

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF SEPTEMBER 11, 1997**

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

CESTI HURTADO CASE

HAVING SEEN:

1. The brief of July 17, 1997, in which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") a request for provisional measures on behalf of Mr. Gustavo A. Cesti-Hurtado, in connection with case Nº 11.730 before the Commission against the State of Peru (hereinafter "the State" or "Peru"), pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure".)

2. The aforesaid communication, in which the Commission requested the Court to call upon the State:

[t]o comply with the judgment delivered in the habeas corpus proceeding by the Special Chamber of Public Law of the Superior Court of Justice of Lima, without prejudice to the continuation of the investigations before the competent judicial organ to determine any criminal responsibility on the part of Mr. Gustavo Cesti-Hurtado.

3. The facts contained in the Commission's request, as summarized below:

a) the "War Chamber " of the Supreme Council of Military Courts, following a complaint lodged by the Army High Command, instituted preliminary proceedings against Mr. Gustavo Cesti-Hurtado and others for the crimes of non-compliance with the duty and dignity of their function, negligence and fraud to the detriment of the Peruvian State-Army, in their capacity as insurance agents for the Army;

b) on December 23, 1996, the Examining Magistrate of the Supreme Council of Military Courts issued a subpoena in which the Military Courts implicated Mr. Cesti, a Peruvian army captain in retirement for the past 13 years, together with four other serving army officers, in a trial for fraud which resulted in a warrant for his arrest and a ban from leaving the country;

c) Mr. Cesti filed a writ of habeas corpus on the ground that he had been wrongfully included in a case before the Military Courts, inasmuch as he was a civilian in private practice;

d) 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 in connection with crimes committed in the course of duty, this not being applicable to civilians, save in allegations of treason and terrorism;

e) on February 12, 1997, the Special Public Law Chamber declared the writ of habeas corpus admissible, ordered the immediate annulment of the order of arrest and the order banning Mr. Cesti from leaving the country and suspended the case brought before the Supreme Council of Military Justice;

f) on February 26, 1997, the Examining Magistrate of the Supreme Court of Military Justice overruled the order of habeas corpus, accused the examining magistrates of the Special Public Law Chamber of interference in the functions of the Court and decided that the detention order issued by the Supreme Court of Military Justice should be executed;

g) Mr. Cesti was arrested on February 27, 1997. He is currently being held at the Simón Bolívar barracks in the city of Lima, is allowed no contact with the outside world and is prevented from receiving food or medicines from his wife, although he has been suffering from cardiac ischemia since 1994, which may pose a threat to his life, owing to the pressure to which he has been subjected;

h) in response to a request from Mr. Cesti's wife, the Public Defender made a recommendation to the appropriate authorities on March 24, 1997, in which he pronounced on the appealable decision of the Special Public Law Division and recommended compliance with the habeas corpus judgment;

i) on April 14, 1997, in a trial flawed by irregularities, the military courts sentenced Mr. Cesti to seven years in prison, despite the order for his release issued in the habeas corpus ruling;

j) on April 25, 1997, the Inter-American Commission approved a request for precautionary measures submitted on April 23, 1997, and requested that the State report within 30 days on whether it had complied with the order of habeas corpus;

k) at the request of the Attorney General of the Nation, on May 7, 1997, the Chief Prosecutor, Mrs. Nelly Calderón Navarro, denounced four examining magistrates of the Supreme Court of Military Justice before the First Transitory Criminal Chamber of the Supreme Court of Military Justice for the crimes of violence, resisting authority, and abuse of power, for refusing to comply with the order of habeas corpus in favor of Mr. Cesti-Hurtado;

l) on May 9, 1997, the ten 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, Miguel Aljovín, for the alleged crimes of malfeasance of office and abuse of authority. They also decided that if any military judges were to be summoned by any instance other than the military court, they would not attend;

m) on May 19, 1997, the State, in response to the request for precautionary measures adopted by the Commission, attached a copy of a note from the President of the Supreme Council of Military Justice, explaining the seven-year prison sentence imposed on Mr. Cesti. With regard to the order of habeas corpus of the Special Public Law Chamber of the Superior Court of Lima, it stated that "*it [had] exercised functions reserved for Military Judges*" and that the related question of competence "*could only be settled by the Supreme Court of Justice*";

n) on May 20, 1997, the Second Transitory Criminal Chamber delivered an order rejecting the complaint against the judges of the Military Court for not complying with the habeas corpus judgment issued on behalf of Mr. Cesti-Hurtado, on the ground that the crimes committed should be tried in the military courts.

4. The Order of the President of this Court of July 29, 1997, in which he decided:

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.

5. The brief of August 25, 1997, from the State, which reported on Mr. Cesti-Hurtado's situation. It mentioned that in dealing with the remedy of habeas corpus sought by Mr. Cesti, the Special Public Law Chamber of the Superior Court of Lima had contravened the domestic laws by interfering in functions specific to the Military Court and that "*had the matter been raised legally, the Supreme Court of the Republic should have* [dealt with that writ]...". It further stated that Mr. Cesti has been receiving visits from his relatives, attorneys and friends several times a week since March 8, 1997; authorization has been given for a person of his choice to take him food; he is housed in a room in which he enjoys many amenities, including a television set, a radio, a computer, and adequate hygiene facilities; he makes use of the compound's recreation areas and receives regular medical check-ups at the Central Military Hospital.

6. The public hearing held on September 8, 1997, at which there appeared:

for the Inter-American Commission on Human Rights:

Oscar Luján-Fappiano, Delegate,
Christina Cerna, Attorney, and
Alberto Borea, Assistant

for the Government of the Republic of Peru:

Hernánd Ñopo-Odar, Vice-Minister of Justice and President of the National Human Rights Council,
Luis Reyes-Morales, Executive Secretary of the National Human Rights Council, and
Luis Hurtado-Rantes, Adviser.

CONSIDERING:

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

2. That Article 63(2) of the Convention provides that:

[i]n cases of extremity gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under its consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

3. That in connection with this matter, Article 25(1) and 25(2) of the Rules of Procedure provides that:

1. At any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent, pursuant to Article 63(2) of the Convention.

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

4. That in the order of July 29, 1997, the President of the Court considered that the request from the Inter-American Commission that the State be ordered "*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 continuation of the investigations before the competent judicial organ to determine any criminal responsibility on the part of Mr. Cesti-Hurtado*" could be directly linked to the merits of the case currently pending before the Commission.

5. That the facts and circumstances raised by the Commission imply that there is 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 of the Superior Court of Lima, and the very matter of the merit of the case placed before the Inter-American Commission and that it is for the Commission to decide at this stage. To accept the request of the Commission would mean that the Court could advance criteria on the merits of a case which is not before it yet.

6. That the President of this Court, in his Order, instructed the State of Peru to adopt urgent measures by providing Mr. Cesti-Hurtado with proper medical treatment for his heart disease, with a view to protecting his physical, psychological and moral integrity. The Court ratifies that order and decides to maintain those measures pursuant to Article 63(2) of the Convention.

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the powers conferred on it by Article 63(2) of the American Convention on Human Rights and Article 25(1) and 25 (2) of its Rules of Procedure,

DECIDES:

1. To ratify the Order of the President of the Inter-American Court of Human Rights of July 29, 1997.

2. To call upon the State of Peru to continue with the necessary measures for ensuring the physical, psychological and moral integrity of Mr. Gustavo Cesti-Hurtado.

3. To call upon the State of Peru to continue to report every three months on any of the measures it has taken to comply with this order.

4. To call upon the Inter-American Commission on Human Rights to submit to the Court its comments on that information at the latest within two months of receipt thereof.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary