

Inter-American Court of Human Rights

Case of Cesti-Hurtado v. Peru

Order of the Court of November 19, 1999 *(Request for Interpretation of the Judgment of Merits)*

HAVING SEEN:

1. The Judgment rendered by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") on September 29, 1999 (hereinafter "the Judgment") in which the Court decided

1. to hold that the Peruvian State violated, to the detriment of Mr. Gustavo Adolfo Cesti Hurtado, Articles 7(6) and 25 of the American Convention on Human Rights, under the terms stated in paragraphs 123 and 133 of the present judgment, and to order that it comply with the order rendered by the Specialized Court of Public Law of Lima on February 12, 1997, concerning the writ of habeas corpus interposed for Mr. Cesti Hurtado.

2. to hold that the Peruvian State violated, to the detriment of Mr. Gustavo Adolfo Cesti Hurtado, Article 7(1), (2), and (3) of the American Convention on Human Rights, under the terms stated in paragraphs 140-143 of the present judgment.

3. to hold that the Peruvian State violated, to the detriment of Mr. Gustavo Adolfo Cesti Hurtado, Article 8(1) of the American Convention on Human Rights, under the terms stated in paragraphs 151 of the present judgment.

4. to hold that in this case it was not proven that the Peruvian State has violated, to the detriment of Mr. Gustavo Adolfo Cesti Hurtado, Article 8(2) of the American Convention on Human Rights, as set forth in paragraph 152 of the present judgment.

5. to hold that in this case it was not proven that the Peruvian State has violated, to the detriment of Mr. Gustavo Adolfo Cesti Hurtado, Article 5(2) of the American Convention on Human Rights, as set forth in paragraph 160 of the present judgment.

6. to hold that the Peruvian State violated, to the detriment of Mr. Gustavo Adolfo Cesti Hurtado, Articles 1(1) and (2) of the American Convention on Human Rights, in the terms stated in paragraphs 166 and 170 of the present judgment.

7. to hold that in this case it was not proven that the Peruvian State has violated, to the detriment of Mr. Gustavo Adolfo Cesti Hurtado, Articles 11 and 21 of the American Convention on Human Rights, in the terms stated in paragraphs 177, 178, and 183 of the present judgment.

8. to hold that the proceeding conducted against Mr. Gustavo Adolfo Cesti Hurtado in the military court are incompatible with the American Convention on Human Rights, and to order the State to nullify that proceeding, and the effects that derive from it;

9. to hold that the Peruvian State is obligated to pay just compensation to Mr. Gustavo Adolfo Cesti Hurtado and to reimburse him for any expenses he may have incurred in the representations relating to the present proceedings, and

10. to order the initiation of the reparations stage, and to authorize the President to adopt in due course such measures as may be necessary.

2. The writing of October 13, 1999 submitted to the Court by the Republic of Peru (hereinafter "the State" or "Peru"), by means of which it presented an application for interpretation of the Judgment (*supra* 1), in accordance with Articles 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure").

3. That, in said writing, the State declared that "the suspension of the execution of the judgment prohibited by Article 58(4) of the Court, was not applicable to the present case...in that the present application for interpretation and clarification concerns ... aspects related to the execution of the judgment."

4. The October 15, 1999 note from the Secretariat of the Court, by means of which it transmitted to the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "Inter-American Commission") a copy of the writing of the State of 13 of the same month and year and granted, in accordance with Article 58(2) of its Rules of Procedure, a period until December 15 of the current year to present its observations to the application for interpretation interposed by Peru.

5. The October 27, 1999 writing of the Commission in which it referred to the "noncompliance... of the State" and indicated that it was not possible for Peru to allege as a justification "the interposition of the... application [for interpretation] because that [was] clearly and absolutely denied by the precepts of Article 58(4) of the Rules of Procedure."

6. The November 12, 1999 writing of Mr. Gustavo Adolfo Cesti Hurtado, in which he communicated to the Court that, despite having been released on November 11, 1999 by the Military Court, that Court still had not fully complied with the Judgment, as it had not ordered the lifting of his ban on going abroad or the orders freezing his property. He also informed the Court that it had prevented his attorney from having access to the records of the case processed before that agency for the purpose of learning the terms of his release.

CONSIDERING:

1. That Peru has been a State Party to the American Convention since July 28, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981.

2. That Article 58 of the Rules of Procedure establishes, in relevant part, that

[...]

2. The Secretary shall transmit the application for interpretation to the States that are parties to the case and to the Commission, as appropriate, and shall invite them to submit any written comments they deem relevant, within a time limit established by the President.

[...]

4. An application for interpretation shall not suspend the effect of the judgment.

5. The Court shall determine the procedure to be followed and shall render its decision in the form of a judgment.

3. That the nature of the proceedings before a human rights court does not permit the parties to withdraw from the application of set procedural rules, since they are by nature of a public procedural order. (*Cfr. Garrido and Baigorria Case*, Judgment of February 2, 1996. Series C No. 26).

4. That the State has not informed the Court of the scope of the Military Court Judgment pursuant to which Mr. Cesti Hurtado was released on November 11, 1999, and, in particular, of compliance with the February 12, 1997 Order rendered by the Special Public Law Court of Lima regarding the writ of habeas corpus interposed for Mr. Cesti Hurtado, as was ordered by the Court in its September 29, 1999 Judgment, omissions which cause uncertainty with respect to the current situation of Mr. Cesti Hurtado and his family.

5. That the Court considers it necessary to hold a public hearing to hear the arguments of the parties concerning the claims formulated by the State in its application for interpretation and the observations to those claims to be submitted by the Inter-American Commission on December 15, 1999 at the latest.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

based on Articles 29(2) and 58 of its Rules of Procedure,

DECIDES:

1. To declare that the application for interpretation submitted by the Peruvian State on October 13, 1999 does not suspend the effect of the judgment of September 29, 1999 rendered by the Inter-American Court of Human Rights.

2. To authorize its President to opportunely summon the Peruvian State and the Inter-American Commission on Human Rights to a public hearing concerning the request for an interpretation of the Judgment of September 29, 1999, to take place at the seat of the Inter-American Court of Human Rights.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez
Jackman

Oliver

Alirio Abreu-Burelli

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Caçado Trindade
President

Manuel E. Ventura-Robles
Secretary