PARTIALLY DISSENTING OPINION OF
JUDGE C. MEDINA QUIROGA

I concur with the judgment of this Court, except in regards to the decision to find that Article 25 of the Convention was abridged. I repeat here my dissent in the 19 Merchants case, recently adjudged by the Court:

1. Article 25 sets forth the right of the individual to simple, rapid and effective protection of his or her human rights in the national sphere, what is known in our hemisphere as the right to the amparo remedy.[1] This is so clearly the case that the first version of this provision enshrined the right only for those rights set forth in the constitution and the laws of the respective country.[2] Its subsequent amendment, including the wording of Article 2, paragraph 3 of the International Covenant on Civil and Political Rights, added the idea that this amparo remedy should also protect the human rights set forth in the American Convention.[3]

In the American Convention, Article 25 is entitled "Right to judicial protection," which might lead to argue that it is a provision that enshrines "the right to access to justice." We should say, in this regard, that said title suggests that, unlike the International Covenant on Civil and Political Rights (Article 2(3)), the remedies that it refers to must be judicial. The possible access to justice granted by Article 25 would only encompass rapid, simple and effective remedies, that is, only the amparo remedy.

2. Article 8, in turn, on the "right to fair trial," does not establish the right to a remedy, but rather due process, that is, the set of requirements that must be met in the procedural instances with the aim of protecting the right of the individuals for them to decide with the utmost justice possible, on the one hand, the controversies between two parties –whether they are private parties or bodies of the State, and whether they refer to subject matters that are or that are not in the sphere of human rights- and, on the other hand, a person's guilt or innocence.

Article 8 therefore establishes a broad right of access to justice for all these purposes and regulates the way this justice must be rendered.

3. This being so, both rights are different in nature, and their relationship is one of substance to form, as this Court has stated, because Article 25 enshrines the right to a judicial remedy while Article 8 establishes how it is processed.[4]

I deem it of the utmost importance to maintain the distinction between these two articles. If Article 25 is analyzed under the parameters of Article 8 –for example, reasonable time- the meaning of the former is altered, as it requires not a reasonable time that might easily be more than a year under the terms of Article 8, but rather rapidity, that is, probably its determination in a matter of days.

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1 *Habeas corpus in Emergency Situations (Arts. 27(2), 25(1) and 7(6) American Convention on Human Rights)* Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 32.

2 Specialized Inter-American Conference on Human Rights, *Proceedings and Documents,* p.22.

3 *Ibídem,* p. 41.

4 *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and (8) American Convention on Human Rights),* Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 24; Case of Hilaire. Judgment of June 21, 2002. Series C No. 94, para. 148.

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