

REPORT No. 151/10

PETITION 366-09

ADMISSIBILITY

WONG HO WING

PERU

November 1, 2010

I. SUMMARY

1. On March 27, 2009 the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition submitted by Luis Lamas Puccio (hereinafter “the petitioner”) on behalf of Wong Ho Wing¹ (hereinafter also “the alleged victim”) alleging violation by the Republic of Peru (hereinafter “Peru,” “the State,” or “the Peruvian State”) of rights enshrined in the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”). The petitioner indicated that the alleged victim was arrested in Peru based on an arrest warrant for purposes of extradition issued by the People’s Republic of China. He indicated that on January 27, 2010 the Supreme Court of Justice issued an opinion favorable to extradition, referring to the Executive Branch the final decision on handing over Mr. Wong Ho Wing. The petitioner asserted that the advisory process before the Peruvian Judicial Branch ignored domestic provisions on obtaining guarantees that the death penalty would not be imposed by the country requesting extradition. Finally, the petitioner argued that the courts that heard the advisory procedure on extradition and the *habeas corpus* actions filed by Mr. Wong Ho Wing failed to comply with the obligations assumed by the Peruvian State by virtue of Articles 4, 5, 7, 8, 24 and 25 of the American Convention.

2. The State asserted that a *habeas corpus* action filed by Wong Ho Wing on February 9, 2010 is pending a final decision and that the Executive Branch has not yet issued a decision on the extradition requested by the People’s Republic of China. It indicated that the alleged victim freely exercised the remedies provided in domestic law for the purpose of challenging the advisory issued by the Supreme Court of Justice on January 27, 2010. It indicated that the legal representative of Mr. Wong Ho Wing filed three *habeas corpus* actions to prevent his extradition, which were ruled by competent courts and with due process guarantees. Finally, the Court asked the IACHR to declare the petition inadmissible based on a failure to comply with requirements established in Articles 46(1)(a) and 47(b) of the Convention.

3. Without prejudging the merits of the complaint and after analyzing the positions of the parties and the requirements established in Articles 46 and 47 of the American Convention, the Commission decided to declare it admissible for purposes of examining the alleged violation of the rights enshrined in Articles 4, 5, 7, 8, and 25 of the Convention as they relate to Article 1.1 of that treaty. In addition, the IACHR decided that the alleged violation of the right protected under Article 24 of the Convention is inadmissible based on the requirement established in Article 47(b) thereof. The Commission also decided to inform the parties of this decision, to publish it, and include it in its Annual Report to the General Assembly of the OAS.

¹ In briefs from the parties and abstracts from the court files received by the IACHR, the alleged victim is referred to with the names Wong Ho Wing, “Huang Hai Yong,” “Huang Haiyong,” “Huang He Yong,” “Wong He Yong,” and “Wuang He Yong.”

II. PROCESSING BY THE COMMISSION

A. Processing of the petition

4. The initial petition was received on March 27, 2009 and recorded under No. P 366-09. On March 31, 2009 the IACHR forwarded the petition to the Peruvian State and, in accordance with Article 30.4 of its Rules of Procedure,² granted the State a period of one month to submit its response. The State submitted its response on May 1, 2009 and sent the respective annexes on May 15 of the same year. That documentation was forwarded to the petitioner on May 19, 2009.

5. The petitioner sent additional briefs on July 9, October 11 and 13, and December 16, 2009 and on January 12, February 2, 17 and 22, May 3 and October 22, 2010. The State in turn sent additional information on August 13 and December 9 and 23, 2009 and on January 13 and 20, March 1 and 17, July 16, August 20, October 25 and 26, 2010.

6. On August 31, 2010 the State asked that it be granted a public hearing during the 140th Regular Period of Sessions of the IACHR. On September 24, 2010, the IACHR notified the parties that a hearing on the admissibility of the petition had been granted. This hearing took place on October 26, 2010.

B. Processing of precautionary measures

7. On January 21, 2009 the IACHR received a request for precautionary measures on behalf of Mr. Wong Ho Wing. On January 27, 2009 it requested information from the State, which sent its response on February 2 of the same year. The petitioner sent additional information on January 27, February 5 and 6, March 17 and 20, 2009. The State in turn made additional submissions on February 4, 6, and 13 and March 4, 2009.

8. On March 31, 2009 the IACHR granted precautionary measures to Mr. Wong Ho Wing pursuant to Article 25 of its Rules of Procedure and asked the Peruvian State to refrain from extraditing him until a decision could be issued on petition 366-09. The State submitted information on the implementation of precautionary measures on May 1 and October 30, 2009 and on January 13 and 20, 2010. The petitioner in turn submitted observations on September 21, November 9, and December 16, 2009, and on February 5 and 11, 2010.

9. In some of the briefs submitted to the IACHR the parties made reference to the precautionary measures and to petition 366-09 without making any distinction between them.

C. Processing of provisional measures

10. On November 9, 2009 a communication was received from the petitioner asking the Commission to bring a request for provisional measures to the Inter-American Court of Human Rights. Among other factors, the petitioner argued that on October 5, 2009 the President of the Permanent Criminal Chamber of the Supreme Court of Justice asserted in a public hearing on the extradition of Wong Ho Wing that the precautionary measure granted by the IACHR on March 31, 2009 would not be binding on the court since its content would only be binding on the Peruvian Executive Branch.

11. On February 2, 2010 the petitioner reiterated the request to seek provisional measures from the Inter-American Court, basing that request on the fact that on January 27, 2010 the Supreme Court of Justice had declared admissible the request for the extradition of Mr. Wong Ho Wing made by

² Article 30.4 of the IACHR Rules of Procedure establishes as follows:

In serious and urgent cases, or when it is believed that the life or personal integrity of a person is in real and imminent danger, the Commission shall request the promptest reply from the State, using for this purpose the means it considers most expeditious.

the People's Republic of China. On February 24, 2010 the IACHR asked the Inter-American Court to grant provisional measures to Mr. Wong Ho Wing, pursuant to Article 63.2 of the Convention. On March 24, 2010 the acting president of the court, Judge Leonardo A. Franco, asked the Peruvian State "to refrain from extraditing Mr. Wong Ho Wing as long as the request for provisional measures remained undecided by the full panel of the Inter-American Court of Human Rights."

12. On May 28, 2010 the Inter-American Court issued provisional measures in favor of Mr. Wong Ho Wing and asked the State "to refrain from extraditing him until December 17, 2010, so as to allow the Inter-American Commission on Human Rights to examine and rule on petition P-366-09 submitted to that body on March 27, 2009."

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

13. The petitioner stated that on October 27, 2008 Mr. Wong Ho Wing was arrested at the Jorge Chávez International Airport in the Constitutional Province of Callao based on an arrest warrant forwarded by INTERPOL. He indicated that the order came from court officials in the People's Republic of China, where the alleged victim is subject to prosecution for the crimes of money laundering, bribery, smuggling, and customs fraud. The petitioner alleged that on November 3, 2008 Office No. 24 of the Chinese Ministry of Security sent an official communiqué to the Peruvian State seeking extradition of the alleged victim. He affirmed that since October 27, 2008 Wong Ho Wing has been held under provisional arrest in the *Sarita Colonia* prison, far from his wife and two children, who reside in the United States. The petitioner asserted that the provisional arrest was ordered on October 28, 2008 by the First Specialized Court of Callao, and was upheld on December 11, 2008 by the First Temporary Combined Superior Chamber of Callao.

14. The petitioner indicated that the extradition request issued on November 3, 2008 by Office No. 24 of the Chinese Ministry of Security contains only a translation of Article 153 of the Chinese Penal Code, which defines the crimes of smuggling and customs fraud. He stated that the request omitted the translation of Article 151 of the same code, which considers the possibility of imposing life in prison or the death penalty for the aggravated form of the referenced crimes. He indicated that the Chinese Penal Code stipulates that evasion amounting to more than five hundred thousand yuan constitutes the aggravated form of smuggling and customs fraud, whereas Mr. Wong Ho Wing is accused before the Chinese Judicial Branch of evading more than one million yuan.

15. The petitioner emphasized that various organizations that monitor the human rights situation in China have expressed concern over reports of thousands of people sentenced to death every year in that country. Such organizations have indicated that various convictions were issued through summary judgments without due process guarantees, in many cases using evidence and confessions obtained through torture. According to some reports from non-governmental organizations attached by the petitioner, the statistics on death sentences and executions are classified as State secrets in China. On this basis, he maintained that the Peruvian State has no ability to exercise any type of control to prevent the imposition of the death penalty on Mr. Wong Ho Wing, nor does it have any ability to guarantee that he will not be tortured or subjected to cruel and inhumane treatment once he is under the jurisdiction of his country of origin.

16. According to the allegations, on January 20, 2009 the Second Temporary Criminal Chamber of the Supreme Court of Justice issued an advisory ruling concluding that the request to extradite Mr. Wong Ho Wing satisfied the requirements provided under Peruvian law regarding the crimes of evasion of customs duties and smuggling. This decision is indicated as having been adopted despite the submission of incomplete translations by the Chinese government of the criminal provisions that provide the basis for the extradition request, specifically Article 151 of the Chinese Penal Code. It is asserted that the defense attorney for the alleged victim was not notified on a timely basis so that he could support his defense in the extradition hearing before the Supreme Court of Justice, which occurred on January 19, 2009. It is alleged that the ruling of January 20, 2009 ignores the provisions of Article

517(3)(d) of the Peruvian Criminal Procedure Code.³ It is also alleged that the Criminal Procedure Code and the Organic Law of the Office of the Attorney General establish that the Chief Prosecutor must be present at the extradition hearing before the Supreme Court of Justice, which did not happen in the hearing conducted on January 19, 2009.

17. The petitioner attached a press clipping on a donation of fifteen vehicles to the Peruvian State by the government of the People's Republic of China on January 9, 2009. According to the attached note, the vehicles were intended for the Peruvian Judicial Branch and delivered personally by China's Ambassador to Peru, in a ceremony that included the participation of the General Secretary of the Office of the President of the Republic, seven members and the Chief Justice of the Supreme Court of Justice. The petitioner maintained that this donation would indicate presumed partiality in the advisory proceeding on the extradition of Wong Ho Wing.

18. According to the information submitted, on January 26, 2009 the alleged victim's representative filed a *habeas corpus* action arguing irregularities in the advisory ruling of January 20, 2009 and risk to the life and integrity of Mr. Wong Ho Wing. That action was declared partially substantiated on April 2, 2009 by the 56th Criminal Court of Lima, which ordered the temporary suspension of the extradition process and called upon the Second Temporary Criminal Chamber to issue a new advisory ruling. That decision was upheld in the final instance on June 15, 2009 by the Second Criminal Chamber for Jailed Accused of the Superior Court of Justice of Lima.

19. The petitioner indicated that a new hearing was conducted on October 5, 2009 before the Permanent Criminal Chamber of the Supreme Court of Justice (hereinafter "the Permanent Criminal Chamber"). He stated that on the same date the extradition request proceedings were returned to the Seventh Criminal Court of Callao to address the observation that the People's Republic of China had not attached the guarantee that the death penalty would not be imposed on the *extraditatus*. The petitioner asserted that on October 12, 2009 Mr. Wong Ho Wing submitted a second *habeas corpus* petition to the 53rd Criminal Court for Summary Proceedings with Jailed Accused, challenging the members of the Permanent Criminal Chamber, alleging that they limited themselves to ruling on the alleged procedural irregularities without deciding on the merits of the extradition request. The information submitted indicates that that action was declared inadmissible on January 5, 2010. The petitioner indicated that in response to that decision Mr. Wong Ho Wing submitted an appeal to the Third Criminal Chamber for Jailed Accused of Lima, without indicating the result obtained.

20. According to the petitioner, on December 11, 2009 the Ambassador of the People's Republic of China in Peru sent an official communiqué to the President of the Permanent Criminal Chamber, reporting that the Supreme People's Court of China had issued a ruling stating that the Chinese Judicial Branch would not impose the death penalty on the alleged victim, even if he is found guilty of offenses sanctioned with such punishment. The petitioner stated that after new oral hearings were conducted before the Permanent Criminal Chamber, that Chamber adopted a second advisory ruling on January 27, 2010, declaring that the documents sent by China met the requirements provided in Peruvian law. According to the information provided, the Permanent Criminal Chamber declared the extradition request admissible only for the crimes of evading customs duties and bribery to the detriment of the People's Republic of China.

21. The petitioner asserted that on February 9, 2010 the legal representative of Mr. Wong Ho Wing filed a third *habeas corpus* action against the President of the Republic, the Minister of Justice, and the Minister of Foreign Relations, who are responsible under domestic law for adopting a final decision on the extradition of the alleged victim. According to the information submitted, that *habeas corpus* action was rejected on February 25, 2010 by the 42th Criminal Court of Lima, and this decision was upheld on April 14, 2010 by the Third Criminal Chamber for Jailed Accused of Lima. The information indicates that

³ That provision establishes that "neither shall extradition be ordered when (...) the crime for which extradition is sought is subject to the death penalty in the requesting State and that State does not provide assurances that it will not be applicable."

the case is pending a ruling from the Constitutional Court on an appeal claiming constitutional injury (*recurso de agravio constitucional*) filed by the alleged victim.

22. Finally, the petitioner alleged that the Peruvian State is responsible for violating the rights enshrined in Articles 4, 5, 7, 24, 8 and 25 of the American Convention and that it has the obligation to compensate Mr. Wong Ho Wing for the material and moral damages he has suffered due to his imprisonment since October 27, 2008.

B. Position of the State

23. The State asserted that on October 27, 2008 INTERPOL agents arrested Mr. Wong Ho Wing, who was being sought internationally due to an arrest warrant issued by court authorities in China, in a criminal proceeding for the crimes of smuggling and customs fraud allegedly committed between August 1996 and May 1998 in the city of Hong Kong. It alleged that on the same date the Criminal Court of Callo ordered the provisional arrest of Mr. Wong Ho Wing, so that the People's Republic of China could submit an extradition request. The State indicated that on October 28, 2008 Mr. Wong Ho Wing submitted his preliminary statement to the Criminal Court of Callo in the presence of a defense attorney, a Chinese interpreter, and a representative from the Office of the Attorney General.

24. The State's narration of the facts was similar to that of the petitioner with respect to the judicial decisions that established the provisional arrest of Mr. Wong Ho Wing, the decisions adopted in the advisory proceeding on extradition, and the *habeas corpus* actions filed. The State indicated that before issuing the second advisory ruling on January 27, 2010, the Permanent Criminal Chamber held extradition hearings on October 5 and December 9 and 21, 2009, in which the attorney for the alleged victim was allowed to speak and a translator was appointed.

25. The State asserted that in the light of Article 515 of the Peruvian Criminal Procedure Code, the ruling of the Supreme Court of Justice on January 27, 2010 is merely consultative and initiates a political procedure in which the final decision must be taken by the Constitutional President of the Republic, with the vote of the Council of Ministers and a prior report from an Official Commission on Extradition and Prisoner Transfers.⁴

26. With respect to guarantees not to impose the death penalty, the State indicated that Article 5 of the Extradition Treaty between the Republic of Peru and the People's Republic of China, signed on November 5, 2001, establishes that extradition will only be carried out if it is not contrary to the legal system of the party to which the request is made. The State indicated that Article 140 of the Political Constitution of Peru limits capital punishment to the crime of treason against the country in cases of war and terrorism. It argued that "it is legally impossible to order the extradition of Mr. Wong Ho Wing to the People's Republic of China if that country does not grant sufficient guarantees that it will not impose the death penalty on the citizen in question." In addition, it attached copy of the ruling of December 8, 2009 issued by the Supreme People's Court of the People's Republic of China, along with an official translation, in which that country's highest court establishes the following:

If extradition from Peru to China is applied, if Huang Haiyong or Wong Ho Wing is found guilty through prosecution in the Court, the Court will not order the Death Penalty (including the immediate execution of the Death Penalty and temporary two-year suspension thereof) for Huang Haiyong or Wong Ho Wing, even when his crime is legally subject to the Death Penalty.⁵

⁴ Article 515(2) of the Peruvian Criminal Procedure Code, establishes the following:

If the consultative ruling is favorable to the handover or considers it advisable to seek extradition to a foreign country, the Government may decide as it sees fit.

⁵ Communication from the State received on July 16, 2010, Annex 18, Ruling dated December 8, 2009 issued by the Supreme Court of the People's Republic of China.

27. The State indicated that in view of the guarantees provided by the Chinese government and Judicial Branch, the Permanent Criminal Chamber declared the requirements provided in constitutional law, procedural law, and in the bilateral extradition treaty between China and Peru to have been met. It transcribed abstracts of the advisory ruling of January 27, 2010, indicating as follows:

The decision contained in the duly translated ruling of December 8, 2009 issued by the Supreme Court of the People's Republic should also be seen as relevant, and is attached to this request [...]. Such a promise reveals an unavoidable commitment from the judicial authorities of the People's Republic of China **NOT TO IMPOSE THE DEATH PENALTY** on the extraditable individual should he be found criminally responsible" (bold face and upper case correspond to the original version).

The Peruvian State makes the requested handover of the Chinese citizen contingent upon the commitment made by the competent authorities of the People's Republic of China not to impose the death penalty on him, should he be convicted; in addition, the Peruvian State must be informed of the verdict in the decision in respect of the *extraditurus* when it is handed down [...].

28. The State submitted a list of 40 Supreme Court rulings adopted in Peru over the last five years regarding extradition requests from various countries. It indicated that in all these cases the norms of the Convention, Constitution and the law established for the purpose or extradition were respected.

29. With respect to the alleged violations of judicial guarantees and protection, the State asserted that Mr. Wong Ho Wing was freely able to invoke all the remedies provided by domestic law, which were decided by competent judges within the context of due process. It indicated that before adopting the advisory ruling on January 27, 2010, the Supreme Court of Justice held three extradition hearings in the presence of translators and the attorney appointed by the alleged victim. It stated that the events related in the petition do not tend to establish a violation of the Convention and asked the IACHR to declare the petition inadmissible pursuant to Article 47(b) of the Convention.

30. The State emphasized that the *habeas corpus* action filed on February 9, 2010 against the President of the Republic and the Council of Ministers has not yet been finally decided by the Constitutional Court, which heard the case on July 14, 2010. It also indicated that the extradition process has not concluded, in that the Council of Ministers has not ruled in accordance with Article 514(1) of the Criminal Procedure Code.⁶ In this sense, the State maintained that the petition does not satisfy the requirement indicated in Article 46(1)(a) of the Convention.

31. Finally, the State asserted that the passive extradition process with respect to the alleged victim is suspended "because on May 28, 2010 the Inter-American Court of Human Rights decided to grant provisional measures in favor of the Chinese citizen Wong Ho Wing, pursuant to which the Peruvian State must refrain from extraditing him to the People's Republic of China until December 17, 2010."

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence of the Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

32. The petitioner is authorized by Article 44 of the Convention to submit complaints. The alleged victim is a natural person under the jurisdiction of the Peruvian State as of the date of the events reported. For its part, Peru ratified the American Convention on July 28, 1978. As a result, the Commission is competent *ratione personae* to examine the petition.

⁶ Article 514(1) of the Criminal Procedure Code of Peru establishes as follows:

The government is responsible for deciding on passive or active extradition through a Supreme Ruling issued with the agreement of the Council of Ministers, with a prior report from an Official Commission presided over by the Ministry of Justice and including the Ministry of Foreign Relations.

33. The Commission is competent *ratione loci* to hear the petition in that it alleges violations of rights protected under the American Convention occurring within the territory of a State Party to that convention.

34. The Commission is also competent *ratione temporis* since the obligation to respect and guarantee the rights protected by the American Convention was already in effect for the State on the date when the events alleged in the petition occurred.

35. Finally, the Commission is competent *ratione materiae* because the petition alleges the violation of rights protected by the American Convention.

B. Exhaustion of domestic remedies

36. Article 46(1)(a) of the American Convention provides that in order for a petition to be admissible before the Inter-American Commission in accordance with Article 44 of the Convention the domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to learn about the alleged violation of a protected right and, if appropriate, to have the opportunity to resolve it before it is heard by an international body.

37. This petition claims that rights protected in the American Convention have been violated due to the alleged irregular actions of the Peruvian Judicial Branch when declaring that the constitutional and legal requirements for the extradition of Mr. Wong Ho Wing to the People's Republic of China had been met. Peru maintained that the petition did not satisfy the requirement provided in Article 46(1)(a) of the Convention because the *habeas corpus* action filed on February 9, 2010 against the President of the Republic and the Ministers of Foreign Relations and Justice has not been finally decided by the Constitutional Court. It also maintained that the extradition process has not concluded since the President of the Republic has not issued a final decision on whether to grant or deny the extradition of Mr. Wong Ho Wing to his country of origin. The State added that "the adoption of a final decision in the extradition process, which is political in nature and is the responsibility of the President and the Council of Ministers, is pending pursuant to the Resolution dated May 28, 2010 from the Inter-American Court of Human Rights."⁷

38. According to the information submitted by the parties, the advisory proceeding before the Judicial Branch is the only stage in which the Peruvian courts exercise legal control over an extradition request and verify the guarantees not to impose the death penalty on the *extraditatus*. Since the Supreme Court of Justice has already issued a final ruling in this regard, the process currently underway in the Executive Branch does not constitute a judicial remedy in the sense of Article 46(1)(a) of the Convention. According to the Peruvian State, this process is political in nature and is suspended until December 17, 2010 due to the provisional measures issued by the Inter-American Court on May 28, 2010.

39. The IACHR notes that the alleged victim first argued the failure to comply with the legal and constitutional requirements for admission of the extradition request throughout the advisory proceeding decided in the final instance by the Supreme Court of Justice on January 27, 2010. Secondly, he submitted two *habeas corpus* actions against the members of the Second Temporary Criminal Chamber and the Permanent Criminal Chamber of the aforementioned Supreme Court, pointing to alleged defects in the advisory proceeding and an alleged inadequate evaluation of the guarantees provided by the government of the People's Republic of China agreeing not to impose the death penalty. In addition, the alleged victim filed a preventive *habeas corpus* action against the President of the Republic and the Council of Ministers, which has been pending a final decision from the Constitutional Court on constitutional injury since July 14, 2010.

⁷ Communication from the State received on July 16, 2007, Summary, paragraph IV.

40. Based on the foregoing considerations, the IACHR considers that the alleged victim exhausted the available remedies, according to domestic law, aiming at remedying the alleged irregularities in the advisory proceeding decided in the final instance by the Permanent Criminal Chamber of the Supreme Court of Justice on January 27, 2010. In this respect, the requirement indicated in Article 46(1)(a) of the American Convention has been met.

C. Deadline for submitting the petition

41. Article 46(1)(b) of the Convention establishes that in order for the petition to be declared admissible it must have been submitted within a period of six months of the date when the interested party was notified of the final decision that exhausted the domestic jurisdiction.

42. As indicated above, the IACHR deemed that the alleged victim exhausted the domestic remedies through his action in the advisory proceeding before the Supreme Court of Justice and submission of *habeas corpus* actions intended to challenge the rulings issued by that higher court. Both the final ruling of the Supreme Court on January 27, 2010 and the decisions on the *habeas corpus* actions before the constitutional court were issued after the submission of this petition. In this respect, compliance with the requirement established in Article 46(1)(b) of the American Convention is intrinsically tied to exhaustion of the domestic remedies and is thus satisfied.

D. Duplication of proceedings and international *res judicata*

43. The file does not indicate that the subject of the petition is pending settlement in another international proceeding nor that it reproduces a petition already examined by this or any other international body. Therefore, it is appropriate to consider the requirements established in Articles 46(1)(c) and 47(d) of the Convention to have been met.

E. Characterization of the alleged facts

44. For purposes of admissibility, the Commission must decide whether the petition presents facts that could characterize a violation, as stipulated in Article 47(b) of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order” in accordance with paragraph (c) of that article. The standard for evaluating these points is different from that required to decide on the merits of a complaint. The Commission must perform a *prima facie* evaluation to examine whether the complaint provides the basis for the apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. Said examination is a summary analysis that does not entail a prejudgment or advance opinion on the merits.

45. In similar matters, the European Court of Human Rights (hereinafter “the European Court”) has indicated that the States Party to the European Convention on Human Rights must adopt the measures necessary to prevent someone subject to extradition from being submitted to cruel and inhumane treatment, torture, or other acts contrary to that regional human rights convention. When examining allegations that an alleged victim could be subjected to such acts, the European Court has taken into account reports from organizations that monitor the human rights situation, governmental sources, and rulings from United Nations committees, concluding in various cases that there was a well-founded risk to the personal integrity of the *extraditatus* in the requesting country.⁸ This analysis has been performed even when the extradition process was suspended due to interim measures⁹ issued by one of

⁸ European Court of Human Rights, *Case N v. Finland*, Petition 38885/02, judgment of July 26, 2005 and *Case of Mamatkulov and Askarov v. Turkey*, Petitions 46827/99 and 46951/99, judgment of February 4, 2005.

⁹ Article 39.1 of the Rules of the European Court of Human Rights establishes as follows:

The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.

the Chambers of the European Court¹⁰ and when a final decision to deport a person to his/her country of origin had not been implemented.¹¹

46. Without prejudging the merits of the matter, the IACHR considers that the allegations regarding inadequate evaluation by the Peruvian authorities of the guarantees provided by the People's Republic of China that it would not impose the death penalty on Mr. Wong Ho Wing and the possibility that he would be subjected to torture and cruel and inhumane treatment could characterize a failure to comply with the obligations arising from Articles 4 and 5 of the American Convention as they relate to Article 1.1 thereof. The IACHR also deems that the adoption of the advisory ruling of January 27, 2010 by the Supreme Court of Justice, allegedly without observing the requirements provided in Peruvian law and without the alleged victim's having had an effective remedy for presenting the risks to his life and personal integrity, could constitute the possible violation of the rights protected in Articles 8 and 25 of the Convention as they relate to Article 1.1 of the same instrument, to the detriment of Mr. Wong Ho Wing.

47. Regarding the allegations with respect to the provisional detention of the alleged victim since October 27, 2008, the IACHR considers it appropriate in the merits phase to analyze the possible violation of the right protected under Article 7 of the Convention. Regarding the right protected under Article 24 of the Convention, the IACHR concludes that the petitioner has not submitted evidence indicating a potential violation thereof.

48. Finally, in that the lack of foundation or the inadmissibility of these aspects of the complaint are not obvious, the Commission concludes that the petition meets the requirements established in Article 47(b) and (c) of the American Convention.

V. CONCLUSIONS

49. Based on the factual and legal considerations presented and without prejudging the merits of the case, the Inter-American Commission concludes that the petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention and accordingly

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible with respect to Articles 4, 5, 7, 8, and 25 of the American Convention as they relate to the obligations established in Article 1.1 of the same instrument.
2. To declare inadmissible the alleged violation of the right enshrined in Article 24 of the American Convention.
3. To inform the State and the petitioner of this decision.
4. To publish this decision and include it in its Annual Report to be submitted to the General Assembly of the OAS.

Approved on the 1st day of the month of November, 2010. (Signed): Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez and Rodrigo Escobar Gil, members of the Commission.

¹⁰ European Court of Human Rights, *Case of Klein v. Russia*, Petition 24268/08, judgment of April 1, 2010, *Case of Saadi v. Italy*, Petition 37201/06, judgment of February 28, 2008 and *Case of Baysakov et al. v. Ukraine*, Petition 54131/08, judgment of February 18, 2010.

¹¹ European Court of Human Rights, *Case of Venkadajalasarma v. the Netherlands*, Petition 58510/00, judgment of February 17, 2004 and *Case of Chahal v. United Kingdom*, judgment of November 15, 1996.