

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Peruvian Prisons v. Peru
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Decided by:	President: Hector Fix-Zamudio
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HAVING SEEN:

1. The communication of November 25, 1992 and its annexes, by which the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submits to the Inter-American Court of Human Rights (hereinafter "the Court"), pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), and 24 of the Rules of Procedure of the Court (hereinafter "the Rules"), a request for provisional measures in Cases 11.015 and 11.048 which are before the Commission regarding the grave situation of the Peruvian prisons of Miguel Castro Castro and Santa Mónica in Lima, Cristo Rey in Ica and Yanamayo in Puno.

2. The Commission's communication which asks the Court to require the Government of Perú (hereinafter "the Government") to take the following provisional measures:

1. That the Government of Peru authorize the Inter-American Commission on Human Rights to carry out an inspection of the prisons mentioned above.
2. That the Government of Peru authorize the Inter-American Commission on Human Rights to conduct private interviews with the persons deprived of their liberty in those prisons.
3. That the Government of Peru authorize relatives to provide clothing, food, the means of hygiene and medicine to the persons deprived of their liberty in those prisons.
4. That the Government of Peru authorize the provision of adequate medical attention by independent institutions who can report on the sanitary conditions of the prisoners.

3. The request of the Inter-American Commission on Human Rights is based upon Articles 5(2) and 48(1)(d) of the American Convention which provide:

Article 5. Right to Humane Treatment

...

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

Article 48

...

1.d . . . If the record has not been closed, the Commission shall, with the knowledge of the parties, examine the matter set forth in the petition or communication in order to verify the facts. If necessary and advisable, the Commission shall carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities.

4. The Commission's request is also founded upon the request made by its President on August 18, 1992, for precautionary measures pursuant to Article 29 of the Commission's Regulations, "in relation to those persons deprived of their liberty for allegedly committing terrorist acts." Moreover, the President of the Commission stated that if the necessary measures were not adopted within 10 days, "the request for provisional measures might be presented to the Inter-American Court of Human Rights." The precautionary measures requested by the Commission were the following:

1. That the Government of Perú authorize the Inter-American Commission on Human Rights to carry out an inspection of the Yanamayo Jail in the Departament of Puno.
2. That the Government of Perú authorize the Inter-American Commission on Human Rights to interview the persons who are deprived of their liberty in that prison.
3. That the Government of Perú authorize the visits of family members and lawyers to that and other detention centers and that it permit the provision of clothing, medicine, shelter and the instruments of hygiene that would allow the prisoners to care for their vital needs.
4. That the Government of Perú provide the necessary medical attention to those who are sick and that they be transferred to places where they can receive the necessary medical care.
5. That the Government of Perú adopt measures to separate prisoners who are members of opposing armed groups in order to avoid violence that may place their life or integrity of their persons in danger.
6. That the Government of Perú send the Inter-American Commission on Human Rights the official list of persons who died or disappeared since the events of the prison "Miguel Castro Castro", of those who were wounded, and of the whereabouts of those transferred.

5. The facts the Commission considered in requiring the Government to adopt precautionary measures, and subsequently in asking the Court for provisional measures, are the following;

a. The existence of "credible evidence of a grave situation in the Peruvian prisons" Miguel Castro Castro, Santa Mónica, Cristo Rey and Yanamayo, which poses "an immediate danger to the right to integrity of the person of those accused and sentenced for terrorism because of the poor conditions in which they are imprisoned." The Commission has received information that in those prisons there is "a high incidence of diseases," loss of weight, overcrowding, isolation and psychological and emotional problems among male and female prisoners. When the prisoners are transferred to those prisons, some of which are in very cold zones, they are "mistreated, insulted, humiliated," although some of them are wounded and only have their "worn" summer clothing. Neither can the prisoners receive the visits of their relatives with the implications that conveys.

b. There is no independent institution which is empowered or is able to observe the conditions described, make recommendations to the Government, and make a public report on whether they are observed. The International Committee of the Red Cross is not currently authorized to inspect those prisons. All the above lends a grave and urgent nature to the situation described.

c. The Government's delay in granting the authorization requested by the Commission. According to the Commission, that may be because the Commission "is perceived as an institution that supports the Shining Path," as may be gathered from Document N° 3135-92-MP-FN, dated September 16, 1992, addressed from the Public Prosecutor to Dr. Oscar de la Puente Raygada, President of the Council of Ministers and Minister of Foreign Relations.

d. On October 20, 1992, in the Cristo Rey Prison in Ica, there were serious incidents which "left two prisoners dead and three wounded, and two policemen injured." This is one of the prisons the Commission had asked to visit.

e. The provisional measures requested by the President of the Commission were based on the measures he had requested of the Government on May 13, 1992, and which had not been adopted. To this date, the Government has not authorized the visit requested by the Commission nor has the pertinent information been received.

6. The communication of December 4, 1992, sent by the Secretariat of the Commission on that same date, contained a complaint which caused the Commission to express the following opinion:

As one may gather from reading the communication, a situation may be developing which could result in the violation of the rights of the women prisoners in the "Santa Mónica" Prison of Chorillos. If the new allegations are true, this would increase the seriousness and urgency of the situation being considered by the Members of the Court.

WHEREAS:

1. Perú has been a State Party to the American Convention since July 28, 1978, and accepted the obligatory jurisdiction of the Court, pursuant to Article 62 of the Convention on January 1, 1981.

2. Article 63(2) of the Convention provides that in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of the Commission, adopt such provisional measures as it deems pertinent with respect to a case not yet submitted to it.

3. Article 24(4) of the Rules provides that
If the Court is not sitting, the President shall convoke it immediately. Pending the meeting of the Court, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt the necessary urgent measures and to act so as to permit any provisional measures subsequently ordered by the Court to have the requisite effect.

4. It should be considered that, in matters before the Commission, and which, therefore, have not yet been submitted to the Court, the provisional measures the Court may order at the request of the Commission, pursuant to Articles 63(2) of the Convention and 24(4) of the Rules, as well as the urgent measures the President may take in consultation with the judges, should be

considered exceptional in nature and not a normal exercise of the competency of the Court and its President.

5. In the instant case, the request presented by the Commission and the accompanying documentation, and although the Commission asked the Government, pursuant to Article 29 of its Regulations, to take measures to avoid harm to the persons to be protected, some of those measures cannot properly be considered precautionary and provisional measures within the meaning of paragraph 2, Article 63 of the Convention, given that they refer to the Government's authorization for the Commission to carry out on-site visits to several Peruvian prisons, said situation being regulated by Articles 48(2) of the Convention and 44.2 of the Commission's Regulations, which require the prior consent of the Government, which has not yet been granted, and which cannot be remedied by measures ordered by the President.

6. Insofar as the Commission's request that the Government be asked to take the necessary provisional measures to stop the mistreatment and to provide medical assistance to the inmates of those prisons, the Commission does not provide any evidence regarding the truth of the allegations, which would probably depend on the observations the Commission might make in the visits it wants to carry out in those prisons, or other means of proof, which have not yet been submitted. Under those circumstances, the President considers that it is not appropriate to require the Government to take urgent provisional measures, but rather that the Court should determine in plenary, after studying the situation, whether the provisional measures requested by the Commission are justified.

7. Therefore, the President shall submit the Commission's request to the Court at its next regular period of sessions beginning on January 25, 1993, so the Court may adopt the pertinent decision.

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

having considered Article 63(2) of the American Convention on Human Rights, in consultation with the judges of the Court, and in exercise, of the Authority conferred upon him by Article 24(4) of the Rules,

DECIDES:

1. Based upon the foregoing considerations, it is not appropriate at this time to ask the Government of Perú to take urgent provisional measures.

2. To submit to the Court at its next regular period of sessions the request presend by the Inter-American Commission so it may adopt the appropriate measures pursuant to Article 63(2) of the Convention.

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary