

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; Judges: Maximo Pacheco-Gomez; Hernan Salgado-Pesantes; Oliver Jackman; Alirio Abreu-Burelli; Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo
Dated:	14 August 2000
Citation:	Constitutional Court v. Peru, Order (IACtHR, 14 Aug. 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 appendices, in which Delia Revoredo-Marsano-de-Mur (hereinafter “Ms. Revoredo”) 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 her husband, Jaime Mur-Campoverde, and on her own behalf, in connection with the Constitutional Court 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, Ms. Revoredo requested the Court

a. That while the proceeding on the restitution of the Justices of the Constitutional Court 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 courts.

b. That, specifically, the judicial proceedings filed against [her] before the Fifteenth Court specializing in the crimes included in Administrative Resolution N° 744-CME-PJ – File N° 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 Justice 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. Ms. 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 Court 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 justices 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 convicted due to her constitutional immunity; therefore, the attacks were focused on her husband, and a proceeding that had been filed for the alleged smuggling 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 justice of the Constitutional Court, 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 convicted “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 Ms. Mur, they decided to give up exile and return to Perú.

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 keeping 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 garnished; 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 damage 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 keep her from becoming reincorporated into the Constitutional Court, 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 honor and freedom of the persons involved.

3. The Order of the President of April 7, 2000, in the Considering part of which it pointed out

4. That, from these provisions [of Articles 63(2) of the American Convention and 25(1) and 25(4) of the Rules of the Court], it is evident that the Court, or, when appropriate, its President, may act de oficio 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 Garbi 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 oficio 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.

[...]

7. That the information submitted in this case reveals a prima facie threat to the integrity of Ms. 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 and 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 Álvarez 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-Garbi 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 and 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 harmed 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.

[...]

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).

And in whose operative part it decided

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 Court 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 de 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 resolatory 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.

4. The brief of the Commission of April 20, 2000, whereby it requested the Court to “ratify the [urgent] measures rendered by the President of the Court on April 7, 2000, on behalf of Ms. Delia Revoredo-Marsano-de-Mur.”

5. The failure of the State to submit the reports provided for in operative paragraphs 2 and 3 of the Order of the President of the Court of April 7, 2000, both, within the period granted, and thereafter.

CONSIDERING:

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

2. That Article 63(2) of the American Convention establishes that “In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court”

may, “in matters it has under consideration,” “adopt such provisional measures as it deems pertinent.”

3. That, according to Article 25(1) of the Rules of Procedure of the Court, 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.

4. That Article 1(1) of the Convention establishes the obligation that the State Parties have to respect the rights and freedoms recognized in that covenant, and to ensure the free and full exercise thereof to all persons subject to their jurisdiction.

5. That the Order of the President of April 7, 2000, was adopted according to law and is consistent with the merits of the facts and circumstances that justified the adoption of urgent measures, and that this Court ratifies it in every respect.

6. That the Commission has asked this Court to maintain the provisional measures in the instant case, because “the extreme gravity and urgency of the situation have become evident in the account of the facts.”

7. That the request for provisional measures is related to the case of the Constitutional Court, currently under consideration before the Court.

8. That the Court considers that the State had the obligation, in conformity with the Order of the President, of April 7, 2000, to order the adoption of whatever measures were necessary to “ensure effectively the physical, psychological and moral integrity of Delia Revoredo-Marsano-de-Mur, petitioner in the Constitutional Court Case under consideration by the Court.”

9. That the Court has established that “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.”

10. That this Court has drawn the attention of some States to the omissions incurred with respect to their obligation to take steps relative to the provisional measures ordered by the Tribunal.

11. That, to date, the State has failed to submit the urgent report requested by the Order of the President of April 7, 2000, both on the measures adopted to ensure effectively the physical, psychological and moral integrity of Delia Revoredo-Marsano-de-Mur, and on her situation.

12. That the event of default by the State is particularly serious given the legal nature of the provisional measures, which are intended to prevent irreparable damage to persons in a situation of extreme gravity and urgency.

13. That, as pointed out by this Court, “the States Parties to the Convention must guarantee compliance with its provisions and its effects (effet utile) within their own domestic laws.

14. That the provision established in Article 63(2) of the Convention makes it mandatory for the State to adopt the provisional measures ordered by this Tribunal, since there stands “a basic principle of the law of international state responsibility, supported by international jurisprudence, according to which States must fulfil their conventional international obligations in good faith (pacta sunt servanda).”

15. That, in like manner, the State has the obligation to investigate the facts that have given rise to this request for provisional measures, in order to identify those responsible and impose upon them the pertinent punishment.

NOW, THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES:

1. To ratify the Order of the President of the Inter-American Court of Human Rights of April 7, 2000, in all of its aspects and, therefore, to request that the State adopt the necessary measures to protect the physical, psychological and moral integrity of Ms. Delia Revoredo-Marsano-de-Mur, in order to prevent her from suffering irreparable damage.
2. To request that the State and the Inter-American Commission on Human Rights provide detailed information no later than September 14, 2000, on the situation of Ms. Delia Revoredo-Marsano-de-Mur and, as regards the State, that it also provide information on the measures adopted for her protection, as it should have done on April 25, 2000, in conformity with the Order of the President of the Inter-American Court of Human Rights of April 7, 2000.
3. To request that the State investigate the facts that gave rise to the adoption of the current provisional measures, and that it punish the persons responsible.
4. To request that, as of the date of notification of this Order, the State submit reports on the provisional measures adopted in the instant case every two months.
5. To request that the Inter-American Commission on Human Rights submit to the Inter-American Court of Human Rights its observations on said reports by the State, within six weeks of receiving them.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez
Hernán Salgado-Pesantes
Oliver Jackman
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