

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JULY 29, 1997**

**PROVISIONAL MEASURES REQUESTED BY THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
IN THE MATTER OF PERU**

CESTI HURTADO CASE

HAVING SEEN:

1. The request of July 17, 1997, submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") for the Court to adopt provisional measures, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 25(4) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), on behalf of Mr. Gustavo Cesti Hurtado, in connection with case N° 11.730 before the Commission against the State of Peru (hereinafter "the State" or "Peru").

2. According to the Commission, the following events justify the provisional measures:

a) That on December 23, 1996, the military Courts included Mr. Gustavo Cesti Hurtado, a Peruvian army captain in retirement for the past 13 years, together with other officers, in a complaint presented by the Army High Command for the crime of fraud and others, to the detriment of the Peruvian State-Army, which resulted in a warrant for his arrest and a ban from leaving the country;

b) Article 173 of the Peruvian Constitution provides that members of the armed and police forces shall be subject to military justice and to the provisions of the Code of Military Justice are applicable to them in connection with crimes committed in the course of duty, this not being applicable to civilians, save in allegations of treason and terrorism;

c) That Mr. Cesti, being a civilian, worked solely in private practice although he maintained a working relationship with the army as an insurance agent for the army with the insurance company "Popular y Porvenir";

d) That Mr. Cesti filed a writ of habeas corpus before the Special Public Law Chamber, which, on February 12, 1997, declared the writ admissible and ordered the immediate annulment of the order of arrest, the order banning Mr. Cesti from leaving the country and the suspension of the proceedings before the Supreme Council of Military Justice.

e) That on February 26, 1997, the Examining Magistrate of the Supreme Court of Military Justice overruled the order of habeas corpus, accused the members of the Special Law Chamber of interference in the functions of the Court and ordered that the immediate execution of detention order issued by the Supreme Court of Military Justice should be executed;

f) That Mr. Cesti was arrested on February 27, 1997. He is currently being held at the

Simón Bolívar barracks, is allowed no contact with the outside world and is prevented from receiving food or medicines from his wife, despite an agreement with the Public Defender that she could bring them to him three times a day since he suffers from heart problems (cardiac ischemia) since 1994, which may pose a threat to his life, given the tense situation to which he has been subjected;

g) That, in its Order of March 24, 1997, the Public Defender overruled the order of Special Public Law Division, and stated that it was improper to appeal that judgment and recommended *"to the Supreme Council of Military Courts to comply with judgment rendered in the [habeas corpus] ... without detriment to continuation of the investigations before the competent judicial organ to determine any criminal responsibility on the part of Mr. Cesti-Hurtado "*.

h) That on April 14, 1997, in a process flawed by irregularities, the military courts tried Mr. Cesti, despite the order for his release issued in the habeas corpus ruling;

i) That on April 25, 1997, the Inter-American Commission on Human Rights requested precautionary measures, and requested that Peru report within *"30 days on whether it had completely complied with the order of habeas corpus ... [and] which measures [would be] adopted"*;

j) That at the request of the Attorney General of the Nation, on May 7, 1997, the Chief Prosecutor, Nelly Calderón Navarro, denounced four examining Magistrates of the Supreme Court of Military Justice before the Supreme Council for the crimes of violence and resisting authority, and abuse of power, for refusing to comply with the order of habeas corpus passed in favor of Mr. Cesti Hurtado by the Special Public Law Chamber of the Public Defender of the Superior Court of Lima;

k) That on May 9, 1997, the members of the Criminal Division of the Supreme Court of Military Justice unanimously decided to file a criminal complaint against the Attorney General of the Nation for interfering in its jurisdiction in this case, for the alleged crimes of malfeasance of office and abuse of authority. They also decided that if any judge from that Court were to be summoned by any instance other than the military court, they would not attend;

l) That on May 19, 1997, the State, in response to the request for precautionary measures adopted by the Commission, justified the seven-year prison sentence imposed on Mr. Cesti and stated that the Special Public Law Chamber of the Superior Court of Lima, *"exercised functions reserved for Military Judges"* and that the related question of competence *"COULD ONLY BE SETTLED BY THE SUPREME COURT OF THE REPUBLIC, in accordance with Article 4(1) of the Organic Law of Military Justice, as well as the Criminal Procedure Codes,"* and therefore the Public Law Chamber did commit malfeasance of office and usurpation of authority.

m) That on May 20, 1997, the Second Transitory Criminal Chamber rejected the complaint against the judges of the Military Court for not complying with the habeas corpus judgment issued on behalf of Mr. Cesti-Hurtado.

CONSIDERING:

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

2. That Article 63(2) of the Convention provides that in cases of *"extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,"* the Court, in matters not yet submitted to it, shall, at the request of the Commission, take the provisional measures it considers pertinent.

3. That within the terms of Article 25(4) of the Rules of Procedure of the Court provides that: *"[i]f the Court is not sitting, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt such urgent measures as may be necessary to ensure the effectiveness of any provisional measures subsequently ordered by the Court at its next session."*

4. That in its request for provisional measures, the Commission specifically requests the Court to “*order the Illustrious Government of Peru to comply with the judgment rendered in the habeas corpus proceeding by the Special Public Law Chamber of the Superior Court of Justice of Lima, without detriment to the continuation of the investigations before the competent judicial organ to determine any criminal responsibility on the part of Mr. Cesti Hurtado*”.

5. That the facts and circumstances raised by the Commission imply that there could exist a direct link between the Commission's request for Mr. Cesti Hurtado's release, in compliance with the order of habeas corpus issued by the Special Public Law Chamber and the very matter of the merit of the case placed before the Inter-American Commission.

6. That in these conditions, this Presidency considers that it lacks the authority to order, with a character or urgency, the provisional measures and their effects requested by the Commission, since to do so would require a more careful study, preliminarily, of the circumstances of the case, and to do so falls entirely under the jurisdiction of the Tribunal.

7. That in spite of the above, from the content of the Commission's request, this Presidency concludes that, in reference to the state of health of Mr. Cesti Hurtado, it is necessary to request the Government of Peru to take urgent measures to ensure his physical, psychological and moral integrity by providing adequate medical treatment for his heart problems.

8. That Article 5 of the American Convention, in relation to the above provides in its relevant part:

1. Every person has the right to have his physical, mental and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

9. That in accordance with Article 25(4) of the Rules of Procedure, the President of the Court is only empowered to adopt the “*urgent measures as may be necessary*”, and therefore corresponds to the Court to decide on the admissibility of the provisional measures requested by the Commission during its next session, since in order to order them it is convenient to first hear the respective Government in this case.

NOW, THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in consultation with the rest of the judges of the Court and in compliance with Article 63(2) of the American Convention on Human Rights and in exercise of the powers conferred on it by Article 25(4) of its Rules of Procedure,

DECIDES:

1. To request the Government of the Republic of Peru to adopt, forthwith, such measures as may be necessary to ensure the physical and moral integrity of Mr. Gustavo Cesti-Hurtado, so that any provisional measures that the Court may take may have the pertinent effects.
2. To request the Government of the Republic of Peru to submit to the President of the

Court, by August 25, 1997, a report on the measures taken in order to bring them to the attention of the Court at its next session. It must report particularly on whether it complied with the request for precautionary measures sought by the Inter-American Commission on Human Rights in its note of April 25, 1997.

3. To summon the Inter-American Commission on Human Rights and the Government of Peru to a public hearing on the matter to be held at the Court on September 8, 1997, at 4.00 p.m.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary