INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE LANDAETA MEJÍAS BROTHERS *ET AL. v.* VENEZUELA

PARTIALLY DISSENTING OPINION OF JUDGE ROBERTO F. CALDAS

JUDGMENT OF AUGUST 27, 2014
(Preliminary objections, merits, reparations and costs)

1. This separate opinion refers to only one part of the Judgment, in which I respectfully dissented from the majority opinion – which only occurs very rarely. Four other judges took part in the discussions, because the Court deliberated with the minimum quorum of five judges.

2. Specifically, I dissented from that part of the Judgment in which the Court deliberated on Chapter VIII: "Reparations (Application of Article 63(1) of the American Convention)," with regard to section B, on the "Obligation to investigate the events that resulted in the violations and to identify, prosecute and punish, as appropriate, those responsible."

3. In point of fact, the Court was unanimous in determining the responsibility of the State. However, in my intervention, I tried to insist on the *effet util* of the order to investigate the events, which, in my opinion, did not have practical effects owing to the way in which it was considered by the other judges, leaving the victims without an effective remedy.

4. When examining the errors, omissions and delays verified in the investigations and in the proceedings in the cases of the two brothers, we agreed unanimously on the international responsibility of the State, established in paragraphs 297, as follows:

> *297. Regarding the arbitrary deprivation of the life of the Landaeta Mejías brothers, the Court has established in this Judgment that the State was responsible for violating the right to life established in Article 4 of the American Convention, with regard to Igmar Landaeta, as well as the rights established in Articles 4, 5 and 7 of the American Convention, in relation to Articles 1(1) and 19 of the same instrument (supra paras. 147 and 204) with regard to Eduardo Landaeta. In addition, in both cases, the Court concluded that the State had failed to conduct a complete and thorough investigation, within a reasonable time, following joint lines of investigation in relation to the death of the brothers, in order to clarify the events and punish those responsible and, therefore, that the State was responsible for the violation of Articles 8(1) and 25(1) of the American Convention (supra paras. 250 and 275).*

5. However, I dissented from the type of reparation adopted for the two brothers, which the Judgment established as follows:

> **Case of Igmar Landaeta:**
> *"[…] the Court establishes that the State should re-open,* ex officio*, the investigation in order to clarify the facts and, as appropriate, determine the responsibilities for the arbitrary deprivation of the life of Igmar Landaeta, within a reasonable time"* (para. 299*).*
> *"[…] the State must investigate and clarify the facts and, as appropriate, determine responsibilities, within a reasonable time, in the terms of paragraphs 298 and 299 of this Judgment"* (operative paragraph 9*).*
>
> **Case of Eduardo Landaeta:**
> *"[…] the Court establishes that the State must continue, and conclude within a reasonable time, the investigation into the said facts in its ordinary jurisdiction, pursuant to domestic law and the corresponding international standards, in order to identify, prosecute and punish, as appropriate, those responsible for the arbitrary deprivation of the life of Eduardo Landaeta"* (para. 300).

> *"[…] the State must continue and conclude, within a reasonable time, the investigation into the facts described in the ordinary jurisdiction and, as appropriate, punish those responsible, in the terms of paragraph 300 of this Judgment"* (operative paragraph 10*)*.

6. Thus, the Court merely established, in one case, the re-opening of the investigation and, in the other, the continuation and conclusion of the investigation, followed by all the subsequent procedural stages up until the possible sentencing and conviction of those responsible was obtained, without establishing an alternative or supplementary penalty, if no sanctions were imposed. To the contrary, with due respect, I understand that a compensatory sum should have been established in case it was not possible to establish the guilt of those responsible, which unfortunately will be very difficult or perhaps impossible. Moreover, since laws and judgments should not contain words or orders that are meaningless, at the very least, compensation should be established.

7. There are many reasons for the facts of this case to remain unpunished. The incidents occurred almost 18 years ago, in 1996. However, they remain at the investigation stage and, in the future, must be processed at all the levels of the courts, perhaps for decades. It is difficult to imagine when there could be a final decision. Furthermore, it is easy to foresee the limited possibility of effective punishment, due either to lack of evidence, increasingly scarce with the passage of time, or to a possible statute of limitations.

8. In my opinion, the Court should establish pecuniary compensation for the cases that, when the judicial stage has concluded, have not obtained a conviction, resulting in impunity and feelings of injustice for the victims. Although it is not possible to remedy the pain and the thirst for justice, my proposal was to establish in this and in similar cases, a sum of between US$50,000.00 and US$150,000.00 as compensation in cases where no conviction is obtained.

9. If the law should not include words that are meaningless at the risk of being a simple piece of paper, much less are innocuous decisions acceptable in the judgment delivered by a court at the risk of being merely an empty promise.

Roberto F. Caldas
Judge

Pablo Saavedra Alessandri
Secretary