

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

OF AUGUST 22, 2013

**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," "the Court" or "this Court") of March 24, 2010, as well as the Orders of this Court of May 28 and November 26, 2010, and March 4 and July 1, 2011, whereby they 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 the Court of October 10, 2011, in which it decided to lift the provisional measures that had been ordered.
3. The Order of the Court of April 27, 2012, in which it required the State to forward certain information, which was sent 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 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 and May 22, 2013. In the latter, the Court decided:
 1. To require the State, as decided in this Order, to abstain from extraditing Wong Ho Wing, until August 30, 2013, to allow the Inter-American Commission on Human Rights to examine and rule on case No. 12,794.
 2. To require the Inter-American Commission on Human Rights to keep the Court informed regarding the status of case No. 12,794 before this organ and, to this end, it is required to present a report to the Inter-American Court of Human Rights by July 31, 2013, at the latest, taking into account the indications contained in considering paragraphs 21 and 22 of th[e] Order.

* Judge Diego García-Sayán, a Peruvian national, did not take part in the examination and deliberation of this Order, pursuant to the provisions of 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 for this matter.

3. To ask 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 one week of receiving it.
6. The brief of May 30, 2013, and its annexes, in which the State presented information concerning these provisional measures.
7. The brief of July 30, 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 paragraph 5) and advised that, on July 18, 2013, it had adopted Merits Report No. 78/13 with regard to case No. 12,794, relating to these provisional measures.
8. The brief of August 7, 2013, in which the State submitted its observations on the information presented by the Inter-American Commission.

CONSIDERING THAT:

1. Peru ratified the American Convention on Human Rights (hereinafter "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, 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-366-09,²

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 Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, third 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 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, *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of June 26, 2012, twenty-first considering paragraph; *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the acting President of the Court of

in view of the *prima facie* risk inherent in extraditing an individual who had 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 The measures were lifted on October 10, 2011, after the Constitutional Court, on May 24, 2011, had ordered the Executive Branch to abstain from extraditing Wong Ho Wing. Subsequently, the Commission again requested provisional measures, because “the State has changed its position and the Executive Branch, alleging the existence of supposed ‘new facts,’ has 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. In the Order of May 22, 2013, the Court considered that the circumstances that justified the granting of these provisional measures in June 2012 remained in force.⁷ Thus, the Court stressed that, even though, in March 2012, the Supreme Court of Justice had declared that it was not in order to issue a new complementary advisory decision, and that “the Executive Branch should adopt the appropriate legal decision,” the Executive Branch has abstained from taking a final decision on the extradition of Wong Ho Wing. This Court underscored that, to the contrary, in addition to the request for the complementary advisory decision, the State has filed at least three appeals in order to clarify the Constitutional Court’s ruling ordering that Wong Ho Wing should not be extradited. The last of these was decided by the Constitutional Court on March 12, 2013, following which the Executive once again failed to adopt a decision regarding the extradition.⁸ The Court also noted that the State had abstained from indicating clearly that it would not extradite Wong Ho Wing; but rather had affirmed the binding nature of the decision of the Constitutional Court, while questioning its scope, alleging that the Constitutional Court did not have all the pertinent information when adopting its decision. Therefore the Court considered that, taking into

December 6, 2012, fourth considering paragraph, *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of February 13, 2013, fourth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, fourth considering paragraph.

³ Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 28, 2010, twelfth, thirteenth and fifteenth considering paragraphs and first operative paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, fourth considering paragraph.

⁴ *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of June 26, 2012, fourth having seen paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, fourth considering paragraph.

⁵ Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of June 26, 2012, thirty-eighth considering paragraph, and *Matter of Wong Ho Wing*. Order of the Court of May 22, 2013, fourth considering paragraph.

⁶ Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 28, 2010, first operative paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of June 26, 2012, first operative paragraph.

⁷ Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, twenty-second considering paragraph.

⁸ Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of April 27, 2012, fifth considering paragraph, and *Matter of Wong Ho Wing*. Order of the Court of May 22, 2013, nineteenth considering paragraph.

account the background to these measures and that, according to the State itself, it is the Executive Branch that takes the final decision in an extradition procedure, the situation of uncertainty continued with regard to the possibility of extraditing Wong Ho Wing that justified maintaining these provisional measures.⁹

6. 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 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

7. This Court 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 [damage 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.¹²

8. Bearing in mind the preventive aspect indicated in the Order of May 22, 2013, this Court found it pertinent and opportune to order the adoption of provisional measures in this matter until August 30, 2013, “in order to allow the Inter-American Commission to examine and rule on case No. 12,794.” In this regard, the Court notes that, on July 18, 2013, the Inter-American Commission adopted Merits Report No. 78/13 with regard to case No. 12,794, related to these provisional measures (*supra* having seen paragraph 7). According to the information submitted, in this report, the Commission made four recommendations to the State and, “[p]ursuant to the procedure established in Articles 50 and 51 of the Convention,” forwarded the Merits Report to the State and asked it to present information on compliance with these recommendations within two months.

9. Based on the above, the Commission requested “a further extension [of the provisional measures] until it was able to provide information on the Peruvian State’s response as regards compliance with the recommendations.” In this regard, the State indicated that it “had until September 30, 2013,” to provide information on compliance with the recommendations made in the Merits Report, so that “it was reasonable that the Inter-American Court would not be advised of this party’s position in relation to compliance with the recommendations of the Commission until September 30, 2012.”

⁹ Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, twentieth considering paragraph.

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, fourth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, fifth considering paragraph.

¹¹ 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, fourth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, fifth considering paragraph.

¹² Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 28, 2010, fourteenth considering paragraph; *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of June 26, 2012, fortieth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, sixth considering paragraph.

10. In a previous brief (*supra* having seen paragraph 6), the State had forwarded information on “similar facts to those of [this matter], in which the People’s Republic of China had guaranteed the right to life and to personal integrity of Chinese citizens repatriated for similar offenses to those of which Wong Ho Wing is accused.” Notwithstanding subsequent observations of the State (*supra* considering paragraph 9), the Court recalls that it has already established that the exact determination and explanation of whether the reform of the criminal law [that annulled the death penalty for one of the offenses for which the beneficiary’s extradition is requested] would be applicable in the eventual trial of Wong Ho Wing undertaken by the requesting State constitutes an analysis that is beyond the proceedings on provisional measures.¹³ Furthermore, as this Court indicated in its Order of May 2010 and reiterated in its Order of June 2012,¹⁴ when considering a request for provisional measures this Court may only consider the obligations of a procedural nature of the State as a party to the American Convention, so that this Court is not competent to rule on the compatibility of the extradition procedure with the Convention, or the alleged violations of the judicial guarantees and judicial protection of Wong Ho Wing in the context of this matter.

11. The Court notes that the information submitted by the parties does not show that there has been any change in the situation of uncertainty regarding the possibility of extraditing Wong Ho Wing that justified maintaining these provisional measures (*supra* considering paragraph 5). Moreover, the Court notes that, according to Articles 50 and 51 of the Convention, three months after the issue of the Merits Report, the Inter-American Commission is empowered to determine whether it submits the case related to these provisional measures to the Court or continues to consider it and to prepare a final report that it may publish.¹⁵ Consequently, to avoid inhibiting compliance with an eventual determination by the organs of the inter-American system, and taking into account also the absence of objection by the State to the extension of the validity of these measures on this occasion (*supra* considering paragraphs 7 and 9), the Court finds it admissible to renew these measures until March 31, 2014.

12. The Court also recalls its previous considerations in this matter concerning 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 certain crimes can be brought to justice. Thus, the international human rights

¹³ *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of June 26, 2012, thirty-first considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, fifteenth considering paragraph.

¹⁴ *Cf. Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 28, 2010, considering seventh paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of June 26, 2012, thirty-third considering paragraph.

¹⁵ Article 50 of the Convention establishes that: “[i]f 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.” While 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 State 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.” Also, Article 61(1) stipulates that: “[o]nly 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 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. Series C No. 172, para. 39.

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

13. Lastly, this Court reiterates that, until this matter has been decided by the organs of the inter-American system, Peru must continue adopting the necessary measures in relation to Wong Ho Wing to avoid his eventual extradition and the corresponding administration of justice in the requesting State becoming null or illusory.¹⁷

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the authority conferred by Article 63(2) of the American Convention and Articles 27 and 31 of the Court's Rules of Procedure,

DECIDES:

1. To require the State, as decided in this Order, to abstain from extraditing 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.

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

Manuel E. Ventura Robles
Acting President

Alberto Pérez Pérez

Eduardo Vio Grossi

¹⁶ Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 28, de 2010, sixteenth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, twenty-third considering paragraph.

¹⁷ Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 28, de 2010, eighteenth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 22, 2013, twenty-fourth considering paragraph.

Roberto de F. Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Manuel E. Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary