SEPARATE OPINION OF JUDGE DE ROUX RENGIFO

The Court abstained from declaring that Maritza Urrutia's right to freedom of expression, as established in Article 13 of the American Convention, had been violated. I do not share this position, but as the judgment does not include an operative paragraph in this regard, from a procedural point of view, this opinion cannot be of a dissenting nature, but rather of a separate line of reasoning.

Article 13 begins with a generic formula: "Everyone has the right to freedom of thought and expression." It then establishes that "this right includes the freedom to seek, receive, and impart information and ideas of all kinds", by any means. As this provision is drafted, the latter elements illustrate, but do not exhaust, the scope of the right to freedom of expression.

Consequently, I consider that, in general, the arguments of the Commission and the representatives of the victims on this matter are pertinent. Indeed: if freedom of expression is violated when a person is prevented from disseminating his opinions, the same occurs, *a fortiori*, if: a) a person is obliged to make a public statement when he wishes to remain silent, and b) a person is obliged to give a meaning or content to a public statement that they do not wish to give to their words. The right to freedom of expression means the possibility of having a choice between acting or not acting in the sphere of disseminating ideas and information, between speaking or remaining silent, and of having the possibility of speaking only in order to say what one wants. If someone is forced to speak when they do not want to, or to say what they do not want to say, their freedom of expression is impaired.

The Court considered that, in this case, the alleged violation of Article 13, was subsumed in the violation of Article 5 of the Convention, which refers to the right to humane treatment. In agreement with this position, let us admit that the conducts capable of entailing a violation of the right to humane treatment can assume the most diverse forms and means. But, the point is that, if such conducts, in their specificity, correspond to the premises *de facto* of another norm of the Convention, the Court must also declare that the latter norm has been violated.

By not establishing the violation of Article 13, the Court failed to apply a normative device that is adapted to certain very relevant aspects of the facts of the case. Maritza Urrutia was not only obliged to make statements that she did not want to make, within the enclosed installations of the security agencies. What she said, against her will, was widely broadcast, also against her will, by the media, specifically by two television channels. Her words were widely disseminated, and undoubtedly entered the sphere of the dissemination of ideas and information. Hence, since Article 13 of the Convention protects the specific rights of the individual in relation to third parties, the Court should have declared that there was a violation of this provision to the detriment of Maritza Urrutia.

Carlos Vicente de Roux-Rengifo
Judge

Manuel E. Ventura-Robles
Secretary