

**RESOLUTION OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
DECEMBER 14, 1992**

**PROVISIONAL MEASURES REQUESTED BY THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
IN THE MATTER OF PERÚ**

CHIPOCO CASE

HAVING SEEN:

1. The communication of November 23, 1992, received in its entirety in the Secretariat of the Court of the following day, 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 Case 11.083 which is before the Commission and in regard to Mr. Carlos Chipoco;

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

1. That it establish as soon as possible the veracity of the allegations contained in Part I of this request.

2. If those allegations are found to be true, that it carry out an exhaustive investigation, specify the acts on which the charge of justification of terrorism is based, and disclose the evidence against Mr. Chipoco, prior to taking any penal actions against him.

3. That, at all stages of the judicial proceedings, it guarantee Mr. Carlos Chipoco the full exercise of his human rights and, in particular, the right to due process and personal security, should he be deprived of his personal liberty, and taking into account the danger to which he would be exposed wherever he might be held.

4. That it guarantee the right to recur to the American system for the protection of human rights.

3. The Commission's petition is based upon the following allegations:

a. The Inter-American Commission received information according to which the Government has filed criminal charges against Mr. Carlos Chipoco before the 43rd Special Prosecutor of Lima for having carried out alleged "*activities in support of subversion in the United States.*" Cause Nº 136-92 of the 43rd Criminal Court of Lima was opened as a "*criminal proceeding against a group of Peruvians who reside abroad or who have traveled abroad, for*

allegedly committing the crime of justification of terrorism against the state."

b. This cause was filed on the basis of a report of the National Intelligence Service (Servicio Nacional de Inteligencia) which mentions the names of several persons and institutions allegedly involved in "*activities in support of subversion in the United States,*" among them Mr. Carlos Chipoco. They are charged with "*maintaining contacts with human rights organizations, with false information, in which they denigrate the Armed Forces and the Police and other State institutions related to the struggle against subversion ...*" This report was adopted by the General Secretariat, the Office of Legal Affairs of the Ministry of Foreign Relations and by the Special Provincial Prosecutor of the 43rd Special Prosecutor's Office. The Court ordered the individual identification of those accused, among them Mr. Chipoco, for the purpose of amending the "indictment" in the criminal proceeding and, upon completing the identification, to be able to order their arrest.

4. According to the request, Mr. Chipoco is a human rights activist. In the course of his work, he has cooperated with the Inter-American Commission and has taken part in the Neira Alegría *et al.* and in the Cayara case, which is currently before the Court. The request adds that Mr. Chipoco has condemned the terrorist acts carried out by the Shining Path and MRTA in Peru and "*has been critical of the acts of rebels as well as those of the Peruvian Government;*"

5. According to the Commission, the allegations are serious in that once Mr. Chipoco is fully identified his arrest could be ordered, and under the new anti-terrorist legislation, being found guilty of the crime of which he is accused could lead to his loss of Peruvian nationality and a prison sentence of more than twenty years. This is made more serious by the fact that the trial is secret and summary, conducted within strict time limits by the so called "faceless judges", and may be held in the absence of the accused;

6. Mr. Chipoco is in the United States of America where he is an international consultant in human rights and, should he return to Peru, would run the risk of being held in the same place as the leaders and activists of the terrorist groups whose acts he has publicly condemned, which would constitute a grave threat to his right to life and integrity of the person which are recognized by the Convention. According to the Commission, the Government wants to punish, penalize and intimidate those who utilize international procedures and courts for the protection of human rights;

7. In the opinion of the Commission, the urgent need of the measures is to avoid the indictment being "*returned without an exhaustive investigation and without having afforded the accused and its representatives an opportunity to prepare his defense,*" which would violate Article 8 (Right to a Fair Trial) of the American Convention. In the opinion of the Commission, this situation would also constitute a violation of Articles 5 (Right to Humane Treatment), 13 (Freedom of Thought and Expression), 1(1) (Obligation to Respect Rights) of the Convention and Articles 44 and the following (Competence) that allow recourse to the Commission and the Court by virtue of the procedure established therein;

8. The Commission's communication of November 30, 1992, which asks the Court to convoke a public hearing on the request for provisional measures and names the following persons to advise the delegates the Commission will designate according to Article 22 of the Rules: Professors Thomas Buergenthal and Hurst Hannum, Doctors Juan Méndez, José Miguel Vivanco and José Ugaz and Mr. Felipe Michelini;

9. By communication of December 2, 1992, received by the Secretariat of the

Court on December 9, the Permanent Mission of Peru to the Organization of American States informs the Commission that

the Prosecutor has not brought a penal action against Mr. Chipoco, but merely has requested the identification of a person known as Carlos Chipoco on the Voting Rolls [and that the Ministry of Foreign Relations will send] a copy of the charge prepared by the Prosecutor and of the Order opening the investigation, which do not mention Mr. Carlos Chipoco except for the purpose of identification.

WHEREAS:

1. Peru 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. In matters before the Commission 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 its 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. Therefore, after opening a case and ascertaining the truth of the allegations, though in preliminary fashion, and additionally, after adopting the measures established in Article 29 of its Regulations, the Commission must present to the Court, and when it is not in session, to its President, clear evidence of the existence of a matter of extreme urgency as required by those documents, and of the need to adopt the necessary measures to avoid grave or irreparable harm to the persons to be protected;

6. Having carefully studied the Commission's request and the accompanying documents, and not the Government's report to the Commission that charges have not yet been filed against Mr. Carlos Chipoco, the President finds in the instant case that the conditions do not now exist which would require the Government to adopt urgent measures of a provisional nature, and that, in any case, whether the provisional measures request by the Commission are justified should be determined by the Court in plenary, after studying the situation;

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 Peru to take urgent provisional measures.
2. To submit to the Court at its next regular period of sessions the request presented 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