. Judgment of May 29, 2014. Series C No. 279, para. 38.

19. Consequently, the Court holds that the issue raised by the State is not a preliminary objection and that, because it is related to the merits of the case, the Court will analyze the arguments of law presented by the representatives in the relevant chapters of this Judgment.

V
PRELIMINARY OBJECTION

20. With respect to the preliminary objection of a "*fourth instance*," the State argued that, if the Court evaluated certain allegations of the representatives pertaining to domestic judicial proceedings[8] relating to the alleged violation of Articles 8 and 25 of the Convention, the Court would be acting as a tribunal of fourth instance because that would mean that the Court would be deciding on the facts and on the law of Peru, which would exceed its jurisdiction. The State added that the Court can not substitute its own assessment of the facts for that of the domestic courts since, as a general rule, it is for the Peruvian courts to evaluate and interpret the laws of Peru; otherwise, the Court would be intervening as a "fourth instance." The State also alleged that the Court "cannot become a higher court to examine presumed errors of fact that might have been committed by the national courts, as long as they were acting within the limits of their competence."[9]

21. The representatives stated that they are not asking that the Court act as a higher court, but rather that the organs of the inter-American system review domestic judicial actions to determine their compatibility with the Convention. In addition, the representatives indicated that the acts referred to by the State are related to the substance of the case and, thus, they requested that the Court reject the preliminary objection. The Commission added that the allegations of the representatives mentioned by the State refer to components of the judicial response of Peru in light of the inter-American standards in the area of the duty to investigate and to punish human rights violations promptly and with due diligence and, thus, an analysis of those allegations does not pretend to be a review of a final decision of criminal proceedings, but rather a determination of the compatibility of that judicial response with the aforementioned standards, regarding which the Court will make an in-depth anaysis.

22. This Court has held that in order that a "fourth instance" objection be applicable, the Court must be asked "to review the decision of a domestic court, based on its incorrect assessment of the evidence, the facts or domestic law, without, in turn, alleging that such decision was in violation of international treaties over which the Court has jurisdiction."[10] In addition, the Court has held that evaluating compliance with certain international obligations can lead to an intrinsic interrelationship between the analysis of international law and of domestic law.[11] Therefore, the determination whether the actions of a domestic judicial body constitute a violation of a State's international obligations can lead to a situation where the

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[8] The State referred to the same allegations of the representatives, summarized in paragraph 15 of this Judgment, with the exception of the allegation regarding the use of force but including the allegation that the payment of compensation ordered at the domestic level for moral redress to the next of kin of the dead alleged victims was only for the loss of their dear ones, without taking into consideration the alleged sufferings caused by the search for justice by the next of kin.

[9] The State maintained that the totality of its acts and omissions that were claimed as infringements of the American Convention, including those of a procedural nature, had already been evaluated and judged by the independent and impartial national courts by means of effective remedies with respect to judicial guarantees and judicial protection.

[10] *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 18 and *Case of Palma Mendoza et al. v. Ecuador. Preliminary Objection and Merits.* Judgment of September 3, 2012. Series C No. 247, para. 18.

[11] *Cf. Case of Cabrera García and Montiel Flores v. Mexico*, para. 16 and *Case of Mémoli v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 22, 2013. Series C No. 265, para. 140.

Court may have to examine the domestic proceedings to establish their compatibility with the American Convention.[12]

23. The Court holds that the arguments of the State are related to alleged violations of the rights recognized in Articles 4, 5, 8 and 25 of the Convention, in relation to Articles 1(1) and 2 thereof. The Court will analyze, *inter alia*, the domestic procedural stages in order to decide on those alleged violations. This anaysis will take place in the chapter on the merits of this Judgment.

24. In view the foregoing, the Court holds that it must reject the preliminary objection raised by the State for being inappropriate.

VI
EVIDENCE

A. Documentary, testimonial and expert evidence

25. The Court received various documents presented as evidence by the State, the representatives and the Commission with their principal briefs and as evidence to better resolve. The Court also received the statements of the witness Pablo Rogelio Talavera Elguera and of the alleged victims Víctor Tarazona Hinostroza and Santiago Pérez Vera. It also received the expert opinions of Víctor Jesús Gonzáles Jáuregui, Víctor Manuel Cubas Villanueva and Josephine Marie Burt. Each of these statements was given before a notary public. As to the evidence given in the public hearing, the Court received the statement of Mr. Bejarano Laura.

B. Admission of the evidence

26. The Court admitted the documents that were presented at the proper procedural moment by the parties and by the Commission, the admissibility of which was neither contested nor objected to.[13] With regard to some documents submitted electronically that may be consulted until the delivery of the Judgment, the Court has established that, if a party or the Commission provides a direct electronic link of the document that is cited as evidence and it is possible to trace it, neither legal certainty nor procedural balance is affected because it can be immediately located by the Court, by the parties or by the Commission.[14] In this case, there was neither opposition nor observations by the parties nor by the Commission regarding the admissibility of such documents.

27. The Court also deems it relevant to admit the statement of Mr. Bejarano Laura given at the public hearing and the testimony and opinions before a notary public to the extent that they deal with the purpose defined by the Acting President in the order that admitted the reception of their testimony[15] and that defined the purpose of the present case.

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[12] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 222 and *Case of Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 27, 2014. Series C No. 281, para. 243.

[13] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140 and *Case of expelled Dominicans and Haitians v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 28, 2014. Series C No. 282, para. 113.

[14] *Cf. Case of Escué Zapata v. Colombia. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 165, para. 26 and *Case of expelled Dominicans and Haitians v. Dominican Republic*, para. 115.

[15] The purpose of these statements is established in the Order of the President of the Court of March 26, 2014.

C. Evaluation of the evidence

28. Based on the provisions of Articles 46, 47, 48, 50, 51, 52 and 57 of the Rules, as well as its consistent case law in matters of evidence and its assessment, the Court will examine and evaluate the documentary evidence provided at the proper procedural moment by the parties and by the Commission, the notarized statements and opinions and those given at the public hearing. All were subject to sound judicial discretion within the relevant legal framework, taking into consideration the totality of the evidentiary file and the allegations in the case.[16] In addition, the statement of the alleged victim shall be assessed as part of the evidence to the extent that it provides additional information on the alleged violations and their consequences.[17]

VII
FACTS

29. This chapter covers the following facts: a) the deaths of Ms. Tarazona Arrieta and Ms. Pérez Chávez and the injuries suffered by Mr. Bejarano Laura; b) the investigation into the facts of the case (August 9, 1994 to May 22, 1995); c) the sending of the case to the archive (June 14, 1995 to September 11, 2003); d) the removal of the file of the case from the archive (April 19, 2001 to January 21, 2003); e) the trial and conviction of Antonio Mauricio Evangelista Pinedo (hereinafter "Sgt. Evangelista Pinedo") (January 21, 2003 to July 23, 2008) and f) the serving of the sentence and the reparations to the alleged victims (July 23, 2008 to January 6, 2011).

A. The deaths of Ms. Tarazona Arrieta and Ms. Pérez Chávez and the injuries suffered by Mr. Bejarano Laura

30. On August 9, 1994, around 8:40 pm, a military patrol comprised of 15 soldiers belonging to the 40th Motorized Infantry Battalion of "La Pólvora" fortress -El Agostino barracks- was conducting security operations in a military vehicle on different streets of the Ate Vitarte district of Lima.[18]

31. Due to the alleged presence of a group of suspicious persons at the bus stop "La Esperanza," the head of the military patrol decided to inspect the zone on foot, dividing 14 members of the patrol into seven groups of two persons, in order to question the pedestrians who were in the area and inspect their identification documents. Sergeant 2nd Class Evangelista Pinedo, 18 years of age and with 18 months of military service, and Corporal J.C.A.L. made up one of the patrol groups.[19] A small bus on the Lima-Chosica route stopped at "La Esperanza." As the bus continued its route, Sgt. Evangelista Pinedo and J.C.A.L. went

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[16] *Cf. Case of the White Panel Truck (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37 para. 76 and *Case of the Landaeta Mejías Brothers et al. v. Venezuela,* para. 31.

[17] *Cf. Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 22, para. 43 and *Landaeta Mejías Brothers et al. v. Venezuela,* para. 39.

[18] *Cf.* Judgment of the National Criminal Chamber in case file N° 13-06 of July 23, 2008 (evidence file, folio 58) and Opinion N° 12-2006-4 FSPN-MP/FN of the Fourth National Superior Criminal Prosecutor of July 14, 2006 (evidence file, folios 76 to 81).

[19] *Cf.* Opinion N° 12-2006-4 FSPN-MP/FN (evidence file, folios 76 to 81).

out to the road. There was a shot in the direction of the bus and, as a consequence, Ms. Tarazona Arrieta and Ms. Pérez Chávez were killed and Mr. Bejarano Laura was injured.[20]

32. When the head of the military patrol heard a shot, he counted his troops and realized that two soldiers were missing; namely, Sgt. Evangelista Pinedo and J.C.A.L. Moments later, a pedestrian approached him and reported that one of his soldiers had fired at the bus and that there were two injured persons. The head of the patrol climbed aboard the military vehicle and went to the site of the incident, spotting the two soldiers who were missing from the patrol and telling them to climb aboard the vehicle and asking whether they had fired the shot, to which they answered in the negative.[21]

33. Each of the soldiers was then taken to the office of the National Criminal Investigation Directorate (hereinafter "DININCRI") of the National Police of Peru (hereinafter "PNP") for the relevant investigations and the experts' reports and where it was determined that it had been Sgt. Evangelista Pinedo, who had fired the shot.[22]

34. Ms. Tarazona Arrieta was 22 years old when she died as a result of "cephalitic traumatism"[23] and Ms. Pérez Chávez, also 22 years of age, died as a result of a "gunshot wound that penetrated her thorax."[24] Mr. Bejarano Laura, 27 at the time of the incident, was attended at the emergency room of the Hospital II Vitarte for "an open abdominal wound because of a gunshot" and was operated on that same day for an "exploratory laparotomy, repairs to lacerations of the transverse colon wall and extraction of the bullet shrapnel." He was hospitalized in the Surgery Section of the hospital for three days and was discharged on August 31, 1994.[25]

B. The investigation into the facts of the case (August 9, 1994 to May 22, 1995)

35. At approximately 11:15 pm on August 9, 1994, the on-duty Prosecutor of the 27th Provincial Criminal Prosecutor's Office of Lima (hereinafter the "Provincial Prosecutor") ordered the Homicide Division of the PNP to take charge of the investigation.[26] On August 10, 1994, the Chief of the National Police in Ate Vitarte reported on "the preliminary procedures in connection with the firearm killing […] which took place in this precinct at km 8 of the central highway, presumably committed by members of the Peruvian Army."[27]

36. The following day, the Headquarters of the 40th Motorized Infantry Battalion informed the Brigadier of the First Division of Las Palmas Special Forces (hereinafter "DIFFE") on what had occurred on August 9, 1994 and indicated that "direct responsibility for the incident lies

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[20] *Cf.* Opinion N° 12-2006-4 FSPN-MP/FN (evidence file, folios 76 to 81) and judgment of the National Criminal Chamber in case file N° 13-06 of July 23, 2008 (evidence file, folios 55 to 65).

[21] *Cf.* Statement of August 17, 1994 of A.V.C. (evidence file, folios 118 to 122).

[22] *Cf.* Opinion N° 12-2006-4 FSPN-MP/FN (evidence file, folios 76 to 81).

[23] *Cf.* It also states that her corpse had "a large open wound, with loss of skin tissue, scalp, and bone, affecting the left side face and cranium; also bruising on the front of the chest, on the left leg, with indication of severe traumatic impact." Certificate N° 450-lC-H-DDCV of the National Criminal Investigation Directorate of the PNP dated October 7, 1994 (evidence file, folios 85 to 105).

[24] *Cf.* Autopsy report of Norma Teresa Pérez Chávez by the Forensic Medicine Institute of the Public Ministry of August 10, 1994 (evidence file, folios 110 to 111).

[25] *Cf.* Medical report of September 17, 1994 (evidence file, folios 112 to 113).

[26] *Cf*. Certificate N° 450-IC-H-DDCV (evidence file, folio 89).

[27] *Cf*. Report N° 232-AP-07-DV (evidence file, folios 159 to 162).

with Sergeant Second-Class Evangelista Pinedo Antonio, for disobeying orders and negligence leading to the deaths of two civilians." [28]

37. With regard to the actions of the patrol after learning of the incident, the Motorized Battalion informed the Brigadier of the First DIFFE regarding: 1) the personal and immediate presence at the scene of the incident and then at the Ate-Vitarte police station; 2) the entire patrol with weapons and equipment was sent to the PNP's homicide division on August 10 for the pertinent ballistic testing; 3) upon identification by the homicide division of Sgt. Evangelista Pinedo, he was immediately detained; 4) contact was made with the families of the deceased and the funeral expenses were paid; 5) a lieutenant was appointed to purchase a perpetual niche in the Chosica cementery, in accordance with the request made by the next of kin, and 6) a captain was appointed to visit the injured victim, Mr. Bejarano Laura, at the Vitarte Hospital and to resolve his immediate needs.[29]

38. On August 10, 1994, the military authorities took the testimony of Sgt. Evangelista Pinedo in which he admitted that he was responsible for the incident.[30] The same day, the Commanding Officer of the First DIFFE sent charges to the President of the Permanent Court-Martial of the Army's Second Judicial District remanding Sgt. Evangelista Pinedo to him "for the alleged crime of negligent homicide" and informed that he was proceeding to hand over the weapon involved in the incident.[31]

39. On August 12, 1994, the National Coordinator of Human Rights (hereinafter "CNDDHH") presented a complaint to the Office of the Attorney General for the killing, injuring and abandonment of Ms. Tarazona Arrieta and Ms. Pérez Chávez, as well as to the detriment of other unidentified persons.[32] On August 25, 1994, the Deputy Attorney General, in charge of the General Secretariat of the Office of the Attorney General, forwarded the CNDDHH's complaint to the Provincial Prosecutor.[33]

40. On August 31, 1994, the Permanent Court-Martial (hereinafter "Court-Martial") opened committal proceedings against Sgt. Evangelista Pinedo "for the commission of the crimes of negligent homicide with respect to Zulema Tarazona Arrieta and Norma Pérez Chávez and the negligent injuries with respect to [Luís] Bejarano Laura" and established the jurisdiction of the Third Permanent Military Court of Lima (hereinafter "Military Court") and ordered the Investigating Judge to discuss the competing jurisdiction with the ordinary court "since there are open proceedings in that court for these same acts."[34]

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[28] Communication N° 005/MBM/BIM 40 sent to Brigadier General Commander of the First DIFFE Las Palmas of August 10, 1994 (evidence file, folio 170 to 173).

[29] *Cf.* An examination of the evidence shows some complementary procedures; namely: "a. Personal and immediate presence of the undersigned and of the Captain of Cap S-2 of the Infantry Unit, Guevara Montoya Alfredo, at the site of the incident and later in the Police Delegation of Ate-Vitarte, where they were able to learn that the deceased individuals were Tarazona Arrieta Zulema and Perez Chavez Norma and that the injured individual was Bejarano Laura Alberto. b. At the request of the undersigned, in coordination with the PNP, sent an armed and equiped patrol to the PNP Homicide Division at 4:00 am on August 10, 1994 for the relevant ballistic testing in order to clarify the acts, ascertain who was responsible and not hide or erase evidence. c. The PC of the DIFFE and the Brigadier General of the DIFFE were informed of the situation."

[30] *Cf.* Testimony of August 10, 1994 of Sgt. Evangelista Pinedo (evidence file, folios 173 to 175).

[31] *Cf.* Decision N° 402 K-1/1ra Div FFEE/20.04 of August 10, 1994 (evidence file, folios 176 to 178).

[32] *Cf.* Communication of the National Coordinator for Human Rights addressed to the Attorney General, dated August 10, 1994 (evidence brief, folios 181 to 183).

[33] *Cf.* Decision N° 4547-94-MP-SEGFIN of the Deputy Attorney General in charge of the Office of the Attorney General, dated August 25, 1994 (evidence brief, folios 2943 to 2944).

[34] *Cf.* Case 270-94. Brief of the President of the Permanent Court Martial of the 2nd. ZJE et al., dated August 31, 1994 (evidence file, folio 180).

41. During the month of August 1944, the DININCRI took the statements of witnesses to the incident;[35] specifically from J.C.A.L.,[36] from Sgt. Evangelista Pinedo,[37] and from Mr. Bejarano Laura.[38] The police investigation concluded that Sgt. Evangelista Pinedo was the perpetrator of a double homicide and injuries by gunshots, to the detriment of Ms. Tarazona Arrieta, Ms. Pérez Chávez and Mr. Bejarano Laura.[39]

42. On November 2, 1994, the Provincial Prosecutor filed criminal charges with the 27th Criminal Court of Lima (hereinafter "Criminal Court") against Sgt. Evangelista Pinedo for the crime of homicide "to the detriment of Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez" and for that of injuries to the detriment of Mr. Bejarano Laura.[40]

43. On November 24, 1994, the Military Court asked the Criminal Court to recuse itself from hearing the case due to the trial in the Military Court on the grounds that the offense had been committed when the accused was part of an operations patrol under orders of a superior. In answer to a prior request, it was informed that committal proceedings had been opened on August 31, 1994 against Sgt. Evangelista Pinedo and that the Military Court had ordered the arrest of the accused on September 13, 1994 and that he was in custody at the Rimac Military Prison.[41]

44. On December 12, 1995, more than a year after the request of recusal and after the case had been archived in the military and in the ordinary jurisdiction (*infra* paras. 48 *et seq*.), the Criminal Court found the request without grounds since there was nothing in the file that would underpin the substance of the request and because the act that was the subject of the committal proceedings had been characterized as homicide.[42]

45. On November 25, 1994, the Criminal Court opened committal proceedings against Sgt. Evangelista Pinedo, as had been requested by the Office of the Attorney General, and ordered that the statement of the accused be received and that he be arrested and diverse procedures be pursued.[43]

46. On January 10, 1995, Santiago Pérez Vera, father of Ms. Pérez Chávez, and Víctor Tarazona Hinostroza, father of Ms. Tarazona Arrieta, filed briefs requesting that they be

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[35] Statement of V.M.T.A. of August 10, 1994 (evidence file, folios 123 to 125); Statement of M.A.S.R. of August 10, 1994 (evidence file, folios 126 to 128); Statement of J.L.B.P. of August 1994 (evidence file, folios 129 to 131); Statement of G.R.A. of August 10, 1994 to the Instructor C.O.A.S., Capitain of the National Police of Peru (evidence file, folios 132 to 134); Report N° 232-AP-07-DV (evidence file, folios 2934 to 2937).

[36] *Cf.* Police certification N° 450-IC-H-DDCV (evidence file, folios 85 to 105); Statement of J.C.A.L. of August 17, 1994 to C.O.A.S., Capitain of the PNP and Dr. F.C.R., Deputy Prosecutor to the 27th FPPL (evidence file, folios 135 to 139).

[37] *Cf.* Statement of Sgt. 2nd Class Evangelista Pinedo of August 17, 1994 to C.O.A.S., Captain of the PNP and Dr. F.C.R., Deputy Prosecutor to the 27th FPPL (evidence file, folios 140 to 143). Antonio Mauricio Evangelista Pinedo had already given testimony to the Investigator Guevara Montoya on August 10, 1994 (evidence file, folios 173 to 175).

[38] *Cf.* Statement of Mr. Bejarano Laura to C.O.A.S., Captain of the PNP, of August 19, 1994 (evidence file, folios 144 to 146).

[39] *Cf.* Police certificate N° 450-IC-H-DDCV (evidence file, folios 85 to 105).

[40] *Cfr.* Complaint N° 455-94 addressed to the Criminal Judge, dated November 2, 1994 (evidence file, folios 155 to 158 and 2945 to 2946).

[41] *Cf.* Written communication N° 2332-94/3er.JMP-2da.ZJE of the Third Permanent Court of the Second Zone of the Army addressed to the Provincial Criminal Judge of the 27th Criminal Court of Lima, dated November 24, 1994 (evidence file, folios 184 to 185).

[42] *Cf*. Brief of December 12, 1995; Criminal Court Judge and Alejandro Huaman García, Secretary, of the 27th Criminal Court of Lima (evidence file, folios 186 and 187).

[43] *Cf.* Communication of November 25, 1994 (evidence file, folios 163 to 165).

considered civil complainants in the criminal proceedings initiated for the deaths of their daughters,[44] requests that were accepted by the Criminal Court on January 10 and 11, respectively.[45] On January 25, 1995, Mr. Pérez Vera requested that the Criminal Court reissue the arrest warrant against the accused in order that he be placed at the order of the Court. He also requested that the summons regarding A.V.C. be repeated in order that he appear to testify before the Court.[46]

47. On April 25, 1995, the Provincial Prosecutor requested the Criminal Judge to grant an extension of 30 days in order to carry out a series of procedures and proposed, *inter alia,* that the judge receive the statement of the accused and that he insist on the appearance of the soldiers who served in the BIM.[47] On May 2, 1995, the Criminal Judge extended the period of the requested committal proceedings in order to pursue a series of procedures.[48] In addition, on May 22, 1995, the defense of the family members of the alleged victims requested that the Criminal Court receive the statements of the passengers of the bus; namely, G.R.A.C., M.A.S.R., chauffeur and conductor of the bus, respectively, and Mr. Bejarano Laura.[49]

C. The sending of the case to the archive (June 14, 1995 to September 11, 2003)

48. On June 14, 1995, the Peruvian Congress enacted Law N° 26.479 that granted amnesty to military and police personnel and civilians involved in any act arising from or occurring as a consequence of the fight against terrorism and that might have been committed individually or as a group from May 1980 until the date of the enactment of the law.[50]

49. Article 4 of that law established that the ordinary and military jurisdictions and the judicial and executive branches should proceed to annul the police, judicial and criminal records of those who have been amnestied by the law, as well as to leave without effect any measure that restricts freedom and to release from jail those amnestied who had been arrested, detained, imprisoned or preventively detained, not including administrative measures.[51] Article 6 ordered the definitive closure of all judicial proceedings, whether cases

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[44] *Cf.* Request of Mr. Pérez Vera to be a civil complainant, dated January 10, 1995 (evidence file, folios 147 to 148) and that of Mr. Tarazona Hinostroza to be a civil complainant, dated January 10, 1995 (evidence file, folios 149 to 150).

[45] *Cf.* Order of the Criminal Judge of January 10, 1995 (evidence file, folios 2956 to 2957) and Order of the Criminal Judge of January 11, 1995 (evidence file, folios 2958 to 2959).

[46] *Cf.* Request of Mr. Perez Vera to the 27th Criminal Court of Lima of January 25, 1995 (evidence file, folios 2540 to 2541).

[47] *Cf.* Communication addressed to the Criminal Judge of April 25, 1995 in file N° 431-94, Provincial Prosecutor of the 27th Provincial Criminal Prosecutor of Lima (evidence file, folios 168 to 169).

[48] *Cf.* Communication of May 2, 1995, Criminal Judge and Edward Díaz Tantalean, Secretary of the 27th Criminal Court of Lima (evidence file, folios 188 to 189).

[49] *Cf.* Complaint of Mr. Tarazona Hinostroza and APRODEH to the 27th Criminal Court of Lima of May 22, 1995 (evidence file, folios 2542 to 2543).

[50] *Cf.* Law N° 26.479 of June 14, 1995 that grants a general amnesty to military and police personnel and civilians for diverse cases. Article 1 states that "A general amnesty is granted to military and police personnel and civilians, regardless of the corresponding military, police or functional situation, who is denounced, investigated, indicted, tried or convicted for common or military crimes in the ordinary or military jurisdictions for any act arising from or occurring as a consequence of the fight against terrorism and that might have been committed individually or as a group from May 1980 until the date of the enactment of the present Law."

[51] *Cf.* Law N° 26.479, Article 4: "The ordinary and military courts and judicial and executive branches shall immediately proceed, under responsibility, to cancel the police, judicial or criminal records that might have been filed against those persons who are amnestied by this Law, as well as to lift any restrictive measure of freedom that might affect them. They shall also proceed to release from prison those amnestied who had been arrested, detained, imprisoned or preventively deprived of their freedom, not including the administrative measures."

being tried or those with a sentence, and prohibited the reopening an investigation on the events that are the subject of those proceedings.[52]

50. On June 28, 1995, the Congress adopted Law N° 26.492, interpreting Article 1 of Law N° 26.479 in the sense that the general amnesty was to be obligatorily enforced by the courts and that it covered "all incidents arising from or occurring as a consequence of the fight against terrorism from May 1980 to June 14, 1995, regardless of whether the military, police or civilian personnel involved had or had not been reported, investigated, prosecuted or convicted, and sending all judicial proceedings, regardless of the stage, to the archive."[53]

51. On June 16, 1995, the civil complainants requested that the Provincial Prosecutor not apply the Amnesty Law because it was manifestly unconstitutional.[54]

52. On June 20, 1995, the Supreme Military Justice Council granted the benefit of amnesty to Sgt. Evangelista Pinedo since his actions took place during the fight against terrorism. The decision ordered the lifting of any measure that restricted his freedom; the definitive archiving of the proceedings; the annulment of the police, court and criminal records in connection therewith, and the communication of this decision to the relevant judicial body for its implementation.[55]

53. On June 23, 1995, Sgt. Evangelista Pinedo requested that the Criminal Court enforce the benefits of Law N° 26.479 on the ground that the incident of August 9, 1994 took place during a countersubversive operation; during his time of service as a member of the Peruvian Army and during the extended state of emergency in the Department of Lima and the Province of Callao.[56]

54. On June 30, 1995, the 27th Criminal Court of Lima extended the committal proceedings for another 30 days, pursuant to a request of the Prosecutor of April 25, 1995.[57]

55. On July 24, 1995, Mr. Pérez Vera, father of Ms. Pérez Chávez and a civil complainant, requested the 27th Criminal Court of Lima that it not apply Law N° 26.479, the Law of the General Amnesty, because it was unconstitutional, that the investigation continue and that the accused not be released.[58]

56. On August 3, 1995, Sgt. Evangelista Pinedo presented a "motion of *res judicata*" to the Criminal Court because proceedings had been initiated in both the ordinary court and the military court for the same crimes and because, by order of June 20, 1995, the Supreme

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[52] *Cf*. Law N° 26.479, Article 6: "The actions or crimes included in the present amnesty, as well as the definitive acquittals and absolutions cannot be subject to investigations, searches or summaries; leaving all judicial cases, in proceedings or execution, definitively archived."

[53] *Cf*. Law N° 26.492, Article 3 "Article 1 of Law N° 26.479 shall be interpreted in the sense that the general amnesty that is granted is to be obligatorily enforced by the judicial bodies and shall include any act arising from or occurring as a consequence of the fight against terrorism, committed individually or in a group from the month of May 1980 to June 14, 1995, regardless of whether the military, police or civilian personnel had or had not been reported, investigated, prosecuted or convicted; sending all judicial cases in process or in execution definitively archived in accordance with Article 6 of the aforementioned Law."

[54] *Cf*. Communication addressed to the Prosecutor of the 27th Provincial Criminal Prosecutor of Lima, dated June 16, 1995 and signed by Ivana M. Montoya Lizárraga and Santiago Pérez Vera (evidence file, folios 199 to 206).

[55] *Cf.* Communication of June 20, 1995 of the Secretary General of the C.S.J.M., Coronel S.J.E. Roger N. Araujo Calderón (evidence file, folios 197 to 198).

[56] *Cf*. Communication of June 23, 1995, received in the 27th Criminal Court on June 26, 1995 (evidence file, folios 195 to 196).

[57] *Cf.* Communication of June 30, 1995 of the Judge and the Secretary of the 27th Criminal Court of Lima, Edward Díaz Tantalean (evidence file, folios 2969 to 2970).

[58] *Cf.* Communication presented by Santiago Pérez Vera dated July 24, 1995 (evidence file, folios 2971 to 2978).

Military Justice Council had granted him the benefit of Law N° 26.479, which was *res judicata* and a person cannot be judged twice for the same act.[59]

57. On June 22, 1995, an Army unit responded to the communication sent on May 2,1995 by the Criminal Court of Lima (*supra* para. 47) that ordered the appearance of the members of the Army patrol so that they might testify, indicating that those persons had been summoned to appear before that court.[60]

58. On August 18, 1995, the Provincial Prosecutor presented his opinion to the Criminal Court, recommending that the motion of *res judicata* be accepted.[61] On September 7, 1995, the Provincial Prosecutor reiterated his opinion to the Criminal Court.[62]

59. On September 11, 1995, the Criminal Court accepted the motion of *res judicata* and ordered the definitive closing of the case. The resolution also ordered the immediate release of the accused and the annulment of the criminal and judicial record resulting from the investigation. On September 12, 1995, the judge requested the Military Court that it order the immediate release of Sgt. Evangelista Pinedo.[63]

D. The removal of the file of the case from the archive ("desarchivamiento") (April 19, 2001 to January 21, 2003)

60. On April 19, 2001, the civil complainants requested the Criminal Court to remove the file of the criminal case from the archive ("desarchivar") and asked that the order of September 11, 1995, which had accepted the motion of *res judicata,* be set aside in view of the decision of the Inter-American Court in the case of *Barrios Altos v. Peru* of March 14, 2001 that held that Amnesty Laws N° 26.479 and 26.492 were incompatible with the American Convention and, therefore, lacked legal effect.[64]

61. On June 7, 2001, the next of kin of the alleged victims requested that the Supreme Military Justice Council declare without legal effect the amnesty law and annul the process and the order to desist, in view of the decision of the Inter-American Court. This request was reiterated on January 31 and April 25, 2002.[65]

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[59] *Cf.* Motion of *res judicata* presented by Sgt. Evangelista Pinedo for the crime against the life, body and health – simple homicide et al. – to the 27th Criminal Court of Lima, dated Augst 3, 1995 (evidence file, folios 207 to 210).

[60] *Cf.* Written communication Nº 879 CP-PREBOSTE 2/29.02.03 of June 22, 1995 (evidence file, folios 192 to 193).

[61] *Cf*. Communication of the Provincial Prosecutor addressed to the Criminal Court, dated August 18, 1995 (evidence file, folios 211 to 212).

[62] *Cf.* Communication of the Provincial Prosecutor of Lima to the judge, dated September 7, 1995, Motion of *res judicata* (evidence file, folios 215 to 216).

[63] *Cf.* Resolution of the 27th Criminal Court of Lima in file of N-431-94 dated September 11, 1995 (evidence file, folios 217 to 218), and written communication 431-91.EDT issued by Judge María Teresa Jara García to the Third Permanent Court of the Second Judicial Zone of the Army, dated September 12, 1995 (evidence file, folios 220 to 221).

[64] *Cf*. Request presented by Santiago Pérez Vera and Víctor Tarazona Hinostroza to the 27th Criminal Court of Lima, dated April 19, 2001 (evidence file, folios 3005 to 3012). See also: *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 44.

[65] This norm establishes the procedure for the implementation of supranational judgments pursuant to the treaties to which Peru is a party; the judgments issued by international tribunals must be transcribed by the Ministry of Foreign Affairs, sent to the President of the Supreme Court, who, in turn, must send them to the Chamber in which the domestic jurisdiction was exhausted and order the execution of the supranational judgment by the Specialized Judge or Judge of Mixed Competence. *Cf.* Communication of Mr. Pérez Vera and Mr. Tarazona Hinostroza to the President of the Supreme Military Justice Council of January 7, 2001 (evidence file, folios 2544 to 2551); Communication of Víctor Tarazona Hinostroza to the President of the Supreme Military Justice Council of January 31,

62. On August 29, 2001, the Provincial Prosecutor sent his opinion regarding the request of the petitioners to the Criminal Court, proposing that the request be declared out of order because the petitioners had annexed a copy of the decision of the Inter-American Court in the *Barrios Altos* case that did not comply with the procedure set out in the Organic Law of the Judiciary.[66]

63. On October 23, 2002, the Provincial Prosecutor issued an opinion favorable to the removal of the file of the case from the archive and the continuation of the trial after having received the decision of the Inter-American Court, pursuant to the Organic Law.[67]

64. On January 21, 2003, the Provincial Court ordered the case removed from the archive and the criminal trial reopened; declared null and void the resolution that accepted the motion of *res judicata* in favor of Sgt. Evangelista Pinedo; extended the duration of the committal proceedings so that a series of procedures could be carried out, and instructed the Judicial Police to locate and arrest the defendant.[68]

E. The trial and conviction of Sgt. Evangelista Pinedo (January 21, 2003 to July 23, 2008)

65. On May 12, 2003, the Provincial Prosecutor requested that the judge of the case extend for 30 days the committal proceedings because the investigation had just opened and the extension was mainly necessary to ask the competent authority to locate and arrest the defendant and to receive the statements of the members of the Army patrol.[69] On June 9, 2003, the Thirteenth Provisional Criminal Court of Lima accepted the extension of the period of committal proceedings so that the Prosecutor could pursue different procedures and receive the statements.[70]

66. On July 15, 2003, testimony was taken from Army Technican 3rd Grade Antonio Enrique Vivas Chapilliquen, Head of the Military Patrol that included Sgt. Evangelista Pinedo on August 9, 1994.[71] On July 21, 2003, Mr. Tarazona Hinostrosa testified.[72] On September 12, 2003, the Provincial Court received the opinion of the Prosecutor in which he informed on the procedures carried out and those that were not during the committal proceedings.[73]

67. On September 25, 2003, the Prosecutor requested the judge to rule on the State's civil responsibility as a third party in the proceedings, as had been requested by the civil complainants on July 18, 2003, on the grounds that the charges imputed to the defendant took place on August 9, 1994 during an operation of the Peruvian Army in which he officially

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2002 (evidence file, folios 2552 to 2555); and Communication of Gloria Cano Legua, lawyer of Mr. Tarazona Hinostroza, to the President of the Supreme Military Justice Council, dated April 25, 2002 (evidence file, folios 2556 to 2560).

66 *Cf*. Opinion N° 673 issued by the 27th Provincial Prosecutor of Lima in case file N° 431-94, dated August 29, 2001 (evidence file, folios 230 to 232).

67 *Cf*. Opinion N° 1012-02 issued by the 27th Provincial Prosecutor of Lima in case file N° 431-02-94, dated October 23, 2002, (evidence file, folios 235 to237).

68 *Cf*. Decision of the 16th Criminal Court of Lima of January 21, 2003 (evidence file, folios 240 to 243).

69 *Cf*. Opinion N° 1071 issued by the 16th Provincial Prosecutor of Lima in case file N° 559-2002 of May 12, 2003 (evidence file, folios 246 to 256).

70 *Cf*. Decision of the Thirteenth Provisional Criminal Court of Lima of June 9, 2003 (evidence file, folios 257 to 259).

71 *Cf*. Testimony of July 15, 2003 of Antonio Enrique Vivas Chapilliquen (evidence file, folios 260 to 265)

72 *Cf*. Preventive declaración of July 21, 2003 of Mr. Tarazona Hinostroza (evidence file, folios 266 to 269).

73 *Cf*. Opinion N° 1587 of the Prosecutor in case file N° 550-02 of September 9, 2002 (evidence file, folios 270 to 273).

participated.[74] On December 22, 2003, the judge ruled the Ministry of Defense to be a civilly responsible third party with respect to the payment of reparations.[75]

68. By communication of May 7,, 2004, the Third Superior Criminal Prosecutor of Lima asked the judge for an extension of 50 days since he had not been able to gather the elements necessary to arrive at a clear decision on the commission of the offenses and the degrees of responsibility of the defendant. The proposed procedures to be carried out included: 1) receive the testimony of the defendant, notifying him of the punishment for noncompliance, if ruled a fugitive, and 2) take the statements of the members of the patrol and other individuals.[76] On May 21, 2004, the judge granted the extension so that the procedures might be pursued to better clarify the incident.[77]

69. On November 2, 2004, the judge issued a resolution that warned that there were still important procedures to carry out in the proceedings and resolved, *inter alia*: 1) that orders be given to immediately locate and arrest Sgt. Evangelista Pinedo; 2) that statements be taken from the members of the Patrol, and 3) that the Army Directorate of Personnel be urgently contacted for it to report on the employment of the defendant and, if still serving, "to make him physically available to the court due to the existence of the arrest warrant."[78]

70. On August 2, 2005, the judge extended the committal proceeding for 30 days in order to carry out the procedures. In connection with the taking of testimony of the members of the Patrol, an order was given for notice to be served on the National Registry of Identity and Civil Status (hereinafter "RENIEC") because, according to the report sent by the Army Directorate of Personnel, those troops were no longer serving and, therefore, their testimonies had not been received.[79]

71. On September 21, 2005, the judge recused himself from further presiding over the proceedings, pursuant to the Administrative Order that expanded the jurisdiction of the Specialized Courts for Crimes of Terrorism to allow them to hear cases involving common crimes that were human rights violations, a situation like that of the case before the judge. Therefore, the judge sent the record to the Superior Court of Justice of Lima in order that it could, in turn, be sent to the Specialized Court for Crimes of Terrorism.[80]

72. On December 19, 2005, the Judge of the Fourth Supraprovincial Criminal Court asked the President of the Superior Chamber for an exceptional extension to pursue various procedures, including taking the testimony of the defendant and that of the 11 members of the patrol.[81]

73. On May 30, 2006, the Senior Prosecutor of the Office of the National Superior Criminal Prosecutor asked the President of the National Criminal Chamber for an exceptional extension of 20 days to receive the testimony of the defendant or, failing that, to determine his legal

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[74] *Cf*. Opinion of the Prosecutor in case file N° 550-02 of September 25, 2003 (evidence file, folios 276 to 277).

[75] *Cf*. Decision of the 16th Criminal Court of Lima of December 22, 2003 (evidence file, folios 278 to 279).

[76] *Cf*. Opinion N° 596-2004 of the Third Superior Criminal Prosecutor of Lima in case file N° 429-2004 of May 7, 2004 (evidence file, folios 280 to 281).

[77] *Cf*. Decision of the 16th Criminal Court of Lima of May 21, 2004 (evidence file, folios 282 to 283.

[78] *Cf*. Decision of the 16th Criminal Court of Lima of November 2, 2004 (evidence file, folios 286 to 287).

[79] *Cf.* Judicial notification issued by the 16th Criminal Court of Lima on August 2, 2005 (evidence file, folios 288 to 289).

[80] *Cf*. Decision of recusal of the 16th Criminal Court of Lima of September 21, 2005 (evidence file, folios 290 to 291).

[81] *Cf.* Final report on an extension issued by the 4th Supraprovincial Criminal Court on December 19, 2005 (evidence file, folios 292 to 295).

situation and for the testimony to be taken from the 11 members of the patrol.[82] On May 31, 2006, the National Criminal Chamber denied the extension because, in the present case "the limit for committal proceedings set by law has been exceeded and the deadline has been extended on repeated occasions, […] and the failure to pursue the procedures requested by the representative of the Public Ministry, at the committal stage, poses no obstacle to the adoption of the corresponding ruling."[83]

74. On July 14, 2006, the Fourth Superior Criminal Prosecutor formally accused Sgt. Evangelista Pinedo of being the perpetrator of crimes against life, body and health -simple homicide- with respect to Ms. Tarazona Arrieta and Ms. Pérez Chávez, and injuries with respect to Mr. Bejarano Laura, and requested a sentence of 10 years in prison as well as the joint payment with the civilly responsible third party of 30.000 New Soles as civil reparation for each of the victims.[84]

75. On October 3, 2006, the accused was a fugitive from justice and no date had been set for the oral proceedings since he had not appeared before the National Criminal Chamber.[85] Between the years 2007 and 2008, the petitioners requested the President of the National Criminal Chamber on three occasions to reissue the arrest warrant against Sgt. Evangelista Pinedo and also to contact: 1) the Warrants Office of the PNP to immediately locate, arrest and refer him to the judicial authorities; 2) the Immigration Office of the Ministry of Interior and the National Office of Electoral Processes (hereinafter "ONPE") for each of them to report whether the accused had entered or left the country recently and whether he had voted in the last elections, and 3) the Judicial Police, for it to report on the steps taken to arrest the accused.[86]

76. On June 27, 2007, the National Criminal Chamber reiterated the arrest warrants.[87] On July 12, 2007, the Immigration Directorate informed the Chamber that there were no migratory movements by the accused. On July 16, 2007, the ONPE informed the Chamber that Sgt. Evangelista Pinedo had voted in the first round of the 2006 general elections, as well as in the regional and municipal elections of that year.[88] On November 22, 2007, the National Criminal Chamber ordered that it be kept in mind and added the reports to the record.[89]

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82 *Cf*. Opinion N° 09-2006-4ºFSPN-MP/FN of the Superior Prosecutor of May 19, 2006 (evidence file, folios 296 to 298).

83 *Cf*. Decision of the National Criminal Chamber in case file N° 13-06 of May 31, 2006 (evidence file, folios 299 to 300).

84 *Cf*. Opinion N° 12-2006-4ºFSPN-MP/FN of the Fourth National Superior Criminal Prosecutor of the Public Ministry in case file N° 13-06 of June 14, 2006 (evidence file, folios 76 to 81).

85 *Cf*. Resolution N° 483 of the National Criminal Chamber in case file N° 13-06, Secretariat of the Mesa de Partes, of October 3, 2006 (evidence file, folios 301 to 303).

86 *Cf*. Undated communication of the International Federation of Human Rights addressed to the President of the National Criminal Chamber in case file N° 13-2006 (evidence file, folios 304 to 305); communication of the International Federation of Human Rights addressed to the President of the National Criminal Chamber in case file N° 13-2006, received on November 19, 2007 (evidence file, folios 306 to 307); and communication of the International Federation of Human Rights addressed to the President of the National Criminal Chamber in case file N° 13-2006, received on March 3, 2008 (evidence file, folios 308 to 310).

87 *Cf*. Decision of the National Criminal Chamber in case file N° 13-06 of June 27, 2007 (evidence file, folios 3073 to 3074).

88 *Cf*. Communication of the International Federation of Human Rights addressed to the President of the National Criminal Chamber in file N° 13-2006, received on March 3, 2008 (evidence file, folios 308 to 310).

89 *Cf*. Decision of the National Criminal Chamber in file N° 13-06 of November 22, 2007 (evidence file, folios 3075 to 3076).

77. On January 7, 2008, the National Criminal Chamber reiterated its arrest warrant, requesting the relevant information from the Warrants Office and the Office of District.[90] On June 4, 2008, the Chamber ordered that the communication of the Head of the Department of Arrests – Division of the Judicial Police, which reported that it had not been possible to arrest the fugitive but that it was continuing to search for him, be added to the record.[91]

78. On June 20, 2008, the Conference of the Parties (Mesa de Partes) informed that Sgt. Evangelista Pinedo was "once again at the disposal and ordered the accused interned in the appropriate penal establishment, requesting information for that effect from the Warden of the Judicial Jail of Lima.[92] On June 27, 2008, the Secretariat of the Mesa de Partes informed that the accused was in the Penal Establishment of Lurigancho.[93] The same day, the National Criminal Chamber set July 21, 2008 as the date to begin the oral trial.[94]

79. On July 23, 2008, the National Criminal Chamber found Sgt. Evangelista Pinedo to be the perpetrator of the crime of simple homicide with respect to Ms. Tarazona Arrieta and Ms. Pérez Chávez, and the crime of grievous bodily harm with respect to Mr. Bejarano Laura, finding that he had "acted with gross negligence" and that "the investigation did not reveal an intent to kill the passengers." As "mitigating factors," the domestic tribunal took into account that the accused admitted the facts contained in the accusation, declaring him to be responsible for the crime of which he had been accused and also responsible for civil reparations to obtain a reduction of the sanction, sentenced him to six years in prison as of June 19, 2008, with credit for the period of his detention ordered by the Military Court (September 13, 1994 to August 29, 1995).[95]

80. The sentence also set civil reparations at 30.000 New Soles, to be paid jointly by the accused and by the Army in favor of Ms. Tarazona Arrieta and Ms. Pérez Chávez, and at 10.000 New Soles in favor of Mr. Bejarano Laura.

F. The serving of the full sentence and the reparations to the alleged victims (July 23, 2008 to January 6, 2011)

81. On January 29, 2010, Sgt. Evangelista Pinedo was released from the Lurigancho penitentiary because he was granted partial freedom by the 16th Criminal Court of Lima.[96]

82. In July, the petitioners filed for the annulment of the decision "regarding the civil redress,"[97] stating that civil reparations due to the commission of a crime must address such

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[90] *Cf.* Decision of the National Criminal Chamber in file N° 13-06 of January 7, 2008 (evidence file, folios 3077 to 3078).

[91] *Cf.* Decision of the National Criminal Chamber in file N° 13-06 of June 4, 2008 (evidence file, folios 3079 to 3080).

[92] *Cf.* Decision of the National Criminal Chamber in file N° 13-06 of June 20, 2008 (evidence file, folios 3081 to 3082).

[93] The evidence does not indicate how long the accused was in that prison, nor for what crime. *Cf.* Decision of the National Criminal Chamber in file N° 13-06 of June 27, 2008 (evidence file, folios 3083 to 3084).

[94] *Cf.* Decision of the National Criminal Chamber in file N° 13-06 of June 27, 2008 (evidence file, folios 3083 and 3084).

[95] *Cf.* Sentence of the National Criminal Chamber in file N° 13-06 of July 23, 2008 (evidence file, folios 55 to 65).

[96] *Cf.* Part s/n-DIVSMS-EP-Lurigancho of July 15, 2010 (evidence file, folios 2573 to 2574); and communication N° 5418-2010-DIRSEPEN-EP-Lurigancho of the Director of the Penitentiary of Lurigancho, dated August 5, 2010 (evidence file, folios 2575 to 2576).

[97] *Cf.* Communication of APRODEH and the FIDH addressed to the President of the National Criminal Chamber of July 2008 (evidence file, folios 313 to 314).

aspects as restitution, repair of the harm caused and compensation for material and moral damages.[98] On November 4, 2008, the First Temporary Criminal Chamber of the Supreme Court rejected the remedy of annulment because, although the civil complainants questioned the civil redress amount requested by the representative of the Public Ministry, they did so after the period established in Article 227 of the Code of Criminal Procedure.[99] On December 24, 2008, the conviction of July 23, 2008 was reaffirmed.[100]

83. On March 4, 2009, this decision was notified to the General Headquarters of the Peruvian Army.[101]

84. On April 27, 2009, the petitioners requested that the judge of the Fourth Supraprovincial Criminal Court order the Army to pay the civil redress.[102] On the following day, the Court reaffirmed its resolution of March 4, 2009, which ordered the payment by the Army.[103] The request to order such payment was repeated by the petitioners in June and on August 4, 2009.[104] On August 5, 2009, the Court once again requested the payment of civil redress by the Army[105] and, on the same date, the petitioners again reiterated that the payment be made by the civilly responsible third party.[106]

85. On November 30, 2009, the Office of the Treasurer of the General Office of Economy of the Army sent the court a judicial deposit in the amount of 5,000 New Soles for Mr. Bejarano Laura, and 15,000 New Soles on behalf of Ms. Tarazona Arrieta in payment of civil redress.[107] On December 15, 2009, the Fourth Supraprovincial Criminal Court notified Víctor Tarazona Hinostroza, father of Ms. Tarazona Arrieta, that the General Office of Economy had deposited the amount of 15,000 New Soles in his favor.[108]

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98 *Cf.* Grounds of the appeal of annulment, presented by the civil complainant on Augst 6, 2008, against the judgment of July 23, 2008 in the terms of what is established for the concept of reparation (evidence file, folios 66 to 75).

99 *Cf.* Decision of the First Temporary Criminal Chamber R.N. Nº 4370-2008 of November 4, 2008 (evidence file, folios 315 to 318).

100 *Cf.* Decision of the National Criminal Chamber in file N° 13-06 of December 24, 2008, Secretariat of the Mesa de Partes (evidence file, folios 319 to 321).

101 *Cf.* Written communication N° 2005-00069-0-4TO.JPSP of the Fourth Supraprovincial Criminal Court of March 4, 2009 (evidence file, folios 322 to 323).

102 *Cf*. Communication of APRODEH and FIDH addressed to the judge of the Fourth Supraprovincial Criminal Court, received April 27, 2009 (evidence file, folios 324 to 326).

103 *Cf*. Decsion of the Fourth Supraprovincial Criminal Court in file 2005-00069 of April 28, 2009 (evidence file, folios 3121 to 3122).

104 *Cf*. Communication of APRODEH and FIDH addressed to the judge of the Fourth Supraprovincial Criminal Court, in the record of the implementation of the judgment (evidence file, folios 327 to 328) and communication of APRODEH and FIDH addressed to the judge of the Fourth Supraprovincial Criminal Court, received on August 4, 2009 (evidence file,, folios 329 to 330).

105 *Cf*. Judicial notification of the Fourth Supraprovincial Criminal Court of August 5, 2009, received by APRODEH on August 21, 2009 (evidence file, folios 331 to 332).

106 *Cf*. Communication of APRODEH and FIDH addressed to the judge of the Fourth Supraprovincial Criminal Court, received on November 19, 2009 (evidence file, folios 333 to 334).

107 *Cf*. Written communication N° 097327 OGECOE / E-9c.19.04 and written communication N° 097326 OGECOE / E-9c.19.04 of the Treasury Office of the General Office of Economy of the Army, dated November 30, 2009 (evidence file, folios 3135 to 3139).

108 *Cf.* Judicial notification issued by the Fourth Supraprovincial Criminal Court to Mr. Tarazona Hinostrosa, dated December 15, 2009 (evidence file, folios 335 to 336).

86. According to the representatives, the Ministry of Defense did deposit the rest of the reparations ordered on July 23, 2008 (*supra* paras. 79 and 80) for the legal heirs of Ms. Tarazona Arrieta and Ms. Pérez Chávez, as well as for Mr. Bejarano Laura, before July 2011.[109]

87. Therefore, the State paid the totality of the compensation ordered by the court.

VIII
MERITS

88. With regard to the alleged violations of the rights recognized by the Convention in the present case, the Court will analyze: 1) the rights to judicial guarantees and to judicial protection of the next of kin of Ms. Tarazona Arrieta and Ms. Pérez Chávez, as well as those of Mr. Bejarano Laura; 2) the right to life of Ms. Tarazona Arrieta and Ms. Pérez Chávez, and the right to personal integrity of Mr. Bejarano Laura; 3) The right to personal integrity of the next of kin of Ms. Tarazona Arrieta, Ms. Pérez Chávez and the family members of Mr. Bejarano Laura, and 4) the duty to adapt the domestic law.

VIII-1
THE RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION

A. Arguments of the parties and of the Commission

89. The Commission alleged that the investigation carried out at the domestic level was not completed within a reasonable time. With regard to the domestic court hearing, the Commission pointed out that the Office of the Prosecutor never requested the rifles of the other 15 members of the patrol; never subjected the rifles to a parafin test; never reconstructed the scene of the crime or made a forensic planimetry. It added that the accused was not placed at the disposal of the Office of the Prosecutor by the Army, although he was being held in military installations and was subject to an arrest warrant. The Commission also claimed that it was proved that for seven years (from December 12, 1995 to January 21, 2003, date on which the case file was removed from the archive) the next of kin of the alleged victims did not have an effective recourse to guarantee their rights due to the application of Amnesty Laws Nos. 26.492 and 26.479, which was a factor in the delay in the investigations. With regard to the period from the removal of the case from the archive to the reaffirmation of the conviction, the Commission argued that the investigation of the Office of the Prosecutor displayed a lack of interest.[110] In addition, it indicated that, since the removal of the case from the archive, no effort had been made to locate Sgt. Evangelista Pinedo and it was not until two years later that the authorities discovered that he was in prison for the commission of a different crime.

90. The representatives argued that there was an infringement of the right to a "natural judge" and to due process of law, in relation to the right to access to justice of the victims and their family members, due to the assumption of the case by the military court, which was "manifestly incompetent" to hear it. They also maintained that the investigation had not been

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[109] Informed by the petitioners in their communication of July 27, 2011. *Cf*. Inter-American Commission on Human Rights. Merits Report 77/12, *Tarazona Arrieta et al.* November 8, 2012, para. 120 (evidence file, folio 33).

[110] Specifically, it pointed out that the Office of the Prosecutor requested on four occasions an extension of the period of committal proceedings and that when that Office presented the complaint, it had not pursued procedures different than those before the case was closed.

carried out within a reasonable time;[111] the investigation by the ordinary jurisdiction took 14 years because the case was sent to the archive in application of the amnesty laws; the unjustified delay between 1995 and 2003 after sending the case to the archive in implementing the procedures to locate and arrest Sgt. Evangelista Pinedo, and the delay in complying with the obligation to pay reparations.

91. The representatives also argued that the State did not conduct a diligent investigation since the authorities did not take the testimonies of the patrol members and of the accused. In addition, once the case was sent to the archive in 2003, on four occasions an extension of the investigation was requested and that during those extensions the requested procedures were not pursued. They also alleged, *inter alia*, a failure on the part of the authorities, especially those belonging to the military jurisdiction, to collaborate in locating and placing Sgt. Evangelista Pinedo at their disposal; a lack of diligence in investigating, which is proved by the excessive length of the proceedings; the lack of information to indentify and individualize those responsible and the failure to serve the full measure of "personal restriction." The representatives also indicated that all the individuals and all the facts of the case were not taken into account during the trial since the State did not investigate those who should have exercised proper control over their subordinates.

92. According to the State, the competent agencies to administer justice in Peru ensured that the individual responsible for the incident was identified, investigated, tried and punished and compensation was paid as a consequence of the incident. It concluded that this demonstrates that the investigations were compatible with the judicial guarantees and the judicial protection established in the Convention. It maintained that the right to a reasonable time was not infringed[112] because the lapse of time between the 27th Criminal Prosecutor's first complaint and the modifications to the criminal system of Peru as a consequence of the Court's Judgment in the *Barrios Altos* case should not be considered in calculating the duration. It claimed that the State had already been sanctioned by that Court and that, in complying with the *Barrios Altos* decision, it had acted to make the domestic system compatible with international standards. It added that the computation of time to establish an infringement of the principle of a reasonable time should begin from January 21, 2003, when the Lima court ordered the removal of the case file from the archive, to the date that the conviction was reaffirmed on July 23, 2008.

93. Finally, the State argued that there was no delay in complying with the payment of civil redress since that payment was subject to the procedures established in the budgetary law and that a period of two years and six months to comply with the totality of the obligation of a final judgment was reasonable and within the terms of the Convention. The State maintained that there were grounds for all of the requests for an extension of the committal proceedings. It added that the fact that the representatives could not contest the sentence due to the provisions of Article 290 of the Code of Criminal Procedure did not infringe any right and that it is not in the interest of the civil complainants that the sentence be increased.[113]

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[111] They indicated that it was not a complex case; that the family members of the victims deployed the necessary actions for the investigations to be carried out, and that the conduct of the authorities in charge of the process were negligent.

[112] The State added that it is a question of a complex procedure since Evangelista Pinedo was a member of the Army, which led to a request of recusal by the military jurisdiction. It indicated that the petitioners did not comply with the procedure of the legalization of international decisions established in Article 151 of the Organic Law of the Judicial Branch, which is why the request for a reopening received a negative opinion; and that Evangelista Pinedo was tried a second time because he was a fugitive from justice for a certain period.

[113] The State also indicated that the representatives could have asked that this norm not be applied in the specific case, pursuant to Article 138 of the Political Constitution of Peru, but that they did not do so.

94. The State also pointed out that the perpetrator of the incident was a member of the Army who accidentally shot the victims and that the Public Ministry decided to try or denounce only that individual. In addition, since the complaint did not include other persons allegedly responsible, they could not be brought before the National Criminal Chamber. The State argued that the sentence imposed on the accused was the result of careful deliberation by the judicial authorities and, with respect to serving the full sentence, it stated that the Code of Criminal Implementation governs compliance of the prison sentence and, pursuant to its Article 42(3), a possible prison benefit is limited freedom and, therefore, the granting of this benefit does not infringe any right recognized in the American Convention.

B. Considerations of the Court

95. The Court has held that the State has the obligation to provide effective legal recourses to all persons who allege that they are a victim of a human rights violation (Article 25), recourses that must be substantiated according to the rules of due process of law (Article 8(1), all part of the States' general obligation to ensure the free and full exercise of the rights recognized by the Convention to all persons who are subject to their jurisdiction (Article 1(1).[114]

96. The Commission and the representatives allege that the State violated Articles 8 and 25 of the Convention for the following reasons: a) the lack of a reasonable time with regard to the domestic proceedings against the perpetrator; b) the lack of due diligence in the investigations; c) closing the case by applying the amnesty law; d) the submission of the case to the military jurisdiction; e) the lack of proportionality of the sentence imposed on the accused; f) the failure to serve the full sentence; g) the impossibility of challenging the sentence; h) the limitation in the procedural laws on the proportionality of the sentences by the type of incident found in the present case, and i) the failure to prosecute other persons who might be responsible for the incident.

97. The Court will first analyze the arguments on the alleged lack of a reasonable time with regard to the domestic proceedings against the perpetrator of the incident; then analyze the lack of due diligence in the investigation, and finally it will offer an over-all evaluation of the arguments referred to in c) to i).

B.1. The lack of a reasonable time with regard to the domestic proceedings

98. The Court has stated that the "reasonable time" referred to in Article 8(1) of the Convention should be analyzed in relation to the total length of the proceedings, including the definitive sentence.[115] In addition, the period to implement the sentence to obtain the full payment of the compensation should also be taken into account in analyzing the reasonable time since civil redress was part of the criminal process of the perpetrator.[116]

99. The Court notes that the length of the criminal proceedings against Sgt. Evangelista Pinedo was approximately 16 years and two months, computed from the beginning of the proceedings on November 2, 1994 to the sentencing on January 6, 2011. The Court also notes

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[114] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 91 and *Case of Gutiérrez and family v. Argentina. Merits, Reparations and Costs.* Judgment of November 25, 2013. Series C No. 271, para. 97.

[115] *Cf. Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 71 and *Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs.* Judgment of May 19, 2014. Series C No. 277, para. 217.

[116] *Cf. Case of Furlán and family v. Argentina*, para. 151. Regarding the present case, see: Judgment of the National Criminal Chamber in case file N° 13-06 of July 23, 2008 (evidence file, folios 55 to 65).

that, during this period, the criminal proceedings were closed from September 11, 1995 to January 21, 2003, a period of more than seven years and four months.

100. Although it is true that the Court should generally consider the global length of a proceedings in order to analyze its reasonable time, in certain special situations it may be relevant to specifically examine its different stages.[117] For that analysis, the different phases of the proceedings may be distinguished, which correspond to the different periods of the proceedings against Sgt. Evangelista Pinedo.

101. The first period, from November 2, 1994 to September 11, 1995, is the period from the lodging of the criminal complaint to the closing of the case. The second period, from September 11, 1995 to January 21, 2003, is when the case was archived. This phase includes the period of one year and nine months between the request of removal from the archive in 2002 and the reopening of the case in 2003. Finally, the third is from January 21, 2003 to January 6, 2011, between the reopening of the case and the payment by the State of reparations in compliance with the judgment.

102. The Court reiterates its jurisprudence that the lack of reasonableness in the time to conduct an investigation or a trial, *per se,* constitutes, in principle, a violation of judicial guarantees. The Court has consistently taken into account four elements in determining the reasonableness of the period: i) the complexity of the matter; ii) the procedural activity of the interested party; iii) the conduct of the judicial authorities, and iv) the harm caused to the legal situation of the person involved in the proceedings.[118]

103. With respect to the complexity of the case, the Court notes that the present case is not complex. It also notes that the criminal proceedings against the perpetrator of the incident do not involve complex legal aspects or discussions that could justify a delay of approximately 14 years. The Court especially takes note that Sgt. Evangelista Pinedo admitted his guilt on the day following the incident; there are witnesses who concur in their versions of what occurred, and there is no evidence that offers complexities.

104. As to the procedural activity of the interested parties, the Court notes that the arguments and the evidence show that they did not delay the proceedings and that they had only intervened when relevant. More specifically, the Court notes that the interested parties asked to be civil complainants in the process; the failure to apply the amnesty law; the reopening of the trial; the annulment of the sentence with respect to the civil redress, and, on various occasions, the reiteration of the arrest warrant of the accused.

105. With respect to the third element, the Court's analysis may be found in the paragraphs that follow (*infra* paras. 106 to 121). At to the fourth element -the degree of potential harm to the legal situation of the individuals involved in the proceedings- the Court considers that the Commission and the representatives did not present evidence that would allow a conclusion on whether there was relevant harm to the legal situation of the persons or provide reasons to imply that a special acceleration should have been given to the proceedings.

106. With respect to the conduct of the judicial authorities, the Court notes that the evidence demonstrates that various aspects could have influenced the length of the criminal committal proceedings: i) those related to the opening of the committal proceedings; ii) those

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[117] *Cf. Case of the Afro-descendent Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 20, 2013. Series C No. 270, para. 403. See also, European Court of Human Rights. *Case of Bunkate v. The Netherlands* (N° 13645/88). Judgment of May 26,1993, paras. 20 to 23 and *Case of Pugliese v. Italy (N. 2)* (N° 11.671/85). Judgment of May 24, 1991, para. 19.

[118] *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, para. 155 and *Case of Landaeta Mejías Brothers et al. v. Venezuela. Preliminary Objections, Merits, Reparations and Costs.* Judgment of August 27, 2014. Series C No. 281, para. 246.

related to determining the judge, bearing in mind that for approximately one year the case was heard by two different jurisdictions (ordinary and military); iii) on various occasions, the prosecutor requested extensions for pursuing different procedures, which were granted except on one occasion; iv) the closing of the case due to the application of the amnesty law, the proceedings lasted approximately seven years; v) the arrest of the accused, and vi) the length of time to pay the reparations. The Court shall now refer to each of these elements in the order established above.

i. The opening of the criminal committal proceedings

107. The Court notes that the record shows that the Office of the General Prosecutor received the complaint of the CNDDHH on August 12, 1994 and that, on November 2, 1994, the Provincial Prosecutor filed a criminal charge before the 27th Criminal Court of Lima against the accused. On November 25, that court opened committal proceedings. The record also shows that there was a delay of more than three months in opening the criminal committal proceedings that would not, *per se*, be considered a lack of a reasonable time. In addition, the evidence indicates that there were certain procedures discharged during this period.

ii. The competent judge and the military jurisdiction

108. On August 10, 1994, a complaint on the incident was filed to the President of the War Council and, on August 12, 1994, the Office of the General Prosecutor received the complaint of the CNDDHH (*supra* para. 39). On August 31, 1994, the War Council opened criminal proceedings and ordered that the dispute on jurisdiction be discussed with the ordinary criminal jurisdiction. On November 25, 1994, the Criminal Court opened criminal proceedings and on the 24th of the month, the Military Court asked the Criminal Court to recuse itself from hearing the case (*supra* para. 43). On June 20, 1995, the Supreme Council of Military Justice ordered, *inter alia*, the definitive closing of the case (*supra* para. 52). On September 11, 1995, the Criminal Court also ordered the definitive closing of its case by applying the amnesty law and, approximately three months after the case had been closed, the same court denied the request of recusal of the Military Court on the grounds that it was a question of homicide (*supra* paras. 44 and 59).

109. The Court notes that the Commission and the representatives alleged a violation of the right to a natural or competent judge. The Court considers that it is not necessary to examine that allegation since the proceedings against the perpetrator of the incident in the military jurisdiction lasted less than a year and that at the reopening of the case he was only tried by the ordinary jurisdiction, which convicted him. Therefore, the only issue to analyze is the impact on the reasonable time of the proceedings caused by the fact that, for a certain period, the case was being heard under both the military and the ordinary jurisdictions.[119]

110. The Court holds that the evidence does not show that the fact that the accused, during a period of less than a year, was simultaneously investigated by the military and the ordinary jurisdiction, contributed to the delay of the proceedings. It also notes that certain procedures were advanced in both jurisdictions, but that this did not obstruct either of the proceedings. In addition, the military jurisdiction never reopened the file after its closing due to the application of the amnesty law and, thus, the co-existence of the case in two jurisdictions was not a factor during the rest of the proceedings. Consequently, the Court does not consider that the hearing of the case by the military jurisdiction for a certain period would have resulted

[119] *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations*. Judgment of November 30, 2012. Series C No. 259, paras. 158 and 159.

in a delay, preventing the criminal proceedings from being conducted within a reasonable time.

iii. Extending the periods for pursuing various procedures

111. The Court notes that on April 25, 1995, May 12, 2003 and May 7, 2004 the Office of the Prosecutor requested extensions in order to carry out various procedures, which were granted by the judge (*supra* paras. 47, 65 and 68). On August 2, 2005 the judge extended *de oficio* the period for 30 days and then recused himself from hearing the case (*supra* paras. 70 and 71). On May 30, 2006, the Office of the Proscutor requested an extension of 20 days, which was denied by the Superior Criminal Chamber, because "the period has been extended on repeated occasions" (*supra* para. 73).

112. In the second procedural stage after the reopening of the proceedings, various extensions of the period were also granted. In a case where the facts and the law are not very complex, the evidence does not provide any grounds to show why the procedures could not have been carried out, and more expeditiously, during the first stage of the investigation. The Court takes note that two different domestic tribunals indicated that they had extended the period on repeated occasions and that one of them, the National Criminal Chamber, stated that "the limit for committal proceedings set by law has been exceeded" (*supra* para. 73). Therefore, the Court holds that the extension of the various periods after the reopening of the criminal proceedings had a negative impact on the reasonable time of the proceedings.

iv. The closing of the case due to the application of the Amnesty Law

113. On September 11, 1995, the judge accepted the motion of *res judicata* filed by the accused based on the Amnesty Law and ordered the definitive closing of the case (*supra* para. 59) and, as a result, the accused was released. On April 19, 2001, the civil complainants filed a request of "desarchivamiento" of the proceedings and, on January 21, 2003, the 16th Criminal Court of Lima accepted the request and reopened the criminal case[120] (*supra* paras. 60 and 64). However, from the reopening to the moment that he was arrested, the accused was a "fugitive from justice" for more than five years and, therefore, it was not possible to hold an oral hearing in the case.

114. The Court notes that the proceedings were reopened by the domestic court after the Inter-American Court had determined that Amnesty Laws 26.479 and 26.492 were incompatible with the American Convention and that they lacked legal effect. The Criminal Court of Lima, therefore, indicated that "by extended application it is necessary to apply to the present case what the Inter-American Court decided, since the processing of the case […] was resolved by applying Laws [N° 26.479 and Nº 26.492]; therefore it ordered the reopening of the proceedings against [Antonio] Mauricio Evangelista Pinedo." For its part, the State indicated that, in general, "after the *Barrios Altos* case, measures were adopted in favor of the position that the amnesty laws did not have any domestic legal effect."

115. The Court notes that the domestic court determined that the proceedings should be reopened because the amnesty law had been applied; a law that this Court had held to be incompatible with the Convention. Consequently, in view of the decision of the domestic court regarding the amnesty laws and since, pursuant to the Judgment in the *Barrios Altos* case, this case should not have been closed, just as the period between the request to send the file to the archive and its reopening negatively affected that period.

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[120] The State alleged that the period of one year and 277 days that occurred between the request and the reopening was due to the failure of the civil complainant to present a ceritified copy of the Judgment.

v. The arrest of the accused

116. The Court notes that, although the accused was not placed at the disposal of the Office of the Prosecutor by the Army during the first stage of the investigation of the incident, it was alleged without challenge that, in September 1994, he was being investigated by a military court in the military prison of Rimac. The proceedings were later closed from September 1995 to January 2003 and, as a result, the accused was released. The Court notes that, after the reopening, beginning in 2003 the authorities carried out various procedures in 2003, 2005, 2007 and 2008 in relation to the arrest warrants for Sgt. Evangelista Pinedo (*supra* paras. 75 to 78).[121] The evidence does not show that the warrants were deficient, but it does show that, as of June 20, 2008, the accused was under the custody of the State, although the record does not indicate when he was apprehended.

117. The Court notes that the authorities had the obligation to deploy the necessary means to locate Sgt. Evangelista Pinedo in order that he be brought to trial. Nonetheless, the Court recalls that such an obligation is one of means or of conduct and cannot be seen as a failure to comply for the mere fact that it did not produce a result.[122] Consequently, the Court holds that it was not proved that the conduct of the authorities related to the arrest of the accused had an impact on the reasonable time of the criminal proceedings.

vi. The length of time to pay the reparations

118. With respect to the payment of reparations ordered on the domestic level, it is noted that on July 23, 2008, the National Criminal Chamber ruled against the accused. On April 27, 2009, the petitioners requested that the judge order the payment of civil redress by the Peruvian Army that had been ordered to jointly pay the reparation. On August 5, 2009, the judge requested the payment by the Army and, on January 6, 2011, more than two years after the judgment, the full payment of the reparations to the beneficiaries was finalized.

119. Regarding the State's argument that there was no delay in complying with the payment of civil redress since that payment was subject to the procedures established in the budgetary law, the Court holds, as it has in other cases concerning Peru, that budgetary regulations may not be used to justify a delay of many years to comply with judgments.[123]

120. Therefore, the Court rules that the time that it took the State to pay civil redress, a part of the criminal proceedings that were delayed more than two years, violated the principle of a reasonable time.

vii. Conclusion `

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[121] It is noted that in 2003 and 2005 a domestic court extended the period of committal proceedings for various procedures, including to locate and arrest the accused. In 2007, the National Criminal Chamber ordered the same, asking the Office of the Division of Warrants of the National Police of Peru and the National Office of Elections (ONPE) to account for his migratory movements and whether he had voted in the last elections and to the Judicial Police that it present a report on the procedures and actions taken to locate and arrest the accused. It is noted that at least the first two reports were presented that same year. In 2008, the arrest warrant was repeated. That same year the Judicial Police informed that it had not been possible to locate or arrest the accused and that it was continuing the relevant procedures. The State indicated that on June 26, 2008, the National Criminal Chamber set a date to open the oral trial once the Secretariat of the Mesa de Partes informed that the accused was being held in the Penitentiary of Lurigancho.

[122] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 177 and *Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 19, 2014. Series C No. 277, para. 183.

[123] *Cf. Case of Acevedo Buendía et al. ("Discharged and Retired Employees of the Office of the Comptroller") v. Peru,* para. 75.

121. In conclusion, the Court considers that, with respect to the first period between the committal proceedings and the case being sent to the archive, the State did not violate a reasonable time, as shown by the aforementioned analysis. With regard to the second period that refers to the closing of the case, the Court holds that the State violated a reasonable time, including that which occurred between the request of "desarchivamiento" and the reopening of the case. During this period, the accused was released and nothing was done because the case was closed for more than seven years due to the application of the Amnesty Law, which was later left without effect by the domestic court. Finally, with respect to the third period, from the reopening of the case to the payment by the State of reparations, the Court holds that, in this period of approximately eight years in which various extensions of the procedural dead-lines were granted, the actions of the authorities went beyond the limits of a reasonable time and, therefore, with respect to this period the State violated that principle.

122. Consequently, the Court finds a violation of a reasonable time for a domestic criminal proceedings against Sgt. Evangelista Pinedo, recognized in Article 8(1) of the American Convention, in relation to Article 1(1) thereof, with respect to to Mr. Bejarano Laura, Víctor Tarazona Hinostroza, Lucila Arrieta Bellena, Santiago Pérez Vera and Nieves Emigdia Chávez Rojas.

B.2. The lack of due diligence in the investigation

123. The Court notes that the Commission and the representatives argued that the investigation of the incident did not comply with the requirements of due diligence for the following reasons: i) the Army did not place at the disposal of the civil authorities the rifle that the accused fired nor the rifles belonging to the other members of the patrol for later procedures; ii) it is not shown that the prosecutor in charge of the case requested the Army to turn over custody of those arms, and iii) the prosecutor did not order additional expert examinations after being informed of the incident; for example, a parafin test for all of the patrol members, the reconstruction of the scene of the crime or the making of a forensic planimetry.

124. The Court recalls that a State's obligation to investigate consists mainly in determining responsibilities and, if applicable, in prosecuting and convicting. The Court also reiterates that that obligation is a matter of means and conduct and that the mere fact that the investigation did not produce a satisfactory result is not a failure to comply. Additionally, the procedures involved in the investigation of the incident must be examined as a whole and it is not the task of the Court, in principle, to rule on the appropriateness of the investigative measures.[124]

125. In the present case, the investigation of the incident resulted in the recuperation of certain evidence; the determination of what happened, and the identification of the person responsible. The Court considers that it was not proved that the flaws alleged by the representatives and the Commssion, in relation to the totality of the procedures carried out by the State, were a deciding factor in the clarification of the circumstances of the case or in the final result of the proceedings against the perpetrator of the incident.[125]

126. Therefore, the Court finds that the State is not responsible for the violation of judicial guarantees and of judicial protection due to a lack of due diligence in investigating the incident related to the present case.

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[124] *Cf. Case of Castillo González et al. v. Venezuela. Merits*. Judgment of November 17, 2012. Series C No. 256, para. 153.

[125] *Cf. Case of Luna López v. Honduras*, para. 167.

B.3. Other arguments with regard to the violation of the rights to judicial guarantees and to judicial protection

127. With respect to the arguments of the representatives on the impossibility to contest the decision and the limitation established in the legislation on the proportionality of sentences for the type of acts analyzed in this case (*supra* para. 96, (g) and (h)), the Court notes that they do not explain why these provisions in the domestic legal order are contrary to the American Convention.

128. As to the arguments of the Commission and the representatives on the application of the amnesty law and the submission of the case to the military jurisdiction (*supra* para. 96, (c) and (d)), the Court refers to its analysis on the impact that these had on a reasonable time (*supra* paras. 109 to 111 and 114 to 116) and does not consider them to be autonomous violations of Articles 8 and 25 of the Convention, since both the amnesty law and the military jurisdiction had ceased to be obstacles to resolve the case judicially.

129. With regard to the arguments of the representatives on the lack of proportionality of the sentence and on serving the full sentence (*supra* para. 96, (e) and (f)), the Court notes that they offer no reasons why those actions would be violations of the Amerian Convention.

130. As to the argument of the representatives on why the other possibly responsible persons were not tried (*supra* para. 96, i)), the Court notes that the Public Ministry conducted an effective investigation and decided to only prosecute Sgt. Evangelista Pinedo as the person who fired on the microbus and not his superior nor the soldier who was with him. There was no evidence nor any allegations that inidicated that the Public Ministry had taken that decision on fraudulent grounds or in collusion with the involved parties.[126]

131. Therefore, the Court finds that the State is not responsible for the violation of the rights to judicial guarantees and to judicial protection for the actions related to the aforementioned arguments (*supra* paras. 127 to 130).

VIII-2
THE RIGHTS TO LIFE AND PERSONAL INTEGRITY OF ZULEMA TARAZONA ARRIETA, NORMA PÉREZ CHÁVEZ AND OF LUÍS BEJARANO LAURA
(Articles 4 and 5(1) of the American Convention)

A. Arguments of the parties and of the Commission

132. The Commission concluded that Peru had violated Article 4(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Ms. Tarazona Arrieta and Ms. Pérez Chávez and Article 5(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Bejarano Laura, because: a) on August 4, 1994, a soldier caused the deaths of Ms. Tarazona Arrieta and Ms. Pérez Chávez and wounded Mr. Bejarano Laura; b) during the military operation neither the interception of vehicles nor the use of arms was authorized and for which there was no justification, and c) the lack of a diligent investigation during the first stage of the criminal proceedings. Nonetheless, the Commission considered that the violation had been partially remedied since the accused had been tried and convicted by the competent jurisdictional authorities and non-pecuniary compensation had been paid to the next of kin of the deceased victims and to Mr. Bejarano Laura, pursuant to the decision of the domestic court of July 23, 2008.

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[126] The evidence shows that the superior of the accused, A.N.C.C., was punished with eight days of detention for the failure to control the personnel under his command. *Cf.* Statement of A.N.C.C. of July 15, 2003 (evidence file, folios 260 to 265).

133. The representatives argued that "the unnecessary, deliberate and disproportionate action of a member of the Army" caused the deaths of Ms. Tarazona Arrieta and Ms. Pérez Chávez and the grievous wounding of Mr. Bejarano Laura while the State had the positive obligation to protect the life of its citizens through the action of the Armed Forces. They added that the soldiers were not authorized to stop public transport vehicles, but only to request the identification documents of pedestrians and that intercepting the bus was done in a violent and surprising manner that culminated in Sgt. Evangelista Pinedo firing his rifle. In addition, they recalled that "the soldiers left the scene without giving first aid to the victims or informing their superior of the incident."[127]

134. The State argued that the domestic court held that Sgt. Evangelista Pinedo had acted with gross negligence. It stated that, therefore, it was not a deliberate act; that the accused was aware of the possibility that certain consequences could arise from his actions, and that nonetheless he accepted the blame. It indicated that it was a case that involved the offenses of homicide and causing grievous injuries, for which the National Criminal Chamber had convicted him. The State added that the accused's act was not the result of an Army order to kill nor did it have a contextual element of the offense of a generalized or systematic armed attack against the civilian population nor was the Army aware of the attack and that, on the contrary, it was the "fotuitous, accidental and isolated" act of a member of the Armed Forces. It concluded that "the acts of the present case had been partially repaired" by means of the serious investigation that resulted in criminal proceedings, a conviction by the domestic court and the payment of compensation to the next of kin of Ms. Tarazona Arrieta and Ms. Pérez Chávez, as well as to Mr. Bejarano Laura.

B. Considerations of the Court

135. The Court must analyze the State's international responsibility for the deaths of Ms. Tarazona Arrieta and Ms. Pérez Chávez and the injuries to Mr. Bejarano Laura as a consequence of a gunshot by a soldier against a public transport vehicle that was carrying the alleged victims. The arguments of the parties and of the Commission on the State's eventual international responsibility due to the lack of due diligence in the investigation and to the reasonableness of the time of the domestic proceedings has already been analyzed by the Court in the chapter on the alleged violation of the rights to judicial guarantees and to judicial protection (*supra* Chapter VIII-1). The facts and the arguments of the Commission and of the parties show that the surviving victim and the next of kin of the deceased victims were repaired domestically.

136. This Court has already stated that the Inter-American System of Human Rights has a "local or national tier consisting of each State's obligation to guarantee the rights and freedoms recognized in the Convention and punish the violations committed" and that "if a specific case is not resolved at the local or national level, the Convention provides an international tier where the principle bodies are the Commission and this Court." The Court has also indicated that "when a question has been definitively settled under domestic law -to use the languge of the Convention- the matter need not be brought before this Court for 'approval' or 'confirmation.'"[128]

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[127] The representatives also stated that, although the acts could be considered as "opposing resistance to authority and to impede flight, even when the abstention of the use of force would have permitted the flight of persons who were the object of the state action, the agents should not have employed lethal force on persons who did not represent a real or imminent threat to the agents or third persons." Consequently, they indicated that "this act, did not definitively constitute a situation of absolute necessity. On the contrary, the agents indiscriminately fired high calibre arms causing injuries and death."

[128] *Case of Las Palmeras v. Colombia. Merits*. Judgment of December 6, 2001. Series C No. 90, para. 33.

137. Therefore, State responsibility under the Convention can only be found at the international level after the State has had the opportunity to find, if applicable, a violation of a right and to repair the harm caused by its own means. This is the principle of complementarity (or subsidiarity) that transversely informs the Inter-American System of Human Rights, which is, as expressed in the Preamble to the American Convention, "reinforcing and complementary to the protection offered by the domestic order of the American States." Thus, the State "is the principal guarantor of human rights and that, as a consequence, if a violation of said rights occurs, the State must resolve the issue in the domestic system and, if applicable, redress the victim before resorting to international forums such as the Inter-American System of Human Rights; since it derives from the ancillary nature of the international system in relation to local systems for the protection of human rights."[129] This subsidiary nature of the international jurisdiction means that the system of protection established by the American Convention on Human Rights is not a substitute for the national jurisdictions, but rather it complements them.

138. The Court notes that, as has been pointed out (*supra* para. 2(a)), the initial petition was filed before the Commission on January 22, 1996, approximately four months after the archiving of the case by the Criminal Court (*supra* para. 59), when the State had not yet tried the person responsible for the incident nor had it repaired the alleged victims. On June 3, 2013, the Commission submitted the case to the Court (*supra* para. 2(e)); that is, more than 17 years after the filing of the initial petition.

139. While the case was before the Commission, the criminal proceedings were reopened, the facts investigated, the person responsible tried and convicted and the victims repaired by the Peruvian authorities. The Commission, in its brief of submission, recognized that this implied that the alleged violations of the rights to life and personal integrity had been "partially remedied." However, in its final observations at the public hearing, it indicated that it had realized "the need to submit to the Inter-American Court a case the resolution of which was not complete and that it did not require a major effort by the State," because, *inter alia*, of "the need to obtain justice due to the failure to comply with the recommendations by Peru" and because "the State indicated that it would not comply with the recommendation" and also "at the express request of the victims and their family members."

140. The evidence in the record shows that the agencies of the administration of criminal justice in Peru effectively investigated, tried and convicted the accused and punctually repaired the next of kin of Ms. Tarazona Arrieta and Ms. Pérez Chávez, as well as Mr. Bejarano Laura. Therefore, in the specific circumstances of this case and bearing in mind the terms of the American Convention, the Court considers that, in application of the principle of complementarity, it is not necessary to analyze the alleged violations of the rights to life and to personal integrity.

141. Therefore, the Court will not rule on the State's international responsibility for the alleged violations of Article 4(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Ms. Tarazona Arrieta and Ms. Pérez Chávez, and of Article 5(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Bejarano Laura.

VIII-3
RIGHT TO PERSONAL INTEGRITY OF THE FAMILY MEMBERS OF ZULEMA TARAZONA

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[129] *Case of Acevedo Jaramillo et al. v. Peru. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs.* Judgment of November 24, 2006. Series C No. 157, para. 66 and *Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations*. Judgment of November 30, 2012. Series C No. 259, para. 142.

ARRIETA, NORMA PÉREZ CHÁVEZ AND OF LUÍS BEJARANO LAURA
(Article 5, in relation to Article 1(1) of the Convention)

A. Arguments of the parties and of the Commission

142. The Commission argued that the violation by the State of the rights to life, to personal integrity, to judicial guarantees and to an effective recourse to the detriment of the alleged victims, as well as the delay in the payment of non-pecuniary compensation, had created in the family members of Ms. Tarazona Arrieta, Ms. Pérez Chávez and in Mr. Bejarano Laura, "suffering, anguish, insecurity, frustration and powerlessness vis-à-vis the State authorities." The representatives maintained that the family members of the alleged victims had "suffered greatly from the unexpected loss of their loved ones and from the serious injuries" caused to one of the victims. They also indicated that such suffering had "heightened as a consequence of the numerous difficulties encountered during the proceedings of the criminal trial […] which represented an additional suffering caused by the loss of or the injuries to the [alleged] victims," which has not been remedied.

143. The State alleged that it had investigated the incident and, therefore, it could not be considered responsible for the alleged violation of the right to persoal integrity of the family members of the alleged victims. It added that "it is probable that some of the suffering of the family members of Zulema Tarazona Arrieta and Norma Teresa Pérez Chávez, as well as of Luís Alberto Bejarano Laura, are similar to that of the family members of victims of similar cases," but because "the perpetrator of the incident was convicted by the competent national jurisdictional authorities and payment of compensation was made, the events of the present case have been totally remedied," and thus the State, pursuant to international law, is not obliged to repair the family members.

B. Considerations of the Court

144. The Court has held that certain violations of human rights may cause suffering and anguish to the family members of the alleged victims, in addition to a feeling of insecurity, frustration and impotence, and has held that such suffering to the detriment of the mental and moral integrity of the family members constitutes a violation of Article 5 of the Convention.[130] It is, therefore, an additional suffering that they have endured as a result of the specific circumstances of the violations perpetrated against their loved ones and because of the subsequent acts or omissions of the State authorities in relation to the facts.[131]

145. The Court considers it relevant to recall that although it has determined that a violation of the right to personal integrity can be declared with regard to the direct next of kin of the victims of certain human rights violations by applying a presumption *iuris tantum* for parents, children, spouses and permanent companions, provided that this responds to the specific circumstances of the case, as has happened, for example, in the cases of some massacres, forced disappearances of persons or extrajudicial executions.[132] Therefore, a violation to personal integrity cannot be presumed in all types of cases, nor with regard to all family members.

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130 *Cf. Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, paras. 114 and 116 and *Case of Luna López v. Honduras*, para. 202.

131 *Cf. Case of the Massacre of Mapiripán v. Colombia.* Judgment of September 15, 2005. Series C No. 134, para. 144 and *Case of Luna López v. Honduras*, para. 201.

132 *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs.* Judgment of November 27, 2008. Series C No. 192, para. 119 and *Case of Luna López v. Honduras*, para. 202.

146. The Court has also held that, in cases in which the circumstances do not indicate a serious human rights violation under its case law, the infringement of the right to personal integrity of the family members, as regards the pain and suffering that occurred, must be proved.[133] In the present case, the suffering of the family members of the alleged victims, claimed by the Commission and the representatives, must be proved to find, if applicable, a violation of the right to personal integrity of the family members as a violation distinct from the alleged violation of other rights.

147. The Court notes that the arguments of the Commission and of the representatives on the sufferings of the family members of the alleged victims refer, as a cause of such suffering distinct from the death and injuries to the alleged victims, to the excessive length of the criminal proceedings. With regard to the case against Sgt. Evangelista Pinedo, the Court notes that there was not sufficient evidence to establish the additional suffering of the family members.

148. Consequently, the Court holds that the State did not violate Article 5(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of the family members of Ms. Tarazona Arrieta, Ms. Pérez Chávez and to that of Mr. Bejarano Laura due to the prolongation of the criminal proceedings against Sgt. Evangelista Pinedo.

149. The Court refers to its prior considerations in which it indicated that it would not rule on the alleged violation of the rights to life and personal integrity (*supra* paras. 133 to 139) and that, for the reasons explained in those paragraphs, it will not rule on the suffering caused to the family members by the death and injuries of the alleged victims.

VIII-4
DUTY TO ADOPT PROVISIONS OF DOMESTIC LAW IN RELATION TO THE RIGHTS TO LIFE AND PERSONAL INTEGRITY, AS WELL AS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION
(Article 2 of the American Convention, in relation to Articles 4, 5, 8 and 25)

A. Arguments of the parties and of the Commission

150. The Commission referred to the incompatibility of the amnesty law with the Convention during its examination of the alleged violation of Articles 8 and 25.[134] In its final written observations, it argued that the State did not provide information on the "special measures of prevention on the use of arbitrary force" and that, at the moment of the incident, there existed "a lack of a normative framework and of practices and training […] that govern the use of force" of State agents, in violation of Articles 4 and 5 of the Convention, in relation to Articles 1(1) and 2 thereof.

151. The representatives maintained that the State did not comply with its obligation to adapt its domestic law, pursuant to Article 2 of the American Convention, during the period in which the amnesty law had a legal effect. They also argued that domestic legislation to "determine the correct use of public force" did not exist when the incident of the present case occurred. They added that the use of public force by the Armed Forces is now governed by Legislative Decree Nº 1095 of 2009, whose "compatibility with the Politicial Constitution of

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[133] *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs.* Judgment of November 25, 2003. Series C No. 101, para. 232 and *Case of Luna López v. Honduras,* para. 203.

[134] The Commission argued that the violation of the rights of judicial guarantees and of judicial protection recognized in Articles 8 and 25 of the American Convention should be read in relation to Articles 1(1) and 2 thereof.

Peru has been questioned by a writ of unconstitutionality." In addition, they argued that some articles of that Decree were incompatible with the American Conventiion.

152. With regard to the amnesty laws, the State maintained that it had not violated Article 2 of the Convention since it took all necessary measures to correct the "irregularities produced during the application" of those laws so that they did not have any legal effect, thus complying with the Court's judgments in the *Barrios Altos* and *La Cantuta* cases.[135] With regard to its domestic norms on the use of force, the State indicated that the current norms "were not applied in investigating the present case," that the representatives turned to the Inter-American Court to request that it rule on a norm that has absolutely no relationship with the facts of the dispute and that "the current legislation on the use of force is a matter that does not appear in the Commission's Merits Report." In addition, it indicated that Decree 1095 has been appealed to the Constitutional Court and that the respective decision is pending and, thus, the representatives "have the procedural mechanisms of the domestic legislation to contest a norm that they believe might infringe some right.

B. Considerations of the Court

153. The Court has stated that Article 2 obligates the States Parties to adopt, in accordance with their constitutional procedures and the provisions of the Convention, the legislative or other measures that are necessary to make effective the rights and freedoms protected by the Convention.[136] Thus, the States not only have the positive obligation to adopt the necessary measures that guarantee the exercise of the rights recognized by the Convention, they must also avoid enacting laws that impede the free exercise of those rights and must avoid eliminating or modifiying the laws that protect them.[137]

154. In the present case, inasmuch as there were two types of arguments related to the alleged violation of the duty to adapt domestic laws as set out in Article 2 of the Convention, the Court will analyze: a) the compatibility of the amnesty law with the Convention (Article 2, in relation to Articles 8(1) and 25 thereof), and b) the normative on the use of force (Article 2, in relation to Articles 4 and 45 thereof).

B.1. The Amnesty Law of 1995

155. With respect to amnesty laws, this Court held in the *Barrios Altos v. Peru* case, that, in general, "all amnesty provisions, provisions of prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations."[138]

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135 The State indicated that "although amnesty laws were enacted in 1995 in Peru, the scene changed later because of the judgment of the Inter-American Court of Human Rights in the '*Barrios Altos v. Peru* case, due to having taken the measures to correct this situation" and that such correction was carried out through the reopening of various proceedings that had been closed due to the application of the amnesty law. It added that it had adopted "measures that considered such laws inexistent in the national legal system, in the sense that they had no effect in their moment and do not have any now."

136 *Cf.* Case of *Genie Lacayo v. Nicaragua. Merits, Reparations and Costs*. Judgment of January 29, 1997. Series C No. 30, para. 51 and *Case of expelled Dominicans and Haitians v. Dominican Republic*, para. 270.

137 *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs*. Judgment of May 30, 1999. Series C No. 52, para. 207 and *Case of expelled Dominicans and Haitians v. Dominican Republic*, para. 270.

138 *Cf. Case of Barrios Altos v. Peru. Merits*, para 41. See also, *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 164, paras. 112 and 114; *Case of La Cantuta v. Peru. Merits, Reparations and Costs*. Judgment of November 29, 2006. Series C No. 162, para. 152; *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, para. 171; *Case of Gelman v. Uruguay. Merits and Reparations*. Judgment of February 24, 2011. Series C No. 221, para. 225 and *Case of the*

156. As was previously stated, the criminal proceedings against Sgt. Evangelista Pinedo were archived for more than seven years and four months due to the application of Amnesty Law N° 26.479 (*supra* paras. 59 and 64). In 2003, the Provincial Court ordered the "desarchivamiento" (*supra* para. 64) of the case because "by extended application it is necessary to apply to the present case what the Inter-American Court decided [in the *Barrios Altos v. Peru* case]" and indicated that the Court had specified that that law and Law Nº 26.492 were "null and void *erga omnes.*"[139]

157. The domestic court concluded in its decision of 2008 that it was a case of homicide and serious injuries and held that Sgt. Evangelista Pinedo had "acted with gross negligence," deciding also that "the investigation did not reveal a decision to kill the passengers,"[140] which the Commission considered an "accidental shot." However, in the *Barrios Altos v. Peru* case this Court held that amnesty laws N° 26.479 and Nº 26.492 were incompatible with the American Convention since they did not permit the investigation of acts constituting serious human rights violations and, therefore, they lacked legal effect for this type of violation and for "other cases that have occurred in Peru, where the rights established in the American Convention have been violated."[141]

158. The Court concludes that the State did not comply with its obligation to adapt its domestic legislation, as established in Article 2 of the Convention, in relation to Articles 8 and 25 thereof, due to the application of Amnesty Law Nº 26.479 in the proceedings against Sgt. Evangelista Pinedo, to the detriment of Mr. Bejarano Laura and the next of kin of Ms. Tarazona Arrieta and Ms. Pérez Chávez.

B.2. The domestic normative on the use of force

159. With respect to the violation of the obligation to adapt the domestic laws with reference to the normative on the use of force, the Court notes that the representatives indicated that Article 2 of the Convention had been violated for two distinct reasons: a) the lack of a domestic normative on the use of force at the time of the incident and b) the existence of a domestic normative after the incident that would be incompatible with the American Convention.

160. With regard to the first point, in order to analyze the compatibility of the domestic normative with international law when the incident occurred, it is necessary in the first place to determine the applicable domestic norms, as well as the corresponding norms of international law and, secondly, to analyze the compatibility of the domestic order with the international order.

161. The Court recalls that the present case involves a shot fired by a member of the Army that caused the deaths of Ms. Tarazona Arrieta and Ms. Pérez Chávez and that seriously wounded Mr. Bejarano Laura (*supra* para. 1), which were characterized by the domestic court as crimes of simple homicide and of serious injuries due to gross negligence. Although it was an operation of the Peruvian Army, the use of arms by the soldiers on the patrol was not authorized. As was stated, the batallion, of which the accused was a member, was on patrol with the mission of stopping pedestrians and requesting their identification documents.

Massacres of El Mozote and surrounding areas v. El Salvador. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, para. 283.

139 Decision of the Court of January 21, 2003 (evidence file, folio 242).

140 Decision of the National Criminal Chamber of July 23, 2008 (evidence file, folios 60 and 61). The court added that the accused "must assume the risk of the life and physical integrity of the occupants of the microbus, in manipulating the FAL rifle in the direction of the vehicle, […] reason for which he should not cock his firearm pointing to the vehicle."

141 *Case of Barrios Altos v. Peru. Merits*, para. 44.

Nonetheless, as was established at the trial and stated by the Commission in its Merits Report, in waving his firearm in the direction of the microbus, Sgt. Evangelista Pinedo shot in the direction of the vehicle.

162. The Court recalls that the cases in which it has developed its case law on the use of force by State authorities involves facts that are distinct than those in the present case.[142] Those were not cases of an "accidental" shot, but rather actions or operations of the authorities in which the use of force was authorized or occurred intentionally. The standards established by the Court in that case law refer to that kind of situation by requiring, for example, that when a display of authority is deployed the State agents, insofar as possible, should assess the situation and draw up a plan of action before intervening.[143] The principles of legality, necessity and proportionality are directed to situations in which the use of force has some pre-established objective, which was absent here because the firearm was "accidentally" discharged.

163. Therefore, bearing in mind the manner in which the acts occurred, the Court must examine the domestic and international norms on the use of force, specifically with regard to the obligations of prevention and precaution that must be observed by the State's security forces.

164. With respect to the domestic normative, the Court notes that, at the moment of the incident, Legislative Decree N° 738 of 1991[144] was in effect and its second article had been amended by Law N° 25.410 in 1992.[145] That norm established that the political or police authorities could request the intervention of the Armed Forces for "acts of terrorism, acts of violence consistent with attempts, armed attacks on public or private enitities or public services in which arms of war or explosive artefacts are used or when sufficient elements of real or imminent danger are found, that surpass the operative capacity of the National Police of Peru." That Decree also indicated in its Article 3 that "the intervention of the Armed Forces […] must inform the Command of the Armed Forces by the most rapid means, for the relevant ends."

165. As to then existing provisions of the international *corpus iuris* on the use of force with respect to preventive and precautionary actions, the Court notes that the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990 (hereinater "Basic Principles") establishes that the "governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons." Similarly, it indicates that "whenever the lawful use of firearms is unavoidable, law enforcement officials shall: […] b) Minimize damage and injury,

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142 *Cf. Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Preliminary Objection, Merits, Reparations and Costs.* Judgment of July 5, 2006. Series C No. 150, paras. 67 to 69; *Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of July 4, 2007. Series C No. 166, paras. 82 to 85; *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251, paras. 84 to 85 and 87 to 88 and *Case of Landaeta Mejías Brothers et al. v. Venezuela*, paras. 130 to 131 and 134 to 136.

143 *Case of Nadege Dorzema et al. v. Dominican Republic*, para. 84 and *Case of Landaeta Mejías Brothers et al. v. Venezuela*, para. 130.

144 Legislative Decree N° 738, which "establishes norms that subject the Armed Forces when it intervenes in zones that have not been declared in a State of Emergency" of November 8, 1991 (evidence file, folios 3690 to 3691).

145 Law N° 25.410, which "subsitutes Article 2 of Legislative Decree Nº 738" of February 25, 1992 (evidence file, folios 3693 to 3694).

and respect and preserve human life, and c) Ensure that assistance and medical aid are rendered to any injured or affected person."[146]

166. The same Basic Principles indicate that the "rules and regulations on the use of firearms by law enforcement officials should include guidelines that […] b) firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm […] d) Regulate the control, storage and issuance of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them."[147]

167. An examination of these norms shows that the State did not adapt its domestic regulations to the Basic Priniciples for preventive and precautionary measures on the use of force. Specifically, the domestic norms on the use of force by State agents did not contain provisions of precautionary and preventive measures, nor on "assistance and medical aid […] to any injured or affected person." In addition, the incident in this case shows that Sgt. Evangelista Pinedo did not take the necessary precautions to avoid firing his rifle[148] nor that neither he nor his colleague on the patrol aided the injured after the shooting and, therefore, the failure to adapt the domestic normative could have had an impact on this specific case.

168. With respect to the domestic normative on the use of force after the incident and, specifically, with respect to Legislative Decree N° 1095 of 2009,[149] the Court will not analyze it nor its incompatibility with the Convention because that norm did not exist when the incident occurred and, therefore, it was not applied in the present case. In addition, the Court notes that the constitutionality of that Decree is being challenged.[150]

169. Consequently, the Court finds that the State is responsible for having violated, at the time of the incident, its obligation to adapt its domestic law on precautionary and preventive measures in the exercise of the use of force and on the assistance to injured or affected persons, in violation of Article 2 of the Convention, in relation to the rights to life and personal integrity contained in Articles 4 and 5 thereof, to the detriment of Ms. Tarazona Arrieta, Ms. Pérez Chávez and Mr. Bejarano Laura.

IX
REPARATIONS
(Application of Article 63.1 of the American Convention)

170. Based on the provisions of Article 63(1) of the Convention,[151] the Court has held that any violation of an international obligation that has caused harm entails the obligation to

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146 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted at the Eighth Congress of the United Nations on the Prevention of Crime and the Treatment of the Offender, Havana, Cuba, August 27 to September 7, 1990, Principles 2 and 5.

147 Basic Priniciples of 1990, Principle 11.

148 Decision of the National Criminal Chamber of July 23, 2008 (evidence file, folio 61).

149 Legislative Decree N° 1095, which "establishes rules for the use of force by the Armed Forces in the national territory" of August 31, 2010 (evidence file, folios 4961 to 4965).

150 Writ of unconstitutionality of December 19, 2011 (evidence file, folios 3757 to 3795).

151 Article 63(1) of the American Convention establishes that: "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 rights be remedied and that fair compensation be paid to the injured party."

provide adequate reparation.[152] In addition, the Court has stated that the reparations must have a causal nexus with the facts of the case, the violations declared, the damage proven, and the measures requested to redress the respective harm. The Court must, thus, analyze such concurrence of these factors in order to rule appropriately and in accordance with the law.[153]

171. Reparation for the harm caused by the breach of an international obligation requires, whenever possible, full restitution that consists in reestablishing the situation prior to the violation. If this is not feasible, the Court may order measures to protect the rights infringed and repair the harm caused by the violations.[154]

172. Consequently and regardless of the form of reparations that subsequently might be agreed to by the State and the victims regarding the violations of the American Convention declared in this Judgment, the Court will now proceed to order the measures to repair the harm caused to the victims. To do so, it will examine the claims of the Commission and of the representatives, as well as the arguments of the State in light of the criteria found in the Court's case law concerning the nature and scope of the obligation to make reparation.[155]

A. Injured Party

173. The Court reiterates that, pursuant to Article 63(1) of the American Convention, the injured party is anyone who has been declared the victim of any right recognized therein. This Court, thus, considers Zulema Tarazona Arrieta, Norma Pérez Chávez, Luis Alberto Bejarano Laura, Víctor Tarazona Hinostroza, Lucila Arrieta Bellena, Santiago Pérez Vera and Nieves Emigdia Chávez Rojas, as victims of the violations declared in Chapter VIII, to be beneficiaries of the reparations ordered by the Court.

B. Obligation to investigate

174. The Commission, in its final written observations, indicated that "there was a lack in the present case of a serious investigation during the criminal or disciplinary proceedings into whether other persons were responsible" and, therefore, it considered that "a component of an investigation on responsibilities, other than those of Mr. Evangelista Pinedo, is necessary in order to comply with the standard of full reparation." The representatives asked that an order be given to "begin the appropriate investigations of the persons who failed in their duty to effectively control their troops, as well as of those who were responsible for the intervention of the military jurisdiction." With respect to Sgt. Evangelista Pinedo serving the full six-year prison sentence, they requested that "there be a judicial review of the benefit granted to him." The State maintained that the incident "had been fully remedied" by the conviction of the perpetrator of the incident and the full payment of compensation. It also indicated that "the domestic proceedings concluded with the judgment of July 23, 2008, which was confirmed on November 4, 2008."

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[152] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs.* Judgment of July 21, 1989. Series C No. 7, para. 25 and *Case of Human Rights Defender et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 28, 2014. Series C No. 283, para. 243.

[153] *Cf. Case of Ticona Estrada et al. v. Bolivia*. *Merits, Reparations and Costs*, para. 110 and *Case of Human Rights Defender et al. v. Guatemala,* para. 245.

[154] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, para. 26 and *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Indigenous Mapuche People) v. Chile*, para. 414.

[155] *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, paras. 25 to 27 and *Case of the Afrodescendant Communities displaced from the Cararica River Basin (Operation Genesis) v. Colombia*, para. 413.

Considerations of the Court

175. The Court notes that the Commission's request for reparations on the obligation to investigate is time-barred because it was presented in its final written observations and not in its brief of submission nor in its Merits Report.

176. Although the Court found the State to be responsible for violating the principle of a reasonable time in the judicial proceedings that ended in the conviction of the perpetrator of the incident, it was not proved that the State had violated Articles 8 and 25 of the American Convention for failing to try other persons or for the proportionality of the sentence of the perpetrator (*supra* paras. 127 and 128). Therefore, the Court finds that it is not appropriate to order the requested measure.

C. Measures of satisfaction

177. The Court will determine the measures that seek to repair the moral redress and that is not of a pecuniary nature, as well as the measures of public scope and repercussion.[156] International jurisprudence, and specifically that of the Court, has repeatedly established that the judgment, *per se,* is a form of reparation.[157]

178. The representatives asked the Court to order the publication, within six months, of at least the sections on the context, the proven facts and the operative part of the Judgment in the Official Gazette, in a newspaper of national circulation and also on the Web sites of the Ministries of Justice, Defense and the Army. The State did not object to the publication of the Judgment "provided that it is limited to a summary of the proven facts, the rights affected and its Operative Part." The Commission did not refer to this measure of reparation.

Considerations of the Court

179. The Court deems it relevant to order, as it has done in other cases,[158] that the State, within six months of the date of notification of this Judgment, publish the following: a) the Court's official summary of this Judgment in the Official Gazette of Peru and in a newspaper of wide national circulation, each one time, and b) the complete Judgment on the State's official Web site, available for one year.

D. Other measures requested

D.1. Measures of rehabilitation

180. The representatives requested that the State order "free and permanent medical and psychological treatment for the family members of the victims, regardless of the health assistance that they now receive through social security programs." They also asked that "the health assistance be provided by competent professionals after a determination of the medical needs of each victim and should include the provision of the medicines that might be required" and the expenses that are part of the treatment, such as the cost of transportation. For its part, the State argued that the denounced facts "have been totally remedied" because the

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156 *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 84 and *Case of the Afrodescendent Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 441.

157 *Cf. Case of Neira Alegría et al. v. Peru. Reparations and Costs*, para. 56 and *Case of expelled Dominicans and Haitians v. Dominican Republic*, para. 448.

158 *Cf. Case of Cantoral Benavides v. Peru*. *Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 79 and *Case of Human Rights Defender et al. v. Guatemala*, para. 261.

perpetrator was convicted by the judicial authorities and compensation was fully paid. The Commission did not refer to this measure of reparation.

Considerations of the Court

181. In the present case, the Court did not find the State internationally responsible for the violation of the right to personal integrity of the family members of the victims and, therefore, it is not appropriate to order the measure requested.

D.2. Public act of recognition of responsibility

182. The representatives requested the holding of an act of recognition of international responsibility and a public apology, which would give "special attention to the situation of the disproportionate use of public force, as a regretful situation that led to serious violations of human rights." The State and the Commission did not refer to this measure of reparation.

Considerations of the Court

183. The Court does not deem it necessary to order the measure requested by the representatives since it considers that the delivery of this Judgment and the reparations ordered are sufficient and adequate.

D.3. Guarantees of non-repetition

184. The Commission requested, generally, that the State strengthen its capacity to investigate, with due diligence and in a timely fashion, any use of lethal force by members of the Armed Forces. It also asked that the Court order the State to adopt the necessary measures to avoid the occurrence of similar situations, especially by implementing human rights programs in the Armed Forces training schools. The representatives requested that the Court "order the State to adapt its domestic order on the use of force to the international standards developed on the matter by this international tribune." They added, *inter alia*, that although the Court "in other cases concerning Peru has ordered human rights courses for members of the Armed Forces and the police […], it has not done so specifically regarding training those agents in the use of public force in accordance with the international standards on the matter."

185. For its part, the State indicated, with respect to the Commission's recommendation on strengthening the capacity to investigate, that such recommendation "had been complied with by the investigations initiated by the Public Ministry and the Judicial Branch, whereby the facts of the present case were clarified and those responsible were punished." With respect to adapting its domestic laws on the use of force, the State referred to its arguments on the alleged violation of Article 2 of the Convention (*supra* para. 150). The State also reported on "the different specialized training courses on the International Law of Human Rights and International Humanitarian Law sponsored by the Military-Policial Jurisdiction and the Ministries of Defense and Interior" and underscored that they contained "up-to-date information and were specifically related to facts similar to this case." In addition, it specified that it had incorporated the topic of human rights "at all levels of training, specialization and advanced courses of the educational system of the police."

Considerations of the Court

186. The Court notes that, with respect to the request to order human rights training for the members of the Armed Forces, the State provided detailed information on programs that

are being developed and there was no information presented that would show that those programs are not sufficient. Therefore, it is not appropriate to order the measure requested.

187. With respect to the request to adapt the domestic law on the use of force, the Court notes that the domestic normative at the moment of the incident was later amended. In addition, it notes that the constitutionality of the present law is being challenged in the domestic courts (*supra* para. 166). Consequently, it is not appropriate that the Court decide on that measure of reparations requested by the representatives.

E. Compensation

188. The Commission requested that the Court adequately repair the declared violations of human rights with fair compensation for the delay of 14 years in the judicial proceedings for the next of kin of Ms. Tarazona Arrieta and Ms. Pérez Chávez, as well as for Mr. Bejarano Laura. The representatives also asked that compensation be ordered for the pecuniary and non-pecuniary damages suffered by the victims.

189. With respect to non-pecuniary damages, specifically consequential damages, although the representatives recognized that the next of kin received financial support from the State for the burial of the deceased victims in a cemetery of their choice, they indicated that other costs related to the funerals, held according to their beliefs, were not covered. In addition, although the medical treatment that Mr. Bejarano Laura received received was paid by social security to which he was entitled as an employee, expenses such as transportation to his home and the necessary medicines were not included. Therefore, the representatives requested that the Court determine, in equity, compensation for consequential damages. As to lost wages, they requested the amount of USD $83.502,31 (eighty-three thousand, five hundred two United States dollars and thirty-one cents) "as wages not received from 1991 to 2012" for each of the deceased victims. For Mr. Bejarano Laura, they requested the Court to determine, in equity, that the State pay the sum of USD $3.500 (three thousand, five hundred United States dollars) since he was hospitalized from the day of the incident, August 9, 1994, until August 31 of the same year and was then unable to work for a month.

190. The representatives also requested that an amount, in equity, be determined for the expenses incurred as a result of the deaths and injuries to the victims for which they do not have the recepts that prove the corresponding amounts since the incident occurred 14 years ago.

191. With respect to the non-pecuniary damages, the representatives requested USD $20.000 (twenty thousand United States dollars) for the moral redress caused to Ms. Tarazona Arrieta and to Ms. Pérez Chávez, an amount arrived at with reference to "a case with similar characteristics."[159] They requested USD $16.500 (sixteen thousand, five hundred United States dollars) for moral redress suffered by Mr. Bejarano Laura as a consequence of the anguish that he felt at the moment of the incident and because "he had to have an operation." Finally, they asked for USD $7.000 (seven thousand United States dollars) for the parents of Ms. Tarazona Arrieta and of Ms. Pérez Chávez, as a consequence of the "deep suffering" caused by the "lack of response of the Peruvian authorities" that "had lasted almost 14 years."

192. The State considered that "it had complied with repairing the matters involved in the present case due to the decisions of the domestic courts" and manifested its "complete opposition" to the requested monetary reparations.

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[159] The representatives refer to the *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations and Costs*. Judgment of October 24, 2012. Series C No. 251.

Considerations of the Court

193. In its case law, the Court has developed the concept of pecuniary damages and the circumstances in which it should be compensated. It has also established that those damages involve "the loss of or detriment to the victim's income, the expenses incurred as a result of the facts, and the monetary consequences that have a causal nexus with the facts of the *sub judice* case."[160] In the present case, the Court notes that the next of kin of the deceased victims, was well as Mr. Bejarano Laura, were monetarily compensated in domestic judicial proceedings (*supra* paras. 85 to 87). In addition, although the civil party in the proceedings against the accused filed an appeal of annulment that contested the civil reparation ordered by the domestic court, the appeal was rejected for being time-barred (*supra* para. 82).

194. Inasmuch as the domestic court had awarded pecuniary damages in the case based on its domestic jurisdiction, the Court considers that, according to the principle of complementarity, it should not order additional pecuniary nor non-pecuniary damages to the family members of the deceased victims or to Mr. Bejarano Laura.

F. Costs and expenses

195. The representative requested that the Court establish, in equity, the expenses incurred by the family members and APRODEH, the latter of which, being a non-profit organization, had not charged the family members for its services that began on the domestic level in May 1994 and on the international level in 1996. With respect to future expenses, the representatives requested the opportunity to present estimates and vouchers on the expenses that they might incur during the international proceedings.

196. The State considers "unacceptable" the claim for the reimbursement of costs and expenses "without presenting the vouchers and other documents that would justify the reparation" and that it should only pay if it is proved that the expense was made "on the specific and direct occasion of the present proceedings." The Commission did not make any observations on the matter.

Considerations of the Court

197. The Court reiterates that, pursuant to its case law, costs and expenses form part of the concept of reparation because the activities deployed by the victims in order to obtain justice, at both the domestic and international levels, entail disbursements that should be compensated when the international responsibility of the State has been declared.[161] Regarding reimbursement for costs and expenses, it is for the Court to prudently assess their scope, which includes the expenses arising before the authorities of the domestic jurisdiction and also those generated during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction of the protection of human rights. This assessment may be made based on the

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[160] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43 and *Case of expelled Dominicans and Haitians v. Dominican Republic*, para. 479.

[161] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43 and *Case of expelled Dominicans and Haitians v. Dominican Republic*, para. 479.

principle of equity and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.[162]

198. The Court recalls that simply providing the documentary evidence is not sufficient, rather "the parties must develop the reasoning that relates the evidence to the fact under consideration and […] that the items for reimbursement and their justifications must be described clearly."[163] The Court has pointed out that "the claims of the victims or their representatives in relation to costs and expenses, and the evidence supporting them must be presented to the Court at the first procedural moment granted them; namely, in the brief with pleadings and motions, without prejudice to those claims being updated subsequently to include new costs and expenses incurred as a result of the proceedings before this Court."[164]

199. The Court notes that the representatives did not refer to the amount of expenses incurred during the litigation at the domestic level nor did they present any evidence thereon. The Court, therefore, lacks the evidence necessary to determine the expenses incurred. With respect to the expenses involved in the litigation at the international level, the representatives only referred to their expenses that "should be considered by the Court" when the costs and expenses are determined, referring to air fares and logistical expenses related to the holding of the public hearing. They provided a table of the "expenses of participating in the hearing" for a total of USD $2,159.28 (two thousand, one hundred fifty-nine United States dollars and twenty-eight cents), as well as a table of "travel and affidavit expenses for a total of USD $149.63 (one hundred forty-nine United States dollars and sixty-three cents)[165] and remitted the respective vouchers.[166] The Court notes that the only other vouchers that it has received are those of the expenses of the Victims' Legal Defense Fund. Other than that, the Court does not have any information or evidence with regard to the expenses incurred during the litigation at the international level, including during the procedures before the Commission, nor the expenses incurred by the next of kin of the deceased victims.

200. Consequently, the Court determines, in equity, to award the amount of USD $10,000 (ten thousand United States dollars) for costs during the litigation at the domestic and international levels, which must be paid by the State to the representatives within six months of notification of this Judgment. Moreover, the Court may order that the State reimburse the victims or their representatives for reasonable expenses incurred during the stage of monitoring compliance with this Judgment.

G. Reintegration of the expenses to the Victims' Legal Assistance Fund

201. APRODEH, in representation of the victims, presented a request of support to the Victims' Legal Assistance Fund of the Court to "cover some specific costs related to the production of evidence during the proceedings of the present case before the Court." The Order of the President of the Court of January 22, 2014 (*supra* para. 8) authorized financial assistance for the Fund that was necessary to present a maximum of two statements and an expert opinion, either at the hearing or by affidavit. Later, the Order of the President of March 26, 2014 approved such assistance to cover the necessary travel and lodging expenses so

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162 *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs*, para. 82 and *Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile,* para. 450.

163 *Cf. Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 277 and *Case of dexpelled Dominicans and Haitians v. Dominican Republic*, para. 496.

164 *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador,* para. 275 and *Case of Landaeta Mejías Brothers et al. v. Venezuela*, para. 328.

165 Evidence file, folios 4969 and 4970.

166 Evidence file, folios 4972 to 4993.

that Mr. Bejarano Laura could appear before the Court to testify at the public hearing. Additionally, the President determined that the reasonable expenses of the notarization and remittance of the affidavits of one of the victims and of an expert proposed by the representatives could be covered with resources of the Fund, as might be determined. By communication of April 8, 2014, the representatives informed that the affidavit of Víctor Tarazona Hinostroza would be covered by the Fund.

202. According to the information contained in the report on the disbursements made in the present case, they total USD $ 2.030,89 (two thousand thirty United States dollars and eighty-nine cents). The State was provided the opportunity until September 19, 2014 to present its observations on the matter, which were remitted the same day. The State observed, with respect to the transportation expenses that did not include vouchers, that the amount did not include details on each of the expenses and that those expenses were "extremely high." With respect to the notarized statement of Víctor Tarazona Hinostroza and its remittance, the State observed that the vouchers were so illegible that the expenses could not be adequately read.

203. It is for the Court, in accordance with Article 5 of its Rules, to decide whether to order the State to reimburse the expenditures that the Victims' Fund might have made. Due to the violations declared in this Judgment and bearing in mind the observations of the State, the Court orders that the State reimburse USD $2.030,89 (two thousand thirty United States dollars and eighty-nine cents) to the Fund for the expenses incurred. This amount shall be remitted to the Inter-American Court within sixty days of notification of this Judgment.

H. Method of compliance with the payments ordered

204. The State shall reimburse the costs and expenses established in this Judgment directly to the representatives, or to whomever they may designate, so that they may be collected by means of an instrument that is valid in the Peruvian legal order, within the period and in the terms of paragraph 198 of this Judgment. This reimbursement must be done without any reductions resulting from possible taxes or charges. The State shall comply with its monetary obligations by payment in United States dollars. If the State shall fall in the arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund, it shall pay the interest on the amount owed corresponding to the banking interest on arrears in Peru.

205. If, for reasons attributable to the beneficiaries of the compensation, it is not possible to pay the compensation established within the time frame indicated, the State shall deposit these amounts in an account or in a certificate of deposit in their favor in a solvent Peruvian institution, in United States dollars, and on the most favorable financial conditions permitted by banking laws and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the accrued interest.

X
OPERATIVE PARAGRAPHS

THEREFORE,

THE COURT

DECLARES:

Unanimously, to:

1. Reject the preliminary objection filed by the State regarding the "fourth instance," pursuant to paragraphs 20 to 24 of this Judgment.

DECLARES:

Unanimously, that:

2. The State violated Article 8(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Luis Bejarano Laura, Víctor Tarazona Hinostroza, Lucila Arrieta Bellena, Santiago Pérez Vera and Nieves Emigdia Chávez Rojas, pursuant to paragraphs 95 to 122 of this Judgment.

3. The State violated Article 2 of the American Convention, in relation to Articles 4, 5, 8(1) and 25 thereof, to the detriment of Zulema Tarazona Arrieta, Norma Pérez Chávez, Luis Bejarano Laura, Víctor Tarazona Hinostroza, Lucila Arrieta Bellena, Santiago Pérez Vera and Nieves Emigdia Chávez Rojas, pursuant to paragraphs 155 to 169 of this Judgment.

4. It is not appropriate to decide on the alleged violations of the rights to life and personal integrity recognized in Articles 4(1) and 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Zulema Tarazona Arrieta, Norma Pérez Chávez and Luis Bejarano Laura, pursuant to paragraphs 135 to 141 of this Judgment.

5. The State did not violate the right to personal integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Zulema Tarazona Arrieta, Norma Pérez Chávez and Luis Bejarano Laura, pursuant to paragraphs 144 to 149 of this Judgment.

AND ORDERS

Unanimously, that:

6. This Judgment is, *per se,* a form of reparation.

7. The State shall, pursuant to paragraph 179 of this Judgment and within six months of notification of this Judgment, publish in the Official Gazette of Peru, once, and in a newspaper of wide national circulation, once, the official summary of this Judgment. In addition, the State shall, within the same period, upload the complete Judgment, available for one year, to the official Web site of the State.

8. The State shall, within six months or ninety days of notification of this Judgment, respectively, pay the amount stipulated in paragraph 200 of this Judgment as reimbursement of costs and expenses and shall reimburse the Victims' Legal Assistance Fund the amount stipulated in paragraph 203 of this Judgment.

9. The State shall, within one year of notification of this Judgment, provide the Court with a report on the measures taken to comply with it.

10. The Court shall monitor full compliance of this Judgment, in exercise of its authority and in fulfillment of its duties under the American Convention on Human Rights, and shall consider the case closed when the State has complied fully with its provisions.

Done at San José, Costa Rica, on October 15, 2014, in the Spanish language.

I/A Court HR. *Case of Tarazona Arrieta et al.* v. Peru. Merits, Reparations and Costs. Judgment of October 15, 2014.

Humberto Antonio Sierra Porto
President

Roberto F. Caldas

Manuel E. Ventura Robles

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Secretary