

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS***

OF JANUARY 29, 2014

**PROVISIONAL MEASURES
REGARDING THE REPUBLIC OF PERÚ**

CASE OF WONG HO WING

HAVING SEEN:

1. The Order of the former acting President for this matter (hereinafter “the acting President”) of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court,” “the Court” or “this Court”) of March 24, 2010, as well as the Orders of the Court of May 28, 2010, November 26, 2010, March 4, 2011, and July 1, 2011, whereby it was decided, *inter alia*, that the Republic of Peru (hereinafter also “the State” or “Peru”) was required to abstain from extraditing Mr. Wong Ho Wing.

2. The Order of the Court of October 10, 2011, in which it decided to lift the provisional measures that had been previously ordered.

3. The Order of the Court of April 27, 2012, by which it required the State to submit certain information, which was provided by Peru on May 25, 2012 and assessed by the Court in its Order of June 26, 2012, *infra*.

4. The Order of the Court of June 26, 2012, in which it required the State to “abstain from extraditing Mr. Wong Ho Wing until December 14, 2012 in order to allow the Inter-American Commission on Human Rights to examine and rule on case No. 12,794.”

5. The Order of the acting President of December 6, 2012, as well as the Orders of the Court of February 13, May 22, and August 22, 2013, through which the effect of the present provisional measures was extended. In the latter, the Court decided:

1. To require the State, as decided in [such] Order, to abstain from extraditing Mr. Wong Ho Wing, until March 31, 2014.

2. To require the Inter-American Commission on Human Rights to keep the Court informed regarding the status of compliance with the recommendations made in case No. 12,794 before that organ and, to this end, it must present a report to the Inter-American Court of Human Rights by October 15, 2013, at the latest.

3. To require the State to present any observations it considers pertinent on the report requested from the Inter-American Commission on Human Rights in the preceding operative paragraph within four weeks of receiving it.

* Judge Diego García-Sayán, of Peruvian nationality, did not participate in the hearing and deliberation of this Order, pursuant to that provided in Articles 19(2) of the Statute and 19(1) of the Rules of Procedure of the Court.

6. The brief of October 18, 2013, in which the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”) forwarded the information requested by the Court (*supra* having seen clause 5) and advised that “it [had] not received the relevant information indicat[ing] progress” in the compliance with the Merits Report No. 78/13, with regard to case No. 12,794, relating to these provisional measures.

7. The brief of November 29, 2013, and its annexes, in which the State submitted its observations regarding the information presented by the Inter-American Commission.

8. The brief of October 30, 2013, in which the Inter-American Commission submitted to this Court the case of *Wong Ho Wing v. Peru* (12,794), related to the present provisional measures.

CONSIDERING THAT:

1. Peru ratified the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) on June 28, 1978 and, in accordance with Article 62 thereof, acknowledged the contentious jurisdiction of the Court on January 21, 1981.

2. Article 63(2) of the American Convention stipulates that in “cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons,” the Court may, in matters not yet submitted to its consideration, order the provisional measures that it deems pertinent at the request of the Commission.” This provision is, in turn, regulated in Article 27 of the Court’s Rules of Procedure.

3. Article 63(2) of the Convention requires that, for the Court to be able to order provisional measures, three conditions must concur: (i) “extreme gravity”; (ii) “urgency” and (iii) that the purpose is to “avoid irreparable damage to persons.” These three conditions must coexist and be present in any situation in which the Court is asked to intervene. In the same way, these three conditions must persist for the Court to maintain the protection ordered. If one of them has ceased to be valid, the Court must assess the pertinence of continuing the protection ordered.¹

4. The Court recalls that these provisional measures were first granted on May 28, 2010, at the request of the Inter-American Commission in the context of petition P-366-09², in view of the *prima facie* risk inherent in extraditing an individual who had alleged possible defects of due process, when the said extradition could lead to the application of the death penalty in a State outside the inter-American system.³ The measures were lifted on October 10, 2011, after the Constitutional Court, on May 24, 2011, ordered the Executive Branch to abstain from extraditing Mr. Wong Ho Wing. Subsequently, the Commission again requested

¹ Cf. *Case of Carpio Nicolle*. Provisional Measures regarding Guatemala. Order of the Court of July 6, 2009, Considering clause 14, and *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of August 22, 2013, Considering clause 3.

² The petition was declared admissible on November 1, 2010. Cf. Report on Admissibility No. 151/10, Case of Wong Ho Wing Vs. Perú, November 1, 2010 (case file of the proceeding on provisional measures, Tome II, folios 620 to 631).

³ Cf. *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of May 28, 2010, Considering clauses 12, 13, 15 and operative paragraph 1, and *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of August 22, 2013, Considering clause 4.

provisional measures, because “the State has changed its position and the Executive Branch, alleging the existence of supposed ‘new facts,’ had even asked the Supreme Court to issue a complementary advisory decision in the extradition procedure.”⁴ On June 26, 2012, the Court once again granted these provisional measures, considering that “given the State’s uncertainty with regard to the possibility of extradition, [...] the Court f[ound] that the considerations [contained in its Order of May 28, 2010], with regard to the existence of a situation of extreme gravity and urgency and the need to avoid irreparable damage [were] applicable to the [...] situation of the proposed beneficiary” at that time.⁵ In both May 2010 and June 2012, the Court ordered the adoption of the provisional measures only so as “to allow the Inter-American Commission on Human Rights to examine and rule on [petition P-366-09, which corresponds to] case No. 12,794.”⁶

5. Subsequently, by Orders of February, May, and August of 2013, the Court has maintained and extended the validity of the present measures considering that the situation of uncertainty with regard to the possibility of extraditing Mr. Wong Ho Wing persists, which justified the granting of these provisional measures in June of 2012.⁷ In its latest Order, this Court took into account that, on July 18, 2013, Inter-American Commission adopted Merits Report No. 78/13 with regard to case at hand. As noted in that Report, the Commission issued four recommendations to the State and, “[i]n accordance with the procedure provided for in Articles 50 and 51 of the Convention,” it transmitted the Report on the Merits to the State and requested that it present information on the compliance with such recommendations within two months. Pursuant to the provisions of Articles 50 and 51 of the Convention, within a period of three months from the date of the transmittal of the Merits Report, the Inter-American Commission had the authority to determine whether or not to refer the case related to the present provisional measures to the Court, or, to continue to hear the case and produce a report, which it could or could not publish.⁸ By virtue of the foregoing, in its Order of August of 2013, the Court extended the present measures until March 31, 2014 to avoid the frustration of the compliance with an eventual determination by

⁴ *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of June 26, 2012, Having seen clause 4, and *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of August 22, 2013, Considering clause 4.

⁵ *Cf. Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of June 26, 2012, Considering clause 38, and *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of August 22, 2013, Considering clause 4.

⁶ *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of May 28, 2010, operative paragraph 1, and *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of June 26, 2012, operative paragraph 1.

⁷ *Cf. Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of February 13, 2013, Considering clause 15; *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of May 22, 2013, Considering clause 22, and *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of August 22, 2013, Considering clause 22.

⁸ Article 50 of the Convention establishes that: “If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. [...]2. The report shall be transmitted to the states concerned, which shall not be at liberty to publish it. 3. In transmitting the report, the Commission may make such proposals and recommendations as it sees fit.” On its behalf, Article 51(1) of the Convention establishes that “, “[i]f, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.” Moreover, Article 61(1) establishes that “Only the States Parties and the Commission shall have the right to submit a case to the Court.” See also, Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights). *Advisory Opinion* OC-13/93 of July 16, 1993. Series A No. 13, para. 47, and *Case of the Saramaka People V. Suriname. Preliminary Objections. Judgment* of November 28, 1999. Serie C No. 172, para. 39.

the bodies of the inter-American system as to the recommendations contained in the Report on the Merits.

6. On October 18, 2013, the Commission reported that “pursuant to the monitoring of compliance with the recommendations, it had not received relevant information indicating any progress,” for which it was “analyzing the available information in accordance with the provisions of Article 51 of the American Convention and Article 45 of the Rules of Procedure.” In response to the foregoing, the State indicated that, on September 30, 2013, it filed “its legal position with respect to the recommendations set forth in the Report on the Merits No. 78/13” with the Commission. In this regard, it provided a copy of the writing in question, whereby the State noted that “[it] disagreed with the arguments developed by the Inter-American Commission” in its Merits Report regarding those in which it declared the violations of the rights to personal liberty, humane treatment, a fair trial, and judicial protection of Mr. Wong Ho Wing. Moreover, it indicated that “the extradition procedure has not ended [...] since, to date, said process is in its final stage.” Consequently, it noted that “the request of the Commission [for the culmination of the extradition procedure and the review of the means of provisional arrest] [would] be evaluated by the appropriate authorities in conformance with the current Peruvian legislation” and the regular domestic proceedings. Additionally, the State informed the Court that the Ministry of Justice and Human Rights had forwarded to the Judiciary documentation related to the process of provisional arrest aimed at the extradition of Mr. Wong Ho Wing, so that “the legal situation related to [his] detention be analyzed and resolved.”

7. On October 30, 2013, the Inter-American Commission submitted this case to the jurisdiction of the Court. According to the Commission, the case involves “a sequence of violations of the rights of Mr. Wong Ho Wing, a national of the People’s Republic of China, from the time of his detention on October 27, 2008, and throughout the extradition procedure that continues to this date.” Moreover, the Commission concluded that that “in the different stages of the process of extradition, the domestic authorities have engaged in a series of omissions and irregularities in the handling of the process, the reception, and the assessment of the alleged guarantees offered by the People’s Republic of China.” According to the Commission, “in addition to due process violations of varying degrees, such omissions and irregularities constituted a breach of the duty to guarantee the right to life and personal integrity of Mr. Wong Ho Wing.”⁹

8. This Court has indicated that provisional measures have two aspects: one preventive and the other protective.¹⁰ The preventive aspect of provisional measures is related to the context of international litigations. Thus, these measures have the object and purpose of preserving the rights that are possibly at risk until the dispute is decided. Their object and purpose are to ensure the integrity and effectiveness of the decision on the merits and, in this way, avoid harm to the rights in litigation, a situation that could nullify the practical effects of the final decision or render them useless. Regarding the protective aspect of provisional measures, they represent a real jurisdictional guarantee of a preventive nature because they protect human rights insofar as they seek to avoid irreparable damage to persons.¹¹

⁹ Brief submitting the case by the Commission (case file on the Merits, Tome I, folio 2)

¹⁰ Cf. *Case of Herrera Ulloa v. Costa Rica* (“La Nación” newspaper). Provisional measures with regard to Costa Rica. Order of the Court of September 7, 2001, considering clause 4, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, considering clause 6.

¹¹ Cf. *Cf. Case of Herrera Ulloa v. Costa Rica* (“La Nación” newspaper). Provisional measures with regard to

9. This Court emphasizes that, in the present matter, the preventive aspect of the measures seeks to avoid non-compliance with an eventual decision by the organs of the inter-American system and, in this way, to prevent “irreversible [damage to] the right to petition established in Article 44 of the American Convention,” considering, in particular, that, in this matter, the proposed beneficiary would be extradited to a State beyond the scope of the protection of the inter-American human rights system.¹²

10. In its Orders of May and August, 2013, this Court stressed that, despite the decision from the Constitutional Court ordering that the Executive Branch abstain from extraditing Mr. Wong Ho Wing, as well as the decision of the Supreme Court of Justice in the sense that it declared that it was not in order to issue a new advisory decision, the Executive Branch has abstained from adopting a final decision regarding the extradition of Mr. Wong Ho Wing.¹³ The Court recalls that the State itself affirmed that the Executive Branch makes the final decision in an extradition procedure. Following the issuance of the Merits Report, the State indicated that “the process of extradition is not complete” and that “[it] disagrees with the arguments developed by the Inter-American Commission” therein (*supra* considering clause 6). With regards to the recommendation of that body to “culminate, at the earliest opportunity” the process of extradition, “denying the request for extradition in strict compliance with the judgment of the Constitutional Court,” Peru noted that the foregoing “would be evaluated by the appropriate authorities in accordance with the current Peruvian legislation” and the regular domestic proceedings in the context of the process of extradition, which “is in its final stage” (*supra* Considering clause 6). Therefore, the Court considers that the situation of uncertainty persists with regard to the possibility of extraditing Mr. Wong Ho Wing for, *inter alia*, the crime of smuggling goods, which is punishable by the death penalty.

11. The Court recalls that it has already established that the exact determination and explanation of whether the reform of the criminal law [that would annul the death penalty for one of the offenses for which the beneficiary’s extradition is requested] would be applicable in the possible trial of Mr. Wong Ho Wing undertaken by the requesting State constitutes an analysis that is beyond the proceedings of these provisional measures.¹⁴ Furthermore, as this Court indicated in its Order of May 2010 and reiterated in its Order of June 2012¹⁵, when considering a request for provisional measures, the Court may only consider the procedural obligations of the State as a party to the American Convention; accordingly, the Court is not competent, in response to a request for provisional measures,

Costa Rica. Order of the Court of September 7, 2001, considering clause 4, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, considering clause 6.

¹² Cf. *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of May 28, 2010, Considering clause 14; *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of June 26, 2012, Considering clause 40, and *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of August 22, 2013, Considering clause 7.

¹³ Cf. *Matter of Wong Ho Wing*. Order of the Court of May 22, 2013, Considering clause 19, and *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of August 22, 2013, Considering clause 5.

¹⁴ *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of June 26, 2012, Considering clause 31; *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of May 22, 2013, Considering clause 15, and *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of August 22, 2013, Considering clause 10.

¹⁵ Cf. *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of May 28, 2010, Considering clause 7, and *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of June 26, 2012, Considering clause 33.

to rule on the compatibility of the extradition procedure with the Convention or the alleged violations of the judicial guarantees and protection of Mr. Wong Ho Wing.

12. This case was submitted to the consideration of the Court on October 30, 2013 (*supra* having seen clause 8 and considering clause 7). At the time of the submission of this case, the Commission requested the Inter-American Court to declare the violations of the rights to life, humane treatment, personal liberty, a fair trial, and judicial protection, allegedly committed in the context of the process of extradition pursued against Mr. Wong Ho Wing, and that the State be ordered to deny the request for extradition of the alleged victim, by virtue of the foregoing violations. Therefore, given the uncertainty about the possibility of extraditing Mr. Wong Ho Wing, the recommendation of the Commission in its Merits Report, the absence of a final decision on the part of the Executive Branch, and the fact that the process of extradition would be in its final stage, the Court considers it pertinent that the State abstain from extraditing Mr. Wong Ho Wing until this Court resolves the present matter definitively under its contentious jurisdiction. This decision seeks to avoid the frustration of the fulfillment of an eventual determination by this Court, taking into special consideration that the beneficiary would be extradited to a State outside the scope of the protection of the inter-American system and that he is being prosecuted for a crime that could contemplate the death penalty (*supra* considering clauses 8 to 11).

13. Notwithstanding the foregoing, the Court recalls the significance of the mechanism of extradition and the duty of the States to collaborate in this regard. It is in the interests of the community of Nations that individuals who have been accused of specific offenses be brought to justice. Thus, the international human rights obligations of the States and the requirements of due process of law must be observed in extradition procedures, while this legal mechanism cannot be used as a path to impunity.¹⁶

14. Lastly, this Court reiterates that during the pendency of this matter before the bodies of the Inter-American system, Peru may take the necessary measures with regard to Mr. Wong Ho Wing to ensure that his possible extradition and the corresponding administration of justice in the requesting State are not rendered null or illusory.¹⁷

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

In exercise of the powers granted to it by Article 63(2) of the American Convention and Articles 27 and 31 of the Rules of Procedure,

DECIDES TO:

¹⁶ Cf. *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of May 28, 2010, Considering clause 16, and *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of August 22, 2013, Considering clause 12.

¹⁷ Cf. *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of May 28, 2010, Considering clause 18, and *Matter of Wong Ho Wing*. Provisional Measures regarding Perú. Order of the Court of August 22, 2013, Considering clause 13.

1. Require the State, in accordance with the provisions of the present Order, to abstain from extraditing Mr. Wong Ho Wing until the Court resolves this case in a definite manner in the context of its contentious jurisdiction.

2. Require the State to maintain the Court informed about the situation of the deprivation of liberty of Mr. Wong Ho Wing, and, to this end, it must submit a report to the Inter-American Court of Human Rights by June 2, 2014, at the latest.

3. Request the representative of Mr. Wong Ho Wing to submit any observations deemed pertinent to the report requested in the preceding operative paragraph within four weeks from the date of receipt of the aforementioned report from the State.

4. Request the Inter-American Commission on Human Rights to present any observations it deems relevant to the report from the State requested in the second operative paragraph and the corresponding comments of the representative of the beneficiary within two weeks of the deadline for the submission of the foregoing observations of the representative.

5. Require the Secretariat of the Court to notify the present Order to the Republic of Peru, the representative of Mr. Wong Ho Wing, and the Inter-American Commission on Human Rights.

Humberto Antonio Sierra Porto
President

Roberto F. Caldas

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Humberto Antonio Sierra Porto
President

Pablo Saavedra Alessandri
Secretary