

SEPARATE OPINION OF JUDGE A.A. CANÇADO TRINDADE

1. I have concurred with the adoption of the instant Judgment by the Inter-American Court of Human Rights; nonetheless, I feel obliged to put on record, in this Separate Opinion, my line of thought on a cornerstone issue in this Judgment aiming at strengthening one of its operative paragraphs (n. 3) as well as the corresponding passages of the considerations (paras. 210 to 281), as grounds for my personal position on this matter. I consider that the violation declared by the Court of Articles 25(1) and (2)(c) of the American Convention in the instant case, based on the failure to comply with the orders of *amparo* for a long time period, is ineluctably and strongly related to the guarantee of reasonable time provided for in Article 8(1) of the Convention.

2. This is the understanding that captures the position that I have consistently maintained for many years as a member of this Court. In the instant case of *Acevedo-Jaramillo et al v. Peru*, the Court decided to refrain from analyzing the alleged violation of Article 8, in the terms it was presented before the Court, which were perhaps not accurate or adequate enough. However, the Court might have given the argument a new form in order to provide an answer entailing a more supportive position towards the protection of human rights. It does not seem to me beside the point to underscore that the statement by the Court when declaring Article 25(1) of the Convention to have been violated, whereby it asserted that the effectiveness of a judgment depends on its faithful enforcement, is closely related to the protection granted by the above mentioned guarantee of reasonable time provided for in Article 8(1) of the American Convention.

3. It is my belief that judgment enforcement is part of the legal process —the due process of the law— and, hence, the States must ensure that said enforcement is carried out within a reasonable time. It would neither be beside the point to recall that, contrary to what traditional legal scholars specializing in procedural matters tend to think or assume, the procedure is not an end in itself, but a means to do justice. There is a big gap between formal and actual justice, the latter being the one I keep in mind at all times when reasoning out my arguments. Moreover, I contend that compliance with the judgment is part and parcel of the right to a fair trial (*lato sensu*), which is to be understood as the right to be furnished the full span of jurisdiction, wherein the faithful enforcement of the judgment is included.

4. The enforcement of judgments is, then, an essential element of the right to a fair trial itself, thus conceived in a broad sense, in which it expresses the relation between the right to a fair trial and the right to judicial protection under Articles 8 and 25, respectively, of the American Convention. This is the construction best fitting the precedents of the Court. No more than a week ago, in its Judgment in the Case of *López Álvarez v. Honduras* (of February 1st, 2006), the Inter-American Court clearly stated that:

"The right to a fair trial entails that the solution of the dispute must be reached in a reasonable time; a long delay might even amount in itself, to a violation of the right to a fair trial" (para. 128).

5. This eloquent *obiter dictum* perfectly harmonizes with the consideration of the Court in its now famous Advisory Opinion No. 16, on *The Right to Information on*

Consular Assistance in the Framework of the guarantees of the Due Process of Law (of October 1st, 1999), in which it stated that:

"In the opinion of this Court, for "the due process of law" a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants." (para. 117).

The Court, once again, considered *as a whole* the right to an effective recourse and the right to the due process of the law (Articles 25 and 8 of the Convention). I believe that, to this respect, the Court, in the instant case of *Acevedo-Jaramillo et al v. Peru*, should have been more consistent with its more enlightened precedents, which also entail a more supportive position towards the protection of human rights.

6. In such intelligence, the violation declared by the Court, in the instant case, of Article 25 of the American Convention, has, from my point of view, a direct impact on the due process guarantees prescribed in Article 8(1) of the American Convention. This is a clear case of *denial* of justice, under Articles 25 and 8(1) of the American Convention. Denial of justice may appear in many different forms and still retain its character as such —as I pointed out in studies on the matter published in the late seventies (cf. A.A. Cançado Trindade, "Denial of Justice and Its Relationship to Exhaustion of Local Remedies in International Law, 53 *Philippine Law Journal* — University of the Philippines (1978), n. 4, pp. 404-420; A.A. Cançado Trindade, "A Denegação de Justiça no Direito Internacional: Doutrina, Jurisprudência, Prática dos Estados", 62 *Revista de Informação Legislativa do Senado Federal* - Brasília (1979) pp. 23-40). In my opinion, in all likelihood, any violation of Article 25 of the American Convention implies that the right to a fair trial embodied in Article 8 of the American Convention has not been thoroughly observed. This is the construction I think implies a higher level of protection.

7. Due process implies that, once the right has been determined by means of a final decision of the judicial authority or the (domestic) court having jurisdiction, said decision must become *effective* through its faithful enforcement. Anything to the contrary would vacate said right, as it clearly happened in the case of *Acevedo-Jaramillo et al v. Peru*, in which, for many years, the respondent State failed to effectively comply with the orders of *amparo* obtained by the victims. This violation should bear on the determination of the reparations from the beginning of the events that infringed the rights of the victims.

Antônio Augusto Cançado Trindade
Judge

Pablo Saavedra-Alessandri
Secretary