

PARTIALLY DISSENTING OPINION OF JUDGE ALBERTO PÉREZ PÉREZ

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF WONG HO WING v. PERU

JUDGMENT OF JUNE 30, 2015

(Preliminary objection, merits, reparations and costs)

1. I have issued a negative vote in relation to the following operative paragraphs of the judgment in the case of *Wong Ho Wing v. Peru*:

Operative paragraph 3:

"The State is responsible for the violation of the guarantee of a reasonable time, established in Article 8(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Wong Ho Wing, in the terms of paragraphs 207 to 223."

Operative paragraph 6:

"The State is not responsible for the violation of Article 7(2) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Wong Ho Wing, in the terms of paragraphs 259 to 262."

Operative paragraph 9:

"It is not necessary to issue a ruling on the alleged failure to comply with the obligation to adopt domestic legal provisions, recognized in Article 2 of the Convention, in relation to the arbitrary nature of the detention of Wong Ho Wing, in the terms of paragraph 256."

Operative paragraph 13:

"The State must immediately review the deprivation of liberty of Wong Ho Wing, as established in paragraph 305."

2. I will now explain the reasons for these negative votes.

Non-violation of the right to a reasonable time

3. According to the judgment (para. 220, and also para. 223), the right to a reasonable time (Art. 8(1) of the Convention) was violated owing to the "delay in the final settlement of the extradition process, which can be attributed to the actions of the State authorities." However, as of May 2010, this Court had ordered numerous provisional measures in favor of Wong Ho Wing¹ in which it had required the State to

¹ On February 24, 2010, the Inter-American Commission, during the proceedings before this organ, asked the Court to adopt provisional measures in favor of Wong Ho Wing. The measures were granted for the first time in May 2010. Following orders of November 26, 2010, and March 4 and July 1, 2011, extending their effects, they were lifted in October 2011, after the decision of the Peruvian Constitutional Court of May 24 that year ordering the Executive Branch to refrain from extraditing Wong Ho Wing. Nevertheless, on June 26, 2012, the Inter-American Court again granted provisional measures in favor of Wong Ho Wing due to "the State's

“refrain from extraditing Wong Ho Wing until the organs of the inter-American human rights system had examined and ruled on the [case].” That ruling has been made today by this Judgment; thus, up until this time, *there has been no delay in adopting the final decision on the extradition, and the time frame for adopting this decision has not yet commenced.* Abstract considerations regarding delays in extradition proceedings, the eventual possibility that these may be attributed to the State, and elements that may make these delays unreasonable are interesting, but are entirely inapplicable to this case.

4. Furthermore, the analysis of the requirement concerning the complexity of the matter, which concluded with the mere recognition that “the case is complex,” does not accord with the extreme complexity of the case owing to the alternatives resulting from the determination of whether or not the offense for which extradition to the People’s Republic of China could be granted was or is punished by the death penalty, and to the difficulties in obtaining an accurate translation from Chinese (paras. 60 to 93 of the Judgment).

Violation of Article 7(2) of the Convention

5. According to the Judgment (paras. 259 to 262), the State did not violate Article 7(2) of the Convention, which establishes that: “No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the Constitution of the State Party concerned or by a law established pursuant thereto.” The Judgment does not refer to any legal or constitutional provision that authorizes this deprivation of liberty. First, article 2.24 (f) of the Constitution (cited in para. 240 of the Judgment) contains no reference to an extradition request as a legitimate reason for deprivation of liberty. Second, both the legal provision cited in para. 241 (article 523 of the Peruvian Code of Criminal Procedure) and the Extradition Treaty between China and Peru (article 9, cited in para. 239) refer to a different situation to that of this case: to what Peru’s domestic laws call “provisional or pre-extradition arrest” and the treaty calls “preventive detention” requested “before the presentation of the extradition request,” which should cease when “30 days have passed without the formal submission of the extradition request” (article 523.6 of the Peruvian Code of Criminal Procedure) or “if the competent authority of the Requested Party has not received the formal extradition request within 60 days of the detention of the person sought,” which “may be extended for a further 30 days when the Requesting Party provides reasons that justify this” (article 9.4 of the Extradition Treaty between China and Peru).

6. Consequently, there were no legal or constitutional grounds for the deprivation of liberty. For it to have been lawful, a legislative norm would have to have existed establishing the conditions for deprivation of liberty in the case of an extradition request. Thus, Article 7(2) of the Convention was violated.

Non-compliance with Article 2 of the Convention

7. The considerations in the previous section reveal that the Peruvian State failed to comply with its obligation to adopt domestic legal provisions, inasmuch as its practice

uncertainty” about the possibility of extraditing him, based on presumed “new facts.” These measures were maintained by orders dated December 6, 2012, February 13, May 22 and August 22, 2013, and January 29 and March 31, 2014. In both May 2010 and June 2012, the provisional measures were *ordered to allow the inter-American system to examine and rule on this case, as well as to prevent thwarting compliance with an eventual decision by its organs. Based on the orders of January and March 2014, the measures remain in force*” (italics added).

in relation to extradition includes the deprivation of liberty of the person whose extradition is requested, without establishing the conditions in which this detention can be implemented, or the conditions of the deprivation of liberty, or its duration, or the possibility of securing the person using means other than deprivation of liberty or less harmful than this (such as the house arrest to which Wong Ho Wing is currently subject).

Inexistence of the obligation to make an immediate review of the deprivation of liberty of Wong Ho Wing

8. Lastly, I understand that the Peruvian State's obligation is not to "immediately review the deprivation of liberty of Wong Ho Wing," but rather to make a prompt final decision on the extradition request. If it is denied, Wong Ho Wing will be released automatically; if it is granted, Wong Ho Wing must be handed over to the Chinese authorities.

Alberto Pérez Pérez
Judge

Pablo Saavedra Alessandri
Secretary