

INTER-AMERICAN COURT OF HUMAN RIGHTS

CESTI HURTADO CASE

**INTERPRETATION OF THE JUDGMENT ON THE MERITS
(ARTICLE 67, AMERICAN CONVENTION ON
HUMAN RIGHTS)**

JUDGMENT OF JANUARY 29, 2000

In the Cesti Hurtado case,

The Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), composed of the following judges (*):

Antônio A. Cançado Trindade, President
Máximo Pacheco Gómez, Vice-President
Oliver Jackman, Judge
Alirio Abreu Burelli, Judge
Sergio García Ramírez, Judge and
Carlos Vicente de Roux Rengifo, Judge;

also present,

Manuel E. Ventura Robles, Secretary and
Renzo Pomí, Deputy Secretary

* Judge Hernán Salgado Pesantes excused himself from taking part in the preparation and adoption of this judgment as he had not formed part of the composition of the Court in the judgment on merits of September 29, 1999.

pursuant to Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") rules on the request for interpretation of the judgment on the merits delivered by the Court on September 29, 1999, in the Cesti Hurtado case (hereinafter "the judgment on merits"), presented by the State of Peru (hereinafter "the State" or "Peru") on October 13, 1999.

I

COMPETENCE AND COMPOSITION OF THE COURT

1. Article 67 of the Convention stipulates that

[t]he judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

In accordance with the article mentioned, the Court is competent to interpret its judgments and, when considering the request for interpretation, it shall have the same composition, whenever possible, that it had when it delivered the respective judgment (Article 58.3 of the Rules of Procedure). On this occasion, the Court is composed of judges who pronounced the judgment on the merits, interpretation of which has been requested by Peru.

II

INTRODUCTION OF THE REQUEST FOR INTERPRETATION

2. On October 13, 1999, pursuant to Article 67 of the American Convention and Article 58 of the Rules of Procedure, the State submitted a request for interpretation of the judgment on the merits. Furthermore, Peru stated that "the suspension of the effect of the judgment prohibited

by Article 58.4 of the Rules of Procedure of the Court [was] not applicable in the instant case [...] insofar as the present request for interpretation and clarification related [...] to aspects regarding execution of the judgment."

III PROCEEDING BEFORE THE COURT

3. In a note of October 15, 1999, the Secretariat of the Court forwarded a copy of the request for interpretation to the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") and, pursuant to Article 58.2 of the Rules of Procedure, invited it to submit its comments on the request for interpretation filed by Peru, by December 15, 1999, at the latest.

4. On October 27, 1999, the Commission submitted a brief in which it requested the Court to take into consideration "that the State [was] incurring in non-compliance with the judgment [on the merits]" since, as at that date, it had not liberated Mr. Cesti Hurtado or complied with the rulings of the Court in the said judgment. In this respect, the Commission declared that, as the State had not complied immediately with the judgment on the merits it should not "file the [...] request for interpretation because this [was] absolutely disallowed by the provisions of Article 58.4 of the Rules of Procedure of the H[onorable] Court."

5. On November 19, 1999, pursuant to Articles 29.2 and 58 of the Rules of Procedure, the Court issued an order in which it declared that the request for interpretation submitted by the State did not suspend the effect of the judgment on the merits and authorized the President of the Court to invite the parties to a public audience on the interpretation.

6. On December 6, 1999, the President of the Court (hereinafter "the President") issued an order in which he invited the State and the Commission to a public hearing to be held on January 25, 2000, at the seat of the Court in order to hear the points of view of both parties on the request for interpretation of the judgment on the merits filed by the State.

7. On December 14, 1999, the Inter-American Commission submitted its written arguments on the request for interpretation.

8. On January 10, 2000, the State presented a brief dated January 6, 2000, in which it requested the Court "if it saw fit, to direct that [the] hearing should be suspended", because:

- 1) Gustavo Cesti Hurtado now enjoys unrestricted liberty[;]
- 2) The prohibition to leave the country in effect against the said Mr. Cesti has been lifted[;]
- 3) The Peruvian Government is devoting itself to studying friendly settlements aimed at concluding all the proceedings relating to human rights.

and requested a "prudent lapse to allow [it] to fine tune the arrangements to be made in order to achieve this end."

9. On January 17, 2000, the President issued an order in which he decided to proceed with the public hearing to be held on January 25, 2000.

10. On January 25, 2000, a public hearing was held on the request for interpretation of the judgment on the merits at the seat of the Court.

There appeared

for the State of Peru:

Rolando Eyzaguirre, Deputy Agent, and
Alberto Cortez, Advisor

for the Inter-American Commission on Human Rights:

Christina Cerna, Lawyer, and
Alberto Borea Odría, Advisor.

IV OBJECT OF THE REQUEST

11. In the request for interpretation, the State asked the Court to clarify some matters related to the "meaning and the scope" of the judgment on merits. In the following chapters, the Court will proceed to examine the different points that are the object of the request for interpretation.

V ADMISSIBILITY

12. As a prerequisite for the admissibility of the request for interpretation of judgment, Article 67 of the Convention requires that this request be made "within ninety days from the date of notification of the judgment." The Court has confirmed that the judgment on the merits in the instant case was notified to the State on October 4, 1999. Therefore, the request for interpretation was submitted within the specified time limit (*supra* 2), as were the Commission's arguments.

13. The Court must now analyze whether the substantial aspects of the request for interpretation comply with the applicable rules. In this respect, Article 58 of the Rules of Procedure establishes that

[t]he request for interpretation, referred to in Article 67 of the Convention, may be made in connection with judgments on the merits or on reparations and shall be filed with the Secretariat. It shall state with precision the issues relating to the meaning or scope of the judgment of which the interpretation is requested.

Pursuant to this Article, the Court will proceed to interpret those aspects of its judgment on which there is a doubt about the meaning or scope.

VI THE FREEDOM OF MR. CESTI HURTADO

14. In the request for interpretation, the State asked for the interpretation of the first ruling of the judgment on the merits in relation to the

eighth ruling of the judgment. In this respect, the State requested that the Court interpret whether the judgment on the merits

ha[d] required the immediate liberty of Captain Cesti Hurtado or [whether], to the contrary, [...] it [did] not impede the aggrieved parties from filing a complaint, prior to his liberation, in the jurisdiction that [had] been declared competent in this respect, in order to prevent the execution of the judgment leading to the situation of an irreversible evasion of justice by Captain Cesti Hurtado.

During the public hearing, the State requested the Court to clarify the eighth ruling of the said judgment in relation to paragraph 129 of the judgment.

15. In this respect, the Court's first ruling stated that

[...] the State violated Articles 7.6 and 25 of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraphs 123 to 133 of this judgment, and [...] order[ed Peru to comply with] the decision of the Chamber of Public Law of Lima of February 12, 1997, on the petition for habeas corpus filed by Gustavo Adolfo Cesti Hurtado.

In the eighth ruling, the Court stated

[...] that the proceeding against Gustavo Adolfo Cesti Hurtado under the military justice system [was] incompatible with the American Convention on Human Rights and [...] order[ed] the State to annul this action and all the effects that may derive from it.

In paragraph 129 the Court stated that

[t]he decision made by the Public Law Chamber on the situation of Gustavo Cesti Hurtado concluded the matter that concerns this Court in relation to Articles 7 and 25 of the Convention, because a tribunal with competence on protective measures adopted a final, unappealable decision conceding habeas corpus to the petitioner and

protecting him from the objective threat to his liberty resulting from procedures initiated under military jurisdiction. This decision does not impede the competent authorities, if appropriate, from making decisions on the criminal responsibility of Gustavo Cesti Hurtado with regard to the illegal acts attributed to him. Such decisions do not concern the Court, but rather the competent domestic tribunals.

16. The Inter-American Commission indicated that the first question was beyond the scope of the Court's competence and, consequently, a pronouncement was not in order. Moreover, the Commission declared that the judgment on the merits referred to an act – the liberation of Mr. Cesti Hurtado – that should have occurred when the Chamber of Public Law issued its decision on the petition for habeas corpus in his favor, so that any other consideration was not material to the object of this proceeding.

17. This Court considers that the judgment on the merits is clear with regard to meaning and scope when it orders the State to comply with "the decision of the Chamber of Public Law of Lima of February 12, 1997, on the petition for habeas corpus filed by Gustavo Adolfo Cesti Hurtado" and "to annul the proceeding [...] under the military justice system [...] and all the effects that may derive from it", so that the State should immediately comply with the ruling. Furthermore, the Court has already duly clarified in its judgment on the merits that "[t]his decision does not impede the competent authorities [...] from making decisions about the criminal responsibility of Gustavo Cesti Hurtado with regard to the illegal acts attributed to him".

VII EMBARGOES DECREED ON THE PROPERTY OF MR. CESTI HURTADO

18. In its second point, the State requested the Court to clarify whether, in accordance with paragraphs 183 and 197 of the judgment on the merits and the eighth ruling of this judgment, the embargoes decreed on Mr. Cesti Hurtado's property should be lifted as a consequence of the judgment on the merits or "whether it [should] make a decision on this issue as a result of the judgment on reparations that might eventually be issued."

19. Paragraph 183 of the judgment on the merits indicates that

[t]he Court considers that, in the context of Article 21 of the American Convention, it was not proved that there had been a violation, per se, of the right to property of Gustavo Cesti Hurtado. The effects on his assets or on his ability to work that his detention, prosecution and conviction may have produced would derive from the violation of Articles 7, 8 and 25 of the Convention; therefore, the Court reserves its decision on such effects until the reparations stage, in such event.

Paragraph 197 of the judgment on the merits establishes that

the consequences on the assets of Gustavo Cesti Hurtado due to his detention, prosecution and conviction, in particular, the embargo on his property, is a matter to be considered at the reparations stage.

20. On this point, the Commission stated that the expression "all" is sufficiently clear and covers all the legal effects deriving from the undue proceeding against Mr. Cesti Hurtado under the military justice system.

21. In the eighth ruling of the judgment on merits (*supra* 15), the Court ordered the State "to annul this action and all the effects that may derive from it." This Court observes that the annulling of a proceeding implies the invalidation of all its legal effects. This is the case of the embargoes decreed on Mr. Cesti Hurtado's property.

VIII APPROPRIATE PROCEDURAL CHANNEL TO ESTABLISH COMPETENCE

22. Points 3 and 4 of the request for interpretation refer essentially to the same matter; therefore, the Court will proceed to examine them together.

23. In the third point, the State referred to paragraph 130 of the judgment on the merits and consulted the Court whether it could be maintained that the said judgment constituted a precedent that might, in the future, be applied to similar cases occurring under the national jurisdictions of the States Parties and under international jurisdiction, in the sense that habeas corpus constituted the appropriate procedural route for disputing the military jurisdiction when there was an alleged deprivation of liberty or threat of this.

24. In its fourth point, the State requested an interpretation of paragraph 132 of the judgment on the merits in order to know what the correct way to act would be if, for example, someone accused of aggravated terrorism or treason should dispute the competence of the military jurisdiction when the latter had initiated a trial, by filing a petition for habeas corpus; and "[w]hat other channels the military justice system would have had to 'insist on its own competence'."

25. Paragraph 130 of the judgment states that

[a]s the State has alleged, Peruvian legislation embodies recourses other than habeas corpus to settle jurisdictional disputes between different judicial organs. However, it is also certain that, according to the American Convention and Peruvian legislation itself, the judge of the petition for habeas corpus has the latitude to deal with the competence of the official who has ordered the deprivation of liberty. Indeed, in the context of the facts of the instant case, the judicial authority responsible for deciding on habeas corpus should have examined the information available in order to define whether the intended arrest was arbitrary. This information necessarily included the competence of the authority who issued the order of arrest, taking into consideration the alleged facts and the circumstances of the person to whom they were attributed and, consequently, the regularity of the proceedings under which the order would be issued.

Paragraph 132 of the judgment indicates "that the habeas corpus decision never deprived the military justice system of the possibility of insisting on

its own competence, through the adequate legal channels, in order to definitively resolve the dispute."

26. The Inter-American Commission stated that paragraph 130 of the judgment on the merits clearly resolved the question posed by the State in its points 3 and 4, so that it was not in order for the Court to make a pronouncement on them.

27. The Court considers that domestic legislation usually establishes an appropriate procedural channel for resolving jurisdictional disputes. Likewise, the judge of a petition for habeas corpus decides whether a deprivation of liberty is of an arbitrary nature. The judgment on the merits only refers to this. It is not in order for this Court to make a pronouncement with regard to the applicability of its judgments in hypothetical future situations.

IX JURISPRUDENCE OF THE COURT

28. In the fifth point, the State requested the Court to clarify whether it should consider that the judgment on the merits corroborated or modified the criterion sustained in the Genie Lacayo and Loayza Tamayo cases or the criterion sustained in the Castillo Petruzzi *et al* case, with regard to the military jurisdiction in relation to civilians.

29. The Commission stated that the cases mentioned by the State involved specific situations that were substantially different from that of Mr. Cesti Hurtado, so that it was not necessary to discuss them.

30. The Court manifests its considerations and criteria through judgments and decisions. Analysis of these and the comparative study of its jurisprudence are eminently academic tasks, beyond the functions of this Court. The State's fifth query is not a request for interpretation of the judgment itself, but rather of the latter in comparison with other judgments delivered by this Court. This comparative task is outside the provisions of Article 67 of the Convention. Therefore, the Court believes

that it is not in order to proceed to interpret this point and thus, it will not make a pronouncement on the matter.

X

ROLE OF THE *AMICI CURIAE*

31. In the last point of its request, the State refers to the fact that Heriberto Manuel Benítez Rivas had presented a brief, in the capacity of *amicus curiae*, and had also taken part in the proceeding as a witness proposed by the Inter-American Commission, and asked the Court about the "legitimacy" of a persons acting in this dual role in a proceeding before this Court.

32. On this point, the Commission stated that, while the Court had referred to the presentations made by the *amici curiae*, "in no way [was it saying] that it ha[d] taken them into consideration; much less, that it had use[d] their arguments to motivate the judgment. This reference [was] therefore merely by way of information."

33. The Court considers that the State's sixth request is outside the scope of interpretation of judgment as contemplated in Article 67 of the American Convention and Article 58 of the Rules of Procedure. Therefore, this Court will not make a pronouncement on the matter.

XI

For the above reasons,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

pursuant to Article 67 of the Convention and Article 58 of the Rules of Procedure

DECIDES:

unanimously,

1. That only the first, second, third and fourth points of the request for interpretation of the judgment of September 29, 1999, in the Cesti Hurtado case, filed by the State of Peru, are admissible.
2. That the first and eighth rulings of the judgment of September 29, 1999, in which the Inter-American Court of Human Rights ordered the State to comply with the decision of the Chamber of Public Law of Lima of February 12, 1997, and to annul the proceeding, as well as all the effects deriving from it, were of an obligatory nature and, therefore, should be complied with immediately, although this did not impede the competent authorities from making decisions on Mr. Cesti Hurtado's criminal responsibility with regard to the illegal acts that are attributed to him.
3. That the eighth ruling of the judgment of September 29, 1999, by which the Inter-American Court of Human Rights ordered the annulment of the proceeding against Mr. Cesti Hurtado, implied the invalidation of all the legal effects of this, including, among others, annulment of the embargoes decreed on his property.
4. That it is not in order for the Inter-American Court of Human Rights to make a pronouncement on the applicability of its judgments in hypothetical future situations and that, in this case, the appropriateness of the remedy of habeas corpus as a procedural channel to define whether the detention of Mr. Cesti Hurtado was of an arbitrary nature was clearly and duly established by the Court in its judgment of September 29, 1999.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, on the 29th day of January 2000.

AA Caçado Trindade.

Antônio A. Caçado Trindade
President

Máximo Pacheco-Gómez

Máximo Pacheco-Gómez

Oliver Jackman

Oliver Jackman

Alirio Abreu-Burrelli

Alirio Abreu-Burrelli

Sergio García-Ramírez

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Carlos Vicente de Roux-Rengifo

Manuel F. Ventura-Robles

Manuel F. Ventura-Robles
Secretary

So ordered,

AA Caçado Trindade.

Antônio A. Caçado Trindade
President

Manuel F. Ventura-Robles

Manuel F. Ventura-Robles
Secretary