

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

OF DECEMBER 6, 2012

**PROVISIONAL MEASURES
WITH REGARD TO THE REPUBLIC OF PERU**

MATTER OF WONG HO WING

HAVING SEEN:

1. The Order of the acting President for this matter (hereinafter “the acting President”) of the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) of March 24, 2010, as well as the Orders of the Court of May 28 and November 26, 2010, and March 4 and July 1, 2011, in which it was decided, *inter alia*, to require the Republic of Peru (hereinafter also “the State” or “Peru”) to abstain from extraditing Wong Ho Wing.
2. The Order of October 10, 2011, in which the Court decided to lift the provisional measures it had ordered.
3. The Order of the Court of April 27, 2012, in which it required the State to forward specific information. Peru submitted this information in a brief of May 25, 2012, and its attachments, which were 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 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. 12,724.”

CONSIDERING THAT:

1. Peru ratified the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) on July 28, 1978, and, in accordance with its Article 62, accepted the binding 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, at the request of the Commission, order the provisional measures that it deems pertinent. This provision is, in turn, regulated in Article 27 of the Court’s Rules of Procedure.

* Judge Diego García-Sayán, a Peruvian national, recused himself from hearing this matter, in accordance with Articles 19 of the Court’s Statute and 19(1) of its Rules of Procedure. Consequently, in accordance with Articles 4(2) and 5 of the Court’s Rules of Procedure, Judge Manuel Ventura Robles, Vice President of the Court, became acting President in this request for provisional measures.

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 is no longer valid, the Court must assess the pertinence of continuing the protection ordered.¹

4. The acting President recalls that these provisional measures were granted for the first time on May 28, 2010, at the request of the Commission in the context of petition P-366-09,² in view of the *prima facie* danger of the risk inherent in extraditing an individual who alleged possible flaws in due process, when the said extradition could lead to the application of the death penalty in a State outside the inter-American system.³ Subsequently, 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 need to avoid irreparable damage [were] applicable to the [...] situation of the proposed beneficiary” at that time.⁴ On both occasions, the Court ordered the adoption of the provisional measures only in order “to allow the Inter-American Commission on Human Rights to examine and rule on [petition P-366-09, which currently corresponds to] case No. 12,794.”⁵

5. With regard to their preventive aspect, provisional measures are designed to preserve the rights that are possibly at risk until the dispute has been decided. Their object and purpose are to ensure the integrity and effectiveness of the decision on merits and, in this way, to avoid harm to the rights in dispute, 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 to the extent that they seek to avoid irreparable harm to persons.⁶

¹ Cf. *Case of Carpio Nicolle*. Provisional measures with regard to Guatemala. Order of the Court of July 6, 2009, fourteenth considering paragraph, and *Matter of González Medina and family*. Provisional measures with regard to Dominican Republic. Order of the Court of June 21, 2012, second considering paragraph.

² The petition was declared admissible on November 1, 2010, by Report No. 151/10 and with regard to Articles 4 (Right to Life), 5 (Right to Personal Integrity), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and y 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) of this instrument. Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the acting President of the Court of March 24, 2010, fourth considering paragraph; *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 28, 2010, fifth considering paragraph; *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of November 26, 2010, fourth considering paragraph; *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of March 4, 2011, eighth and ninth considering paragraphs; *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of July 1, 2011, eleventh considering paragraph; *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of October 10, 2011, fifth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of June 26, 2012, forty-first considering paragraph.

³ *Matter of Wong Ho Wing*. Order of the Court of May 28, 2010, twelfth, thirteenth and fifteenth considering paragraphs and first operative paragraph.

⁴ *Matter of Wong Ho Wing*. Order of the Court of June 26, 2012, thirty-eighth considering paragraph.

⁵ *Matter of Wong Ho Wing*. Order of the Court of June 26, 2012, first operative paragraph. Also, Cf. *Matter of Wong Ho Wing*. Order of the Court of May 28, 2010, first operative paragraph.

⁶ Cf. *Case of the “La Nación” Newspaper*. Provisional measures with regard to Costa Rica. Order of

6. The acting President emphasizes that, in this 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 [harm to] the right to petition established in Article 44 of the American Convention,” especially considering 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.

7. The acting President recalls that, in its Order of June 26, 2012, the Court considered it “opportune that the Inter-American Commission decide case No. 12,794 before that organ promptly, taking into account the said preventive aspect, [...] as well as the State’s observations with regard to the certainty required by the entities intervening in the procedure to extradite Wong Ho Wing.”⁷ In addition, when analyzing the appropriateness of granting the said measures, the Court took into consideration “that the proceedings relating to Case No. 12,794 [were] at the merits stage and that the Inter-American Commission [had] advised that, on March 26, 2012, a public hearing would be held on the merits of the case in order to complete the processing of the case and proceed to issue a merits report as soon as possible.”⁸

8. Despite the foregoing, the acting President observes that, in the course of the nearly six months that have elapsed since the adoption of the said measures, the Inter-American Commission has not advised the Court that it has adopted the said merits report, and has not presented any information on the current status of the said case before this organ. Nevertheless, the Court notes that the State has not forwarded any information either, or raised any objection to the continuation of the measures granted in favor of the beneficiary. Therefore, the acting President understands that the circumstances that, at the time, justified the adoption of these provisional measures have not changed.

9. For the Court to have the necessary information to make an adequate assessment of the need to maintain these measures, as well as for the Inter-American Commission to comply with its mandate under the Convention, the acting President finds it pertinent to extend these provisional measures until March 1, 2013, so as to allow the Commission to examine Case No. 12,794, and the Court in plenary to consider and deliberate on the need to maintain these measures during its ninety-eighth regular session to be held at the seat of the Court from February 4 to 16, 2013. During this extension of these measures, the State must abstain from extraditing Wong Ho Wing.

10. Notwithstanding the above, the acting President considers it necessary to mention that the Inter-American Commission has been analyzing the petition in this case for more than three years and eight months, and more than two years have elapsed since the case has been at the merits stage of the proceedings before the said organ, without the Inter-American Commission having ruled on it, despite the prompt processing accorded to the case.⁹ The Court underscores that the delay in the adoption

the Court of September 7, 2001, fourth considering paragraph; *Matter of Wong Ho Wing*. Order of the Court of March 4, 2011, tenth considering paragraph; *Matter of Wong Ho Wing*. Order of the Court of July 1, 2011, twelfth considering paragraph, and *Matter of Wong Ho Wing*. Order of the Court of June 26, 2011, thirty-ninth considering paragraph.

⁷ *Matter of Wong Ho Wing*. Order of the Court of June 26, 2012, forty-first considering paragraph.

⁸ *Matter of Wong Ho Wing*. Order of the Court of June 26, 2012, forty-second considering paragraph.

⁹ The petition was lodged before the Inter-American Commission on March 27, 2009. The Commission has been processing it since March 31, 2009, and declared it admissible on November 1, 2010, by Report

of a decision by the Inter-American Commission, on the one hand, delays the extradition procedure, which has continued for more than four years and, on the other hand, delays the failure to define the legal situation of Wong Ho Wing, who is currently deprived of liberty.

11. Consequently, the acting President considers it opportune to require the State and the Inter-American Commission, within the time frame established in the operative paragraphs of this Order, to present updated information so that the Court has all the necessary elements to make an adequate assessment of the implementation and validity of these provisional measures. In particular, the Inter-American Commission is requested to forward complete and detailed information on: (i) the subsistence of a situation of extreme gravity and urgency for Wong Ho Wing that could cause irreparable damage to his rights; (ii) the actual status of Case No. 12,794 before the Inter-American Commission and, if appropriate, (iii) the approximate date on which it considers that it could reach a decision on the merits of the case. In addition, the State is requested to present current information on the status of the beneficiary's extradition procedure.

12. The acting President also recalls what has been said in this matter concerning the importance of the mechanism of extradition and the obligation of States to collaborate in this regard. It is in the interests of the community of Nations that individuals who have been accused of certain offenses can be brought to justice. Thus, the international obligations of the States with regard to human rights and the requirements of due process of law must be observed in extradition procedures, while this legal mechanism may not be used as a way to achieve impunity.¹⁰

13. Lastly, the acting President reiterates that, until this matter has been decided by the organs of the inter-American system, Peru must continue adopting the necessary measures with regard to Wong Ho Wing, to avoid his extradition and the corresponding administration of justice in the requesting State becoming illusory or ineffective.¹¹

THEREFORE:

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

in exercise of the attributes conferred on him by Article 63(2) of the American Convention and Articles 27 and 31 of the Rules of Procedure of the Court,

DECIDES:

1. To require the State, as established in this Order, to abstain from extraditing Wong Ho Wing until March 1, 2013, in order to allow the Inter-American Commission on Human Rights to examine and rule on Case of No. 12,794.

No. 151/10. *Cf. Matter of Wong Ho Wing*. Order of the Court of May 28, 2010, having seen paragraph 9(d) and fifth considering paragraph.

¹⁰ *Matter of Wong Ho Wing*. Order of the Court of May 28, 2010, sixteenth considering paragraph.

¹¹ *Matter of Wong Ho Wing*. Order of the Court of May 28, 2010, eighteenth considering paragraph.

2. To establish that this matter be heard by the plenary of the Inter-American Court of Human Rights during its ninety-eighth regular session, to be held at the seat of the Court from February 4 to 16, 2013.

3. To require the State and the Inter-American Commission on Human Rights to submit to the Inter-American Court of Human Rights the information requested in the eleventh considering paragraph of this Order by January 15, 2013, at the latest.

4. To request the State to present any observations it deems pertinent on the information required from the Inter-American Commission in the preceding operative paragraph, and the Inter-American Commission on Human Rights to present any observations it deems pertinent on the information required from the State in the preceding operative paragraph. The said observations must be presented within two week of receiving the said information.

5. To require the Secretariat of the Court to notify this Order to the Republic of Peru and to the Inter-American Commission on Human Rights.

Manuel Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary

So ordered,

Manuel Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary