

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

OF FEBRUARY 13, 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" or "the Court") of March 24, 2010, 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."
5. The Order of the acting President of December 6, 2012, in which he decided:
 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.
 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.

* 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.

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.

6. The briefs of December 7, 2012, and January 15 and 25, 2013, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) forwarded, *inter alia*, the information requested by the acting President in his Order of December 6, 2012, as well as its observations on the respective information provided by the State.

7. The briefs of January 16 and 31, 2013, in which the State presented the information requested by the acting President in his Order of December 6, 2012, as well as its observations on the corresponding information of the Inter-American Commission.

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.

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 granted for the first time on May 28, 2010, at the request of the Inter-American Commission in the context of petition P-366-09,² in view of the *prima facie* danger of the risk inherent in

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 acting President of the Court of December 6, 2012, 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 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

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. The Court has indicated that provisional measures have two aspects: one preventive and the other protective.⁶ 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 to the extent that they seek to avoid irreparable harm to persons.⁷

6. The 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 [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. Bearing in mind the said preventive aspect, in the Order of June 26, 2012, this Court considered it pertinent and opportune to order the adoption of provisional measures in this matter until December 14, 2012 “so that the Inter-American Commission can fulfill its mandate under the Convention, considering that the proceedings on case No. 12,794 are at the merits stage and that the Commission has

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, forty-first considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the acting President of the Court of December 6, 2012, fourth 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 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*. Order of the acting President of the Court of December 6, 2012, fifth considering paragraph.

⁷ *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; *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, *Matter of Wong Ho Wing*. Order of the Court of June 26, 2011, thirty-ninth considering paragraph, and *Matter of Wong Ho Wing*. Order of the Court of December 6, 2012, fifth considering paragraph.

advised that on March 26, 2012, a public hearing was 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 The Court also indicated that it was "opportune that the Inter-American Commission take a prompt decision on case No. 12,794 before that organ," taking into account the preventive aspect indicated, [...] as well as the State observations on the certainty required by the organs intervening in the extradition procedure of Wong Ho Wing."⁹

8. Despite the foregoing, in the course of the six months since the adoption of these measures up until December 2012, the Court has not received any information from the Commission on the adoption of the said merits report, or on the situation of the said case before this organ. Furthermore, it has not received any information from the State or any objection from Peru to the continuation of the measures granted in favor of the beneficiary. Therefore, on December 6, 2012, the acting President issued an Order in which he found it pertinent to extend the validity of these provisional measures until March 1, 2013, in order, *inter alia*, "to allow the Inter-American Commission to fulfill its mandate under the Convention and [to proceed] to examine case No. 12,794," in the understanding that the circumstances that, at the time, justified the adoption of these provisional measures had not changed.¹⁰ In addition, in the said Order, the acting President required the State and the Inter-American Commission to present updated information so that the Court would have all the necessary elements to make an adequate assessment of the validity and implementation of these provisional measures, while establishing that "the Court in plenary [would] 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."¹¹

9. In particular, the acting President required the Inter-American Commission to present completed 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 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 acting President asked the State to present current information on the status of the beneficiary's extradition procedure.

10. In this regard, the Inter-American Commission emphasized that "neither in the context of case [No.] 12,794 nor in the context of the provisional measures, has the State of Peru provided updated information indicating that there has been a change in the situation Wong Ho Wing." Based on this, it indicated that "the factual assumptions on which the decision was taken to re-establish the provisional measures on June 26, 2012, remain identical and, therefore, the situation of extreme gravity, urgency and risk of irreparable damage subsists"; similarly, "the need remains to allow the organs of the inter-American system to make a final ruling on the case," in a decision that will be effective. Regarding the actual status of case No. 12,794 before that organ, the Commission advised that it continues at the merits stage and that it had decided to

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

⁹ *Matter of Wong Ho Wing*. Order of the Court of June 26, 2012, forty-first considering paragraph.

¹⁰ *Cf. Matter of Wong Ho Wing*. Order of the acting President of the Court of December 6, 2012, eighth and ninth considering paragraphs.

¹¹ *Matter of Wong Ho Wing*. Order of the acting President of the Court of December 6, 2012, eighth and ninth considering paragraphs.

include the analysis of the merits of the case, "in principle, at the next occasion on which it will be deliberating case"; namely, during its next regular session scheduled for March 7 to 22, 2013. Accordingly, it asked the Court to extend the validity of these measures "until April 1, 2013, in order to permit the deliberation and issue of the merits report."

11. Regarding the actual status of the extradition procedure, the State advised that "the anti-constitutionality appeal in relation to the interpretation of the judgment that decided the *habeas corpus* in favor of Wong Ho Wing remains pending." It explained that the extradition "has not yet been decided by the Executive, precisely because of the mandate of the Constitutional Court," as well as because of these provisional measures. It indicated that the Executive "has expedited procedural mechanisms before the competent jurisdictional organs in order to determine whether the constitutional order means that, on no grounds, can Wong Ho Wing be extradited to the Republic of China." It indicated that "this is an unclear aspect regarding which the Constitutional Court has not yet ruled and that can only be decided – in the final analysis – by [that] organ of constitutional control," because "[n]o State entity, including the Executive, has competence at this time to rule on the matter." In addition, the State indicated that, in this matter, "the three concurring requirements of] extreme gravity, urgency and need to avoid irreparable damage are not met," because, according to the decision in the "judgment of May 24, 2011, the Constitutional Court declared the application for *habeas corpus* presented in favor of Wong Ho Wing admissible, and ordered the State to abstain from extraditing him," and this "is being complied with strictly, because Wong Ho Wing has not been extradited [...] and there is no real indication that this is about to happen."

12. In its observations on the information presented by the State, the Inter-American Commission noted that "much of the content of the [State's] brief relates to legal arguments on the admissibility or not of the provisional measures, [and these] were duly decided in the Order of June 26, 2012, [when] the plenary of the Inter-American Court decided to reinstate the provisional measures." With regard to the information provided by Peru on the current status of the extradition procedure, the Commission indicated that the State considers that the extradition procedure remains pending a final decision and that "a new appeal has been filed" before the Judiciary at the request of the Executive in order to determine the scope of the judgments of the Constitutional Court. The Commission therefore observed that "the situation remains the same as before." In addition, it indicated that "all the aspects relating to the guarantees granted by China [...] must be assessed by the Inter-American Commission in the decision on merits in this case."

13. For its part, in its respective observations, the State indicated that "the response given by the Commission was manifestly insufficient." It argued that the Commission "has not provided sufficient elements to prove a situation of extreme gravity and urgency that would justify maintaining the measures." Regarding the extradition procedure, it indicated that "there is no risk of the application of the death penalty" to the beneficiary, because "he will not be extradited [...] for any offense that entails the possibility of the beneficiary being sentenced to death." It insisted that the order issued by the Constitutional Court "is non-appealable"; "it is in force and legally binding," despite the fact that "doubts or disagreements may exist about how to comply with it." In this regard, it reiterated that the anti-constitutionality appeal remained pending a decision in relation to the interpretation of the *habeas corpus* decided in favor of Wong Ho Wing. Regarding the actual status of the proceedings before the Commission, it indicated that "the Commission's response [...] leads to the

understanding that this case does not have the characteristics that constitute a violation of the rights recognized in the Convention [...], because, to the contrary, the Commission would have issued a merits report some time ago." It underscored that the Commission had not been direct and positive when affirming that, "in principle," it would examine this case in its next session, "so that it is evident that this will not necessarily happen." In addition, it recalled that "it is not the first time that the Court issues a provisional measure in the expectation that the Commission will issue its merits report in the case of Wong Ho Wing without this having occurred."

14. Regarding the information presented by the Commission and the State, this Court observes that case No. 12,794 continues at the merits stage before the Commission and, "in principle," it will be submitted to the consideration of this organ at its next regular session to be held from March 7 to 22 this year. The Court also takes note of the information provided by the State, that a new judicial remedy had been filed, this time "an anti-constitutionality appeal with regard to the interpretation of the judgment that decided the *habeas corpus* in favor of Wong Ho Wing" (*supra* considering paragraph 11), in order to obtain an interpretation from the Constitutional Court on its own decision in relation to the possibility of extraditing the beneficiary to the People's Republic of China. Based on the foregoing, the Court observes that the situation of uncertainty remains as regards the possibility of extraditing Wong Ho Wing that justified the granting of these provisional measures in June 2012. The information provided by the parties does not reveal any element that changes the circumstances that, at that time, justified the adoption of these provisional measures, which are still in force in this matter.

15. Even though the State indicated that it "has been complying strictly" with the decision of the Constitutional Court that ordered the State to abstain from extraditing Wong Ho Wing (*supra* considering paragraph 11), the Court observes that Peru remains unclear about how to execute this judgment because, according to the State, a possible interpretation would be that the extradition is admissible since "the prohibition should only be understood in relation to the offenses for which he could be sentenced to death." The Court recalls that, in its Order of June 26, 2012, it found that "given the uncertainty of the State with regard to the possibility of extradition [...]," the considerations of the Court in its Order of May 28, 2010, regarding the existence of a situation of extreme gravity and urgency and the need to avoid irreparable damage, were "applicable to the actual situation of the [...] beneficiary."¹²

16. Taking into account the preceding considerations, the Court finds that the circumstances that justified the granting of these provisional measures in June 2012 remain in force. Consequently, the Court considers it in order to ratify and expand the decision of the acting President of December 6, 2012, in order to extend the validity of the provisional measures until June 1, 2013, so that the Inter-American Commission can comply with its mandate under the Convention and conclude the examination of case No. 12,794, in the understanding that it is at the merits stage and that the Commission will be analyzing its merits very shortly.

17. The Court recalls that, in its Order of June 26, 2012, it indicated that "it was opportune that the Inter-American Commission decide case No. 12,794 before that organ promptly." However, the Court observes that the processing of this case before

¹² *Matter of Wong Ho Wing*. Order of the Court of June 26, 2012, thirty-eighth considering paragraph, and *Matter of Wong Ho Wing*. Order of the Court of May 28, 2010, twelfth, thirteenth and fourteenth considering paragraphs.

the Commission does not appear to have advance for seven months. In this regard, it takes note of the State's observation that this is not the first time that this Court has extended the validity of these provisional measures so that the Commission may issue the respective merits report. Although the Commission has advised that it will include the analysis of the merits of this case in the program of its next regular session, the Court finds it pertinent to reiterate what the acting President stressed in his Order of December 6, 2012, to the effect 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.¹³ The Court underscores that the delay in the adoption 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.

18. Moreover, the Court 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.¹⁴

19. Lastly, this Court reiterates that while the matter is being 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 eventual extradition and the corresponding administration of justice in the requesting State becoming illusory or ineffective.¹⁵

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the attributes conferred on it 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 June 1, 2013, in order to allow the Inter-American Commission on Human Rights to examine and rule on Case of No. 12,794.

2. To require the Inter-American Commission on Human Rights to keep the Court informed about the status of case No. 12.794 before that organ and, to this end, it

¹³ 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 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.

¹⁴ *Matter of Wong Ho Wing*. Order of the Court of May 28, 2010, sixteenth considering paragraph.

¹⁵ *Matter of Wong Ho Wing*. Order of the Court of May 28, 2010, eighteenth considering paragraph.

must present a report to the Inter-American Court of Human Rights by April 1, 2013, at the latest.

3. 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, within four weeks of receiving it.

4. 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

Eduardo Vio Grossi

Roberto de Figueiredo Caldas

Humberto Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Manuel Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary