

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF JANUARY 21, 1998**

**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 N° 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 25 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure".)
2. 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.
3. The Order of the Court of September 11, 1997, in which it decided:
 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.

4. The brief of January 9, 1998, in which the Commission submitted the Cesti Hurtado Case against Peru to the Court.

5. The brief of January 9, 1998, in which the Commission presented, within the Cesti Hurtado Case before this Court, another request for provisional measures on behalf of Mr. Gustavo Adolfo Cesti Hurtado, pursuant to Articles 63(2) of the Convention and 25 of the Rules of Procedure. In said brief, the Commission requested of the Court:

a) That it order the conditional freedom of the victim until the conclusion of these proceedings, condition which will be reviewed pending a decision in the present case before the Honorable Human Rights Court..., ordering his recapture if this complaint results unfounded.

b) That it free the victim's assets that had been frozen, ordering that Mr. Cesti put up sufficient guarantee for the case in the event that the... complaint was to be declared unfounded by the Court.

6. The brief of the State of January 19, 1998, in which it presented its first report on the measures adopted pursuant to the Order of the Court of September 11, 1997. In said brief, Peru expressed that it had taken the measures necessary to maintain the physical, psychological and moral integrity of Mr. Cesti Hurtado, such that, in the last medical visit it was verified that his clinical health is good as a result of the periodic medical treatment he receives.

7. The brief and its annexes of Mr. Oscar Luján Fappiano, the Delegate designated by the Commission, of January 21, 1998.

8. The amicus curiae brief of January 21, 1998 from the President of the Executive Commission of Human Rights of the Lima Bar Association, Mr. Heriberto Manuel Benítez Rivas.

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 extreme 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 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 the President of the Court, in his Order of July 29, 1997, ratified by this Court by the Order of September 11, 1997, ordered 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."

5. That the provisional measures in this matter began when the case was before the Commission and that the new request, of January 9, 1998, referring to the same facts, was presented the same day that the Commission submitted the Cesti Hurtado to the Court.

6. That of the new documentation consigned by the Commission, sufficient elements of conviction are not present that allow an inference that the situation of Mr. Cesti Hurtado has deteriorated. In spite of this, if in its January 19th, Report, the State indicates that Mr. Cesti Hurtado is in "*good health*," it is opportune to specify that Consideration 4 of this Order provides that a doctor of his choice may do the necessary examinations to preserve his physical and psychological integrity, in the Simón Bolívar Barracks.

7. That to determine if the events referred to in parts a) and b) of the January 9, 1998, request for provisional measures (*supra*, Having Seen 5) and the brief of the Commission of January 21, 1998 (*supra*, Having Seen 7) can be adapted to the presuppositions contemplated in Article 63(2) of the Convention, is something that requires additional elements of proof than what is currently at the disposition of the Court.

8. That in examination of the new documentation sent and in accordance with Article 63(2) of the Convention, there are sufficient reasons to maintain the provisional measures previously adopted, developing them in the previously indicated meaning. (*supra*, Having Seen 6).

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 of its Rules of Procedure,

DECIDE:

1. To call upon the State of Peru to continue with the provisional measures adopted in the Order of the Inter-American Court of Human Rights of September 11, 1997, to ensure the physical integrity of Mr. Gustavo Adolfo Cesti Hurtado.

2. To call upon the State of Peru to permit Mr. Cesti Hurtado to receive the medical treatment of his choice.

3. To call upon the State of Peru to continue to report every two 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 six weeks of receipt thereof.

Hernán Salgado-Pesantes
President

Antônio A. Cançado Trindade

Máximo Pacheco-Gómez

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Hernán Salgado-Pesantes

President

Manuel E. Ventura-Robles
Secretary