

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
NOVEMBER 26, 2010**

**PROVISIONAL MEASURES
REGARDING 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 Rights¹, (hereinafter “the Inter-American Court,” or “the Court”) dated March 24, 2010, ruling *inter alia* to require the Republic of Peru (hereinafter “the State” or “Peru”) to abstain from extraditing Mr. Wong Ho Wing, as long his request for provisional measures remained pending before the Inter-American Court.
2. The May 28, 2010, Order of the Court requiring the State to “refrain from extraditing Mr. Wong until December 17, 2010, in order to allow the Inter-American Commission on Human Rights to examine and rule on application P-366-09, filed before the Commission on March 27, 2009.”²
3. The brief of September 27, 2010, in which the State submitted information related to the provisional measures and requested that the Court require the representative of Mr. Wong Ho Wing to, *inter alia*, refrain from “maliciously and irresponsibly using domestic resources to block the administration of justice [...] with the intention of impeding the State from adopting the measures necessary to prevent the eventual extradition of the petitioner from becoming illusory or ineffective.” It also indicated that “if [the beneficiary] opts to continue requesting domestic constitutional and jurisdictional protection, it will be understood to have nullified the request for provisional measures.”

¹ Judge Diego García-Sayán, of Peruvian nationality, recused himself from this matter, pursuant to Article 19 of the Statute and Article 21 of the Rules of Procedure of the Court. The Court accepted his recusal. For this reason, Judge García-Sayán ceded the Presidency under the terms of Article 4(2) of the Rules of Procedure to the Vice President of the Court, Judge Leonardo A. Franco, who is the acting President in this matter.

² *Matter of Wong Ho Wing*, Request for Provisional Measures with regard to the Republic of Peru. Order of the Inter-American Court of Human Rights dated May 28, 2010, Operative Paragraph 10.

4. The October 1, 2010, brief in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") rejected the State's request and indicated that its opinions "on the procedural conduct of the beneficiary do nothing to change the legal basis of the request and the granting of the provisional measures."

5. The communication from the Secretariat of the Court of October 19, 2010, which, following the instructions of the acting President, stated that the State's request would be considered by the Inter-American Court during the 89th Ordinary Period of Sessions, to be held in the seat of the Court from November 22th to 26th, 2010.

6. The November 11, 2010, brief in which the Inter-American Commission informed the Court of the November 1, 2010, passage of Admissibility Report No. 151/10 on application 366-09. The Commission also provided information indicating that in keeping with Article 37 of the Rules of Procedure, on November 9, 2010, the Commission notified the parties about this report and granted the petitioners a period of three months to present additional observations on the merits. Once presented, these observations will be forwarded in order for the State to present its comments within a similar period of time. Finally, the Commission "repeat[ed] its arguments regarding extreme gravity and urgency, the need for preventing irreparable damage to the beneficiary, and the consequent need for these provisional measures to remain in force until the bodies of the inter-American system issue a final ruling on the case."

7. The communication from the Secretariat of the Court dated October 12, 2010, which, following the instructions of the acting President, requested comments from Peru on the information provided by the Commission and stated that the Commission's request would be considered by the Court during its 89th Regular Period of Sessions.

8. The November 18, 2010, brief in which Peru requested a hearing or working meeting with the Court prior to the adoption of a ruling on the Inter-American Commission's request, as well as an extension of the deadline for presenting comments on the request. An extension of the deadline until November 22, 2010, was granted.

9. The brief of November 22, 2010, and its annexes in which Peru stated, *inter alia*, that: a) the Commission "is using the figure of [provisional measures] as a quick way of getting a 'kind of solution' to the legal conflicts under its consideration," resulting in "a situation of abuse of a request for provisional measures, since they have been proposed without a time limit, without reservations, contradicting the provisions of the Court's Order for Provisional Measures"; b) by virtue of the Commission's failure to issue a report on the merits, the State argues that "one of the essential elements for moving forward and/or continuing the protective measures - that being the urgency of the situation - has disappeared as a result of the actions of the Commission itself"; c) the deadlines for processing the case before the Commission could result in "an excessive delay in the processing of the [...] case before the supranational instances, thus contradicting the allegation that the situation is urgent", and d) in particular circumstances, Peruvian legislation and the Extradition Treaty between Peru and the People's Republic of China, permits the country in which the extradition is requested to give the country requesting the extradition the option of an *extraditurus* trial before the lower court and under its laws, "with the intention of preventing impunity for the crime committed by the individual whose extradition is being requested." Also, it asked the Court to request from Mr. Wong Ho Wing "a commitment to forfeit prior procedural

defenses such as statute of limitations” and reject the Commission’s request due to its lack of one of the elements required to grant it.

10. The November 22, 2010, brief and its annex, in which the Inter-American Commission submitted a communication to the Court from Mr. Wong Ho Wing, requesting the provisional measures be broadened.

CONSIDERING THAT:

1. Peru ratified the American Convention on July 28, 1978, and, in accordance with Article 62 of the Convention, recognized the contentious jurisdiction of the Court on January 21, 1981.

2. Article 63(2) of the American Convention holds that, “[i]n 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.”

3. Article 27 of the Rules of Procedure of the Court holds, *inter alia*, that:

1. At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, on its own motion, order such provisional measures as it deems appropriate, pursuant to Article 63(2) of the Convention.

2. With respect to matters not yet submitted to it, the Court may act at the request of the Commission.

[..]

5. The Court, or if the Court is not sitting, the Presidency, upon considering that it is possible and necessary, may require the State, the Commission, or the representatives of the beneficiaries to provide information on a request for provisional measures before deciding on the measure requested.

4. The Court recalls that these provisional measures were granted at the request of the Inter-American Commission in the context of application P-366-09. This application was declared admissible through report No. 151/10, dated November 1, 2010, with regard to Articles 4 (Right to Life), 5 (Right to Humane Treatment [Personal Integrity]), 7 (Right to Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection), of the American Convention in relation to Article 1(1) (Obligation to Respect Rights) of the Convention³. The Court takes note of the information provided by the Inter-American Commission with regard to the status of the proceeding and the parties’ deadlines to submit information on the merits of the matter (*supra* Having Seen 6).

5. Likewise, the Court recalls that this case is before the Inter-American Commission and that the adoption of these provisional measures was ordered only for the purpose of “allowing the Commission to examine and rule on application P-366-

³ Report on Admissibility No. 151/10 dated November 1, 2010, para. 46.

09." Thus the Court did not stipulate that it would examine this matter while it is before the Commission, nor did it request the parties to submit information on the progress of domestic remedies or the extradition proceeding.

6. Nevertheless, the State and the Commission have submitted information and made several requests of the Court with regard to these provisional measures. Given the request by the Commission for an extension of these provisional measures and the request by the State for a hearing (*supra* Having Seen clauses 6 and 8), the Court finds it appropriate to call a public hearing during the next Regular Period of Sessions, which will take place from February 21 to March 5, 2011, with the purpose of receiving arguments from the parties on the pertinence of maintaining these provisional measures. Consequently, the Court rules that these provisional measures remain in effect until March 31, 2011, under the same terms of its May 28, 2010, order⁴.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

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

DECIDES TO:

1. Convene the Inter-American Commission on Human Rights, the Republic of Peru, and the legal representative of the beneficiary to a public hearing, to be held at the seat of the Inter-American Court of Human Rights during the next Regular Period of Sessions, which will take place from February 21 to March 5, 2011, with the purpose of hearing the arguments of the parties over the request for an extension of the provisional measures, in keeping with Considering paragraph 6 in this Order. The Secretariat will communicate the date and time of the public hearing to the parties in a timely fashion.

2. Keep the current provisional measures in effect until March 31, 2011, with the purpose of allowing the public hearing requested by the State to be held.

3. Require the State to refrain from extraditing Mr. Wong Ho Wing until March 31, 2011, in keeping with the provisions of this Order and with the terms of the May 28, 2010, Order.

4. Ask the Secretariat to notify the Inter-American Commission on Human Rights, the Republic of Peru, and the legal representative of the beneficiary of this Order.

⁴ Cf. *Matter of Wong Ho Wing*, Order of the Inter-American Court, *supra* footnote 1.

Leonardo A. Franco
Acting President

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So Ordered,

Leonardo A. Franco
Acting President

Pablo Saavedra Alessandri
Secretary