

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS*
OF OCTOBER 10, 2011**

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

CASE OF WONG HO WING

HAVING SEEN:

1. The order of the acting President of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") of March 24, 2010, and also 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 briefs of August 4, 9 and 18, 2011, and their attachments, in which the State forwarded Reports Nos. 410-2011 and 419-2011 JUS/PPES, advising that the Constitutional Court had delivered two judgments with regard to the request to extradite Wong Ho Wing to the People's Republic of China. It also requested the "immediate lifting of the provisional measures" ordered by the Court in this matter.
3. The notes of August 11 and 22, 2011, of the Secretariat of the Inter-American Court of Human Rights in which, on the instructions of the acting President of the Court, it asked the representative of the beneficiary and the Inter-American Commission on Human Rights to submit their observations on the information provided by the State, and on its request.
4. The brief of September 1, 2011, in which the representative of the beneficiary (hereinafter also "the representative") forwarded observations on the State's Report No. 419-2011 JUS/PPES. In addition, he asked the Court to maintain these provisional measures in force.
5. The brief of September 8, 2011, in which the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission" or "the Commission") forwarded observations on the said State report. In addition, it "consider[ed] appropriate the Peruvian State's request to lift the measures."

* Judge Diego García-Sayán, a Peruvian national, recused himself from hearing this matter, pursuant to Article 19 of the Court's Statute and 19 of its Rules of Procedure, and the Court accepted his recusal. Also, Judge Leonardo A. Franco, Vice President of the Court, advised that, for reasons beyond his control, he would be unable to attend the deliberation and signature of this order. Consequently, Judge Manuel Ventura Robles became acting President on this occasion.

CONSIDERING THAT:

1. Peru ratified the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) on July 28, 1978, and, pursuant to its Article 62, accepted the compulsory jurisdiction of the Court on January 21, 1981.

2. Article 63(2) of the American Convention establishes that “in cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent, in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.” This provision is, in turn, regulated by Article 27 of the Court’s Rules of Procedure.¹

3. Article 63(2) of the Convention requires that, for the Court to order provisional measures three conditions must be met: (i) “extreme gravity”; (ii) “urgency,” and (iii) that their purpose is to “avoid irreparable damage to persons.” These three conditions coexist and must be present in any situation in which the Court’s intervention is requested. Similarly, the three conditions must persist for the Court to maintain the protection ordered. If one of them has ceased to be applicable, the Court must assess the pertinence of continuing the protection ordered.²

4. Based on its competence, in the context of provisional measures the Court must consider only those arguments that are strictly and directly related to the extreme gravity, urgency and need to avoid irreparable damage to persons. Thus, in order to decide whether the provisional measures should remain in force, the Court must analyze whether the situation of extreme gravity and urgency persists that resulted in their adoption, or whether new circumstances, which are equally grave and urgent, warrant maintaining them. Any other matter may only be submitted to the consideration of the Court by means of the corresponding litigation.³

5. The Court recalls that these provisional measures were granted at the request of the Inter-American Commission in the context of petition P-366-09, only in order to “permit the Commission [...] to examine and rule on [the said] petition,” which was declared admissible in Report No. 151/10 of November 1, 2010.⁴

6. The State requested the immediate lifting of these provisional measures because the situation of extreme gravity and urgency to avoid irreparable damage had

¹ Rules of Procedure approved by the Court at its eighty-fifth regular session held from November 16 to 18, 2009.

² *Cf. Case of Carpio Nicolle*. Provisional measures with regard to Guatemala. Order of the Inter-American Court of Human Rights of July 6, 2009, fourteenth considering paragraph; *Matter of Certain Venezuelan Penitentiary Centers*. Provisional measures with regard to Venezuela. Order of the Inter-American Court of Human Rights of July 6, 2011, fourth considering paragraph, and *Matter of the Urso Branco Prison*. Provisional measures with regard to Brazil. Order of the Inter-American Court of Human Rights of August 25, 2011, third considering paragraph.

³ *Cf. Matter of James et al.* Provisional measures with regard to Trinidad and Tobago. Order of the Inter-American Court of Human Rights of August 20, 1998, sixth considering paragraph; *Case of Rosendo Cantú et al.* Provisional measures with regard to Mexico. Order of the Inter-American Court of Human Rights of July 1, 2011, tenth considering paragraph, and *Matter of the Urso Branco Prison*, *supra* note 2, fourth considering paragraph.

⁴ Inter-American Commission on Human Rights, Report on Admissibility No. 151/10 of November 1, 2010, para. 46.

ceased to exist, because the Constitutional Court had ordered the State to abstain from extraditing Wong Ho Wing and to proceed to prosecute him by representation in Peru. The State attached a copy of the judgments of the Constitutional Court of May 24 and June 9, 2011, in the first of which, among other considerations, the said Court indicated:

In this regard, the Inter-American Court of Human Rights has emphasized that Articles 4 and 1(1) of the American Convention on Human Rights, recognize the international obligation of the States Parties "not to subject a person to the risk of the application of the death penalty via extradition"[:]

Nevertheless, the Peruvian State has two obligations that, supposedly, it must fulfill. On the one hand, it has the obligation to extradite Wong Ho Wing owing to the Extradition Treaty between the Republic of Peru and the People's Republic of China. On the other hand, it also has the obligation not to subject Wong Ho Wing to the risk of the application of the death penalty via extradition and to prosecute him for the offenses for which his extradition was requested.

Apparently, the above-mentioned obligations are incompatible, because if Wong Ho Wing is extradited, the Peruvian State is prevented from prosecuting him. To the contrary, if the Peruvian State decides to prosecute Wong Ho Wing, it would be prevented from extraditing him, preferring to safeguard the protection of the right to life. This apparent conflict of obligations must be resolved, bearing in mind the protection of the right to life of Wong Ha Wing, which is also an obligation imposed on the Peruvian State under Articles 4 and 1(1) of the American Convention on Human Rights.

7. The representative asked that the provisional measures be maintained, among other arguments because, even though "the Constitutional Court has delivered judgment, to date, Wong Ho Wing continues to be deprived of his liberty." In addition, he argued that "[s]ince it has been decided that extradition is not appropriate, it is evident that, in this context, the detention is no longer valid." He also stated that the Constitutional Court's judgment "does not imply that the reasons have disappeared for which, at any time, he can be prosecuted under the domestic jurisdiction, or be expelled from Peru so that, once he leaves the country, he may be captured by Interpol." Consequently, the situation of gravity that justified the petition before the inter-American system "subsists [...] with other characteristics that make the presence of the Inter-American Commission necessary [...] and, above all, the effective implementation of the provisional measure ordered by the Court." Lastly, he stated that, to date, there had been no final ruling on the merits of the matter by the Commission, which "prolongs [...] the situation of legal uncertainty that directly affects the petitioner."

8. The Inter-American Commission assessed positively the judgments delivered by the Constitutional Court and observed that, according to the information provided, "they would eliminate juridically the possibility that the State of Peru order the extradition of Wong Ho Wing to the People's Republic of China." In addition, the Commission took note of the express indication of the State in its reports to the Court that "it would strictly observe the said Constitutional Court judgments, in accordance with domestic law." In conclusion, it considered that the Constitutional Court's judgment had changed the factual presumptions that justified maintaining the measures and found that the State's request to lift the measures was admissible.

9. The Court observes that the arguments made by the representative to request the continuation of these provisional measures (*supra* considering paragraph **) refer to issues relating to the merits of the matter being processed before the Inter-American Commission, as well as other aspects outside the purpose of this provisional proceeding.

10. Consequently, taking into account the decision of the Constitutional Court of Peru, the information forwarded by the parties, the State's request to lift the measures and the opinion of the Inter-American Commission (*supra* considering paragraphs **), the Inter-American Court of Human Rights finds that the requirements of extreme gravity, urgency and need to prevent irreparable damage to the integrity and life of the beneficiary have ceased to exist, so that it is admissible to lift these provisional measures.

11. The Inter-American Court assesses positively the references made to the American Convention on Human Rights by the Constitutional Court of Peru in this provisional proceeding in relation to compliance with the obligations of respect and guarantee established therein. Furthermore, notwithstanding the conclusion of these provisional measures, the Inter-American Court recalls that the States have the constant and permanent obligation to comply with their general obligations under Article 1(1) of the Convention to respect the rights and freedoms recognized therein and to guarantee their free and full exercise to all persons subject to their jurisdiction.⁵

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred by Article 63(2) of the American Convention and Article 27 of its Rules of Procedure,

DECIDES:

1. To lift the provisional measures ordered by the Inter-American Court of Human Rights since May 29, 2010, and subsequently ratified, in order to protect the life and personal integrity of Wong Ho Wing.
2. To recall that, under Article 1(1) of the American Convention, the lifting of the provisional measures does not imply that the State is relieved of its treaty-based obligations of protection.
3. To order the Secretariat of the Court to notify this order to the Republic of Peru, the Inter-American Commission on Human Rights and the representative of the beneficiary of these measures.
4. To close the file on this matter.

⁵ Cf. *Case of Velásquez Rodríguez*. Provisional measures with regard to Honduras. Order of the Court of January 15, 1988, third considering paragraph; *Matter of the Forensic Anthropology Foundation*, *supra* note 5, forty-first considering paragraph, and *Matter of the Socio-educational Detention Unit*, *supra* note 6, fourteenth considering paragraph.

Manuel Ventura Robles
Acting President

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered

Manuel Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary