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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Gustavo Adolfo Cesti Hurtado v. Peru
Doc. Type: Judgment (Reparations and Costs)
Decided by: President: Antonio A. Cancado Trindade
Judges: Hernan Salgado Pesantes; Oliver Jackman; Alirio Abreu Burelli;
Sergio Garcia Ramirez; Carlos Vicente de Roux Rengifo

Judge Maximo Pacheco Gomez informed the Court that, owing to circumstances beyond his control, he was unable to attend the Fifty-first Regular Session of the Court; therefore, he did not take part in the deliberation and signature of this judgment.

Dated: 31 May 2001
Citation: Cesti Hurtado v. Peru, Judgment (IACtHR, 31 May 2001)

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In the Cesti Hurtado case,

the Inter-American Court of Human Rights, in accordance with Articles 29, 55 and 56 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) in relation to Article 63(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and in compliance with the judgment of September 29, 1999, delivers this judgment on reparations.

I. COMPETENCE

1. According to Articles 62 and 63(1) of the Convention, the Court is competent to decide on reparations and expenses in the instant case, because the Republic of Peru (hereinafter “the State”, “Peru” or “the State of Peru”) has been a State Party to the American Convention since July 29, 1978, and accepted the contentious jurisdiction of the Court on January 21, 1981.

II. BACKGROUND

2. This case was referred to the Court by the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”), in an application dated January 9, 1998, accompanied by Report No. 45/97 of October 16, 1997. It originated in a petition (No. 11.730) against Peru, received by the Secretariat of the Commission on March 7, 1997.

3. On September 29, 1999, the Court delivered judgment on the merits of the case in which it decided unanimously:

1. to rule that the State of Peru 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 to order that the decision of the Chamber of Public Law of Lima on the petition for habeas corpus filed by Gustavo Adolfo Cesti Hurtado, of February 12, 1997, should be complied with;
2. to rule that the State of Peru violated Article 7(1), 2 and 3 of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraphs 140 to 143 of this judgment;
3. to rule that the State of Peru violated Article 8(1) of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraph 151 of this judgment;
4. to rule that, in the instant case, it was not proved that the State of Peru violated Article 8(2) of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraph 152 of this judgment;
5. to rule that, in the instant case, it was not proved that the State of Peru violated Article 5(2) of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraph 160 of this judgment;
6. to rule that the State of Peru violated Articles 1(1) and 2 of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraphs 166 to 170 of this judgment;
7. to rule that in the instant case it was not proved that the State of Peru violated Articles 11 and 21 of the American Convention on Human Rights with regard to Gustavo Adolfo Cesti Hurtado, in the terms established in paragraphs 177, 178 and 183 of this judgment;
8. to rule that the proceeding against Gustavo Adolfo Cesti Hurtado under the military justice system is incompatible with the American Convention on Human Rights and to order the State to annul this action and all the effects that may derive from it;
9. to rule that the State of Peru is obliged to pay fair compensation to Gustavo Adolfo Cesti Hurtado and to indemnify him for any expenses that he may have incurred in steps related to this proceeding, and
10. to order that the reparations stage should be opened and to authorize its President to duly adopt the appropriate measures.

III. PROCEEDING AT THE REPARATIONS STAGE

4. On January 21, 2000, the President of the Court (hereinafter “the President”), in compliance with the judgment of September 29, 1999, decided:

1. To grant the Inter-American Commission on Human Rights until March 3, 2000, to submit a brief and any evidence it had, for the purpose of determining reparations and costs in the instant case.
2. To grant Gustavo Adolfo Cesti Hurtado, the victim in this case, or his legal representative, until March 3, 2000, to submit a brief and any evidence he had, for the purpose of determining reparations and costs in the instant case.
3. To instruct the Secretariat of the Court to remit all the briefs and evidence submitted to the State of Peru, once the period mentioned in the previous operative paragraphs has expired.

4. To grant the State of Peru a period of six weeks, from the date on which it receives the briefs and the evidence referred to in operative paragraphs 1 and 2, to submit its comments and any evidence it had, for the purpose of determining reparations and costs in the instant case.

5. To summon Gustavo Adolfo Cesti Hurtado, the victim in this case, or his legal representative, and also the Inter-American Commission on Human Rights and the State of Peru to a public hearing at a date that will be announced in due course, once the written stage of the proceeding has been completed.

5. On March 1, 2000, the Inter-American Commission submitted its brief on reparations and expenses

6. On March 2, 2000, Gustavo Adolfo Cesti Hurtado (hereinafter “Mr. Cesti” or “the victim”) submitted his brief and certain documentary evidence relating to reparations, in 14 annexes (infra 24).

7. On March 20, 2000, the President summoned Mr. Cesti or his legal representative, Peru and the Inter-American Commission to a public hearing on reparations, to be held at the seat of the Court on June 16 that year.

8. On April 7, 2000, the Secretariat of the Court (hereinafter “the Secretariat”) advised Mr. Cesti, the Inter-American Commission and the State that the Forty-eighth Regular Session of the Inter-American Court had been suspended, and that the public hearing on reparations programmed for that session (supra 7) would be convened again, in due course.

9. On April 13, 2000, the State requested the President to extend the period established for formulating its comments on the briefs on reparations submitted by the victim and the Inter-American Commission. The following day, on the instructions of the President, the Secretariat advised Peru that the period for submitting its brief had been extended until May 3, 2000.

10. On May 4, 2000, the State commented on the briefs on reparations submitted by the victim and the Inter-American Commission.

11. On June 12, 2000, the President summoned Mr. Cesti or his legal representative, the Inter-American Commission and Peru to a public hearing on reparations to be held at the seat of the Court on August 10, 2000.

12. On June 20, 2000, Mr. Cesti commented on the brief on reparations submitted by the State.

13. On August 10, 2000, the Court held a public hearing on reparations.

There appeared before the Court:

Gustavo Adolfo Cesti Hurtado;

for the Inter-American Commission:

Oscar Luján Fappiano
Alberto Borea Odría, and
Christina M. Cerna;

for the State:

Jorge Hawie Soret, and
Rolando Eyzaguirre.

14. On September 11, 2000, the victim submitted written comments on the arguments made by the State during the public hearing on reparations.

15. On November 6, 2000, the State informed the Court that “the Supreme Council of Military Justice ha[d] complied with the decisions of the judgment [on merits]” and attached a copy of the decision of the Plenary of the Supreme Council of Military Justice of September 14, 2000, which established that “the orders issued against [Mr. Cesti] that restricted his freedom and embargoed his property are suspended.”

16. On February 9, 2001, the State informed the Court that it had appointed Patricio Marcial Rubio Correa and Iván Arturo Bazán Chacón as its agent and deputy agent, respectively, in this case, and on February 16 that year, it indicated the place where any notifications would be officially received.

17. On April 26, 2001, the victim submitted a brief with observations on the reparations in the instant case and attached certain documentary evidence in six annexes (infra 27 and 29).

IV. EVIDENCE

18. Article 43 of the Rules of Procedure of the Inter-American Court (hereinafter “the Rules of Procedure”) establishes that:

Items of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto [...]. Should any of the parties allege force majeure, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing parties are guaranteed the right of defense.

19. Article 44 of the Rules of Procedure indicates that, at any stage of the case, the Court may:

1. Obtain, on its own motion, any evidence it considers helpful. In particular, it may hear as a witness, expert witness, or in any other capacity, any person whose evidence, statement or opinion it deems to be relevant.

2. Request the parties to provide any evidence within their reach or any explanation or statement that, in its opinion, may be useful.

3. Request any entity, office, organ or authority of its choice to obtain information, express an opinion, or deliver a report or pronouncement on any given point. The documents may not be published without the authorization of the Court.

[...]

20. According to the consistent practice of the Court, during the reparations stage, the parties must indicate the evidence that they will offer at the first occasion granted to them to make a written statement. Moreover, the exercise of the Court's discretionary powers stipulated in Article 44 of its Rules of Procedure, allows it to request the parties to provide additional elements of evidence to help it to make a more informed decision; however, this does not grant the parties another opportunity to expand or complete their arguments or offer new evidence on reparations, unless the Court so allows.

21. The Court has previously indicated that the proceedings before it are not subject to the same formalities as domestic proceedings and that, when incorporating determined elements into the body of evidence, particular attention must be paid to the circumstances of the specific case and to the limits imposed by respect for legal certainty and the procedural equality of the parties [FN1]. In its jurisprudence, the Court has sustained that it has the authority to evaluate the evidence within the limits of sound judicial discretion; and has always avoided making a rigid determination of the amount of evidence required to support a judgment [FN2].

[FN1] Cf. Ivcher Bronstein case. Judgment of February 6, 2001. Series C No. 74, para. 65; "The Last Temptation of Christ" case (Olmedo Bustos et al.). Judgment of February 5, 2001. Series C No. 73, paras. 49 and 51; and The Constitutional Court case. Judgment of January 31, 2001. Series C No. 71, para. 46.

[FN2] Cf. Castillo Páez case. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 38; Fairén Garbi and Solís Corrales case. Judgment of March 15, 1989. Series C No. 6, para. 130; Godínez Cruz case. Judgment of January 20, 1989. Series C No. 5, para. 133; and Velásquez Rodríguez case. Judgment of July 29, 1988. Series C No. 4, para. 127; and Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p. 14, para. 60.

22. This practice extends to the briefs in which the victim and the Inter-American Commission formulate their claims for reparations and to the State's answering brief, which are the principle documents at this stage and, in general, entail the same formalities with regard to the offer of evidence as the application.

23. On this basis, the Court will proceed to examine and evaluate all the elements that make up the body of evidence, according to the rules of sound judicial discretion [FN3], within the legal framework of the instant case.

[FN3] Cf. Ivcher Bronstein case, *supra* note 1, para. 69; The Last Temptation of Christ” case (Olmedo Bustos et al.), *supra* note 1, para. 54; and Baena Ricardo et al. case. Judgment of February 2, 2001, Series C No. 72, paras. 70 and 72.

24. Regarding the evidence, when Mr. Cesti submitted his brief on reparations, he attached a series of documents in 14 annexes [FN4] (*supra* 6).

[FN4] Annex 1. Opinion 18-1997 issued by the United Nations High Commissioner for Human Rights on January 12, 1998; Annex 2. Statements on the Cesti Hurtado case by different entities and well-known people: A) Lima Bar Association, September 11, 1997; B) Amicus Curiae of the Executive Human Rights Committee of the Lima Bar Association of March 3, 1998; C1) Defense decision No. 012-97/DP of March 24, 1997; C2) Amicus Curiae of the Peruvian Ombudsman of June 10, 1998; D) Amicus Curiae submitted by Héctor Faúndez Ledesma, dated June 12, 1998; E) Amicus Curiae of the Center for Legal and Social Studies (CELS) and the Center for Justice and International Law (CEJIL) of November 3, 1998; F) 2 letters addressed to the President of the Executive Human Rights Committee of the Lima Bar Association, from the Working Group on Arbitrary Detentions and the United Nations Special Rapporteur on the Independence of Judges and Lawyers, dated April 16 and 21, 1998, respectively; G) Letter from three members of the United States Congress, dated July 6, 1998; H) Letter from the Human Rights Committee of the Chamber of Deputies of Mexico, dated March 20, 1998; I) Letter from the Guatemalan Bar Association, dated April 21, 1998; J) Decision No. 33 of the Puerto Rican Bar Association, dated June 26, 1998; K) Letter from Amnesty International, dated October 20, 1998; L) Notification dated June 5, 1998, of Decision CD 05-98/3 of the Central American Commission for the Defense of Human Rights (CODEHUCA); M) Letter of July 7, 1998, from the Washington Office on Latin America; N) Pronouncement of the Pro-Human Rights Association (APRODEH) of June 8, 1998; Ñ) Letter of the University Human Rights Network (RUDEH) of November 25, 1997; Annex 3.- Publications of the Superintendency of Banks and Insurance with financial information on insurance-broking companies for the years 1994, 1995, 1996 and 1997; Annex 4.- Official letters Nos. 3066-97 and 6501-98 of May 27, 1997, and August 14, 1998, respectively, from the Superintendency of Banks and Insurance; Annex 5. Receipt for security services for the Cesti family and invoices for miscellaneous carrier services. File 1: A) Summary of expenses of the companies Perfecta Seguridad, Siccsa, Scharff Express s.a. and Poder Seguridad s.a., for surveillance and miscellaneous carrier services from January 1997 to May 1999; B) 8 invoices from the company, Perfecta Seguridad, for private surveillance services for the months of July to October 1997; C) 34 invoices from Siccsa (Scharff International courier & cargo, s.a.) for miscellaneous carrier services from March 1997 to May 1999; D) 9 invoices from Poder de Seguridad s.a. for private surveillance services from January to July 1997; File 2: A) Summary of expenses for support personnel services from January 1998 to February 2000; B) 472 receipts for “transport and food expenses relating to the arrangements to support” Mr. Cesti Hurtado, from July 1997 to February 2000; Annex 7.- Receipts for the media and press announcements; A) Summary of expenses for publicity by different media and companies during 1997; B) 16 invoices from various companies, for designing and publishing announcements, recording services, equipment rental, etc. from March to September 1997;

Annex 8. 2 invoices from SETRIX s.a. for advisory services to Top Security and 2 information leaflets on the “Mi Seguro” plan; Annex 9. A) Judicial notification No. 602 V.I. CSJM 3.S. of the decision of May 20, 1997, addressed to Mr. Cesti Hurtado; B) 4 copies with information issued by the National Public Registry Office; C) Certification of voluntary departure from the San Lucas Clinic, by Carmen Cardó de Cesti on January 5, 1998; D) 3 copies with information issued by the National Public Registry Office; Annex 10. A) Intendancy Resolution No. 0234 41956 issued by the Lima Regional Intendancy of the SUNAT on August 31, 1999; B) Report No. 248-99-FRACC-NB0230, on the tax contributor, Top Security; C) Final part of a resolution issued by the Head-Central Taxation Section-MEPECO, Collection Division; D) Annex to report No. 248-99-FRACC-NB0230; E) Resolution No. 02307008839 issued by SUNAT on September 3, 1999; Annex 11. Psychological report on Mr. Cesti Hurtado prepared by Dr. Luis Arata Cuzcano on February 28, 2000; Annex 12.- 2 reports of the San Lucas Clinic, on cardiology and psychiatric tests for Carmen Cardó de Cesti and certificate of voluntary departure from the San Lucas Clinic, dated January 5, 1998; Annex 13. Professional fees: A) Summary of expenses for professional fees for the lawyers Alberto Borea Odría, Miguel Borea Odría and Javier Valle Riestra during 1997, 1998 and 1999; B) 18 invoices issued by Alberto Borea Odría from January 1997 to February 1999; C) 3 invoices issued by Miguel Borea Odría from January 1997 to June 1998; D) 3 invoices issued by Javier Valle Riestra from January to June 1997; Annex 14. Agreement of the firm, L.A. Motley and Company, of September 17, 1997; Annex 15. Transport and per diem expenses. File 1: A) Payment of hotel and per diem allowances during 1997, 1998, 1999 and 2000; B) 14 receipts issued by Alberto Borea Odría for hotel and per diem allowances from January 1997 to January 2000; C) 9 receipts issued by Carmen Cardó de Cesti for hotel and per diem allowances from April 1997 to January 2000; E) 8 receipts issued by Heriberto Benítez Rivas for hotel and per diem allowances from April 1997 to September 1999; File 2: A) Summary of transport expenses for 2000 and 2 invoices issued by Acuario Turismo, s.r.l., dated January 21, 2000; B) Summary of transport expenses paid to various companies during 1997, 1998 and 1999; b1) 6 invoices issued by Acuario Turismo, s.r.l. for travel tickets from January to November 1999; b2) 2 invoices issued by Nova Tours, s.a. for travel tickets, dated December 4, 1998, and June 26, 1998; b3) 1 invoice issued by Perú Visión for travel tickets, dated January 15, 1998; b4) 7 invoices issued by Acuario Turismo, s.r.l. for travel tickets, from April to December 1998; b5) 3 invoices issued by Perú Visión for travel tickets from August to December 1997; and, b6) 7 invoices issued by Acuario Turismo, s.r.l. for travel tickets from April to October 1997.

25. Neither the Inter-American Commission nor the State submitted any evidence with their briefs on reparations.

26. On November 6, 2000, the State submitted a copy of the decision of the Plenary of the Supreme Council of Military Justice of September 14, 2000 (supra 15).

27. On April 26, 2001, the victim submitted comments on reparations and attached six annexes [FN5] (supra 17).

[FN5] Annex 1.- Congress of the Republic Peru transcript of videos Nos. 910 and 911 of June 15, 1998; Annex 2.- Congress of the Republic Peru transcript of video No. 907 of June 13, 1998; Annex 3.- Newspaper cuttings corresponding to March and April 2001; Annex 4.- Letter of March 1, 2001, from Top Security to Compañía de Seguros Popular y Porvenir; Annex 5.- Letter No. 019-2001/10000 of March 7, 2001, from Compañía de Seguros Popular y Porvenir to Top Security; Annex 6.- Letter of April 10, 2001 from Top Security to Compañía de Seguros Popular y Porvenir.

28. In the instant case, the Court admits the value as evidence of those documents that were submitted by the parties at the appropriate time, that were not contested or opposed, and the authenticity of which was not questioned [FN6].

[FN6] Cf. Ivcher Bronstein case, supra note 1, para. 73; The Last Temptation of Christ” case (Olmedo Bustos et al.), supra note 1, para. 55; and Baena Ricardo et al. case, supra note 3, para. 74.

29. With regard to the decision of the Plenary of the Supreme Council of Military Justice of September 14, 2000, although this was not submitted at the appropriate procedural moment (supra 15 and 26), the Court observes that this evidence refers to a supervening event and this reason justifies its tardy presentation, so that it is in order to admit it to the body of evidence. The same may be said of the evidence submitted by the victim on April 26, 2001 (supra 17 and 27).

V. OBLIGATION TO MAKE REPARATION

30. In the tenth operative paragraph of the judgment on merits of September 29, 1999, the Court decided to open the reparations stage and authorized the President to adopt the corresponding procedural measures.

31. With regard to reparations, Article 63(1) of the American Convention is applicable and it establishes:

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 (the original is not underlined).

32. In its consistent jurisprudence, this Court has reiterated that it is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to make adequate reparation [FN7].

[FN7] Cf. Ivcher Bronstein case, supra note 1, para. 177; Baena Ricardo et al. case, supra note 3, para. 201; The Constitutional Court case, supra note 1, para. 118; Blake case. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 33; Suárez Rosero case. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44, para. 40; Castillo Páez case. Reparations, supra note 2, para. 50; Loayza Tamayo case. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 84; Caballero Delgado and Santana case. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of September 19, 1996. Series C No. 31, para. 15; Neira Alegría et al. case. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of September 19, 1996. Series C No. 29, para. 36; El Amparo case. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of September 14, 1996. Series C No. 28, para. 14; Aloeboetoe et al. case. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of September 10, 1993. Series C. No 15, para. 43. Also, Cf. Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949, p. 184; Factory at Chorzów, Claim for indemnity, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 29; and Factory at Chorzów, Claim for indemnity, Jurisdiction, Judgment No. 8, 1927, P.C.I.J., Series A, No. 9, p. 21.

33. Reparation of the damage resulting from the violation of an international obligation requires, whenever possible, the full restitution (*restitutio in integrum*), which consists in the re-establishment of the previous situation. If this is not possible, as in the instant case, the international court must determine a series of measures to guarantee the violated rights and order payment of compensation for the damage caused [FN8].

[FN8] Cf. Ivcher Bronstein case, supra note 1, para. 178; Baena Ricardo et al. case, supra note 3, para. 202; and The Constitutional Court case, supra note 1, para. 119.

34. The respondent State may not invoke provisions of domestic law in order to modify or fail to comply with the obligation to make reparation – all aspects of which (scope, nature, methods and determination of the beneficiaries) are regulated by international law [FN9].

[FN9] Cf. Blake case. Reparations, supra note 7, para. 32; Suárez Rosero case. Reparations, supra note 7, para. 42; and Castillo Páez case. Reparations, supra note 2, para. 49.

35. As the Court has indicated, Article 63(1) of the American Convention codifies a rule of common law that is one of the fundamental principles of contemporary international law on State responsibility [FN10]. When an unlawful act occurs that may be attributed to a State, the international responsibility of the latter is immediately engaged for the violation of an international law, with the resulting obligation to make reparation and to ensure that the consequences of the violation cease [FN11].

[FN10] Cf. Blake case. Reparations, supra note 7, para. 33; Suárez Rosero case. Reparations, supra note 7, para. 40; Castillo Páez case. Reparations, supra note 2, para. 50; also Cf. Reparation for injuries suffered in the service of the United Nations, supra note 7, p. 184; Factory at Chorzów, Claim for indemnity, Merits, supra note 7, p. 29; and Factory at Chorzów, Claim for indemnity, Jurisdiction, supra note 7, p. 21.

[FN11] Cf. Baena Ricardo et al. case, supra note 3, para. 201; Blake case. Reparations, supra note 7, para. 33; and Suárez Rosero case. Reparations, supra note 7, para. 40.

36. As the word indicates, reparation consists in the measures that are intended to eliminate the effects of the violations that were committed. Their nature and amount depend on the damage caused at both the pecuniary and the non-pecuniary level. Reparations are not supposed to enrich or impoverish the victim or his heirs [FN12].

[FN12] Cf. Blake case. Reparations, supra note 7, para. 34; Castillo Páez case. Reparations, supra note 2, para. 53; and Garrido and Baigorria case. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of August 27, 1998. Series C No. 39, para. 43.

37. The reparations established in this judgment must be consistent with the violations found in the judgment on merits delivered by the Court on September 29, 1999 (supra 3).

VI. BENEFICIARIES

38. In the instant case, Gustavo Adolfo Cesti Hurtado is evidently the victim. In its judgment of September 29, 1999, the Court declared that the State violated several of his rights embodied in the Convention (supra 3); therefore, he merits the compensation that the Court determines in his favor.

39. However, in his brief of March 2, 2000, Mr. Cesti also requested the Court to compensate his wife, children, mother-in-law and father for non-pecuniary damage, as they had been affected by the violations of his fundamental rights for more than three years.

40. The Court recognizes that the violations that have been established must have produced prejudices of various kinds within the victim's household and, consequently, his nearest next of kin may have the right to receive compensation, provided this is in relation to the violations that were declared in the judgment on merits and provided that it complies with the requirements established in the jurisprudence of this Court.

VII. PROVEN FACTS

41. To determine the measures of reparation that are in order in this case, the Court will base itself on the facts that were considered proven in its judgment of September 29, 1999. Moreover, as it has been indicated, the victim and the State have contributed new evidence to the file that is relevant for determining the measures of reparation. The Court has examined this evidence and the arguments of the parties and declares the following facts proven in relation to Mr. Cesti:

- a) he was 45 years of age at the time of his detention [FN13];
- b) at the time of his detention, he was the general manager and legal representative of the insurance company, Top Security Asesores and Corredores de Seguros Sociedad Anónima (hereinafter “Top Security” or “the company” [FN14];
- c) while he was detained, he suffered health problems of a psychological and cardiological nature, for which he received medical treatment during his detention [FN15];
- d) he was liberated on November 11, 1999 [FN16];
- e) he incurred a series of expenses for the professional fees of his representatives who prepared, filed and processed his case before the Peruvian authorities and the inter-American system [FN17];
- f) his lawyers and other persons close to Mr. Cesti also incurred expenses, in particular, with regard to travel to Costa Rica and the United States [FN18];
- g) his family employed private security services [FN19].

[FN13] Cf. Gustavo Adolfo Cesti Hurtado’s electoral document; Cesti Hurtado case. Judgment of September 29, 1999. Series C No. 56, para. 75; and medical report on Mr. Cesti Hurtado prepared by Dr. César Segura Serveleón on June 10, 1997.

[FN14] Cf. Contract between the Peruvian Army and Top Security for advisory services on insurance, signed on November 2, 1993; petition for Habeas Corpus filed before the Public Law Chamber on January 31, 1997; and official letter No. 3066-97 of May 27, 1997, from the Superintendency of Banks and Insurance.

[FN15] Cf. Four receipts issued by the Central Military Hospital; letter dated June 24, 1997, from Mr. Cesti Hurtado to the Central Military Hospital; psychological report on Mr. Cesti Hurtado by Dr. Luis Arata Cuzcano, dated November 26, 1997; medical report on Mr. Cesti Hurtado by Dr. César Segura Serveleón, dated May 30, 1997; medical report on Mr. Cesti Hurtado by Dr. César Segura Serveleón, dated June 10, 1997; copy of judicial notification No. 1237 V.I.CSJM.3.S. of November 4, 1997; and copy of judicial notification No. 717 V.I.CSJM.3.S of June 18, 1997.

[FN16] Cf. Communication from Mr. Cesti Hurtado of November 12, 1999.

[FN17] Cf. Summary of expenses for professional fees of the lawyers Alberto Borea Odría, Miguel Borea Odría and Javier Valle Riestra for 1997, 1998 and 1999; 18 invoices issued by Alberto Borea Odría from January 1997 to February 1999; 3 invoices issued by Miguel Borea Odría from January 1997 to June 1998; 3 invoices issued by Javier Valle Riestra from January to June 1997; and agreement of the firm, L.A. Motley and Company, dated September 17, 1997.

[FN18] Cf. 34 invoices issued by Siccsa (Schariff International courier & cargo, s.a.) for miscellaneous carrier services from March 1997 to May 1999; summary of expenses for support personnel services from January 1998 to February 2000; 472 receipts for “transport and alimentation expenses for the support arrangements” for Mr. Cesti Hurtado, from July 1997 to February 2000; payment of expenses for hotel and per diem allowances during 1997, 1998, 1999

and 2000; 14 receipts issued by Alberto Borea Odría for hotel and per diem allowances from January 1997 to January 2000; 9 receipts issued by Carmen Cardó de Cesti for hotel and per diem allowances from April 1997 to January 2000; 8 receipts issued by Heriberto Benitez Rivas for hotel and per diem allowances from April 1997 to September 1999; summary of expenses for 2000 for travel expenses and 2 invoices issued by Acuario Turismo, s.r.l., dated January 21, 2000; summary of expenses for travel tickets from various companies during 1997, 1998 and 1999, composed of: 6 invoices issued by Acuario Turismo, s.r.l. for travel tickets from January to November 1999; 2 invoices issued by Nova Tours, s.a. for travel tickets, dated December 4, 1998, and June 26, 1998; 1 invoice from Perú Visión for travel tickets, dated January 15, 1998; 7 invoices issued by Acuario Turismo, s.r.l. for travel tickets from April to December 1998; 3 invoices issued by Perú Visión for travel tickets from August to December 1997; 7 invoices issued by Acuario Turismo, s.r.l. for travel tickets from April to October, 1997.

[FN19] Cf. Summary of expenses relating to the companies, Perfecta Seguridad, Siccsa, Scharff Express s.a. and Poder Seguridad, s.a., for surveillance and miscellaneous carrier services during 1997, 1998 and 1999; 8 invoices issued by Perfecta Seguridad for private surveillance services, corresponding to July to October 1997; and 9 invoices issued by Poder de Seguridad, s.a., for private surveillance services from January to June 1997.

VIII. REPARATIONS

A) PECUNIARY DAMAGE

42. At the time of his detention, Mr. Cesti indicated that he was the legal representative and general manager of the family company, "Top Security", which was well known in Peru; the shareholders were his wife, his daughter and his father. He indicated that this company was fourth among more than 300 similar companies in the ranking drawn up by the Superintendency of Banks and Insurance and first in tax payments. He stated that, during the three years prior to his detention, the company had billed, on average, more than US\$ 2,000,000.00 (two million United States dollars) a year. Lastly, he declared that, when he was detained, the Superintendency of Banks and Insurance decided that, as he was imprisoned, he could no longer fulfill his functions as legal representative of the company, an essential requirements for its operation and, therefore, the company's operations had to be suspended, a situation which continued until the date of the brief on reparations.

43. Based on the foregoing, Mr. Cesti requested the Court to order the following compensation for pecuniary damage:

- a) US\$ 6,000,000.00 (six million United States dollars) for the loss of earnings caused directly by the termination of the company's activities;
- b) US\$ 106,405.63 (one hundred and six thousand four hundred and five United States dollars and sixty-three cents) for the total expenses of security systems and personnel employed to provide surveillance services for the movements of the Cesti family, their homes and the company, Top Security, owing to the constant threats, thefts to remove information from the offices, the placing of a listening device in the office of Carmen Cardó de Cesti and threats with military weapons from moving vehicles;

- c) US\$ 15,690.69 (fifteen thousand six hundred and ninety United States dollars and sixty-nine cents) spent on announcements in the national and foreign press in order to try and lessen the damage to Mr. Cesti;
- d) US\$ 4,000,000.00 (four million United States dollars) for consequential damage in order to return the company, Top Security, to its former position of prestige and confidence;
- e) US\$ 43,907.21 (forty-three thousand nine hundred and seven United States dollars and twenty-one cents) for consequential damage, as a result of the interruption of an insurance program of the company, Top Security, known as “Mi Seguro” (My Insurance), which had to be suspended due to the problems that arose;
- f) US\$ 1,070,000.00 (one million seventy thousand United States dollars) for the total financial damage caused by the embargo decreed on his assets (property and savings), which his wife co-owned. This amount includes US\$ 360,000.00 (three hundred and sixty thousand United States dollars) for the embargo of US\$ 400,000.00 (four hundred thousand United States dollars) during three years, plus US\$ 710,000.00 (seven hundred and ten thousand United States dollars) for the embargo on his property. This property consisted of a residence and a chalet in an exclusive zone of Lima, an apartment in the best commercial zone of this city and a parking space, the overall commercial value of which amounts to US\$ 900,000.00 (nine hundred thousand United States dollars) approximately; and
- g) US\$ 67,316.48 (sixty-seven thousand three hundred and sixteen United States dollars and forty-eight cents) for additional damage because, owing to the embargoes ordered on his assets, the company went into arrears in its payments to the Superintendency of Tax Administration, so that this institution withdrew the benefit of the special system of fractioning tax payments.

44. The Commission considered that Peru should make reparation to Mr. Cesti for the damage of an irreversible nature that he suffered as a result of the violation of his rights, by paying an adequate indemnity. In this respect, the Commission requested the Court to compensate the victim for loss of earnings, consisting in the remuneration that he ceased to receive as an officer of the company, from the time of his detention and until his effective reincorporation; for the earnings that he had ceased to receive as a “shareholder” of the company, due to the termination of activities; and for the income and interest that he had ceased to receive because he could not dispose of his property owing to the embargo on his assets. The Commission also requested the Court to order compensation for the consequential damage resulting from the fact that he could not dispose of his embargoed assets and for the expenses in order to reinstate Top Security in its previous position. The Commission cited the estimates and amounts that the victim had requested and also the evidence that he had submitted.

45. Finally, Peru declared that the claims for pecuniary damage were not in order because:

- a) the fact that Mr. Cesti was absent from the administration of the company could not result in pecuniary damage, as a direct consequence, since the company could have continued offering its services with another legal representative and even with Mr. Cesti’s participation and advice;
- b) the company’s financial statements did not show that it had an annual income of US\$ 2,000,000.00 (two million United States dollars);
- c) the amount requested to compensate the expense of providing security to Mr. Cesti’s family and assets was not included in the judgment on merits, and it had not been requested in the domestic jurisdiction;

- d) the expenses occasioned by the publication of newspaper announcements were made “*motu proprio*”;
- e) the level of trust that a company attains is a result of the importance of the body corporate, unrelated to those who are on the board of directors, and the “*Mi Seguro*” program could have continued, so that its suspension did not constitute consequential damage;
- f) the embargoes that were decreed were executed as part of a right that corresponds to any jurisdictional instance, as a precautionary measure to ensure the execution of a subsequent result of the proceeding, and should not be considered pecuniary damage; and
- g) the tax debt to the Office of the National Tax Administration Superintendency was in existence before Mr. Cesti was detained and could have been paid, taking into account the annual income that Mr. Cesti “said he received”; also, this debt arose from how the company, Top Security was managed, and, therefore, bore no relation to Mr. Cesti’s imprisonment.

46. The Court takes note of the statements by the victim and the Commission that the violations that occurred in the instant case justify making reparation to Mr. Cesti for pecuniary damage. However, in view of the particularities of this case and the nature of the reparations requested, this Court considers that they should be determined by the mechanisms established in the domestic laws. The internal courts or the specialized national institutions have specific knowledge of the branch of activity to which the victim was dedicated. Taking into consideration the specificity of the reparations requested and also the characteristics of commercial and company law and the commercial operations involved, the Court considers that this determination corresponds to the said national institutions rather than to an international human rights tribunal.

47. In view of the foregoing, it is appropriate to order the State to compensate the victim for the pecuniary damage that the violations declared in the judgment on merits caused him, taking into account, within the circumstances of the instant case, the elements that normally constitute pecuniary damage; and that it is appropriate to establish the corresponding compensatory amounts, following the pertinent national norms, so that the victim will receive them within a reasonable period.

B) NON-PECUNIARY DAMAGE

48. The victim indicated that the three years of “undue, distressing and cruel detention, together with the permanent uncertainty and tension that the fact that [...] the motives for his liberation [were] not explained [... had] generate[d in him]” caused him to live “with the anguish of uncertainty based on the arbitrariness of the proceedings against him”, all of which had caused very severe psychological damage from which he has still not recovered. He therefore requested the sum of US\$ 20,000,000.00 (twenty million United States dollars) for non-pecuniary damage. In the same way, he indicated that his family had been constantly harassed, threatened and humiliated, and attempts had been made on their lives during recent years and, accordingly, he requested the following amounts:

- US\$ 2,000,000.00 (two million United States dollars) for his wife, Carmen Cardó Guarderas de Cesti;

- US\$ 1,000,000.00 (one million United States dollars) for his daughter, Margarita del Carmen Cesti Cardó de Lama;
- US\$ 1,000,000.00 (one million United States dollars) for his son, Gustavo Guillermo Cesti Cardó;
- US\$ 500,000.00 (five hundred thousand United States dollars) for his mother-in-law, Judith Guarderas Cardó de Cardó; and
- US\$ 500,000.00 (five hundred thousand United States dollars) for his father, Gustavo Aurelio Cesti Ackermann.

49. The Inter-American Commission considered that the deprivation of freedom, disregarding a habeas corpus judgment that ordered the victim's liberation, the prison sentence, the embargo on his assets and the publicity given to the case, affected the Mr. Cesti's "feelings"; it also declared that this situation was aggravated owing to the type of work that he performed, because, in insurance activities, trust is an essential factor in the relationship between the insurer and the person insured. Therefore, it requested a compensation, to be determined by the Court.

50. With regard to non-pecuniary and psychological damage, Peru remarked that this claim was not admissible, because a detention could not be described as undue if it was executed on the basis of a warrant and, also, if the effects of the detention on Mr. Cesti were merely due to an omission on his part, since he failed to demand and process a request for release on bail.

51. Based on extensive international jurisprudence, the Court considers that obtaining a judgment that supports the victim's claims is, in itself, a form of reparation [FN20]. However, it also believes that it is pertinent to grant him an additional compensation for non-pecuniary damage, taking into account the circumstances of the instant case [FN21]. This should be determined on the basis of equity and prudent evaluation, since it is not possible to assess it precisely [FN22].

[FN20] Cf. Ivcher Bronstein case, supra note 1, para. 183; "The Last Temptation of Christ" case, supra note 1, para. 99; Baena Ricardo et al. case, supra note 3, para. 206; The Constitutional Court case, supra note 1, para. 122; Blake case. Reparations, supra note 7, para. 55; Suárez Rosero case. Reparations, supra note 7, para. 72; Castillo Páez case. Reparations, supra note 2, para. 84; Neira Alegría et al. case. Reparations, supra note 7, para. 56; and El Amparo case. Reparations, supra note 7, para. 62; see also Cf. Eur Court HR, Ruiz Torrija v. Spain judgment of 9 December 1994, Series A no. 303-A, para. 33; Eur Court HR, Boner v. the United Kingdom judgment of 28 October 1994, Series A no. 300-B, para. 46; Eur Court HR, Kroon and Others v. the Netherlands judgment of 27 October 1994, Series A no. 297-C, para. 45; Eur Court H.R., Darby judgment of 23 October 1990, Series A no. 187, para. 40; Eur Court H.R., Koendjibiharie, judgment of 25 October 1990, Series A no. 185-B, para. 34; Eur Court H.R., Wassink judgment of 27 September 1990, Series A no. 185-A, para. 41; and Eur Court H.R., McCallum judgment of 30 August 1990, Series A no. 183, para. 37.

[FN21] Cf. Ivcher Bronstein case, supra note 1, para. 183; Baena Ricardo et al. case, supra note 3, para. 206; and Blake case. Reparations, supra note 7, para. 55.

[FN22] Cf. Ivcher Bronstein case, supra note 1, para. 183; Baena Ricardo et al. case, supra note 3, para. 206; and Castillo Páez case. Reparations, supra note 2, para. 84; and inter alia Cf. Eur.

Court H.R., *Kemmache v. France*, judgment of 2 November 1993, Series A No. 270-B, p. 13, para. 11.

52. In this respect, the Court considers it necessary to evaluate the violations that were declared in the judgment on merits in the instant case and the repercussions that these had on the victim and, observing the standards established by this Court in the resolution of other cases, to determine a reasonable and appropriate amount for non-pecuniary damage in favor of Mr. Cesti, as reparation for the harm caused him.

53. Based on the previous considerations, the Court believes that it is fair to grant the victim a compensation of US\$ 25,000.00 (twenty-five thousand United States dollars) for non-pecuniary damage.

54. With regard to Mr., Cesti's request that this Court order the State to provide reparations to his next of kin, this Court has already verified the existence of grave violations against the victim and must presume that they had consequences on his wife and his children, who were not only separated from Mr. Cesti and understood and shared his distress, but also, there are indications that they were harassed and threatened, as a result of which the Court had to order provisional measures in their favor. The Court considers that these presumptions have not been disproved by the State and, therefore, it is pertinent to designate Mr. Cesti's wife, Carmen Cardó Guarderas de Cesti, and his children, Margarita del Carmen Cesti Cardó de Lama and Gustavo Guillermo Cesti Cardó, beneficiaries of a reparation.

55. Accordingly, the Court believes that it is fair to grant Mr. Cesti's wife a compensation of US\$ 10,000.00 (ten thousand United States dollars) and each of his children a compensation of US\$ 5,000.00 (five thousand United States dollars) for non-pecuniary damage.

56. Regarding the victim's father and mother-in-law, Gustavo Aurelio Cesti Ackermann and Judith Guarderas Cardó de Cardó, respectively, the Court assumes that they both suffered non-pecuniary damage as a result of the violations against Mr. Cesti. However, taking into account the specific circumstances of the instant case, the Court considers that obtaining a judgment that supports the victim's claims is, in itself, a form of reparation.

IX. OTHER FORMS OF REPARATION

57. In its brief on Reparations, the Commission requested the Court to order Peru to ensure Mr. Cesti the full enjoyment and exercise of his personal freedom and freedom of movement, by releasing him from the prison sentence that had been imposed, by lifting the prohibition to leave the country, and by allowing him to have the benefit of his property by annulling the embargo on his assets; that it attend and cover the costs of any adverse changes in Mr. Cesti's health subsequent to his detention; and that it make reparation to him for damage to his honor and reputation, by a pecuniary compensation and the publication of announcements that make it clear that Mr. Cesti cannot be considered guilty of committing any crime, owing to the irregularity of the proceeding to which he was submitted.

58. The Court observes that, in a resolution of the Plenary of the Supreme Council of Military Justice of September 14, 2000, the State instructed that “the orders issued against [Mr. Cesti] that restricted his freedom and embargoed his assets be suspended” (supra 15). Consequently, with regard to the proceeding before the military justice system, the Commission’s request concerning the enjoyment and exercise of personal freedom, which includes the consequences that the imprisonment might have had on Mr. Cesti’s health and the lifting of the embargo on his assets, is unfounded.

59. With regard to the request concerning reparation for damage to Mr. Cesti’s reputation and honor, the Court believes that both the judgment on merits that was delivered in the instant case, in which it decided that Peru was responsible for violating his human rights, and also this judgment, constitute per se adequate reparation in this respect.

X. OBLIGATION TO TAKE DOMESTIC MEASURES

60. The Inter-American Commission requested the Court to order Peru to take the following measures to make reparation for the damage suffered: that it conduct an exhaustive, serious and impartial investigation to identify the authors of the violations that had been declared and eventually punish them, in accordance with the applicable constitutional, legal and administrative provisions, and that it adopt the necessary measures under domestic law so that the State authorities comply with the judgments delivered by the judges and courts of the Peruvian Judiciary regarding habeas corpus and the protection of the fundamental rights and freedoms and ensure that they are complied with, in order to make Article 25 of the American Convention fully effective.

61. Neither the victim nor the State referred to this matter.

62. As this Court has indicated “the investigation of the facts and the punishment of those responsible, [...] is incumbent upon the State whenever there has been a human rights violation and that obligation must be discharged seriously and not as a mere formality.” [FN23]

[FN23] Cf. Villagrán Morales et al. case. Reparations (Article 63(1) of the American Convention on Human Rights). Judgment of May 26, 2001. Series C No. 77, para. 100; Suárez Rosero case. Reparations, supra note 7, para. 79; and El Amparo case. Reparations, supra note 7, para. 61.

63. As this Court has already indicated, impunity signifies “the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention,” [FN24] and

[...] the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations and total defenselessness of victims and their relatives [FN25].

[FN24] Cf. Ivcher Bronstein case, supra note 1, para. 186; The Constitutional Court case, supra note 1, para. 123; and Bámaca Velásquez case. Judgment of November 25, 2000. Series C No. 70, para. 211.

[FN25] Cf. Paniagua Morales et al. case. Judgment of March 8, 1998. Series C No. 37, para. 173; Loayza Tamayo case. Reparations, supra note 7, para. 170; and Blake case. Reparations, supra note 7, para. 64.

64. Consequently, the State has the obligation to investigate the human rights violations that have been determined in this case and prosecute those responsible in order to avoid impunity.

65. Article 25 of the American Convention establishes:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

2. The States Parties undertake:

- a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
- b. to develop the possibilities of judicial remedy; and
- c. to ensure that the competent authorities shall enforce such remedies when granted.

66. With regard to Article 25 in relation to Article 1(1) of the Convention, the Court has already established that the State is obliged to guarantee access to the administration of justice to all persons and, above all, to an effective, prompt and simple recourse that ensures the protection of their rights. Article 25 of the Convention is “one of the basic pillars, not only of the American Convention, but also of the rule of law in a democratic society according to the Convention” [FN26] and is directly related to Article 8(1) of the Convention, which establishes that every person has the right to a hearing with due guarantees and within a reasonable time, by an, independent and impartial judge or tribunal for the determination of his rights, whatever their nature [FN27].

[FN26] Cf. Ivcher Bronstein case, supra note 1, para. 135; The Constitutional Court case, supra note 1, para. 90; and Bámaca Velásquez case, supra note 24, para. 191.

[FN27] Cf. Loayza Tamayo case. Reparations, supra note 7, para. 169.

67. In view of the foregoing, this Court considers that Peru has the obligation to ensure and make effect the recourses relating to judicial guarantees for the protection of fundamental rights and freedoms, which include the procedures of habeas corpus and amparo.

XI. COSTS AND EXPENSES

68. In his brief on reparations, the victim requested the Inter-American Court to approve the following amounts for reimbursement of costs and expenses:

- a) US\$ 34,939.00 (thirty-four thousand nine hundred and thirty-nine United States dollars) for the fees of Javier Valle Riestra at the start of the proceeding under the military justice system;
- b) US\$ 94,892.24 (ninety four thousand eight hundred and ninety-two United States dollars and twenty-four cents) and US\$ 10,202.60 (ten thousand two hundred and two United States dollars and sixty cents) for fees that have already been paid to Alberto Borea Odría and Miguel Borea Odría, respectively, for assuming his defense in the trial under the military justice system in Peru and for the application before the Inter-American Commission and the Inter-American Court;
- c) US\$ 210,000.00 (two hundred and ten thousand United States dollars) for pending fees for Alberto Borea Odría, for the proceedings at the merits and reparation stages before the Inter-American Court;
- d) US\$ 45,000.00 (forty-five thousand United States dollars) for retaining a lawyer's office in the United States to provide legal advice;
- e) US\$ 46,512.18 (forty-six thousand five hundred and twelve United States dollars and eighteen cents) for air travel, owing to 12 journeys to the seat of the Court in San José, Costa Rica, and the seat of the Commission in Washington D.C. by his lawyers and family, and also travel by other lawyers to different places to further his case; and
- f) US\$ 55,836.56 (fifty-five thousand eight hundred and thirty-six United States dollars and fifty-six cents) for expenses arising from these journeys, such as airport taxes, taxis, hotels, food, telephone calls, faxes and translators.

Mr. Cesti stated that, although the Commission was formally responsible for submitting the case to the Court, the advice of the victim's lawyer was fundamental in order to process the case appropriately. Moreover, he requested the Court to determine Mr. Borea's fees for the reparation stage, since the latter had agreed that his fees would depend on the respective results, and suggested that this amount should be no less than 15% of the amount that the Court ordered Peru to pay as reparation. Lastly, he observed that the disbursements he would have to make for the presence of his lawyer and the parties in San José, Costa Rica, were still pending.

69. In its brief on reparations, the Commission requested the Court to order the State to pay Mr. Cesti the expenses that he had incurred, at both the domestic level and before the inter-American system; to this end, it referred to the justification and the estimate of expenses that the victim had submitted in the instant case.

70. In this respect, the State indicated that:

- a) the Commission represented Mr. Cesti's interests before the Inter-American Court, and its involvement was compensated by the contributions of the countries that form part of the Convention, which included Peru, and that the other expenses incurred in the said proceeding should be paid for by the interested parties;
- b) the amounts proposed by the victim, including those that he was attempting to collect for his defense before the military justice system, "[did] not harmonize with the table of fees

established in [Peru]” and that it did not consider it viable for a supranational instance to establish the costs of an internal judicial proceeding; and

c) the expenses for travel and per diems include travel to countries that have no relation to the proceeding in the instant case.

71. It should be understood that costs and expenses are included in the concept of reparation established in Article 63(1) of the American Convention, because the measures taken by the victim or victims, their successors or their representatives to have access to international justice imply financial disbursements and commitments that should be compensated when a guilty verdict is delivered. Therefore, this Court considers that the costs referred to in Article 55(1) of the Rules of Procedure also include the various necessary and reasonable expenses that the victims make in order to have access to the inter-American system for the protection of human rights, and the fees of those who provide legal assistance are included among the expenses. Evidently, this only refers to the necessary and reasonable expenses, according to the particularities of the case, which are effectively incurred or defrayed by the victim or his representatives [FN28]. Owing to the foregoing, the Court must prudently assess the scope of the costs and expenses, bearing in mind the circumstances of the specific case, the nature of the international jurisdiction for the protection of human rights and the characteristics of the respective proceeding, which are unique and differ from those of other proceedings of a national or international nature [FN29].

[FN28] Cf. Loayza Tamayo case. Reparations, supra note 7, para. 177; and Garrido and Baigorria case. Reparations, supra note 12, para. 80.

[FN29] Cf. Villagrán Morales et al. case. Reparations, supra note 23, para. 107; Paniagua Morales et al. case. Reparations (Article 63(1) of the American Convention on Human Rights). Series C No. 76, para. 212; and Garrido and Baigorria case. Reparations, supra note 12, para. 82.

72. The disbursements that are strictly necessary to attend the matters before the jurisdictional organs at the national and international level are included in the concept of expenses and costs [FN30]. With regard to professional fees, it is necessary to bear in mind the characteristics inherent in the international human rights proceeding, in which decisions are adopted on the violations of such rights, without examining all the extremes of the implications of these violations, which could involve questions of earnings related to the said fees, which are legitimate in themselves, but unrelated to the specific issue of the protection of human rights. Therefore, the Court must decide these claims with restraint. If the Court proceeded otherwise, international human rights litigation would be denatured. Consequently, the Court must apply criteria of equity in these cases.

[FN30] Also, Cf. Loayza Tamayo case. Reparations, supra note 7, para. 178; and Garrido and Baigorria case. Reparations, supra note 12, para. 81.

73. To that end, the Court considers that it is fair to grant the victim the sum of US\$20,000.00 (twenty thousand United States dollars), in reimbursement of the expenses and costs generated in the domestic jurisdiction and in the inter-American jurisdiction; this amount includes professional fees [FN31].

[FN31] Also Cf. Ivcher Bronstein case, supra note 1, para. 189; Baena Ricardo et al. case, supra note 3, para. 209 and The Constitutional Court case, supra note 1, para. 126.

XII. METHOD OF COMPLIANCE

74. To comply with this judgment, the State must pay the indemnities and compensations, reimburse the costs and expenses, and adopt the other measures ordered, within six months of the notification of this judgment, with the exception of what is established in paragraph 47.

75. Reimbursement of the expenses generated by the measures taken by the victim or his representatives and reimbursement of the costs resulting from the domestic proceedings or the international proceeding before the inter-America system for the protection of human rights will be made to Mr. Cesti.

76. The State may fulfill its obligations by paying in United States dollars or an equivalent amount in Peruvian currency, using the exchange rate between the two currencies in force in the market in New York, United States, the day before payment, to make the respective calculation.

77. The payments ordered in this judgment for pecuniary and non-pecuniary damage shall be exempt of any existing or future tax or charge.

78. Should the State fall in arrears, it shall pay interest on the amount owed, corresponding to banking default interest in Peru.

79. In accordance its constant practice, the Court reserves the authority to monitor full compliance with this judgment. The case shall be closed once the State has totally complied with all its provisions.

XIII. OPERATIVE PARAGRAPHS

80. Therefore,

THE COURT,

DECIDES:

unanimously,

1. to order the State of Peru to compensate Gustavo Adolfo Cesti Hurtado for the pecuniary damage he was caused by the violations declared in the judgment on merits of September 29, 1999, and that, following the pertinent national procedures, it is in order to establish the corresponding compensatory amounts, so that he may receive them within a reasonable period of time, if there is cause for them.

unanimously,

2. to order the State of Peru pay Gustavo Adolfo Cesti Hurtado a compensation of US\$ 25,000.00 (twenty-five thousand United States dollars) or the equivalent in Peruvian currency, for non-pecuniary damage.

unanimously,

3. to order the State of Peru to pay Carmen Cardó Guarderas de Cesti a compensation of US\$ 10,000.00 (ten thousand United States dollars), Margarita del Carmen Cesti Cardó de Lama a compensation of US\$ 5,000.00 (five thousand United States dollars), and Gustavo Guillermo Cesti Cardó a compensation of US\$ 5,000.00 (five thousand United States dollars) or the equivalent in Peruvian currency, for non-pecuniary damage.

unanimously,

4. to order the State of Peru to pay Gustavo Adolfo Cesti Hurtado, as compensation for the costs and expenses generated in the internal jurisdiction and in the inter-American jurisdiction, the sum of US\$ 20,000.00 (twenty thousand United States dollars) or the equivalent in Peruvian currency, an amount that includes professional fees.

unanimously,

5. to order the State of Peru to investigate the facts of the instant case, identify and punish those responsible and adopt any provisions of domestic law that may be necessary to ensure compliance with this obligation.

unanimously,

6. to order the State of Peru to make the payments indicated in operative paragraphs 2, 3 and 4 within six months of the notification of this judgment.

unanimously,

7. to order that the payments for pecuniary and non-pecuniary damage established in this judgment shall be exempt of any charge or tax that exists or that may exist in the future.

unanimously,

8. to monitor compliance with this judgment and to close this case once the State of Peru has fully applied all its provisions.

Done at San José, Costa Rica, on May 31, 2001, in Spanish and English, the Spanish text being authentic.

Antônio A. Cançado Trindade
President

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