

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

OF MAY 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" or "the Court") of March 24, 2010, as well as 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 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. This 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. 12,724."
5. The Order of the acting President of December 6, 2012, and also the Order of the Court of February 13, 2013, in which it was decided:
 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 No. 12,794.
 2. To require the Inter-American Commission on Human Rights to keep the Court informed about the situation of case No. 12,794 before that organ and, to this end, present a report to the Inter-American Court of Human Rights by April 1, 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.

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.

6. The brief of April 1, 2013, in which the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) forwarded the information requested by the Court (*supra* having seen paragraph 5), and advised that, on March 12, 2013, the Constitutional Court had ruled on an appeal relating to the extradition of Wong Ho Wing.

7. The brief of May 4, 2013, in which the State presented its observations on the report presented by the Inter-American Commission. In this brief, the State requested that these provisional measures be lifted, considering that “the decision of the Constitutional Court ordering that Wong Ho Wing should not be extradited was legally binding for the Executive Branch and all other entities of the State.”

8. The brief of May 13, 2013, in which the Commission presented its observations on the request of the State to lift these measures (*supra* having seen paragraph 7).

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, 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 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 extraditing an individual who

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 February 13, 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,

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 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.”⁶

5. The Court has indicated that provisional measures have two aspects: one preventive and the other protective.⁷ 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.⁸

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 [damage to] the right to petition

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

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 February 13, 2013, fourth considering paragraph,

⁶ Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. 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.

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, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of February 13, 2013, fifth considering paragraph.

⁸ 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*. Provisional measures with regard to Peru. Order of the Court of February 13, 2013, fifth considering paragraph

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.⁹

A. *Actual situation of these measures, and arguments of the Commission and the State*

7. Bearing in mind the preventive aspect indicated in the Order of February 13, 2013, this Court found it pertinent and opportune to order the adoption of provisional measures in this matter until June 1, 2013, "in order to allow the Inter-American Commission to examine and rule on case No. 12,794," considering that the case was at the merits stage before the Commission and, "in principle," would be submitted to the consideration of this organ during its next regular session to be held from March 7 to 22 this year.¹⁰ Furthermore, in its last Order, the Court took note of the information provided by the State, that it had filed a new judicial remedy, 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," in order to obtain an interpretation from the Constitutional Court of its own decision concerning the possibility of extraditing the beneficiary to the People's Republic of China. Based on the foregoing, the Court observed that the situation of uncertainty remained as regards the possibility of extraditing Wong Ho Wing that justified the granting of these provisional measures in June 2012.¹¹

8. However, in April 2013, the Commission advised that "[d]uring the session, [in which the deliberation on the merits of this case had been programmed, the said organ] was informed of a ruling issued by the Constitutional Court on March 12, 2013."

9. In the said ruling of March 12, 2013, the Constitutional Court declared inadmissible the anti-constitutionality appeal filed by the Public Attorney of the Ministry of Justice against the decision of a Criminal Chamber of the Lima Superior Court of Justice rejecting an appeal against the decision declaring inadmissible a request to clarify the implications of the Constitutional Court's decision ordering that Wong Ho Wing should not be extradited.¹² The Constitutional Court's declaration of inadmissibility was based on the fact that:

The brief [of the Public Attorney of the Ministry of Justice,] did not constitute a procedural remedy, either to clarify the judgment or to incorporate its content, particularly when a request of this kind would be totally time-barred [...]. To the contrary, it is noted that, on the pretext of "clarifying" an element of its judgment, the purpose sought is that the Constitutional Court "modify" its previous decision, so that it expresses something that, originally, it did not indicate, which also affects the guarantee of *res judicata* [...].

Thus, pursuant to the content of both the judgment and of the clarification decision issued by the Constitutional Court, it should be indicated that neither of these rulings made an individual or

⁹ 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 November 26, 2010, fortieth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of February 13, 2013, sixth considering paragraph.

¹⁰ Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of February 13, 2013, fourteenth considering paragraph and first operative paragraph.

¹¹ Cf. *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of February 13, 2013, fourteenth considering paragraph.

¹² The Public Attorney of the Ministry of Justice argued before the Constitutional Court, *inter alia*, that "since the ruling of the Constitutional Court does not make a distinction between the offenses that result in the protection granted by the ruling, it is possible to agree to the extradition based on the offense for which there is no danger of the death penalty and, in that eventuality, the State's actions would comply with the execution of the judgment of the Constitutional Court."

separate analysis of the offenses of which the applicant is accused, not only because it was not appropriate for this to be elucidated by this Court, but also because the relevant issue was to determine whether or not the right to life of the beneficiary of the *habeas corpus* procedure was threatened if the extradition request was declared admissible.

10. Owing to this decision, the Commission indicated that “[s]ince [the said] decision is particularly relevant for the analysis of the merits of the case, the Commission decided to postpone the deliberation of its decision on merits until the 148th session, to be held from July 8 to 19, 2013, in order to receive the arguments of the parties with regard to this decision.” Consequently, the Commission requested “the extension of these provisional measures until July 31, 2013.”

11. For its part, the State explained that the said decision “ratifies that the determinant factor in the 2011 judgment of the [Constitutional Court] was to evaluate whether, given the circumstances of the case and the evidence in the case file, the right to life of Wong Ho Wing was in danger.” Thus, it reiterated that “the decision of the Constitutional Court ordering that Wong Ho Wing should not be extradited was legally binding for the Executive Branch and other entities of the State, which provided sufficient grounds to lift the provisional measures.” It emphasized that the 2011 decision of the Constitutional Court “has been complied with strictly because Wong Ho Wing has not been extradited.” In this regard, the State indicated that it was not necessary to wait until July 31, 2013, and therefore asked that these provisional measures be lifted. In addition, Peru argued that “in this case, the three concurrent requirements of extreme gravity, urgency and need to avoid irreparable damage are not met, [because] by its judgment of May 24, 2011, the Constitutional Court had declared that the application for *habeas corpus* filed in favor of Wong Ho Wing was admissible, and ordered the State to abstain from extraditing him.” Despite this, the State reiterated that “with the entry into force of the Eighth Amendment to the Criminal Code of the People’s Republic of China, the death penalty for the offense of smuggling [...] has been annulled.”

12. The State also argued that “it is not the first time that the Court issues provisional measures while waiting for the Commission to issue its report on merits in the Wong Ho Wing case.” In this regard, it considered that, “in principle, it is probable that, even in the [Commission’s] next session, it does not take a decision on the merits [...], so that the provisional measures designed to give it time to issue its decision has lost any real substantiation.” The State indicated that “[g]iven that, in this case, the said delay has been caused in part by the provisional measures granted by the Court, the State requests that they be lifted.” In addition, the State presented arguments on the Commission’s findings in the admissibility report of this case, and attached information on the guarantees offered by the People’s Republic of China, and on another extradition case: of a Chinese citizen in Canada.

13. Regarding the request to lift the measures, the Commission indicated that “the Peruvian State has not provided any information on the specific effects of the [supposed] binding nature [of the Constitutional Court’s decision of March 12, 2013,] on the extradition procedure and, specifically, on the final decision of the Executive Branch.” In this regard, it stressed that “the information available indicates that, to date, the Executive Branch has not taken a final decision that Wong Ho Wing should not be extradited.” In addition, it recalled that “the binding nature of the decisions of the Constitutional Court was the same argument used by the State previously to request the lifting of these provisional measures. However, once the measures had been lifted, [...] the Executive Branch undertook a series of measures to obtain a reinterpretation of the judgment of the Constitutional Court of May 24, 2011.” Therefore, the Commission indicated that, “in the absence of final decision, added to the lack of clarity of the situation under examination, [...] it] consider[ed] that the State

cannot justify the lifting of these provisional measures based exclusively on the mere affirmation that the judgment of the Constitutional Court is binding." The Commission also reiterated that it "plans to conduct the deliberations on the merits of case 12,794 during its next session," and also that "the State's arguments on the sufficiency or insufficiency of the diplomatic guarantees given by the People's Republic of China, as well as the legal effects of the supposed annulment of the death penalty for [the offense of smuggling], are aspects that correspond to the merits of the matter."

B. Considerations of the Court

14. First, the Court notes that the guarantees attached by the Peruvian State are, in essence, the same as those already examined by the Court in its Order of June 26, 2012.¹³ On that occasion, the Court considered that the official translation of article 12 of the Chinese Criminal Code provided by the State did not allow it to understand clearly the applicability of the principle of retroactivity of the most favorable criminal law in relation to the amendment that annulled the death penalty for the offense of smuggling merchandise and other objects, which constitutes one of the offenses for which the extradition of Wong Ho Wing was requested.¹⁴ The Court notes that, at the present time, the State has sent the Eighth Segment of the Criminal Code which clarifies the meaning of a phrase of article 12 of the Criminal Code; however, the applicability to the case of Wong Ho Wing of the principle of retroactivity of the most favorable criminal law in relation to the said amendment continues to be ambiguous.

15. Nevertheless, the Court recalls that it has already established that the exact determination and explanation of whether the said penal reform would be applicable in the eventual trial of Wong Ho Wing conducted in the requesting State constitutes an analysis that falls outside the procedure of provisional measures, insofar as it requires an examination of the merits of the facts, the evidence provided, and the reported legal situation, which goes beyond what the State has alleged and the information in the body of evidence. This examination is one of the issues that must be analyzed during the examination of the dispute that is pending before the Commission.¹⁵

16. Furthermore, the Court recalls that, even though, in its Order of June 26, 2012, it had taken note of the official translation of a "Clarification regarding the cases to which the Eighth Amendment of the Criminal Code is applicable" made by the Supreme Court of the People's Republic of China,¹⁶ and "assesse[d] positively the existence of the guarantees presented," the Court "recall[ed] that, as of its first Order in this matter, it had ruled on the alleged guarantees issued by the People's Republic of China," indicating that:

The analysis of the guarantees received by Peru is a matter of merits, which is related to compliance with the State's international obligation derived from Article 4 and 1(1) of the Convention, not to subject a person to the risk of the application of the death penalty through

¹³ At the present time, the State merely added an official translation of some articles of the Chinese Criminal Code in force before the amendment that presumably annulled the death penalty for the offense of smuggling, and of the Eighth Segment of the Chinese Criminal Code where the general time frames for prescription are regulated.

¹⁴ *Cf. Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of June 26, 2012, thirtieth considering paragraph.

¹⁵ *Cf. Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of June 26, 2012, thirty-first considering paragraph.

¹⁶ This clarification indicates that, according to the said article 12, "the eighth amendment will be applied in the case [of Wong Ho Wing]" and reiterates "the commitment assumed by the Supreme Court of the People's Republic of China not to apply the death penalty [to the beneficiary]." *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of June 26, 2012, thirty-second considering paragraph.

extradition. It is also related to the formalities of due process that domestic law ensures in the extradition procedure. Therefore, the assessment of the pertinence and appropriateness of the said guarantees, as well as of the alleged violations of the rights recognized in Articles 8 and 25 of the American Convention, corresponds to the examination of the merits of the case that the Inter-American Commission must eventually make in the petition lodged before it, and not to this proceeding of provisional measures.¹⁷

17. As this Court indicated in its Order of June 2012,¹⁸ in response to a request for provisional measures, the Court must consider only the procedural obligations of the State as a party to the American Convention; accordingly, the 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 protection of Wong Ho Wing. These aspects, including the analysis of the guarantees that have been given to Peru that the death penalty will not be applied if Wong Ho Wing is extradited to China, are related to compliance with the obligation to protect and ensure life. The same can be said of the determination of facts, assessment of the evidence and decision on merits concerning the application of the said legislative amendment to this specific case. These arguments can be debated by the petitioners and the State before the Inter-American Commission, in accordance with the rules established in the Convention and in the Rules of Procedure of the said organ.

18. The Court reiterates that it does not doubt the good faith of Peru and of the People's Republic of China as regards the different documents of guarantee that have been presented, but notes that their analysis is a matter of merits that cannot be examined in the context of a procedure on provisional measures. Similarly, regarding certain arguments presented by the State (*supra* considering paragraph 12), the Court notes that it is not appropriate to evaluate the decisions adopted by the Commission in its Admissibility Report in this matter in a procedure on provisional measures.

19. In addition, the Court recalls that, when adopting these measures again in its Order of June 26, 2012, it found that "owing to the uncertainty of the State concerning the possibility of extradition [of Wong Ho Wing]," 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.¹⁹

¹⁷ *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 28, 2010, ninth considering paragraph, and *Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of June 26, 2012, thirty-second considering paragraph.

¹⁸ *Cf. Matter of Wong Ho Wing*. Provisional measures with regard to Peru. Order of the Court of May 28, 2010, seventh considering 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.

¹⁹ In its Orders of May 2010 and June 2012, the Court considered the following as regards compliance with the requirements to grant these measures: (i) "the requirement of *extreme gravity* co-existed in this case, in both the preventive and the protective dimension 'based [...] on the rights involved, fundamentally, the right to life, [...] as well as the danger of harm to the right of petition established in Article 44 of the same instrument. Indeed, the Court f[ound] that the requirement of extreme gravity [was] satisfied in this matter with the determination *prima facie* of the risk inherent in extraditing a person who alleges possible errors in due process, when the said extradition could lead to the application of the death penalty in a State outside the inter-American system." (ii) Regarding the requirement of *urgency*, the Court indicated that after the Supreme Court of Justice of Peru had declared that the extradition of Wong Ho Wing was admissible, on January 27, 2010, "the extradition process [was] in its final stage and the only matter pending, [...] was] the decision of the Government," so that "[Wong Ho] Wing could be extradited at any time." Lastly, with regard to (iii) the requirement of the irreparability of the damage, the Court considered that this was met, "in its protective dimension, because of the risk of harm to the right to life owing to the possibility of an irremediable measure such as the death penalty," while "regarding the preventive dimension, [because the beneficiary's] extradition would thwart compliance with an eventual decision of the organs of the system concerning the existence of a violation [...] of the Convention," because any possible violation of the Convention that was eventually determined "could not be remedied" and "the right of petition embodied in Article 44 of the American Convention would be affected irreversibly." *Matter of Wong Ho Wing*. Order of the Court of June 26,

Thus, the Court underscores that, in February 2012, the State indicated that “The Executive Branch will issue the Supreme Decision, ruling on the admissibility or inadmissibility of the extradition,” following the issue of the complementary advisory decision by the Supreme Court of the Republic.²⁰ On March 14, 2012, the Permanent Criminal Chamber of the Supreme Court of Justice declared, *inter alia*, “without purpose [...] the issue of [a] new advisory decision or ‘complementary advisory decision’ as sought by the Ministry of Justice, and that the Executive Branch should adopt the appropriate legal decision.”²¹ The Court emphasizes that, despite the issue of this decision and the previous observations of the State, the Executive Branch has abstained from taking a final decision on the extradition of Wong Ho Wing and, on the contrary, has filed at least three additional appeals in order to clarify the Constitutional Court’s judgment ordering that he should not be extradited; the last of these being the one decided by the Constitutional Court on March 12, 2013 (*supra* considering paragraph 9). According to the information provided to the Court, the Executive Branch has still not taken a final decision on the extradition of Wong Ho Wing, even though two months have passed since the adoption of this last decision by the Constitutional Court.

20. Additionally, the Court notes that the State has abstained from indicating clearly that it will not extradite Wong Ho Wing and, to the contrary, throughout its brief, Peru has stressed that the Constitutional Court’s judgment of March 12, 2013, “ratifies that the determinant factor of its 2011 judgment was to evaluate whether, in light of the circumstances of the case and the evidence in the case file, the right to life of Wong Ho Wing was threatened,” because “in the file of the *habeas corpus* processed before the Judiciary and the Constitutional Court, there were insufficient diplomatic guarantees to prove that Wong Ho Wing would not be liable to the death penalty,” because the said “documentation was provided to the [Constitutional] Court after its judgment [and] was not accepted by the latter because it was time-barred.” The Court has no information on any new judicial appeals that the State may have filed to achieve the extradition of Wong Ho Wing. However, taking into account the background to these measures (where the State has already on one occasion affirmed the binding nature of the decision of the Constitutional Court and then questioned its obligatory nature by numerous judicial remedies) and that, according to the State itself, it is the Executive Branch that takes the final decision in an extradition procedure²² (which has not occurred in this case), the Court finds that a situation of uncertainty continues with regard to the possibility of extraditing Wong Ho Wing that justifies maintaining these provisional measures.

21. Despite the foregoing, the Court reiterates that, in its Order of June 26, 2012, it indicated that “it [was] advisable that the Inter-American Commission decide case No. 12,794 lodged before it promptly.” Nevertheless, the Court observes that, during the processing of this case before the Commission, the decision on the merits of the case has already been postponed on at least two occasions. In this regard, it takes note of the State’s observation that it is not the first time that this Court has extended the validity of these provisional measures so that the Commission may issue the respective report on merits.

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.

²⁰ This assertion was made by the State in a brief sent to the Inter-American Commission in the context of the proceedings before that organ. The Commission forwarded it as an annex to its request for provisional measures.

²¹ *Matter of Wong Ho Wing*. Order of the Court of April 27, 2012, fifth considering paragraph.

²² *Cf.* Brief of the State of March 8, 2010, where Peru explained that “[t]he final decision in an extradition procedure is merely political in nature and corresponds to the Executive Branch” (file of provisional measures, folio 147); Peruvian Code of Criminal Procedure. Article 514. Authorities who intervene (file of provisional measures, folio 141), and *Matter of Wong Ho Wing*. Order of the Court of May 28, 2010, thirteenth considering paragraph.

Given that the request for provisional measures is based on the requirement of urgency, the Court finds that greater celerity should be accorded to the Inter-American Commission's proceeding to decide on the merits of the case lodged before it in this matter. Indeed, it would clearly be inconsistent if the urgency argued to request provisional measures did not entail the urgent consideration of the merits of the petition. Even though the Commission has advised that it will include the analysis of the merits of this case in the program for its next period of sessions, the Court finds it pertinent to reiterate what it emphasized in its Order of February 13, 2013: that the Inter-American Commission has been analyzing the petition in this case for more than four years and two months, and more than two years and six months have elapsed since the case has been at the merits stage of the proceedings before the said organ, without the Commission having ruled on it, despite the prompt processing accorded to the case.²³ The Court underscores that the delay in the adoption of a decision by the Inter-American Commission, on the one hand, could delay 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.

22. Taking into account the above considerations and that the Court finds that the circumstances that justified the granting of these provisional measures in June 2012 remain in force (*supra* considering paragraph 20), the Court considers it admissible to renew the validity of these provisional measures until August 30, 2013, so that the Inter-American Commission can comply with its mandate under the Convention and conclude the examination of case No. 12,794. However, the Court notes that, if the Commission has not reached a decision on the merits of the case when the time frame for these provisional expires, it can be presumed that the alleged urgency is no longer applicable.

23. 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.²⁴

24. 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 so that his eventual extradition and the corresponding administration of justice in the requesting State do not become illusory of ineffective.²⁵

THEREFORE:

THE INTER-AMERICAN COURT DE DERECHOS HUMANOS,

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

²³ The petition was lodged before the Commission on March 27, 2009, and this organ has been processing it since March 31, 2009. It was declared admissible on November 1, 2010, in 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.

²⁴ *Cf. Matter of Wong Ho Wing*. Order of the Court of May 28, 2010, sixteenth considering paragraph, and *Matter of Wong Ho Wing*. Order of the Court of February 13, 2013, eighteenth considering paragraph.

²⁵ *Matter of Wong Ho Wing*. Order of the Court of May 28, 2010, eighteenth considering paragraph, and *Matter of Wong Ho Wing*. Order of the Court of February 13, 2013, nineteenth considering paragraph.

DECIDES:

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 this Order.
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.
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

Roberto de Figueiredo 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