

**CONCURRING OPINION OF
JUDGE *AD HOC* VICTOR OSCAR SHIYIN GARCÍA TOMA**

In the case of Acevedo Buendía *et al.* ("*Discharged and Retired Employees of the Comptroller*") V. Perú,

I ratified my position that I orally put forward in the session dated July 1, 2009, where the drafting of this Judgment was discussed, as to the conceptual considerations regarding the progressive development and the non-regression of the Economic, Social and Cultural Rights.

I deem that the arguments introduced in paragraphs 99 to 103 of the Judgment are not directly related nor have an indissoluble or connective relation to the case subject-matter of this dispute.

In this regard, said arguments do not provide relevance in the assertion of them, sufficient reason or *obiter dicta* to justify their inclusion.

I consider that any doctrinal concept put forward in a case, must be made, necessarily, in consideration of the specific and concrete circumstances of the case itself.

Said doctrinal concept, presented as an unconnected annotation may lead to interpretations of an important impact on the Inter-American system of human rights; which calls for a more detailed and thorough treatment.

In this context, the introduction of an argument of such an importance in a non-obvious case, drives me to offer a point of view that is not related to the case in question, in order to go on record- considering the necessary coherence required to the organs of the Inter-American system of human rights as a whole- that the progressive development is not at variance with the existence of legal restrictions. The latter is not a synonym of regression within the realm of human rights. Therefore, its application is not necessary contrary to the provision of Article 26 of the American Convention on Human Rights.

Hence, any legal restriction is compatible with the provisions of the American Convention on Human Rights when it is teleologically established to safeguard the principle of equality and general welfare. In any case, this is subject to the fulfillment of the proportionality test.

According to said concession already adopted by an organ of the Inter-American system- the Inter-American Commission on Human Rights- the progressive development of the access to Economic, Social and Cultural Rights is not applicable to the exception rules, where the rights are granted without a valid justification considering the theory of the nature of things and, therefore, in violation of the principle of equality of treatment.

There is no doubt that every rule created to prioritize a group of people to the detriment of the rights of the rest of the population may and must be subjected to a restrictive modification.

Víctor Oscar Shiyin García Toma
Judge *ad hoc*

Pablo Saavedra Alessandri
Secretary