

WorldCourts™

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Constitutional Court v. Peru
Doc. Type:	Order
Decided by:	President: Antonio A. Cancado Trindade
Dated:	7 April 2000
Citation:	Constitutional Court v. Peru, Order (IACtHR, 7 Apr. 2000)
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

HAVING SEEN:

1. The communication of April 3, 2000, and its annexes, in which Delia Revoredo Marsano de Mur (hereinafter “Mrs. Revoredo”) submitted to the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) a request for provisional measures for her husband, Jaime Mur Campoverde, and herself, in connection with the Constitutional Tribunal case before the Court against Peru (hereinafter “Peru” or “the State”), pursuant to Article 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”). In this communication, Mrs. Revoredo requests the Court

a. That while the proceeding on the restitution of the Magistrates of the Constitutional Tribunal is being heard, the Peruvian State shall abstain from harassing [her] directly or harassing [her] husband, by exercising the control and manipulation of judges and tribunals.

b. That, specifically, the judicial proceedings filed against [her] before the Fifteenth Court specializing in the crimes included in Administrative Resolution No. 744-CME-PJ - File. No. 1607-2000, for the alleged crimes of misappropriation, fraud and crime against the authority to attest documents, shall be suspended until the action for restitution to [her] function of Constitutional Magistrate shall have been decided.

c. That, the spouses Delia Revoredo de Mur and Jaime Mur Campoverde shall be guaranteed their right to the judicial protection of their proprietary interests, allowing their company Corporación de Productos Alimenticios Nacionales PYC S.A. the legal recourse of contesting in court an adverse decision of an arbitrator.

2. Mrs. Revoredo based her request for provisional measures on the following considerations:

a. That during the proceeding in which she participated as a member of the Constitutional Tribunal of her country, where the action on the unconstitutionality of a law “interpreting” the Constitution of the State, which allowed the actual President of Peru to be a candidate to a third consecutive presidential mandate, was examined, three of the seven magistrates present, who

maintained the unconstitutionality of this “interpretative law”, were dismissed and suffered “all kinds of pressure: offers, threats, harassment”.

b. That, as far as she is concerned, she may not be tried or condemned, due to her constitutional immunity; therefore, the attacks were focused on her husband, and a proceeding that had been filed for the alleged contraband of a vehicle was reopened. During this period, she and her husband suffered attacks on their property and their telephones were intercepted, while there was also interference in her husband’s business activities.

c. That, following her dismissal as a magistrate of the Constitutional Tribunal, she was appointed Dean of the Lima Lawyers Professional Association and President of the Board of Deans of the Peruvian Lawyers Professional Associations and instructed by civil society entities to lodge a complaint with the Inter-American Commission on Human Rights due to the interference of the Executive in the constitutional functions of other State organs. In consequence, she was informed that her husband was going to be condemned “and that he would be arrested”, so they went into exile.

d. That, following declarations of the President of Peru in which he referred negatively to the good reputation of Mr. and Mrs. Mur, they decided to give up exile and return to Peru.

e. That, due to a recent public declaration, which she signed together with various other Peruvians in order to create a Front for the Defense of Democracy, the following events have occurred: the criminal action aimed at impeding her from leaving the country was reactivated, she has been requested to pay a pledge of 20,000 soles and the public registries have been requested to supply a list of her property so that it may be embargoed; one of her husband’s companies lost a case and both the case and subsequent appeals for review that were presented were processed irregularly in order to prejudice them.

f. That all the previous acts against her have a twofold objective: on the one hand, to take away her freedom and her property, and on the other, to impede her reincorporation into to the Constitutional Tribunal, due to legal impediment.

g. That the Government, through the judges or prosecutors, uses family or company problems to impose arbitrary judicial penalties that jeopardize the honour and freedom of the persons involved.

CONSIDERING:

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

2. That Article 63.2 of the American Convention provides that, in cases of “extreme gravity and urgency and when necessary to avoid irreparable damage to persons”, the Court may take the provisional measures that it deems pertinent, in matters it has under consideration.

3. That, in the words of Article 25.1 and 25.4 of the Rules of Procedures of the Court, [a]t 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.

[...]

[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, from these provisions, it is evident that the Court, or, when appropriate, its President, may act *de officio* in cases of extreme gravity and urgency to avoid irreparable damage to persons. The Court has already done so previously (Order of January 15, 1988, Provisional Measures in the Velásquez Rodríguez, Fairén Garbí and Solís Corrales, and Godínez Cruz cases, fourth and fifth preambular paragraphs). As the Court is not sitting, the President is authorized to adopt urgent measures *de officio* in such cases of extreme gravity and urgency to avoid irreparable damages to persons.

5. That Article 1.1 of the Convention establishes the obligation of States Parties to respect the rights and freedoms recognized therein and to ensure their free and full exercise to all persons subject to their jurisdiction.

6. That the Court is authorized to adopt provisional measures in cases of extreme gravity and urgency to avoid irreparable damage to persons (Article 63.2 of the Convention). In this case, in relation to the request contained in the section "Having Seen", 1.a (*supra*), this implies safeguarding the personal integrity of Mrs. Revoredo.

7. That the information submitted in this case reveals a *prima facie* threat to the integrity of Mrs. Revoredo. The standard of *prima facie* appreciation of a case and the application of assumptions in view of the needs of protection have led this Court to order provisional measures on various occasions (*cf. inter alia*, Order of the Inter-American Court of Human Rights of November 17, 1999, Provisional Measures in the Digna Ochoa y Plácido et al case, fifth preambular paragraph; Order of the Inter-American Court of Human Rights of June 3, 1999, Provisional Measures in the Cesti Hurtado case, fourth preambular paragraph; Order of the Inter-American Court of Human Rights of May 27, 1999, Provisional Measures in the James et al case, eighth preambular paragraph; Order of the Inter-American Court of Human Rights of June 19, 1998, Provisional Measures in the Clemente Teherán et al case, fifth preambular paragraph; Order of the President of the Inter-American Court of Human Rights of July 22, 1997, Provisional Measures in the Alvarez et al case, fifth preambular paragraph; Order of the President of the Inter-American Court of Human Rights of August 16, 1995, Provisional Measures in the Blake case, fourth preambular paragraph; Order of the President of the Inter-American Court of Human Rights of July 26, 1995, Provisional Measures in the Carpio Nicolle case, fourth preambular paragraph; Order of the President of the Inter-American Court of Human Rights of June 4, 1995, Provisional Measures in the Carpio Nicolle case, fifth preambular paragraph; Order of the Inter-American Court of Human Rights of December 7, 1994, Provisional Measures in the Caballero Delgado and Santana case, third preambular paragraph; and Order of the Inter-American Court of Human Rights of June 22, 1994, Provisional Measures in the Colotenango case, fifth preambular paragraph).

8. That, in its jurisprudence, this Court has protected witnesses who have made statements before it by adopting provisional measures (*cf. inter alia*, Order of the Inter-American Court of Human Rights of January 15, 1988, Provisional Measures in the Velásquez Rodríguez, Fairén Garbí and Solís Corrales, and Godínez Cruz cases; Order of the Inter-American Court of Human Rights of December 7, 1994, Provisional Measures in the Caballero Delgado and Santana case; Orders of the Inter-American Court of Human Rights of September 22, 1995, and April 18, 1997, Provisional Measures in the Blake case; Order of the President of the Inter-American Court of Human Rights of June 30, 1998, and Order of the Inter-American Court of Human Rights of August 29, 1998, both as to the Provisional Measures in the Bámaca Velásquez case);

with all the more reason is the adoption of provisional measures justified when it is a petitioner in a contentious case pending before the Court who claims that she fears for her personal integrity.

9. That, on this point, as this Court has already stated, “it is the responsibility of the State to adopt security measures to protect all those who are subject to its jurisdiction; this obligation is even more evident as regards those who are involved in proceedings before the supervisory organs of the American Convention” (cf. Order of the Inter-American Court of Human Rights of November 17, 1999, Provisional Measures in the Digna Ochoa y Plácido et al case, seventh preambular paragraph).

10. That the purpose of provisional measures, under the national legal systems (domestic procedural law) in general, is to preserve the rights of the contending parties, ensuring that the future judgement on merits is not prejudiced by their actions *pendente lite*.

11. That, under the International Law of Human Rights, the purpose of provisional measures goes further, as, besides their essentially preventive character, they effectively protect fundamental rights, inasmuch as they seek to avoid irreparable damage to persons.

12. That the requests contained in “Having seen” 1b and c (*supra*) refer to legal proceedings that are not directly linked to the facts of the Constitutional Tribunal case under consideration by this Court and, if these facts were to be submitted to the Court, it would not be in order for it to take a decision with regard to ordering provisional measures, since this would imply prejudging the merits. In view of its specific object and legal nature, the granting of provisional measures may under no circumstances prejudice the merits of a case.

13. That, in accordance with Article 25.4 of the Rules of Procedure, the President of the Court is only authorized to order such urgent measures as may be necessary to ensure the effectiveness of any provisional measures subsequently ordered by the Court at its next period of sessions (cf. *inter alia*, Order of the President of the Inter-American Court of Human Rights of February 10, 1998, in the Paniagua Morales et al and Vásquez et al cases; and Order of the President of the Inter-American Court of Human Rights of July 29, 1997, Provisional Measures in the Cesti Hurtado case).

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

Based on Article 63.2 of the American Convention on Human Rights and on the use of the attributes conferred on him by Article 25.4 of the Rules of Procedure, after having consulted all the Judges of the Court,

DECIDES:

1. To call upon the State to adopt immediately all necessary measures to ensure effectively the physical, psychological and moral integrity of Delia Revoredo Marsano de Mur, petitioner in the Constitutional Tribunal case under consideration by the Court, in order that any provisional measures that the Inter-American Court of Human Rights may decide to order shall have the pertinent effects.

2. To call upon the State and the Inter-American Commission on Human Rights to provide detailed information on the situation of Delia Revoredo Marsano de Mur, at the latest by April

25, 2000, so that the Inter-American Court of Human Rights may take a decision in this respect in due course.

3. To call upon the State to present to the Court a report on the measures taken pursuant to resolutive point 1 of the present Order, at the latest by April 25, 2000, so that it may inform the members of the Court during the next period of sessions, and to continue providing information on these once every six weeks.

4. To call upon the Inter-American Commission on Human Rights to present its observations on the reports submitted by the State, within thirty days of having been notified that these have been received.

Antônio A. Cançado Trindade
President

Manuel E. Ventura Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura Robles
Secretary