

CONCURRING OPINION

JUDGE MANUEL E. VENTURA ROBLES

1. Despite having concurred with my vote to the approval of all the operative paragraphs of the instant judgment, the allegation made by the representatives of the victim in the brief of requests, arguments, and evidence based on which the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court", or "the Tribunal") declared, in the present case, the violation by the Republic of Ecuador of the Right to Humane Treatment, acknowledged by Article 5 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), in detriment of Mr. Rigoberto Acosta Calderón, has aroused in my mind several worries on subjects that the Court could have covered in its judgment, but did not. One of them is the violation to Mr. Acosta's psychic and moral integrity in this case.

2. Article 5 of the Convention, in its paragraphs 1 and 2, states that:

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

3. The Court, in its judgment, expressed in paragraph 143 that

"The arbitrary arrest and the repeated non-recognition of Mr. Acosta Calderón's right to a due process constitutes a situation in which the psychic and moral integrity could have been affected. However, in the present case, the Court does not have enough elements to issue a ruling on the violation of Article 5 of the Convention."

4. The worry in my mind referred not to the fact that since there is no evidence in the case file regarding if Mr. Acosta Calderón suffered any damage to his physical integrity during his imprisonment, or that the Court did not seek it through an order that would determine the presentation of evidence to facilitate adjudication of the case since the victim's whereabouts were unknown, but instead to the non-determination of the violation of Article 5 of the American Convention in what refers to the psychic and moral integrity of a person who, according to the same judgment, spent more than five years in preventive detention, as a consequence of an imprisonment that the same Tribunal classified

as arbitrary and that originated a repeated infringement of the due process.

5. Repeatedly, since the judgment of Reparation in the case of *Aloeboetoe et al. versus Suriname* (Cfr. *Case of Aloeboetoe et al. Reparations* (Art. 63(1) of the American Convention of Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 52; *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, paras. 168 and 169; and *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 244) the Court has constantly affirmed in its jurisprudence that it is proper of human nature that a person submitted to aggressions and humiliation experiments a moral damage, and evidence is not required to reach this conclusion. Also, based on the case of *Loayza Tamayo versus Peru* (Cfr. *Case of Loayza Tamayo*. Judgment of September 17, 1997. Series C No. 33, para. 57; *Case of Hilaire, Constantine, and Benjamin, et al.* Judgment of June 21, 2002. Series C No. 94, para. 169; *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, para. 87; and *Case of Caeser*. Judgment of March 11, 2005. Series C. No. 123, para. 97), it has determined the violation of a person's psychic integrity due to the consequences of the arrest regime and the conditions of the prisons, which are similar in all Latin America, and to which Mr. Acosta Calderón was surely exposed.

6. In my opinion, the Court, in this case, should have considered the possibility to determine if Mr. Acosta Calderón's dignity was affected and if his psychic and moral integrated were violated, since it considers within its own judgment that this person was arbitrarily arrested, thus taking away his freedom, a natural condition of all human beings, and he was submitted to a process in which fundamental guarantees were violated. More than five years in prison must have caused Mr. Acosta Calderón pain, which must have resulted in a psychological and moral damage that does not need to be proved. The arbitrary arrest for such a long period of time should be enough to presume damage to his integrity and the resulting moral and psychic damage to a person. That is how the victim's representatives understood it when in their brief of requests and arguments they stated the following:

The Ecumenical Commission on Human Rights considers that under the same aforementioned principles, the Court must decide that submitting a person to an arbitrary arrest, to the deprivation of their judicial guarantees and the right to a due process, and to a judicial lack of protection under clear arbitrary conditions, necessarily produce moral suffering, without it being necessary to present evidence regarding said suffering since it results evident from human nature itself.

In principle, it should be recognized, and the Honorable Court is so requested to issue a ruling, that all form

of dwindling or non-recognition of human dignity, the basis for human rights, constitutes a form of cruel treatment, since it implies partial or total non-recognition of a person's human condition. Every person evidently suffers when they are deprived in any way of any of the prerogatives or rights that must always be acknowledged by all. Any form of dwindling of what it means to be a person necessarily leads to the violation of humane treatment, since the individual will no longer continue to be a whole.

7. During the deliberation of this case and when voting the corresponding judgment, the Court lost a valuable opportunity to consider possible violations to Article 5 of the Convention and, specifically psychic and moral integrity, to determine the differences between the violation to humane treatment and the type of evidence required for its determination regarding violations to psychic and moral integrity. And, in the event of these last two types of violation, when should psychic and moral damages be presumed.

8. This will probably be a recurring matter in future cases submitted to the consideration of the Court, due to the conditions of the region's prisons, a public and notorious fact, as well as the many violations to personal liberty reported in Latin America. The effects of an arbitrary arrest and imprisonment on a human being, as well as the resulting psychic and moral damage and its possible presumption by the Tribunal in certain cases, is a matter that the Court must deal with hopefully sooner than later. And I hope it does.

Manuel E. Ventura Robles
Judge

Pablo Saavedra Alessandri
Secretary