

Inter-American Court of Human Rights

Case of Cesti-Hurtado v. Peru

Judgment of November 27, 2001 **(*Interpretation of the Judgment of Reparations and Costs*)**

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;
Hernán Salgado Pesantes, Judge;
Alirio Abreu Burelli, Judge;
Sergio García Ramírez, Judge, and
Carlos Vicente de Roux Rengifo, Judge;

also present,

Manuel E. Ventura Robles, Secretary, and
Pablo Saavedra Alessandri, Deputy Secretary;

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") decides on the request for interpretation of the judgment on reparations delivered by the Court on May 31, 2001 in the Cesti Hurtado case¹ (hereinafter "the judgment on reparations" or "the judgment") against the State of Peru (hereinafter "the State", "the Peruvian State", or "Peru"), filed by Gustavo Adolfo Cesti Hurtado (hereinafter "Mr. Cesti" or "Mr. Cesti Hurtado") on September 4, 2001.

I **COMPETENCE AND COMPOSITION OF THE COURT**

1. Article 67 of the Convention establishes 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, providing the request is made within ninety days from the date of notification of the judgment.

* Judge Máximo Pacheco Gómez did not participate in the deliberation and signing of the judgment on reparations in this case, and Judge Oliver Jackman informed the Court that, for reasons of *force majeure*, he could not attend the LIII Regular Session of the Court. Therefore, neither of them participated in the deliberation and signing of the instant Judgment.

¹ *Cesti Hurtado Case. Reparations.* (Art. 63.1 American Convention on Human Rights. Judgment of May 31, 2001. Series C No. 78.

In accordance with the abovementioned article, the Court is competent to interpret its decisions, and to examine the request for interpretation it will meet, if possible, with the same composition it had when it delivered the respective judgment (article 58(3) of the Rules of Procedure). On this occasion, the Court is composed of the same judges who delivered the judgment on reparations, whose interpretation has been requested by Mr. Cesti Hurtado.

II INTRODUCTION OF THE REQUEST FOR INTERPRETATION

2. On September 4, 2001, pursuant to article 67 of the American Convention and in accordance with article 58 of the Rules of Procedure, Mr. Cesti Hurtado filed a request for interpretation of the judgment on reparations.

III PROCEEDING WITH THE COURT

3. This case was filed before the Court by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on January 9, 1998. Subsequently, the Court delivered judgments on preliminary objections, merits, interpretation of the decision on the merits, and reparations, respectively on January 26, 1999, September 29, 1999, January 29, 2000, and May 31, 2001².

4. In a note of September 5, 2001, the Secretariat of the Court (hereinafter "the Secretariat") forwarded copies of the request for interpretation to the Peruvian State and to the Inter-American Commission, and pursuant to article 58(2) of the Rules of Procedure, invited them to submit, no later than October 5 of that same year, whatever comments they deemed relevant.

5. On October 4, 2001 the Commission requested an extension of the deadline to submit its comments on the request for interpretation made by Mr. Cesti, until the 23 of that same month and year. Said extension was granted that same day, under instructions by the President of the Court (hereinafter "the President").

6. On October 5, 2001 the Peruvian State submitted its written comments on the request for interpretation, which were complemented in a brief on October 9.

7. On October 23, 2001 the Commission submitted its comments on the request for interpretation in English, and on the 30th of that same month and year it submitted the translation of that brief into Spanish.

8. On November 27, 2001 Mr. Cesti Hurtado filed a brief before the Court in which he requested a hearing on the interpretation of the judgment on reparations, for the Court to hear the pleadings of his attorneys before reaching a decision on the request.

² *Cesti Hurtado Case. Preliminary Objections.* Judgment of January 26, 1999. C Series No. 49; *Cesti Hurtado case.* Judgment of September 29, 1999. C Series No. 56; *Cesti Hurtado case. Interpretation of the Decision on the Merits.* (Art. 67 American Convention on Human Rights). Judgment of January 29, 2000. C Series No. 65 and *Cesti Hurtado case. Reparations, supra* note 1.

IV SUBJECT OF THE REQUEST

9. Mr. Cesti requested in his petition that the Court “interpret paragraphs 41, 46, and 47 of its judgment on reparations delivered on May 31, 2001, and point No. 1 of the operative section of that judgment, bearing in mind the questions raised [in the request for interpretation and] that it convene the parties to a public hearing, so as to hear his pleadings on [the] interpretation remedy”.

10. Mr. Cesti specifically requested that the Court clarify the following:

1. Whether, as part of the material damage caused, the Peruvian State must indemnify the victim for *direct detriment to his assets derived from the expenses he had to incur* to confront the acts which violated his rights and which have been established by the [...] Court in its judgment on the merits in the Cesti Hurtado Case.

2. Whether -taking into account what the Court said in paragraphs 32, 33, and 36 of the judgment on reparations-, as part of the material damages, the Peruvian State must indemnify the victim for the expenses required for his legal defense in face of the acts of the Peruvian State which violated his rights, which in fact were detrimental to his assets, and which the [...] Court did not include under Costs and Expenses.

3. Whether, pursuant to paragraphs 46 and 47 of the judgment on reparations, to determine the amount of material damage, “taking into account the items usually included under material damage” [...], that is, consequential damages, lost earnings, and other economic damages derived from the violation of the human rights of Gustavo Cesti Hurtado, and taking into account the principle of *restitutio in integrum* [...], it can be understood that the Peruvian State must indemnify for all material damages caused in this case, and that only determination of their amount is pending.

4. Whether the Peruvian State, in light of the mandate of the judgment on reparations for which an interpretation has been requested, is under the obligation to begin on its own initiative the relevant procedures before domestic entities for payment of the indemnification set forth in points 1, 2, 3, and 4 of the operative part of the judgment, or whether the victim must initiate them, so as to collect the indemnification due to him.

5. Whether the term ‘*relevant national procedures*’ mentioned in point No. 1 of the operative part of the judgment, as well as the reference to ‘*mechanisms established in domestic legislation*’ stated in paragraph 46, and the reference to the “relevant national laws” contained in paragraph 47 of the judgment on reparations, refer to:

a) judicial procedures to determine the amount of indemnity to be paid, therefore leaving the determination of that amount entirely and exclusively in the hands of the courts of that State [...], or

b) if it is sufficient for the victim, as part of those ‘*relevant procedures*’, to demonstrate to the State -with the same evidentiary documents previously filed before the [...] Court and which were not challenged before the Court- the expenses he had to make and the amount of damages caused to him, or

c) whether the expression ‘*relevant domestic procedures*’, or ‘*mechanisms established under domestic legislation*’, or ‘*relevant national norms*’ presuppose a direct negotiation among the parties so as to determine the amount of indemnification, or

d) whether these expressions refer to alternative forms of conflict resolution, such as arbitration, provided for by Peruvian legislation.

6. In any of the abovementioned cases, taking into account the provisions of paragraphs 47 and 74 of the judgment on reparations, to state:

a) what is the period within which the amount of indemnification to be paid for material damages must be determined, and

b) what is the period within which payment of that part of the indemnification must be made.

7. Whether, in case the indemnification decided by the State were not satisfactory for the victim, he can come before this [...] Court, for it to determine, as a last resort, the definitive amount of indemnification.

V ADMISSIBILITY

11. Article 67 of the Convention requires, as a condition for the admissibility of the request for interpretation of judgment, that it be submitted "within ninety days from the date of notification of the judgment". In the instant case, the Court has verified that the judgment on reparations was notified to the parties on June 6, 2001. Therefore, the request for interpretation was filed in a timely manner (*supra* 2). Furthermore, the victim has legal standing to appear before the Court, in light of the fact that article 67 of the Convention and the rules of procedure of the Court establish the possibility that the Court interpret its ruling in response to a request by any of the parties and that Mr. Cesti can submit his request in an autonomous manner during the proceedings³.

12. As regards the comments filed by Peru and by the Inter-American Commission, they were submitted within the time limit (*supra* 6 and 7) and the Court therefore deems it appropriate to examine them.

13. The Court must now verify whether the substantive aspects of the request for interpretation satisfy the applicable norms⁴. Article 58(1) 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.

14. The request for interpretation filed by Mr. Cesti is based on doubts regarding the *meaning* or *scope* of the reparations ordered by the Court in its May 31, 2001 judgment.

15. In light of the foregoing, the Court notes that the request for interpretation is in accordance with the provisions of article 67 of the Convention and article 58 of the Rules of Procedure, for which reason it declares the request admissible. Without detriment to the above, the Court considers that, even though the scope and the content of the provisions of the judgment on reparations are clear, it will examine the points raised by Mr. Cesti to dispel any doubt that might exist regarding the indemnification he is entitled to for material damages.

³ The relevant part of article 23 of the Rules of Procedure in force at the Court states that "[w]hen the application has been admitted, the alleged victims, their next of kin or their duly accredited representatives may submit their requests, arguments and evidence, autonomously, throughout the proceeding".

⁴ *Cfr. Ivcher Bronstein Case. Interpretation of the Judgment on the Merits.* (Art. 67 American Convention on Human Rights). Judgment of September 4, 2001. C Series No. 84, para. 11 and *Barrios Altos Case. Interpretation of the Judgment on the Merits* (Art. 67 American Convention on Human Rights). Judgment of September 3, 2001. C Series No. 83, para. 11.

16. Regarding the requests for a public hearing, filed before the Court by Mr. Cesti (*supra* 8 and 9), the Court deems it appropriate to specify that the purpose of the hearing, proposed by the victim, is not directly related to interpretation of the judgment, but rather to the phase of compliance with the judgment on the merits, and that the Court has given the parties the opportunity to file whatever written pleadings they believe are important. Therefore, pursuant to article 39 of the Rules of Procedure of the Court, it does not consider that the request referred to here is in order.

VI SCOPE OF THE REPARATIONS

Pleadings by Mr. Cesti

17. In his request for interpretation, Mr. Cesti Hurtado stated that the purpose of the indemnification ordered by the Court in its judgment on reparations is that "the State must fully reimburse the amount of material damages caused, which are a direct consequence of the human rights violation". In this context, he pointed out that the State must pay a just indemnification covering all material damages caused, and he stated that "to carry out an effective legal defense, [...] he incurred in considerable expenses, which were detrimental to his assets, and which resulted from the State's actions" and that, therefore, this should be the interpretation of the first operative point of the judgment.

18. Mr. Cesti also stated that "it is his understanding that point No. 1 of the operative part of the judgment on reparations, in accordance with paragraphs 46 and 47 of that judgment, should be interpreted as meaning that the income the victim did not receive, whether from salaries [...] or dividend [...], as well as any other legitimate income derived from the normal activities which both he and his firm carried out, are part of the material damages which the State must indemnify", because the "income of the victim did not only include his remuneration as an employee or functionary of the family firm, but also the profits of that firm which depended almost exclusively on his professional activity".

19. Likewise, he pointed out that the reference in the judgment on reparations to the amount of indemnification being determined by mechanisms established in domestic legislation, "cannot be interpreted as the right of the State to unilaterally determine the amount of damage caused [but rather that] it entails a bilateral procedure in which, based on the general principles stated in the judgment on reparations and the spirit of that judgment, the parties determine by mutual agreement [...] the amount of the corresponding indemnification". He also stated that determination of the amount to be paid for moral damages and payment of same cannot be delayed more than 6 months.

20. Finally, as regards the procedure to determine the amount of indemnification, Mr. Cesti considered that "the State must indemnify, with no further procedures, all material damages duly demonstrated by the victim in this case [and that] the State must effect the payment [...] without improper delays, as soon as possible". He added that if necessary, the Court itself might be asked to determine the amount of indemnification to be paid for material damages.

Pleadings by the Commission

21. The Commission, in turn, stated that

the [...] Court has established that Peru has breached the American Convention in this case, and ordered payment of monetary compensation. It is necessary for the domestic courts to intervene so as to execute the judgment in accordance with the parameters established by the [...] Court. Those parameters necessarily include indemnification categories established by the [...] Court, such as compensation for consequential damages and loss of income, lost profits, loss of future incomes, etc. The Commission respectfully requests that if such parameters were not sufficiently clear, the Court establish precisely the amount which must be paid by the State for material damages. It is not the role of the State to negotiate its responsibility as a victim at a national level, [...] instead it must simply execute the judgment of the [...] Court.

22. Furthermore, regarding the attorney's fees, the Commission expressed its concern and stated that "[t]he judgment must bear some relationship to the criteria to determine amounts payable at a national level, but it must also bear a realistic relationship to the contract negotiated between the attorney and his client. Unwillingness to recognize the contract between the attorney and his client and to order payment to the attorney of what the applicant calls "symbolic fees" will reduce the filing of cases with the inter-American system to private attorneys willing to work *pro bono*, and other professionals carrying out their task due to their own interest and not for expected remuneration, which in [the opinion of the Commission] is not the result sought".

Pleadings by the State

23. In its October 5, 2001 brief, Peru stated that "merely reading of [paragraphs 41, 46, and 47 of the Judgment on Reparations] allows them to be understood in the usual sense of the meaning of their wording. Therefore, the State does not agree that there is a need to request their interpretation". Nevertheless, as regards the more specific aspects on which Mr. Cesti has requested clarification (*supra* 10), the State agrees that a order of the Court is required, "since according to domestic norms, a petition by a party is necessary to initiate judicial action to determine the indemnification".

24. The Peruvian State expressed that the ideal entity to determine the amount of indemnification is the Judiciary, since it is an independent power whose decision will be respected by the Government "if it were to face an application filed there by citizen Cesti Hurtado". The State also stated that "within the procedure established for this purpose there is a conciliation stage, in which the parties have an opportunity to reach an agreement on the criteria to determine the amount of indemnification", and that since there are important discrepancies between the parties regarding the criteria and the amounts of compensation claimed, said discrepancies should be heard in civil proceedings.

25. The Peruvian State added that

[...] it considers that both the amount and the very items claimed as material damages, cannot be unilaterally set by only one of the parties and that therefore a judicial proceeding is the appropriate mechanism set forth in domestic legislation to hear and decide this issue [...]

26. Regarding expenses and costs, it argued that the Court already ordered their reimbursement and that the amount "includes professional fees, and no further claims should be made in this regard". The State also considered that the process of indemnification may extend beyond the six-month period mentioned in paragraph 74

of the judgment, since Mr. Cesti's opinion that the determination of material damages cannot take longer than the six months, contradicts the judgment of the Court.

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Observations of the Court

27. It follows from the pleadings of the parties that it is suitable for the Court to determine the scope of the State's obligation to repair the material damages derived from its violation of the rights of Mr. Cesti Hurtado, under the terms of the May 31, 2001 judgment.

28. In the relevant paragraphs of the judgment which this interpretation refers to, the Court decided

41. To determine the measures of reparation which are appropriate in this case, the Court will have as its basic reference the facts admitted as proven in its September 29, 1999 judgment. Furthermore, as has been pointed out, the victim and the State have contributed additional probatory elements which are significant to determine the reparation measures. The Court has examined other evidentiary elements and the pleadings of the parties and rules that the following facts have been proven in connection with Mr. Cesti:
[...]

e) that [Mr. Cesti] incurred a number of expenses for professional fees of his representatives in the preparation, filing and processing of his case before the Peruvian authorities and the inter-American system [...];

f) that his attorneys and other persons surrounding Mr. Cesti also incurred expenses, specifically in connection with trips to Costa Rica and the United States [...];
[...]

46. The Court takes note that the victim and the Commission have expressed that the violations in this case justify reparations to Mr. Cesti for material damages. However, given the specificities of this case and the nature of the reparations requested, this Court considers that they should be established through mechanisms set forth in domestic legislation. Domestic courts or specialized national institutions are knowledgeable on the type of activity carried out by the victim. Given the specificity of the reparations requested as well as the characteristics of commercial law and of the corporations and commercial operations involved, the Court believes that said determination should be made by the abovementioned national institutions rather than by an international human rights court.

47. Given the above, it is suitable to order the State to indemnify the victim for material damages caused by the violations declared in the judgment on the merits, taking into account, under the circumstances of the instant case, the usual components of material damages; and that, in accordance with relevant national norms, it set the respective amounts of indemnification, for the victim to receive them within a reasonable time.

and in operative point one it decided

1. to order that the Peruvian State indemnify Gustavo Adolfo Cesti Hurtado for material damages caused to him by the violations declared in the September 29, 1999 judgment on the merits, and that, following relevant domestic procedures, it set the

respective amounts of indemnification, for him to receive them within a reasonable time, if they were in order.

29. Furthermore, in operative points 4 and 6 of the judgment on reparations, the Court decided

4. to order the Peruvian State to pay Gustavo Adolfo Cesti Hurtado, as compensation for the costs and expenses incurred under domestic jurisdiction and under inter-American jurisdiction, the amount of US\$ 20,000 (twenty thousand dollars of the United States of America) or its equivalent in Peruvian currency, an amount which includes professional fees.

[...]

6. to order the State of Peru to make the payments mentioned in operative points 2, 3, and 4 within six months from the notice of this judgment.

30. Article 63(1) of the American Convention prescribes:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

31. The Court has previously stated that

[the] request for interpretation of a judgment should not be used as a means to appeal but rather it should have as its only purpose to clarify the meaning of a ruling when one of the parties maintains that the text in its operative parts or in its considerations lacks clarity or precision, provided that such considerations have a bearing on that operative parts and, therefore, modification or annulment of the respective judgment cannot be petitioned through a request for interpretation⁵.

32. As can be seen, the judgment on reparations includes precise specifications regarding various aspects of the reparations to be paid by the Peruvian State:

a) As regards material damages (*supra* 10(1), 10(3) and 10(6)), since it delivered its first judgment on reparations the Court has recognized that violations of protected rights create for the victim a right to reparation of the consequences caused by the breach, including payment of indemnification as compensation for material and moral damages. Thus, to restore insofar as possible the situation that existed before the violations, the judgment on reparations has decided in the instant case that the State must provide the necessary conditions for the person concerned to take steps conducive to obtaining the respective indemnifications for violations declared in the decision on the merits *within a reasonable time* (*supra* 28, Operative point 1);

⁵ Cfr. *Ivcher Bronstein Case. Interpretation of the Judgment on the Merits*. (Art. 67 American Convention on Human Rights), *supra* 4, para. 19; *Suárez Rosero Case. Interpretation of the Judgment on Reparations*. (Art. 67 American Convention on Human Rights). Judgment of May 29, 1999. C Series No. 51, para. 20 and *Loayza Tamayo Case. Request for Interpretation of the Judgment of September 17, 1997*. Order of the Court on March 8, 1998. C Series No. 47, para. 16.

b) Concerning the amount of compensation for legal costs and expenses (*supra* 10(2)), the Court already stated clearly in its judgment that the specific payments ordered include those for professional fees (*supra* 29, Operative point 4);

c) In connection with economic earnings lost by Mr. Cesti as a consequence of the violation of his rights as a shareholder and functionary of the firm Top Security Asesores y Corredores de Seguros, S.A. (*supra* 10(3)), including the dividend for participation as a shareholder, the Court also decided that the parties should resort to national legislation applicable in this matter⁶;

d) The Court itself stated in paragraphs 46 and 47 of its judgment on the merits (*supra* 28) that to fulfill reparation for material damages to Mr. Cesti (*supra* 10(4)), the respective petitions must be made by the interested party before the appropriate national authorities. It is they, in fact, who must decide whatever is pertinent, under the relevant Peruvian norms⁷.

e) Steps conducive to compensation for material damages in favor of Mr. Cesti Hurtado must be taken before the Peruvian State for it, in good faith, to facilitate access of the victim to the relevant domestic legal procedures. In this regard, the Peruvian State has the specific obligation to receive, process and decide those claims as required by law and within a reasonable time.

33. Pursuant to the above, all reparations applicable to the instant case have been explicitly dealt with and specified.

VII

34. For the aforementioned 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 the request for interpretation of the May 31, 2001 judgment in the Cesti Hurtado case, filed by Gustavo Adolfo Cesti Hurtado, is admissible.

2. That the request for a public hearing on the request for interpretation of the judgment on reparations made by Mr. Cesti is not in order.

⁶ In this regard, the Court has previously stated that pertaining to material damages, in the cases of survivors of violations of human rights, "the compensation should include, among other factors, the time that the victim remained unemployed". Cfr. *Suárez Rosero Case. Reparations.* (art. 63(1) American Convention on Human Rights). Judgment of January 20, 1999. C Series No. 44, para. 59; *Loayza Tamayo Case. Reparations.* (art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. C Series No. 42, para. 128 and *El Amparo Case. Reparations.* (art. 63(1) American Convention on Human Rights). Judgment of September 14, 1996. C Series No. 28, para. 28.

⁷ Cfr. *Ivcher Bronstein Case. Interpretation of the Judgment on the Merits.* (Art. 67 of the American Convention on Human Rights), *supra* 4, para. 21.

3. That the State of Peru must set the indemnification due to Gustavo Adolfo Cesti Hurtado for material damages caused, for which purpose it must facilitate, in good faith, access by Mr. Cesti to the appropriate domestic legal procedures for the victim to obtain the aforementioned indemnification, if it were in order, within a reasonable time.

Done, in Spanish and English, the Spanish text being authentic, at the seat of the Court in San Jose, Costa Rica, on November 27, 2001.

Antônio A. Cançado Trindade
President

Hernán Salgado-Pesantes

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary