Order of the Inter-American Court of Human Rights

of September 1, 2010[*]

Monitoring Compliance with Judgment
Request for the Adoption of Provisional Measures

Case of De La Cruz Flores *V.* Peru

Having seen:

A) Monitoring Compliance with the Judgment

1. The Judgment of merits, reparations and costs (hereinafter "the Judgment") issued in the present case by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on November 18, 2004, in which it established, *inter alia*, that the State shall:

> 1. […]observe the right to freedom from ex post facto laws embodied in Article 9 of the American Convention and the requirements of due process in the new trial of María Teresa De La Cruz Flores, in the terms of paragraph 118 of the […] Judgment[;]
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> […]
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> 3. […] pay the amounts established in paragraphs 152 to 154 of the […] Judgment to María Teresa De La Cruz Flores, Alcira Domitila Flores Rosas widow of De La Cruz and Alcira Isabel De La Cruz Flores for pecuniary damage, in the terms of those paragraphs[;]
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> 4. […] pay the amounts established in paragraphs 161 and 163 of the […] Judgment to María Teresa De La Cruz Flores, Alcira Domitila Flores Rosas widow of De La Cruz, Alcira Isabel De La Cruz Flores, Celso Fernando De La Cruz Flores, Jorge Alfonso De La Cruz Flores, Ana Teresa Blanco De La Cruz and Danilo Alfredo Blanco De La Cruz for non-pecuniary damage, in the terms of those paragraphs[;]
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> 5. […] provide medical and psychological treatment to the victim through the State's health services, including the provision of free medication, in the terms of paragraph 168 of the […] Judgment[;]
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> 6. […] reincorporate María Teresa De La Cruz Flores into the activities that she had been performing as a medical professional in public institutions at the time of her detention, in the terms of paragraph 169 of the […] Judgment[;]
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> 7. […] provide María Teresa De La Cruz Flores with a grant that allows her to receive professional training and updating, in the terms of paragraph 170 of the […] Judgment[;]
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> 8. […] re-enter María Teresa De La Cruz Flores on the respective retirement registry, in the terms of paragraph 171 of the […] Judgment[;]
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> 9. […] publish in the official gazette and in another daily newspaper with national circulation the section entitled "Proven Facts" and operative paragraphs 1-3 of the declaratory part of the […] Judgment, in the terms of paragraph 173 of the […] Judgment[;]

[*] Judge Diego García-Sayán, of Peruvian nationality, excused himself from hearing the monitoring of compliance of the present case, according to Articles 19(2) of the Statute and 19 of the Rules of Procedure of the Court.

> 10. […] pay the amount established in paragraph 178 of the […] judgment to María Teresa De La Cruz Flores for costs and expenses, in the terms of this paragraph[;]
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> […]

2. The Order of the Court Inter-American of November 23, 2007, regarding the Supervision of Compliance with the Judgment in the present case, in which it declared:

> 1. [t]hat, in accordance with that state in Considering clauses number eight, nine, and ten of the […] Order, the State has complied with its obligation to:
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> a) pay the amounts specified in the Judgment as compensation for pecuniary and non-pecuniary damages and as reimbursement of costs and expenses to María Teresa De La Cruz Flores, Alcira Domitila Flores Rosas, widow of De La Cruz, Alcira Isabel De La Cruz Flores, Celso Fernando De La Cruz Flores, Jorge Alfonso De La Cruz Flores, Ana Teresa Blanco De La Cruz, and Danilo Alfredo Blanco De La Cruz, respectively (third, fourth, tenth, eleventh, and twelfth operative paragraphs of the Judgment of November 18, 2004);
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> b) reinstate Mrs. De La Cruz Flores to the job that she was performing as a medical professional in public institutions at the time of her detention (sixth operative paragraph of the Judgment of November 18, 2004), and
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> c) publish the section entitled "Proven Facts" as well as operative paragraphs one to three of the declaratory part of the Judgment in a newspaper of national circulation (ninth operative paragraph of the Judgment of November 18, 2004)[.]
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> 2. [t]hat the Court will keep open the proceedings to monitor the compliance with the following obligations that remain unfulfilled, namely:
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> a) to comply with the right to freedom from ex post facto laws and the requirements of due process in the new proceeding brought against Mrs. De La Cruz Flores (first operative paragraph of the Judgment of November 18, 2004);
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> b) to provide medical and psychological care to the victim through the State's health services, including the free supply of medication (fifth operative paragraph of the Judgment of November 18, 2004);
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> c) to provide Mrs. De La Cruz Flores of a grant for training and professional development (seventh operative paragraph of the Judgment of November 18, 2004);
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> d) to re-enter Mrs. De La Cruz Flores in the respective retirement registry (eighth operative paragraph of the Judgment of November 18, 2004);
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> e) to publish the section entitled "Proven Facts" as well as operative paragraphs 1 to 3 of the declaratory part of the Judgment in the Official Newspaper (ninth operative paragraph of the Judgment of November 18, 2004).
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> […]

3. The communications of December 19, 2007; April 15 and 18, and August 25, 2008; December 15 and 18, 2009; and January 22, February 19, and March 5, 2010; through which the State of Peru, (hereinafter "the State" or "Peru") referred to the compliance with the Judgment.

4. The briefs of December 13 and 17, 2007; April 9, June 3, and October 17 and 27, 2008; April 8 and 14, June 23, July 16, and December 26, 2009; and February 14 and 15, and May 13, 2010; in which the representative of the victim (hereinafter "the representative") presented its observations regarding the state of compliance with the Judgment.

5. The communications of June 5, 2008, December 9 and 17, 2009, and March 19, 2010, through which the Inter-American Commission of Human Rights (hereinafter "the Commission" or "the Inter-American Commission") presented its observations regarding the state of compliance with the Judgment.

6. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of January 19, April 13, and August 2, 2009; through which, following the instructions of the Presidency of the Court, requested the State the presentation of a new report in which it pointed out all the measures adopted to fulfill the reparations pending compliance.

7. The Order of the Presidency of the Court of December 21, 2009, through which it decided to call the Inter-American Commission, the State, and the representative to a private hearing for the Court to obtain information from the part of the State regarding the compliance of the Judgment issued in the present case, and to listen the observations of the Inter-American Commission and the representative in that sense, and to receive information regarding the request for the adoption of provisional measures in favor of the victim (*infra* Having Seen 12 to 15).

8. The private hearing held during the LXXXVI Ordinary Period of Sessions of the Inter-American Court, in the headquarters of the Tribunal, in San José, Costa Rica, on February 1, 2010.[1]

9. The note of the Secretariat of February 19, 2010, through which, following instructions of the Court in full, requested the State, within a non-extendable term until March 19, 2010, to present information regarding the following aspects linked to the fulfillment of the referred Judgment:

> a) if in the second process against Mrs. De La Cruz Flores new evidence and facts were considered –and the dates in which they occurred-, linked to the new attribution of the crime of terrorism-affiliation to a terrorist organization;
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> b) the specific evidence in the file, that does not refer to acts of a medical nature, carried out by Mrs. De La Cruz Flores and, in the same way, that it proves in a specific manner that acts of affiliation with a terrorist organization and a "constant association logic", in the terms described by the [...] State in the private hearing;
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> c) the relation between the acts attributed to Mrs. De La Cruz Flores and the respective rules and punishments applicable to each of them, taking into account that, according to the Judgments of the Peruvian Tribunals, the time that they cover involves 2 different criminal codes and the Decree Law 25475;
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> d) observations regarding the guarantee against self-incrimination, taking into account the reference to the Judgment of November 23, 2009, of the Supreme Court of the Republic, in the sense that "it results legitimate to raise the sanction imposed, since [...] those processed assumed an obstructionist conduct during the investigations, and there is no extenuating circumstance to lower the sentence [...] because they have denied the facts attributed to them", and
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> e) if there is any extraordinary recourse in the Peruvian law that can be invoked regarding the Judgment of November 23, 2009.

10. The briefs of March 29 and 26, 2010, in which the State presented information regarding the questions submitted by the Tribunal in a note of the Secretariat of February 19, 2010 (*supra* Having Seen 9).

11. The communications of April 6 and May 4, 2010, in which the representatives, and the Inter-American Commission presented, respectively, its observations to the information submitted by the State in his briefs of March 19 and 26, 2010 (*supra* Having Seen 10).

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[1] To this hearing attended the following persons: for the Inter-American Commission, Santiago Cantón, Executive Secretary and Silvia Serrano Guzmán, Specialist of the Executive Secretary; for the representative of the victim, Carolina Maida Loayza Tamayo, and for the State, Mr. César San Martín, Supreme Judge President of the Permanent Criminal Chamber of the Judicial Branch, and Mr. Stephen Haas of the Ministry of Justice; Mrs. Delia Muñoz, Main Agent, Jimena Rodríguez of the State Attorney´s office, and Dalia Suárez of the Ministry of Health.

B) Request for Provisional Measures

12. The brief and the annex received on April 15, 2009, in which the representative submitted to the Inter-American Court a request for the adoption of provisional measures, for the State "to refrain from depriving of liberty" Mrs. De La Cruz Flores "for considerations that collid[e] with [the] Judgment [in the present case]" and as a consequence of the supposed "condemnatory character of [a] Judgment [of the Supreme Court of Justice] and the [possible] increase in the punishment issued against the victim in the second process followed against her in the national jurisdiction." In communications of May 4, June 23, November 15 and 24, December 7, 2009, and February 15, 2010, the representative referred to this request again.

13. The notes of the Secretary of April 30, May 6, June 10, and October 14, 2009, through which, following the instruction of the Court in full, requested the representative and the State that, in the event that the Supreme Court of the Judicial Branch of the Republic of Peru issued any Judgment in the case No. 4681-2006, it shall be submitted to the Tribunal as soon as possible.

14. The briefs of April 22, 23 and 27, June 30, November 30, and December 15, 2009, and its annexes; and of January 19 and April 22, 2009, through which the State informed about the request for Provisional Measures presented by the representative.

15. The communication of April 22, and December 15 and 17, 2009; in which the Inter-American Commission referred to the request for provisional measures in favor of Mrs. De La Cruz Flores.

CONSIDERING THAT:

A) Monitoring Compliance with Judgment

1. It is an attribution inherent to the jurisdictional functions of the Court, to supervise the compliance with its decisions.

2. Peru is a State party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since July 28, 1978, and acknowledged the adjudicatory jurisdiction of the Court on January 21, 1981.

3. Article 68(1) of the American Convention establishes that "[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties". The treaty obligations of the State parties bind all the branches or functions of the State.[2]

4. By virtue of the final and definitive character of the Judgments of the Court, according to that established on Article 67 of the American Convention, they shall be promptly fulfilled by the State in a complete manner.

5. The obligation to comply with that established in the decisions of the Tribunal corresponds to a basic principle of the law of international State responsibility, supported by international jurisprudence; according to which the States shall fulfill their international treaty obligations in good faith (*pacta sunt servanda*) and, as it has been already established by this Court and as it is stated by Article 27 of the Vienna

[2] *Cf. Case of Castillo Petruzzi and others V. Perú*. Supervision of Compliance with the Judgment. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, Considering third; *Case of Baena Ricardo et al. V. Panamá*. Supervision of Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering fifth, and *Case of Vargas Areco V. Paraguay*. Supervision of Compliance with the Judgment. Order of the President of the Inter-American Court of Human Rights of July 20, 2010, Considering fourth.

Convention on the Law of Treaties of 1969, they cannot, for reasons of internal law, stop assuming the international responsibility already established.[3]

6. The State Parties to the Convention shall guarantee the fulfillment of the treaty dispositions and its own effects (*effet utile*) within their respective domestic law. This principle is applied, not only regarding substantive rules of the human rights treaties (namely, the ones that contain dispositions regarding the protected rights), but also in relation with the law of procedure, such as those referred to the fulfillment of the decisions of the Court. These obligations shall be interpreted and applied within their respective domestic law. This principle applies, not only regarding substantive rules of the human rights treaties (namely, those that contain dispositions regarding the protected rights), but also regarding rules of procedure, such as the ones referring to the compliance with the decisions of the Court. These obligations shall be interpreted and applied in a manner that the protected guarantee is truly practical and effective, taking into account the special nature of the human rights treaties.[4]

1. Regarding the duty to observe the principle of legality and protection from ex post facto laws of the demands of legal due process in the second process against Mrs. De La Cruz Flores (first operative paragraph of the Judgment).

7. Before presenting the information and observations of the parties in the framework of the procedure of supervision of compliance of the present obligations ordered in the Judgment, the Court considers it pertinent to specify some background facts.

8. On November 21, 1996, Mrs. De La Cruz Flores was convicted to 20 years in prison by a "faceless" tribunal for the crime of collaboration with terrorism (hereinafter the "first process").[5] On June 20, 2003, the National Chamber of Terrorism declared null the prosecutorial charge and set it aside without effect in such first process, "without [varying] the legal situation [of the victim]." After said declaration of nullity, a new trial was brought forward (hereinafter the "second process"). On July 8, 2004, a request by the defense of the victim for a variation of the order of detention for one of restricted appearance was declared admissible, and the victim was effectively freed from prison the following days, namely, after eight years, two months and eleven days of being deprived of liberty.

9. In the second process, on July 10, 2006, the National Criminal Chamber issued a judgment in which the victim was convicted as "the author of the 'crime against the Public Peace-Terrorism-Affiliation against the State,' imposing upon her the sentence of deprivation of liberty for eight years, two months and eleven days, which was considered fulfilled." Said judgment was the object of recourses of nullity by the defense of the victim as well as by the Prosecutor in the case, which derived in the Supreme Judgment of the Second Criminal Transitory Chamber of the Supreme Court of November 23, 2009, "which declar[ed] the nullity of the appealed judgment and reform[ing] it to impose 20 years of deprivation of liberty" and ordered "her location and capture."

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[3] *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994*. Series A No. 14, par. 35; *Case of Baena Ricardo et al. supra* note 2, Considering fifth, and Case of *Vargas Areco, supra* note 2, Considering fourth.

[4] *Cf. Case of Ivcher Bronstein V. Peru. Jurisdiction.* Judgment of September 24, 1999. Series C No. 54, par. 37; *Case of Baena Ricardo et al., supra* note 2, Considering sixth, and *Case of Vargas Areco, supra* note 2, Considering fifth.

[5] Cf. Case of De la Cruz Flores V. Perú. Merits, Reparations and Costs. Judgment of November 18, 2004. Series C No. 115, par. 73.27.

10. The Inter-American Court in its Judgment of 2004, made rulings regarding various violations of the American Convention which occurred in the first process and ordered the respect in the second process of the principle of legality and protection from ex post facto laws and the demands of legal due process; which is analyzed next, in relation to the following subjects alleged: i) the alleged penalization of a medical act and ii) the alleged retroactive application of a criminal definition of a crime of affiliation with a terrorist group.

11. Although the State has responded in an exhaustive manner to the allegations of the parties regarding that ordered by the Tribunal in the first operative paragraph of the Judgment, contributing even the important part of the internal case file regarding the first and second processes followed against Mrs. De La Cruz Flores, the Court clarifies that it shall not analyze the controversy between the parties about possible violations in the second process. That analyzed in the following paragraphs, within the framework of the supervision of compliance with judgment, is if the second process had conformed with that ordered in the first operative paragraph of the Judgment issued by the Court in the present case.

1.1. Alleged penalization of the medical act

12. According to the State, in the second consecutive process against Mrs. De La Cruz Flores, she was not penalized for the carrying out of medical acts, since she was not judged "[for the] attention to a person or to various persons for reasons of fulfillment of the duty as a doctor, [but for being] a delinquent terrorist, comrade Eliana, that was part of the basic apparatus of the Socorro Popular, [that had] a mechanism […] to order and to take care of the wounded and all those that were affected in armed [confrontations], all with a system of medical attention, all with a system of clinics, all with a system of mutual relations." In this way, for the State, De La Cruz Flores "had an active participation in favor of the terrorist organization Sendero Luminoso, […] her affiliation was not eventual or accidental, but permanent and continuous, having passed through the levels of (i) Organized Support, (ii)School, and (iii) Activist." In this manner, the State concluded that "the participation of the accused is not found only reduced to medical activity, but to her participation as an affiliate[ed] member of a subversive group, following her directive, her plan, program and methodology and putting her medical knowledge to the service of the organization."

13. Also, the State signaled that "if from the point of view of the general evaluation [of the evidence] one can agree or not agree with such and such witness, this is a subject […] of the merits of the matter that is not material for the supervision, unless there is criteria on the contrary." The State "emphasiz[ed] that the Supreme Court of Justice of the Republic has established in its reiterated jurisprudence for the "Evidentiary Evaluation" of the declaration of those processed and witnesses that 'when they declare, without distinction, in different stages of the process and with the due guarantees, the Tribunal is not obligated to believe that said in the oral trial, but must make an evaluation together with all the testimonies offered during the process and [will] take into account the circumstances that have greater credibility and likeness with the facts." In this way, the State resolved that "in the concrete case, there are diverse incriminatory declarations from the accused and witnesses acting in the preliminary and judicial level" that would affirm that the victim "was dedicated to the surgical attentions and interventions of the *senderistas*," that participat[ed] in different treatments of terrorist patients," and that she was "the one responsible for delivering medicine and giving attention to terrorist patients." Also, the State added that "although the evidence of the Military Jurisdiction had been utilized in the second consecutive process before the ordinary Jurisdiction, the magistrates evaluate this evidence with the criteria of

conscience. Also, an evaluation together with other evidentiary doctors must be made, as established in the Legislative Decree No. 922 that was not questioned by the Constitutional Tribunal." "[T]he orthodox position assumed by those accused of terrorism makes it absurd [to think] that a judgment in the Military Jurisdiction and the evidence obtained is null," in such a form that "no fact would exist to be judged by the State of Peru and with less basis to condemn, with which the State would be lacking in its duty to preserve the Nation."

14. For its part, the representative indicated that the State "in a covert method, criminalized the act of being a doctor by [identifying it] as an element of the definition of the crime of affiliation to [a] terrorist organization and its voluntary carrying out, which is neither sporadic nor circumstantial." It added that in International Humanitarian Law, it does not exist "any qualification that refers to the act of being a doctor in an isolated or not isolated or circumstantial or non-circumstantial manners" and that the accusation of Mrs. De La Cruz Flores refers to "two concrete facts, medical attention to one Mario, medical attention to one Kike," and that this is "the reiteration, the continuation, of the offering of medical assistance that the Peruvian State is referring to." In this manner, they emphasized that "the State has not presented specific evidence in the case file that does not refer to acts of a medical nature supposedly carried out by Mrs. De La Cruz."

15. According to the representative, "[t]he use of a criminal process of evidence obtained in an irregular manner to convict persons takes away independence from the [J]udicial [P]ower." It added that the judgments issued in the second process "are sustained, among other elements, on evidence obtained in the framework of the initial process made before faceless judges," while the Inter-American Court "declared in its [J]udgment that none of the acts made in the process can be considered compatible with the American Convention." It added that "the evidence used by the State to convict Mrs. De La Cruz is not new evidence [and that] the only new evidence in [the] second process was the testimony of Mrs. Aroni Apcho during the oral trial [in which she] retract[s] from her incriminatory testimony and the declaration of a supposed beneficiary of the medical attention of Mrs. De La Cruz Flores in 1989," in which she "deni[ed] having received said attention from Mrs. De La Cruz." The representative signaled that "the Chamber [itself] has admitted […] the various contradictions" in the testimony of Mabel Mantilla Moreno, who had affirmed that "apparently [Mrs. De La Cruz Flores] made [an] operation," incurring in this way a "doubtful version." Regarding the key witness A2230000001, it indicated that his accusation "[was] not corroborated with other evidentiary elements." Finally, facing the content of the testimony of said witnesses, the representative emphasized that the victim "never has had the specialty of surgery."

16. The Commission signaled that "the facts based upon which the internal judicial authority establishes that the victim is part of the Sendero Luminoso are surgical interventions, healings and the provision of medical treatment, which are medical acts." Also, according to the Commission, "the argument through which the Supreme Court of Justice tries to justify that it fits within the Judgment of the Inter-American Court is that the medical acts are repeated and that the information comes from the same [terrorist] organization." Before this, the Commission signaled that the judgment of the Inter-American Court "did not make […] a difference between the medical acts of emergency or repeated medical acts, [but] it raises the issue that the medical act is not only an illicit activity but a duty in certain circumstances, and therefore, it is not susceptible to a criminal sanction." On the other hand, the Commission indicated that "[the] prohibition [of the penalty for medical acts] is not equivalent to immunity in favor of the health professionals who, like any other persons, can be criminally persecuted if they carry out illegal conduct." For the Commission, what happened in the present case is that "the Peruvian authorities considered as proven the occurrence of a crime – the belonging of Mrs. De La Cruz Flores to a terrorist organization in different levels – using a series of medical acts as the supporting facts. In the absence of other concrete facts that may accredit the belonging of Mrs. De La Cruz Flores to a terrorist organization, the decision of the National Chamber of Terrorism and the Supreme Court of Justice constitute a new criminalization of acts of a medical nature."

17. Also, the Commission indicated that "the judgment [in the second process] is sustained among other elements in the evidence obtained in the framework of the initial process carried out before faceless judges," connected "to the theory of the fruit of the poisonous tree that will be newly applied." According to the Commission, "[r]egarding Mrs. Jacqueline Aroni Apcho, […] her political testimony, in which she mentions Mrs. De La Cruz Flores, was rendered before a faceless military prosecutor. Also, being questioned years later in an oral trial, […] she retracted from her statements against Mrs. De La Cruz Flores and in the process of confrontation, she signaled that she did not know her." "Regarding the testimony of the regretful person identified as key, the Commission consider[ed] that the use of this type of evidence does not appear to be compatible with the guarantees of due process, in particular, with the right to a defense. In any case, this person, just as Mrs. Mantilla Morena, did not render testimony in the oral trial; therefore, his or her statements were approved at a police station without being confronted by other means of evidence."

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18. The Court reminds, regarding the first process followed against Mrs. De La Cruz Flores, that in its Judgment it confirmed that the evidence in which the conviction against her included basically two police files that enclosed: 1) documents seized from six persons that would allegedly identify the victim as linked to the "Sendero Luminoso" organization for carrying out surgeries and the provision of medication, 2) testimonial declarations of the key regretful person A2230000001, 3) testimony of Mrs. Jacqueline Aroni Apcho and 4) declarations of Mrs. Elisa Mabel Mantilla Moreno.[6] The Tribunal in its Judgment signaled that these declarations "offered contradictions" and that Mrs. De La Cruz Flores, "did not have the opportunity to interrogate the regretful person key A2230000001, whose declaration was central for the formulation of the accusation against her." Likewise, the Tribunal verified that the convicting judgment considered that:

> [the case file] describes the documentation found in 1992 on [six people], in which the defendant is implicated, and in which she appears under the alias "Elíana"; one of these documents refers not only to meeting points carried out with the defendant, but also, examines her doctrinal and ideological evolution within the organization, there are descriptions of talks that she has given, as a physician; that she has taken part in an operation as the assistant surgeon, and of problems within the health sector, all of which has been corroborated […] by the defendant, Elisa Mabel Mantilla Moreno, who, in the presence of the Prosecutor states that, on one occasion, she met with María Teresa De la Cruz on the orders of her 'handler,' to coordinate several matters; […] the same defendant […] accuses her of being one of the supportive elements responsible for providing treatment and performing operations; […] accuses her of participating in an surgery of 'Mario' whose hand had been burned, which corroborates the foregoing; namely, that she took part as assistant surgeon in a skin-grafting operation; and it is evident that the defendant has denied this during the proceeding so as to elude her criminal liability, which has been adequately proved[.]

19. In its Judgment, this Court made a very detailed evaluation of the procedure followed against Mrs. De La Cruz. That exhaustive analysis included the judgments in which the accusation made against the victim was evaluated. After such a detailed analysis, the Court considered that there was a penalization of the medical act, and established that

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[6] *Cf. Case of De la Cruz Flores, supra* note 5, paras. 73.14, 73.15, and 73.16.

> The medical act […] is not only an essentially legal act, but it is a duty for a doctor to provide; and for imposing on doctors the obligation to report the possible illegal behavior of his/her patients, based on the information obtained in the exercise of their profession."[7]

20. The Court has pointed out that it has no jurisdiction to determine the innocence or guiltiness of a person.[8] In the present case, taking into account that declared by the Tribunal in its Judgment, it follows to determine if there was a new criminalization of the medical act in the second process followed against the victim.

21. The Court observed that in the second procedure, the judgment issued by the National Chamber of Terrorism and the Supreme Court established that the guiltiness of Mrs. De La Cruz Flores, derived from the declarations rendered in several moments by the same three witnesses whose declarations based the conviction in the first procedure. (Elisa Mantilla[9], Jacqueline Aroni Apcho y la testigo de clave A223000001[10]). The Tribunal notes that the Supreme Court quotes two declarations of Mrs. Aroni against Mrs. De La Cruz Flores, which were rendered before a faceless military prosecutor.[11] Likewise the Tribunal notes that such witness retracted in later declarations. However, in order to reach the conviction of Mrs. De La Cruz Flores, only the first declarations of Mrs. Aroni were taken into account, and not her retraction, in spite of the allegations of Likewise the Tribunal notes that such witness retracted in later declarations. However, in order to reach the conviction of Mrs. De La Cruz Flores, only the first declarations of Mrs. Aroni were taken into account, and not her retraction, in spite of the allegations of the

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[7] *Cf. Case De la Cruz Flores, supra* note 5, par. 102.

[8] *Cf. Case Velásquez Rodríguez V. Honduras. Merits. Judgment of July, 29, 1988,* Series C No. 4, par. 134; *Case González et al. (¨Cotton Filed¨) V. México. Preliminary exceptions, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, par. 18*,* and *Case of Manuel Cepeda Vargas V. Colombia. Preliminary exceptions, Merits, Reparations and Costs*. Judgment of May 26, 2010. Series C No. 213, par. 41

[9] Statement of Elisa Mabel Mantilla Moreno on September 7, 1995 ("fojas" 537-547, equivalent to pages 729-739, Book VI, Supervision of Compliance with Judgment), before the representative of the 14 Criminal Prosecution of the Province of Lima, with her defense attorney and before a representative of the DIVICOTE-IV-DINCOTE; Second Extension of the Statement of Elisa Mabel Mantilla Moreno of September 11, 1995, before a representative of the 14 Criminal Prosecution of the Province of Lima, with her defense attorney and before a representative of the DIVICOTE-IV-DINCOTE; ("fojas" 555-557, equivalent to pages 747-749, Book VI, Supervision of Compliance with Judgment); Continuation of the Instruction of Elisa Mabel Mantilla Moreno, of September 22, 1995 ("fojas" 1007 to1013, equivalent to pages 693-704, Book VI, Supervision of Compliance with Judgment), before the representative of the Public Ministry, a Criminal Judge and her defense attorney. In its Judgment, the Supreme Court mentions that, in the "foja" 3248 of the internal penal file, there is proof of a ratification of Mrs. Mantilla, "while being confronted with the accused De La Cruz Flores" in which "it can be appreciated that [Mrs. Mantilla] is emphatic in recognizing the accused as [comrade] Eliana, it shall be précised that in such procedure she states that she does not recognize César David Rodríguez Rodríguez –and not the accused as she alleges-." Regarding this last piece of evidence, the Court observes that such confrontation between Mrs. De La Cruz and the witness against her was not submitted by the illustrious State in its report presented by request of the Tribunal when supervising the compliance with this Judgment (*supra* Having Seen 9 and 10), however, in the merits file of the present case, there is a confrontation that would correspond to such piece of evidence. Indeed, during the Merits trial, a procedure of confrontation Mrs. Mantilla and César David Rodríguez was presented to the Tribunal, that belongs to the aforementioned "foja" 3248 of the file of the internal criminal procedure. Such document is partially unreadable, however, in its readable components; it does not mention Mrs. De La Cruz. Likewise, in the file of Supervision of Compliance, the Court observes that the first instance judgment issued by the National Chamber of Terrorism, refers to a "procedure of confrontation carried out between Mabel Mantilla Moreno and César David Rodríguez" (file of Supervision of Compliance with the Judgment, Book V, page 179) that would be in the "foja" 3248 that the Supreme Court links with the supposed confrontation between Mrs. Mantilla and Mrs. De La Cruz.

[10] Extention of the Internal Act of Declaration Key No. A2230000001 of August 17,1993 ("fojas" 649-663, equivalent to pages 714-728, Book VI, Supervision of Compliance with Judgment), in which the Province Deputy Prosecutor of the 43rd. Prosecution of the Province of Lima and a representative of DIVICOTE-IV-DINCOTE sign together.

[11] The Supreme Court refers to two "police statements" of Mrs Aroni. According to the documents submitted by the State, the Tribunal notes that such declarations refer to: i) the statement of Jacqueline Aroni Apcho carried out on September 11, 1995, before a Navy Special Prosecutor -identified with key JE-500-403-, an appointed attorney and having as instructor a member of the National Police affiliated to the DIVICOTE-IV-DINCOTE (pages 648-681, Book VI, Supervision of Compliance with Judgment) and ii) the extensive statement of September 27, 1995, before the same key identified Prosecutor, the same appointed attorney and the same instructor affiliated to the DINCOTE (pages 682-692, Book VI, Supervision of Compliance with Judgment).

defense that the first declarations were made under pressure.[12] In the other hand, the defense could not cross examine the regretful witness identified with a code. Finally, witness Mantilla did not appear in the oral trial to ratify her accusations, which was also alleged by the defense of Mrs. De La Cruz. [13]

22. In the judgment of the Supreme Court it is established that, according to the aforementioned declarations, Mrs. De La Cruz Flores: i)cured a member of 'Sendero Luminoso', ii)"in its condition of 'activist', carried out the attention and surgical [or 'healings" a] of the senderistas, iii) that afterwards "she remained as 'support' or 'school,'" iv) attended to "the burns" of another member of the aforementioned organization, v) "formed part of the health subsection of Socorro Popular," and vi) – according to key witness A223000001- "she was responsible of delivering medicine and provide of attention to terrorist patients."

23. The Court observes that the Supreme Criminal Chamber expressly stated that "it assumes the doctrine […] institut[ed by] the [J]udgment of the Inter-American Court" in the present case regarding that "a medical act cannot be penalized," and therefore "the medical act constitutes […] a generic cause of lack of correspondence with the definition of the crime." However, the Supreme Court indicated that "the charges attributed" to Mrs. De La Cruz Flores "are not centered in the fact of having attended patients in a circumstantial or isolated manner", but "were linked or connected as clandestine collaborators for the ends of the terrorist organization," and that in that sense

> "obtain[ed] and offer[ed] her participation in the works – certainly repeated, organized, and voluntary – of support for the wounded and sick of the subversive movement, occupying both the offering of medical assistance – whose analysis cannot be made in an isolated manner, but also in attention with the acts concretely developed and proved – and also of providing medications and other types of offerings to the wounded and sick of the terrorist organization – whose closeness to the wounded or sick, the information of their state and location were offered to her by the terrorist organization itself, and not that these had gone to her for reasons of urgency or emergency […]"

24. In this sense, this Tribunal considers that regarding the establishment of the conviction in the second process followed against the victim:

> i) the same witnesses were used that generated the conviction of Mrs. De La Cruz Flores in the first procedure;
>
> ii)declarations of witnesses that had already been taken into account by this Tribunal in its Judgment of Merits of 2004, when it considered that in the present case there existed penalization of the medical act,[14] and
>
> iii) there was not any more specific information regarding acts corresponding to the crime definition of affiliation for which Mrs. De La Cruz was prosecuted – despite the express requests of information made by this Tribunal in that sense (*supra* Having Seen 9 and 10)-.

Therefore, the Tribunal concludes that the second conviction imposed on the victim is developed in terms very similar to the first one, previously analyzed by this Court, namely, regarding medical acts such as surgical interventions, healings, and delivery of medicines and attentions to those wounded or sick.

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[12] Defense allegation – discord in that which requests to declare as null in the judgment of July 10, 2006, (case file of supervision of compliance of Judgment, Folder IV, pages 1185, 1190 and 1191).

[13] Defense allegation – discord in that which requests to declare null in the judgment of July 10, 2006, *supra* note 12, page 1182.

[14] *Cf. Case of De la Cruz Flores, supra* note 5, par. 73.16, footnote on page 46, and par. 102.

25. Regarding this particular, the Court reiterates that stated in the Judgment, in the sense that it

> "observes that the medical act is acknowledged in numerous normative and declarative documents relating to the medical profession. For example, article 12 of the Code of Ethics and Deontology of the Physician's Professional Association states that "[the] medical act is any activity or procedure performed by a physician in the exercise of the medical profession. It includes the following: acts of diagnosis, therapeutics and prognosis carried out by a physician when providing comprehensive care to patients, and also acts deriving directly therefrom. Such medical acts may only be exercised by members of the medical profession."

26. Furthermore, the Court reminds that pointed out in its Judgment in the sense that "[n]o one shall be punished for having exercised a medical activity according to the deontology, whatever have been the circumstances or the beneficiaries of such activity" in the terms of Article 16 of Protocol I and Article 10 of Protocol II, both Additional Protocols to the 1949 Geneva Conventions.

1.2. The alleged retroactive application of criminal crimes

27. The State pointed out that "it is not inferred that Decree Law No. 25475 of May 6, 1992, be applied retroactively, regarding the various testimonial declarations given as evidence that Mrs. De La Cruz Flores remained in the aforementioned terrorist organization during the year 1992; and even one of the incriminatory testimonies affirmed that she belonged to the area of health until the month of February in 1992 as an Activist, after which she lower[ed] levels, and then she lost contact with the organization; while the other testimonies affirmed that she belonged to the terrorist organization 'Sendero Luminoso' until the month of April 1992 as an Activist, later descending to the position of 'School' and 'Organization Support', being evident that her participation within the subversive group was prolonged during the year 1992." According to the State, in the respective procedural pieces, it specifies that the conduct of the victim "was foreseen and sanctioned by Article [288] "c" of the Penal Code derogated [by 1924], introduced by Law [No. 24953], to later be classified in Article [322] of the Penal Code of [1991], finally derogated by Article [5] of the Decree Law [No. 25475]. In this sense, the State concluded that "it is not inferred […] that the conduct of the accused has not occurred during the effect of Decree Law 25475." Without prejudice to the aforementioned, the State added that the representative of the Public Ministry "established that the facts imputed to the accused […] occurred since 1989 until 1993, fixing in a definite manner the object of the criminal process, duly communicated to the procedural subjects. Over this basis of facts and of law, the oral trial was developed, and the procedural actors had the opportunity to discuss and question each one of the points that made up the object of the accusation."

28. Likewise, connected with the criminal definition of the crime applied, the State indicated that the penalty established in the first instance was increased "because the norm permits it, because the appellant also was the Prosecutor that was aggravated by the penalty that was not compatible with the national legislation." In any case, it stated that "the principle of interdiction of the pejorative reform applies and functions when resorting only to the accused regarding the penalty imposed, [and that] when they are crossed appeals like this, the ambit of the competence of a judge of appeal expands." Also, the State stressed that it had observed "the relationship […] of the first annulled process regarding the second process, [so that in the] annulled process, 20 years of deprivation of liberty [was imposed][to Mrs. De La Cruz Flores] and if we compare one with the other, there is no […] violation." Therefore, it concluded that "in the concrete case, none of the exceptional situations [established in the Penal Code], that [could] permit the judging [t]ribunal to reduce the penalty under the legal minimum were presented, and in this substantive context, the Supreme Court "corrected" the judgment

of instance in this extreme and imposed a sanction that is found within the legal margins established by the definition of the [particular] crime."

29. Also, the State indicated that in the second process "the [new charge] was [for] affiliation." In this way, in agreement with the State, "the facts are clear, they have not changed […] and from the Judgment itself of the Court […] it has decided that the accusation […] is for the crime of collaboration to terrorism" because on the contrary "[the order of the Court would not be justified to] have a new trial." In this sense, the State highlighted that "the extension of the criminal definition of the crime accused is not based on new facts, but on the same facts that were the object of the initial accusation, which were the object of the evidentiary activity developed in the oral trial with the guarantees of contradiction, right for the judge to hear the evidence, and publicity."

30. For its part, the representative indicated that in the second process, facts that occurred "before the entrance into force" of Decree Law 25475 were imputed to Mrs. De La Cruz. In this manner, "the State [had] applied a norm whose application that Court had already considered to be a violation of the principle of protection from ex post facto laws." On the other hand, it alleged that "[i]n the judgment of November 23, 2009, the charges that were raised" against Mrs. De La Cruz "were not signaled" "after the date of the entry into force of the D[ecree] [L]aw 25475" and that neither "the judgment of the Court nor of the Supreme Court of the State [had] signaled which facts corresponded to which charges, and which facts referred to the Decree Law 25475, especially when there had been an order of the […] Court to eliminate any retroactive application in the second process." In this way, "[t]he State has not complied with establishing the relationship between the facts imputed to Mrs. De La Cruz and the respective norms and penalties applicable."

31. In the same line, the representative pointed out that "[t]he State has not given valid legal basis to increase the sanction" that was applied by the Trial Chamber and that it has only "limited to justify the reduction of the conviction as a prize benefit in case of a "sincere confession" as a mitigating circumstance." In this sense, she précised that "she considers that the right of the State of reducing the conviction due to a benefit, does not authorize it *per se* to increase the punishment established by the Trial Chamber without the corresponding motivation." In this context, "the fact that the accused faces the possibility that his silence or denial of the charges attributed to him can be used to increase his conviction constitutes a coaction to his right to declare himself innocent, deny the fact, or to remain silent."

32. The representative added that "[t]he State has referred [to] norms that describe the crime of collaboration with terrorism," despite having sustained that the new conviction "derives from the crime of affiliation." The foregoing would imply a conviction for "acts of collaboration with terrorism [that] would be contrary to the [J]udgment of [the] Court in the case."

33. The Commission stressed that "it is not true that the alleged membership to Sendero Luminoso had been imputed to Mrs. De La Cruz Flores from 1989 to 1993[, given that a]s it results from the clear Reading of the Annexes submitted by the State, […] that term referred to the charge of membership or affiliation to a terrorist organization to a plurality of persons, among which the victim is mentioned." In any case, "[t]he greatest precision is observed in some of the extents of the [testimony] declarations that indicate that in certain months Mrs. De La Cruz Flores had a certain character within Sendero Luminoso. Nevertheless, the factual grounds of such affirmations, this is, the medical acts imputed to her, were described in a general

manner without establishing the day in which they had occurred." For the Commission, "the most recent reference in such declarations is that of the month of April, 1992." Likewise, the Commission indicated that "it is not possible to extract conclusions as to what descriptions of the crime were applied before the conducts allegedly committed by Mrs. De La Cruz Flores," circumstance that "[has] gener[ated], at the same time, lack of certainty regarding the applicable conviction, given that the three descriptions of the crime contemplated different ranges of penalty."

34. Additionally, the Commission indicated that "[t]he judicial authority, applied the most repressive penalty (that establishes in the Decree Law 25475) in a retroactive manner, using as an excuse the alleged obstruction to the process of the victim, for the fact of having used the legal mechanisms of defense."

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35. In this regard, the Tribunal recalls that in its Judgment, it declared the violation to the right of the principle of protection from *ex post facto* laws, when considering that

> "in the judgment of November 21, 1996 […], which convicted María Teresa De La Cruz Flores, the only testimony cited in support of the judgment[…], which refers to acts she allegedly committed in 1988 and for which the provisions of Decree Law No. 25,475, which entered into force on May 5, 1992, would have occurred in 1988."[15]

36. Regarding the second procedure followed against Mrs. De La Cruz Flores before the Peruvian jurisdiction, taking into account the information submitted by the State, the Tribunal can confirm that the facts that are being attributed to her, involve the period between 1988 y 1992, without the existence of a clear identification of the acts committed during such year that could justify the application of the Decree Law No. 25475. It must be stated the Ruling No. 2903-2008-MP-FN-1º FSP of the First Supreme Criminal Prosecutors' Office of December 4, 2008, which solves the exceptions *res judicata* and prescriptions issued by the defense of Mrs. De La Cruz Flores, clearly establish that the facts that are being charged upon the victim had a last day of performance in the year of 1992, and not until 1993, as the State established in its last report (*supra* Having Seen 10). As a matter of fact, according to the First Supreme Criminal Prosecution:

> "Regarding the [e]xtinction of the [c]riminal [a]ction for [p]rescription, it must be highlighted that according to the terms of the criminal accusation charges, […] since year 1989 until year 1992, several violations to the same criminal law occurred in diverse moments, reason why, considering the definition of the crime of terrorism as a continuous crime, the term for prescription shall be counted from the moment of its cessation; namely since year 1992."

37. In this manner, the Court observes that when the different documents of the record of the second process refer to the period between 1988 and 1993 they do it regarding the term that covers the commission of the crimes allegedly committed by the fourteen accused persons involved in such process. On the contrary, when they make specific reference to Mrs. De La Cruz Flores, such term is delimited between 1988 and 1992, although without specifying days or months. In any case, there is a different determination of the term that covers the alleged criminal acts committed by Mrs. De La Cruz Flores in the later judgments of the Second Penal Transitory Chamber of the Supreme Court of March 11 and November 23, 2009, in which texts it is established that the victim "[would] have participate[d] in the clandestine attention of patients and carried out surgical interventions to terrorist criminals from year 1989 to year 1992."

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[15] *Cf. Case of De la Cruz Flores, supra* note 5, par. 107.

38. Likewise, the Tribunal verifies that although the record of the second process makes reference to other norms applicable to the case (Criminal Codes of 1924 and 1991), besides the Decree Law No. 25475, no judicial instance in the internal level makes a clear and detailed listing of the facts attributed to Mrs. De La Cruz Flores between 1988 and 1992, the specific dates in which the acts would have occurred, nor the corresponding link between this facts and the applicable descriptions of the crime. [16]

39. In this regard, the Court notes that the three criminal definitions mentioned, derive in legal consequences with different range of penalties:

> Article 288-C of the Criminal Code of 1924.- "Those that are members of an organization integrated by two or more persons that meet or associate to instigate, plan, facilitate, organize, diffuse, or commit, mediate or immediate acts of terrorism, established in the Articles of this Title, shall be punished, for the mere fact of grouping or associating, as well as for being members of the organization, with a sentence of prison of no less than ten years and not more than fifteen years."[17]
>
> Article 322 of the Criminal Code of 1991.- "Those that are part of an organization integrated by two or more persons to instigate, plan, facilitate, organize, diffuse, or commit, mediate or immediate acts of terrorism, established in this Chapter, shall be punished, for the mere fact of grouping or associating, with a sentence of prison of no less than ten years and not more than twenty years".[18]
>
> Article 5 of the Decree Law No. 25475.- "Those that are part of a terrorist association, for the mere fact of belonging to it, shall be punished, with a sentence of prison of no less than twenty years and later disqualification for the term established in the sentence."[19]

40. Regarding this particular, the Tribunal considers that the referred lack of determination regarding the attributed facts, and the norm applied to each of them has direct implications in the sentence imposed of the victim. Thus, the Final Judgment of November 23, 2009, raised to 20 years the sentence of imprisonment of the victim, although at least one of the cited norms, namely, Article 288-C of the Criminal Code of 1924, established the imposition of a sentence not longer than 15 years. Therefore, the Peruvian authorities, applied the less favorable criminal norm to Mrs. De La Cruz Flores, with the aggravation that for the definition of the crime finally imposed, namely, Article 5 of the Decree Law No. 25475, there is not clear correspondence with any specific fact, attributable to the victim, after the its entry in effect, in May 1992.

41. However, even under the assumption that a fact has been attributed to the victim that was committed after the entry in effect of the Decree Law No. 25475, this Tribunal notes that, taking into account the principle of application of the most favorable law in the time, the sentence imposed on the victim shall have been the minor among the criminal norms that succeeded regulating the crime of affiliation to a terrorist organization, this is, the aforementioned Article 288-C of the Criminal Code of 1924.

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16 As has been mentioned (*supra* Considering 21), the judgment of the Supreme Court of November 23, 2009 has six declarations against Mrs. De La Cruz Flores. In relation to the dates on which the facts that are imputed to the victim occur, this Tribunal specifies the following: from the three declaration of Elisa Mabel Mantilla Moreno, the first of which, on September 7, 1995, is the same that this Tribunal analyzed in its Judgment on Merits (paragraphs 106 and 107), to declare the violation of the principle of ex post facto laws, given that the first sentence was based only upon said declaration. In the declarations of September 11 and 22, 1995, the witness Mantilla Moreno did not specify the dates regarding the facts that concerned Mrs. De La Cruz Flores (pages 747 to 749, Folder IV, supervision of compliance of Judgment). For its part, the declaration made on August 17, 1993 by the key witness A2230000001 neither specified the dates of the facts that are attributed to Mrs. De La Cruz (page 722, Folder IV, supervision of compliance of Judgment). In relation to the declarations of Jacqueline Aroni Apcho that cite the Supreme Court, the declaration of September 11, 1995 indicates that "until the year 1992," Mrs. De La Cruz Flores had had an "ACTIVIST level" (page 673, Folder VI, supervision of compliance of Judgment) and in the declaration of September 27, 1995, she signaled that she had been known "in the year 1989" as an activist. (page 691, Folder VI, supervision of compliance of Judgment).

17 Article 288-C of the Penal Code of 1924, introduced by Law 24651 and modified by Law 24953.

18 Article 322 of the Penal Code of 1991 (Legislative Decree 635).

19 Article 5 of Decree Law No. 25475.

Indeed, as a complement of the principle of protection from *ex post facto* laws, the Court has referred to the "principle of retroactivity of the most favorable criminal law" that is oriented to the protection of the human person, and implies the application of such a norm that establishes a minor sentence for the imputed crime. Such principle of application of the most favorable law "is applied regarding laws that have been sanctioned before the issuance of [a] Judgment, as well as during its execution, since the [American] Convention does not establish a limit in that sense." [20] In similar sense, the European Court has established that where there is a difference between the criminal law valid after and before the issuance of the judgment, tribunals shall apply the law which provisions are more favorable for the accused.[21]

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42. Regarding the sentence imposed of the victim and her right to remain silent and not to self-incriminate, the Tribunal highlights that the States shall respect the minimum guarantees of the right to defense, among them, those contemplated in Article, 8(2) g) "of the Convention, according to which "[d]uring the proceedings, every person is entitled, with full equality, to the following minimum guarantees: […]the right not to be compelled to be a witness against [her]self or to plead guilty." In the present case, the Tribunal observes that the Supreme Court indicated that "it [was] admissible to raise the sanction imposed since they warned about the circumstances that accompanied the commission of the crime and the conduct of the accused have not been properly accounted by the [j]udging Tribunal, since "the defendants assumed an obstructionist conduct during the judicial investigations, and there are no attenuating circumstances to reduce the sentence – the definition of the crime establishes a sentence of no less than 20 years, since they have denied the facts imputed to them."

43. In this regard, the Court considers that the judgment of the Supreme Court could not result in a negative consequence –increase of the sentence- against Mrs. De la Cruz, using as an argument her denial of culpability. In a similar sense the European Court has stated that there might be a violation of the right to a fair trial if the tribunal bases its judgment or derives negative consequences for the accused, exclusively or mainly from the refusal to declare.[22]

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44. In the other hand, regarding the definition of the crime applied to the victim, the Tribunal highlights that the Decree Law No. 25475 was issued "[to] [e]stablish the sanction of the crimes of terrorism and the procedures for the investigation, the instruction and the trial [of the same]". Thus, this decree criminalizes, among others, the following conducts:

> Article 4.- Collaboration with Terrorism
>
> It shall be punished with sentence of imprisonment of no less than twenty years anyone who "voluntarily obtains, collects, assembles or facilitates any type of supplies or devices, or carries out acts of collaboration, which in any way promote the committing of the crimes included in [the same] decree law, or the achievement of the goals of a terrorist group" commits the crime

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[20] Cf. *Case of Ricardo Canese V. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111. paragraph 178 and 179; *Case De la Cruz Flores V. Peru*, *supra* note 5, par. 105, and *Case García Asto and Ramírez Rojas V. Peru. Preliminar Exception, Merits, Reparations and Costs.* Judgment of November 254, 2005. Series C No. 137, par. 191.

[21] ECHR, *Scoppola V. Italy (*Application No. 10249/03) September 17, 2009, par 107 and 108.

[22] ECHR, Barberà, Messegué and Jabardo *V*. Spain (Application No. 10590/83) December 6, 1988, par. 77, and ECHR, Salabiaku *V*. France (Application No. 10519/83) October 7, 1988, par. 28.

> of collaboration with terrorism. The norm then defines six categories of conduct that it identifies as "acts of collaboration"; these are:
>
> a. Providing documents and information on individuals and property, facilities, public and private buildings and any other that specifically contributes to or facilitates the activities of terrorist elements or groups.
>
> b. The cession or use of any type of accommodation or other means which could be used to hide individuals or serve as a deposit for weapons, explosives, propaganda, provisions, medicines, and other belongings related to terrorist groups or their victiMrs.
>
> c. The intentional transfer of individuals belonging to terrorist groups or linked to their criminal activities, and also the provision of any kind of assistance that helps them escape.
>
> d. The organization of courses, or the management of centers of indoctrination and training for terrorist groups, operating under any cover.
>
> e. The manufacture, acquisition, possession, theft, storage or supply of weapons, ammunition, explosive, asphyxiant, inflammable, toxic or other substances or objects that could cause death or injury. An aggravating circumstance is the possession and hiding of weapons, ammunition or explosives belonging to the Armed Forces and the Peruvian National Police.
>
> f. Any form of financial activity, help or mediation carried out voluntarily in order to finance the activities of terrorist elements or groups.
>
> Article 5.- Affiliation to a terrorist organization
>
> Those that are part of a terrorist association, for the mere fact of belonging to it, shall be punished, with a sentence of prison of no less than twenty years and later disqualification for the term established in the sentence.

45. In the Judgment issued in the present case, the Court pointed out that "Article 4 of Decree Law No. 25475, under which Mrs. De La Cruz Flores was convicted, defines acts of collaboration with terrorism as a crime and not membership in an organization that may be considered a terrorist group, nor does it establish the obligation to report possible terrorist acts" and however, it was those two acts that gave rise to the criminal liability of the victim in the judgment of November 21, 1996.[23]

46. Nevertheless, regarding the crime of "collaboration with terrorism," regulated on Article 4 of the Legislative Decree No. 25475, the Judgment issued by the Court in the case of *Lori Berenson* established that such definition of the crime is incompatible with Article 9 of the American Convention.[24] Likewise, in the Judgment of the case *García Asto and Ramírez Rojas*, such position was reiterated regarding the conformity of the definition of the crime of "collaboration with terrorism" with Article 9 of the American Convention, extending such criterion for the definition of the crime of "membership or affiliation to a terrorist organization," contained on Article 5 of the Decree Law No. 25475. Regarding both definitions of the crime, the Tribunal concluded that "that they set forth the elements of the criminalized conduct, differentiating it from acts which are either not punishable or punishable with non-criminal sanctions, and which do not infringe other provisions of the Convention."[25]

47. The Tribunal observed that the second process of prosecutorial charge initiated on September 29, 2003, was for the crime of terrorism in the modality of "acts of collaboration." However, on December 2004, the instruction was extended to include also the crime of "affiliation to a terrorist organization," defined in the second process Article 5 of the Decree Law No. 25,475.[26] After the filing of a recourse by the defense, on July 18, 2005, the Third Superior Prosecutor's Office Specialized in crimes of Terrorism,

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[23] *Cf. Case of De la Cruz Flores, supra* note 5, par. 88.

[24] *Cf. Case of Lori Berenson Mejía V. Peru. Merits, Reparations and Costs.* Judgment of November 25, 2004. Series C No. 119, paras. 127 and 128.

[25] *Cf. Case of García Asto and Ramírez Rojas, supra* note 18, par. 195.

[26] Report No. 216-1º FSPN-MP/FN of the First Superior Criminal National Prosecutor General's Office of December 20, 2004 (Case File Accumulated No. 88-04 and No. 673-93), which consist of four "fojas". (pages 374-377, Book V, Supervision of Compliance with the Judgment)

declared "the absence of merit" to move to an oral trial for the crime of collaboration with terrorism, questioning such order for the trial to commence, that accused the victim for two "incompatible" crimes. Thus, the process was limited to the accusation for the crime of terrorism-affiliation.

48. Notwithstanding the foregoing, this Tribunal points out that the Judgment of the Supreme Court, refers to the crime of "collaboration" in its Considering paragraphs to determine the responsibility of Mrs. De La Cruz Flores, however, the crime imputed to the defendant in the second process is that of "affiliation to a terrorist organization." Indeed, despite that previously it was considered that a trial for collaboration was not going to be promoted (*supra* Considering 47) that Chamber pointed out that:

> "regarding that alleged by the appealing defendants, in the sense that providing medical attention shall not constitute any crime, it shall be established that the crime of terrorist collaboration, in its diverse legal expressions since its introduction in the national arrange of punishments, represses those linked in some way with the material execution of any act of collaboration that favors the commission of the crimes of terrorism or the materialization of the purposes of a terrorist group; that, without prejudice of that stated in the Final Judgment of December 2004 […], it shall be added that **the** acts of collaboration that are relevant for the definition of the crime, firstly, should be related to the activities and purposes of the terrorist organization, and, in second place, they shall materially favor the terrorist activities themselves […]; that, the typical conduct shall, then, contribute with its suitability, to the consecution of execution of a specific purpose: to favor the commission of crimes of terrorism or the realization of the purposes of a terrorist organization." (emphasis added)

49. Taking into account these precedents, the Court observes that the internal judicial authorities fall in the same irregular conduct pointed out in the Judgment of Merits when applying an article that does not define the criminal conducts for which Mrs. De la Cruz Flores was convicted. Indeed, in the first procedure, considerations regarding her affiliation to a terrorist group were made, and she was convicted for her collaboration within it. In the second process, the judicial authority makes considerations regarding the collaboration with such group and she is convicted for affiliation to it (she is convicted for "be[ing] link[ed] or connect[ed] as a clandestine collaborator to the purposes of the terrorist organization.") Furthermore, in both cases, this is to say, either for the crime of collaboration or for the affiliation, the acts imputed to Mrs. De La Cruz are linked to medical acts allegedly committed by her (*supra* Considering 23 and 24). This, besides verifying again the *ex post facto* application of Decree Law No. 25475 before the absence of a clear correspondence between the facts imputable to the victim and the entry into force of such norm that, in any event, was applied despite not being the most favorable regarding the amount of the sentence. Finally, the Court verified that in the process, negative consequences resulted from the victim denying her culpability.

50. Thus, the Tribunal verifies that the first operative paragraph of the Judgment has not been fulfilled in the new process followed against Mrs. De La Cruz Torres, in the extent of observing the principle of protection from *ex post facto* laws.

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51. For all the foregoing, the Tribunal points out those elements that demonstrate that the second process followed against Mrs. De La Cruz Flores has been carried out in conformity with the first Operative Paragraph of the Judgment, have not been submitted. Thus, the Court deems that the State shall carry out all the concrete and pertinent procedures to fulfill such operative paragraph, and to adequate the second process followed against the victim to the principles of legality, protection from *ex post facto*

laws, and the warrantees of due process of law. In this sense, the Court considers that the decisions and orders established in the second process do not allow to deem compliance with that established in the first Operative Paragraph of the Judgment and, in this manner; it will keep open the procedure of monitoring the compliance with judgment, until the State gives full compliance to the obligation concerned. Furthermore, the Tribunal considers that the State shall guarantee that all the legal consequences derived from such lack of compliance do not create a burden on the victim.

2. Duty to give an adequate medical and psychological attention (*Operative Paragraph fifth of the Judgment*)

52. Regarding the duty to give medical and psychological attention to Mrs. De La Cruz Flores through the State´s healthcare services, including the free provision of medicines, the State pointed out that it "assures and guarantees […] preventive, promotional, rehabilitation and recovery attention, including psychological medical services." This way, she currently" is covered by the social security system." Since her insurance type is "regular," "her medical attention is 100% covered; therefore, there is no type of medical attention that cannot be covered […], which includes all type of treatments, including those that are 'specialized' or, in any event, 'attention overseas.'" In this line, the State informed that Mrs. De La Cruz had been attended to on April 2 and 6, and December 9, 2009, in traumatology and psychiatry services. Likewise, the State stressed that "if […] there was a termination of the labor link of the person [derived from] a judicial judgment, […] the domestic law of health social security foresees a period of latency that covers 9 months of attentions posterior to the termination of the labor link, also [with a] 100% coverture."

53. The State declared that "if Mrs. De La Cruz Flores was eventually placed into the penitentiary establishment, the Ministry of Health […] [would] automatically and freely affiliate her to the Integral Health Insurance, covering all the corresponding health care needs, that also include the mental conditions on schizophrenia, anxiety, depression or alcoholism, that are specialized treatments, and the respective medication." In any event, "the National […] Penitentiary Institute has, within its facilities, a basic medical attention service in [which] regular and psychological medical services are included."

54. The representative indicated that "[t]he victim has regained her right to receive [medical] services, not as a compliance of the State with the obligation established in [the] Court´s [J]udgment, but as a consequence of being working and contributing for such benefit." For the representative, "the State did not adopt nor has adopted any measure to assure the medical and psychological attention that her health condition requires as a consequence of the human rights violations that she was a victim of on the part of the State." The medical attention received by Mrs. De La Cruz "does not have origin in the physical and psychological suffering that she was subject of by the State when detaining, processing, and convicting her on violation of the legality principle and due process among others, but they originate in later illnesses of a different origin."

55. In any case, the representative indicated that "the offerings of medical attention in case of contingency, such as her reclusion in a penitentiary center, and subject to previous diagnose, ratify the position […] of the inaction of the State in this aspect, given that it did not carry out any action or measure in order to diagnose the physical and mental health condition of the [victim]." Specifically, regarding psychological attention, the representative informed that "on April 6, 2009, [the victim] had to be attended in the specialty of Psychiatry of the ESSALUD II Suárez-Angamos Hospital, the same that diagn[o]s[ed her post-traumatic stress disorder], establishing as treatment […] medical [r]est from April 6 […] to April 20, 2009, issuing her [a] medical certificate of temporary incapacity for work." Before such diagnose, Mrs. De La Cruz requested the Foundation of Social Aid of Christian Churches (FASIC), based on Santiago de Chile, "to give her specialized treatment, given the expertise of such institution in […] disorders [for] human rights violations." Thus, Mrs. De La Cruz informed that "almost one year

[a]go […] the treatment beg[an], therefore she ha[d] to take a license without salary for 3 months, but due to the pressure at her work, she interrupt[ed] the treatment, without being able to continue with it in the Social Security, for not having worked in the last 3 months." Despite that, the representative highlighted that "[t]he State [has] not inform[ed] regarding the treatment that has been established in favor of Mrs. De La Cruz [by] the State doctors [that] […] diagnos[ed her such] post-traumatic stress and adaptation disorder."

56. The Commission stated that it "values that Dr. De La Cruz Flores has State health care and access to medication." Nevertheless, it "request[ed] the Court to urge the State to adopt the measures and mechanisms necessary to provide medical and psychological treatment, as well as free provision of medication to the [victim]."

57. The Court takes note of the various initiatives of a general character related with the health care carried out by the State, and, without prejudice to it, reiterates that, in addition to the measures adopted in the framework of the general system of health, it is necessary that the State grants preferential attention to the victim.[27] In this way, and with the effects of evaluating the adaptation of these and other activities in the means of reparation ordered by this Tribunal in the present case, it is necessary for the State to refer only and concretely to the activities of the medical offering in favor of Mrs. De La Cruz Flores developed prior to the sentence, that excludes those derived from the support of social security that the victim made herself as a worker for the State. In this sense, the Tribunal reminds the State that the medical and psychological treatment that has been ordered as a means of reparation by this Court and that, therefore, Mrs. De La Cruz must be the beneficiary of a treatment differentiated by her quality as a victim, in relation to the treatment and procedures that must be made for her being attended in the public hospitals.

58. Regarding the psychological-psychiatric attention, the Tribunal refers to that signaled in its Judgment in the sense that the State must offer said attention "through the State health services" which clearly refers to the Peruvian national institutions.[28] Along the same lines, the Court reminds that this measure seeks to contribute to the reparation of the psychological damages derived from the violations committed, and the modality ordered for its fulfillment cannot be modified during the stage of supervision of compliance with the Judgment.[29] Therefore, the State is prohibited from providing the psychological treatment outside its territory. Taking into account that provided, the Tribunal considers that it needs updated, ordered, and complete information from the representatives that includes, if it be the case, information regarding whether it is the desire of Mrs. De La Cruz to not receive psychological-psychiatric treatment in Peru.

3. Duty to provide a scholarship for training and professional development (*seventh operative paragraph of the Judgment*)

59. Regarding the duty to provide to Mrs. De La Cruz Flores a scholarship that would permit her to receive training and professional development, the State informed that she "request[ed] to receive a Postgraduate Diploma from the Autonomous University of Barcelona (Spain) that is valued at 4,100 Euros and also that the State has to assume the costs of travel, stay, lodging, internal movements, and book expenses, which comes to a total of 7,82[5] Euros, according to that indicated in the letter presented by her to

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[27] *Cf. Case of the 19 Tradesmen v. Colombia*. Supervision of Compliance of Judgment and Provisional Measures. Order of the Inter-American Court of Human Rights of July 8, 2009, Considering thirtieth; *Case of the Mapiripán Massacre v. Colombia*. Supervision of Compliance of Judgment. Order of the Inter-American Court of Human Rights of July 8, 2009, Considering fifty-fourth, and *Case of the Pueblo Bello Massacre v. Colombia.* Supervision of Compliance of Judgment. Order of the Inter-American Court of Human Rights of July 9, 2009, Considering thirtieth.

[28] *Cf. Case of De la Cruz Flores, supra* note 5, Operative Paragraph 5.

[29] *Cf. Case of Gutiérrez Soler v. Colombia.* Supervision of Compliance of Judgment. Order of the Inter-American Court of Human Rights of January 31, 2008, Considering fifteenth.

the Ministry of Justice on [September 5, 2007]." "[I]n agreement with that informed by the organs of the Ministry of Education in charge of the granting of scholarships, the [P]eruvian State only has the power to grant scholarships within its jurisdiction." Also, it indicated that "the Post-Graduate degree required by the interested party is not given in Schools of Post-Graduate Study of the Peruvian Educational Entities" and that "[i]n the scholarships for Post-Graduate degrees of an international character that international organizations send, the post-graduate degree required by [Mrs.] [D]e [La] Cruz does not exist. […] Therefore, it is materially impossible for [her] request to be fulfilled." Nevertheless, in the private hearing, the State informed that it is transmitting "the corresponding documents to evaluate if any possibility exists or not to materialize some level of reintegration in favor of Mrs. De La Cruz Flores." Previously, the State informed that "it had carried out meetings of coordination with the representatives of the Ministry of Education, and [that] the advances of the same would arrive at the brevity of the case."

60. The representative signaled that "[t]he requests for training made by [Mrs.] De La Cruz [connected with the specialization of pediatric studies], [were] rejected by the public institution that offers services – ESSALUD." In this way, "[b]efore the repeated lack of fulfillment of the State and facing the medical responsibilities that it […] assign[ed in the area of adult services], the [d]octor De La Cruz, […] look[ed] to obtain the medical training necessary to face said responsibilities." Also, "she registered for the Diploma of Post-Graduate in Medicine of Aging that is offered in the Post-Graduate School of the Autonomous University of Barcelona (Spain), during the per[i]od of [N]ovember 2007 to [J]une 2008, assuming the costs of registration, moving, and residing in Spain." Also, the representative highlighted that "the State not only did not respond to the communications of the victim requiring the granting of the scholarships for her training and development, but neither – although it supposedly lacks financing – made any procedure before the Spanish government or foundations or Spanish agencies that grant scholarships to foreign students with the goal of obtaining a scholarship in favor of the victim." Notwithstanding, the representative "recogniz[ed] the fact [of] the State having said that it will begin to make procedures to perform the reintegration of the training of the doctor De La Cruz [in] the University of Barcelona." It fits to stress that, at this point, the representative highlighted that Mrs. De La Cruz "has been recognized since the year 2005 [until] 2008 for her work as a doctor in the Peruvian Institute of Social Security, attending to elder persons, [and becoming] the coordinator of the doctors in that area."

61. The Commission "observ[ed] that the State limited itself to inform that it will continue making internal procedures" and that it "has not detailed which are the procedures that it is carrying forward nor when it foresees that they will be culminated. In this sense, the Commission […] request[ed] the Court to insist upon the State to present concrete information about the measures provided in order to give fulfillment to thi[s] point of the [J]udgment."

62. Regarding this particular point, the Court observes "[t]hat the scholarship for studies in the present case had […] to be fulfilled with special compliance t[o] the time perio[d] establish[ed] in the Judgment."[30] For this not having occurred, it verified a scenario in which the victim sees the need to make all the processes of access to said training abroad, not only for the absence of a course in her specialty in the country, but also due to the lack of disposition of the State to offer a scholarship in any university or center of studies, alleging that there are always a series of obstacles or impediments for its concession. Taking into account that in the framework of the private hearing the State indicated that it is not making the processes in order to repay the expenses that Mrs. De La Cruz has incurred, this Tribunal considers that said possibility constitutes an appropriate modality to comply with that ordered in the seventh operative paragraph of

[30] *Cf. Case of Gómez Paquiyauri v. Peru.* Supervision of Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 3, 2008, Considering eighteenth.

the Judgment.[31] In this way, the Tribunal remains awaiting the results of the meetings of coordination made by the State with the goal of complying with this obligation (*supra* Considering 59).

4. Duty to Re-Register in the Retirement Registry (e*ighth operative paragraph of the Judgment*)

63. Regarding the duty to re-register Mrs. De La Cruz in the corresponding registry of retired persons, the State indicated that "it has raised the corresponding official report to the Office of Provisional Normalization (ONP) with the goal that it complies with the respective re-registration of the beneficiary." Said entity is now in the process of making the action […] for said re-registration [through] Order No. 133-2010-OAJ/ONP issued by the ONP to the Secretariat General of Social Security of Health (EsSalud), so that this entity will offer the precise information of the beneficiary, and also to proceed with the fulfillment of that ordered by the Court.

64. The representative signaled that "the entity responsible for the registration[,] the Peruvian Institute of Social Security, said that [it is not possible] to comply with this point of the [J]udgment, […] because to recognize the years of services of Mrs. [D]e La Cruz would require also the recognition of all legal effects, including the remuneration effects, of the time of effective non-labor services, although the Peruvian Institute of Social Security has recognized the 25 years of service of doctor De La Cruz in a public act on August 12, 2005, a document that was alleged to this Court." Also, the representative highlighted that the obligation ordered by the Court "is not an obligation of process [but] an obligation of results," concluding that "it is without a doubt that economic criteria exists that [limit the fulfillment]." For the representative, the lack of fulfillment of this point generates collateral effects so that "[Mrs.] De La Cruz cannot access pension plans and other benefits of health services for herself and her next of kin in case of retirement or death through the Association of Merits of Retirement and Death of Workers, Pensionists and Former Workers of the Peruvian Social Security (FOPASEF for its Spanish acronym), given that remunerations were not perceived, the support of FOPASEF has not been paid, and for not having offered to said institution during the time that she was deprived of her liberty, she cannot access any benefit. Her debt with FOPASEF on August 25, 2008, ascended to the sum of S/. 8,605.30."

65. The Commission "observ[ed] that the State limited itself to inform that it will continue making internal procedures" and that it "has not detailed which are the procedures that it is carrying forward nor when it foresees that they will be culminated. In this sense, the Commission […] request[ed] the Court to insist upon the State to present concrete information about the measures provided in order to give fulfillment to thi[s] point of the [J]udgment."

66. In this respect, the Tribunal takes note of the last information provided by the State in the sense that the Office of Provisional Normalization (ONP) has issued a report to the Secretariat General of Social Security of Health (EsSalud), so that EsSalud will offer it the precise information of Mrs. De La Cruz and also to proceed with the re-registration of the same in the corresponding registry of retired persons. In this way, the Court remains awaiting the updated, ordered, and complete information regarding the fulfillment of this point. The Court considers that the measures and prior information presented by the State must be taken into account in a detailed manner in the respective observations of the representative and of the Commission about the State's actions regarding this point of the Judgment.

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[31] *Cf. Case of Cantoral Benavides V. Peru.* Supervision of Compliance of Judgment. Order of the Inter-American Court of Human Rights of February 7, 2008, Considering twelfth and *Case of Escué Zapata V. Colombia. Interpretation of Judgment of Merits, Reparations and Costs.* Judgment of the Inter-American Court of Human Rights of May 5, 2008, Considering twenty-ninth.

5. Publication of the Judgment (ninth operative paragraph of the Judgment)

67. In that regarding the duty to publish in the Official Newspaper both, the section denominated "Proven Facts" as well as the first through third operative paragraphs of the declarative part of the Judgment, the State indicated that on March 1, 2010, it fulfilled the required obligation of publication.

68. The representative confirmed that "[o]n March 1, 2010, the State has complied with the publication in the [O]fficial [N]ewspaper of the [J]udgment in the terms provided by this Court […], [although] after approximately 5 years and 4 months from when it was ordered."

69. The Commission "consider[ed] that this point of the [J]udgment must be declared fulfilled."

70. For that provided, the Tribunal observes that the State has offered the documentation that supports the publication of the pertinent parts of the Judgment in the Official Newspaper, the reason for which it declares the total fulfillment of the present obligation.

A) Request for Adoption of Provisional Measures

71. Article 63(2) of the American Convention provides that "[i]n cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court, in the matters that are before it, may take the provisional measures that it considers pertinent. If dealing with matters that are not yet submitted before the Court, it may act at the request of the Commission."

72. Effectively, for the adoption of provisional measures, it is required that the gravity be "extreme," meaning that it is found in its most intense or elevated level. The urgent character implies that the risk or threat involved is immediate. Finally, regarding the harm, there must be a reasonable probability that it materializes and it cannot be based upon goods or legal interests that can be repaired."[32]

73. To issue provisional measures, the Tribunal does not require, in principle, proof of the facts that *prima facie* appear to comply with the requirements of Article 63.[33]

74. That under international human rights law, provisional measures are not only precautionary, in the sense of preserving a juridical situation; they are also safeguards inasmuch as they protect human rights. When the requisite basic conditions of extreme gravity and urgency are present and when necessary to prevent irreparable harm to

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[32] *Cf. Matters of Monagas Judicial Confinement Center ("La Pica"), Yare I and Yare II Capital Region Penitentiary Center (Yare Prison), Penitentiary Center of Central Occidental Region (Uribana Prison), and Capital El Rodeo I and El Rodeo II Judicial Confinement Center.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering third; *Matter of Belfort Istúriz et al.* Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of April 15, 2010, Considering eighth, and *Matter of COFAVIC- Case of Caracazo*. Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering sixth.

[33] *Cf. Matter of Carpio Nicolle et al.* Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, Considering fifteenth; *Matters of Monagas Judicial Confinement Center ("La Pica"), Yare I and Yare II Capital Region Penitentiary center (Yare Prison), Penitentiary Center of Central Occidental Region (Uribana Prison), and Capital El Rodeo I and El Rodeo II Judicial Confinement Center*, *supra* note 31, Considering fourth, and *Case of Rosendo Cantú et al.* Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of February 2, 2010, Considering eleventh.

persons, provisional measures become a true jurisdictional guarantee that is preventive in nature.[34]

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75. The representative alluded to a situation of extreme gravity derived from the order of detention that the victim received. According to the representative, "[t]he situation is aggravated taken into account that [Mrs.] De La Cruz[…] could not access any penitentiary benefit to be able to obtain her request for release, having eliminated any type of penitentiary benefit to the persons condemned for the crime of terrorism, that would be her case, through Law No. 29423, the Law that derogates the Legislative Decree No. 927 that regulates the criminal execution of crimes of terrorism."

76. The Commission "consider[ed] it worrisome […] that with a basis in a decision that at [its] criteria […] does not comply with the standards of the Inter-American Court […], can arrive at the detainment of the victim in this case."

77. After analyzing the foundations that sustain this request for the adoption of provisional measures (*supra* Considering 76), it is shown that the object of the request of the representative is connected to the obligation imposed on the State in the first operative paragraph of the Judgment concerned, that is, "to observe the principle of legality and of ex post facto laws consecrated in Article 9 of the American Convention and the demands of legal due process in the new process that follows for Mrs. Maria Teresa De La Cruz Flores." Consequently, the issue raised relates to the possible capture or detention of Mrs. De La Cruz Flores, regarding that it derives from an internal decision that does not comply with that ordered by the Tribunal in its Judgment (*supra* Considering 51) is directly related with the supervision of compliance with the same.[35]

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

In the exercise of its powers of supervision of compliance with its decisions and in conformity with Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, Articles 25(1) and 30 of the Statute, and Articles 31(2) and 69 of its Rules,

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[34] *Cf. Case of the Newspaper "La Nación"*. Provisional Measures regarding Costa Rica. Order of the Inter-American Court of Human Rights of September 7, 2001, Considering fourth; *Matter of Alvarado Reyes et al*. Provisional Measures regarding Mexico. Order of the Inter-American Court of Human Rights of May 26, 2010, Considering fourth, and *Matter of the Forensic Anthropology Association*. Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of July 21, 2010, Considering fifth.

[35] In a similar sense, see *Raxcaco Reyes et al.* Request for Amplification of Provisional Measures regarding Guatemala. Order of the Inter-American Court of Human Rights of February 2, 2007, Considering twenty-first.

DECLARES:

1. That in conformity with that signaled in the Considering paragraph 70 of the present Order, the State has given total fulfillment to the following operative paragraph of the Judgment:

> a) to publish in the Official Newspaper both the section denominated "Proven Facts" as well as the first through third operative paragraphs of the declarative part of the Judgment (*ninth operative paragraph of the Judgment of November 18, 2004).*

2. That in conformity with that stated in the Considering paragraphs 51, 57, 58, 62 and 66 of the present Order, that it will maintain open the procedure of supervision of compliance with the following points pending fulfillment:

> a) to observe the principle of legality and of ex post facto laws and the demands of legal due process in the new process that follows for Mrs. De La Cruz Flores (first operative paragraph of the Judgment of November 18, 2004);
>
> b) to offer medical and psychological attention to the victim through the State health services, including the free provision of medicine (fifth operative paragraph of the Judgment of November 18, 2004);
>
> c) to offer to Mrs. De La Cruz Flores a scholarships that permits her to get training and professional development (seventh operative paragraph of the Judgment of November 18, 2004);
>
> d) to re-register Mrs. De La Cruz Flores in the corresponding registry of retired persons (eighth operative paragraph of the Judgment of November 18, 2004), and

AND DECIDES:

A) Supervision of Compliance with Judgment

1. To require the State of Peru to adopt all the measures necessary to give effective and prompt fulfillment to the points pending fulfillment signaled in the second operative paragraph *supra*, in conformity with that stipulated in Article 68(1) of the American Convention on Human Rights.

2. To request the State of Peru to present to the Inter-American Court of Human Rights, no later than February 15, 2011, a report that indicates all the measures adopted in order to comply with the reparations ordered by this Court that are found pending fulfillment, in conformity with that signaled in the Considering paragraphs 51, 57, 58, 62 and 66, as well as the second operative paragraph of the present Order.

3. To request the representative and the Inter-American Commission on Human Rights to present their observations to the report of the State mentioned in the previous operative paragraph, in the time periods of four and six weeks, respectively, beginning from the reception of said report.

B) Request for the Adoption of Provisional Measures

4. To declare inadmissible the request for the adoption of provisional measures in favor of Mrs. De La Cruz Flores in the means that the object of the same is connected to the obligation imposed on the State in the first operative paragraph of the Judgment of the merits, reparations, and costs of November 18, 2004, in the present case.

5. To request the Secretariat of the Court to notify the present Order to the State of Peru, to the Inter-American Commission on Human Rights, and to the representative of the victim.

Leonardo A. Franco
Exercising President

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alesandri
Secretary

So ordered,

Leonardo A. Franco
Exercising President

Pablo Saavedra Alessandri
Secretary