CONCURRING OPINION OF JUDGE SERGIO GARCIA RAMIREZ IN THE JUDGMENT ON THE *CASE OF FERMIN RAMIREZ V. GUATEMALA*, OF JUNE 18, 2005

A) *Of the due process and the criminal function*

1. In this first part of my *Concurring Vote* I will present some considerations on the position of the Inter-American Court regarding the due process in general, a notion that has oriented the decisions of the Tribunal in the legal proceedings that concern the matters of the trial. In separate paragraphs, *infra,* I will refer to the characteristics that the matter of the due process assumes in the case *sub judice*. It certainly offers specific characteristics, in good measure different to the ones present in other trials that have come to be known by this Court with regard to issues of the due criminal process.

2. As a previous clarification, it is appropriate to mention that the concept of due process that I will proceed to examine is the one that refers to procedural matters, called "adjective" (that has a paradigmatic reference in the classic reflection of Lord Coke on the impertinence of somebody being the judge of their own cause). This version of the due process refers to the adequate serving through jurisdictional instances and others that are responsible for the decision of controversies pursuant to certain principles and formal rules. Another thing is the due process in its "substantive" meaning, developed by the jurisprudence and the doctrine of the United States of America and received in other countries (whose paradigmatic reference was reexamined by the *justice* Samuel Miller, of the Supreme Court of the United States of America, in *Davidson v. New Orleans* (1878): "to take away from A to give to B"). Obviously, the American Convention and the Inter-American Court have taken into account –although under different expressions—the matters covered in the substantive version of the *due process*, focused on the consistency of the norms and decisions with a specific group of values and interests.

3. That substantive notion must be analyzed in the light of several precepts of the Convention and of various jurisprudence of the Court. Among those we can find the stipulations regarding the interpretation of the Pact of San Jose, especially those that prohibit its interpretation in such a way that it may "preclude other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government" (Art. 29 (c)), or "exclude or limit the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have" (Art. 29 (d)); those that refer to admissible restrictions that "can only be applied in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which they have been established" (Art. 30); and those that refer to the limit of the right of each person: "the rights of others, (…) the security of all and (…) the just demands of the general welfare, in a democratic society." (Art. 32(2))

4. The jurisprudence of the Court includes important information of the examination of the "substantive" due process, even though it has not used this approach. Without the intention of going into detail of these matters –taking into consideration that, as previously mentioned, this *Opinion* refers only to the "adjective" due process, which is the version explored under the area of the due process--, the Inter-American jurisprudence has referred to the characteristics the law that

establishes limitations to rights must have: adopted within the framework of institutions and processes of a democratic society and seeking common good. The Court has reflected on the characteristics a law must have within the framework of the protection to human rights (*OC-6/86*, paras. 32 and following). And the Tribunal itself has mentioned that the concept of common good, within the context of the Convention, refers to "the conditions of social life that allow the members of society to reach their greatest level of personal development and the greatest validity of democratic values" (*OC-5/85*, para. 66). Likewise, the Inter-American jurisprudence examined the connection between radical concepts of political-legal order based on the philosophical convictions that form the basis of the American Convention: "The concept of rights and liberties and, therefore, that of there guarantees, is also inseparable from the system of values and principles that inspire it. In a democratic society the rights and liberties inherent to the person, their guarantees and the Constitutional State form a triad, and each of its components is defined, completed, and makes sense in function of the others" (*OC-8/87*, para. 26).

5. I return now to the procedural due process. This matter has occupied the Inter-American Court since it started it advisory functions. It has dealt with it, extensively, when deciding cases and provisional measures. It is a highly traveled road, maybe the most from among the many that this Tribunal has considered in its judicial exercise during a quarter of a century. From here on with the designation due process I will refer now to the issues analyzed in Article 8 of the Convention as well as those covered in Articles 5 and 7 regarding the treatment of people held in custody, the duration of the detention, and the conditions in which it occurs. Eventually, the issues of the due process are projected on other stipulations of the Convention that refer to different rights, or cover matters referred to in the mentioned articles: this has occurred, in some points, in the case of Article 4.

6. It seems natural that there is an abundance of matters regarding the due process within the scene of infringements of human rights. When serving criminal justice –or criminal injustice—there is an ample quota of violence comparable only with that committed by the criminals: there is a parallel course between the history of crime and that of the reactions devised to fight it, generally under the name of criminal justice. It is in that space that the most dramatic encounter –as I have mentioned on several occasions— between the State invested with all its power and the individual divested of merits and defenses, except for those that may be provided to it by the kindness of the powerful, first, and the development of Law, later, has always wanted to be legitimized and many times has not even been legalized.

7. The overflowing of the repression occurs here with greater ease than in other areas of public work, because the first turns on those who have been designated "public enemies": the criminal that damages individual and collective goods that are highly appreciated –thus the condition of criminal, and not just illicit, behavior of the act committed—and with it they put in risk the existence of society. They are, therefore, a greater social opponent; an enemy even. It would be difficult to find a more natural and vulnerable addressee of state actions. This explains the performance of the persecutions and punishments, their phenomenology, characteristics, consequences, and slow appearance of the means of protection for the individual that faces the State as a defendant, and that may, in effect, be guilty, but that may also be innocent of the charges made against him, and in any case continues to be a human being.

8. In the exercise of civilization the imperious need for the State to provide security

to society –provision that constitutes one of the reasons for the existence of the State, among the most radical and necessary—and the ethical, and today judicial, demand that it be done without harming human dignity or prejudging with regard to the responsibility subject to trial. From this complicated conciliation –natural realm for the construction and preservation of the Constitutional State--, which guarantees the liberty of all, not only the security of the defendant, arises the due process of law in its different aspects, with the criminal one at the head, and with it what could be presented as a dilemma in other circumstances dispels: security or justice, peach or law. In the era of guarantees, the due process that leads to a clarification and a fair judgment – thus a due process that helps to have a formal and material access to justice—is a security of said conciliation and of the fragile balance on which it is installed.

9. When criminality increases, driven by numerous factors that rarely consider the political one –unless dealing with a politician used to looking beyond appearances and to acting beyond the symptoms--, the persecution is extreme. This behavior is explicable. Before social desperation, soon turned into exasperation, the conflict between the due process and crime control comes back into scene, a dialectic that is currently present throughout the criminal process, as has been stated by Mireille Delmas-Marty in what refers to Europe and that certainly finds multiple manifestations in other countries besieged by traditional crime and evolved delinquency, that public efforts cannot successfully prevent, face, or reduce.

10. The Inter-American Court, that has on many occasions dealt with the due process, as mentioned, stated that it is a "set of requirements that must be observed in the procedural instances so that the people are in condition to adequately defend their rights before any (…) act of the State that may affect them" (*Advisory Opinion OC-18*, para. 123). This concept, according to the jurisprudence of the Court, is not exclusive of criminal matters; it reaches other specialties of the trial and, in general, of the procedure, when dealing with the rights of people: the "group of minimum guarantees established in numeral 2 of (Article 8) is applied also to (other) orders and, therefore, in this type of matters the individual also has the right, in general, to the due process that applies in criminal matters." (*Case of the Constitutional Court,* para. 70)

11. OC-16 established that in order for there to be a due process "a defendant must be able to exercise his rights and defend his interests in an effective manner and in conditions of equality with other defendants. To this effect, it is useful to remember that the process is a means to endure, to the extent possible, the fair solution of a controversy. The set of acts of different characteristics normally united under the concept of the due process of law attends to this purpose." (para. 117) On other opportunities, the Court stated that the existence of real judicial guarantees –in which the due process is affirmed—requires that in it all the requirements that "serve to protect, ensure, or enforce the title or exercise of a right, (*OC-8/87*, para. 25) be observed, that is, the "conditions that must be complied with to ensure the adequate defense of those whose rights or obligations are under judicial consideration." (OC-9/87, para. 28)

12. In my *Concurring opinion* to *Advisory Opinion AO-16* I stated that "what we know as the 'due criminal process', the backbone of the prosecution of a crime, is the result of this long road, fed by the law, jurisprudence –among it, the progressive North American jurisprudence—and doctrine. This has occurred at a national level as well as in international matters. The developments of the first years have been

surpassed by new progress and probably the years to come will bring novelties in the permanent evolution of the due process within the democratic conception of criminal justice."

13. At the time I added: "The rights and guarantees that make up the due process – never an exhausted reality, but a dynamic system in constant formation-- are necessary pieces of the same; if they disappear or are dwindled, the due process disappears. Therefore, they are indispensable parts of a whole; each of them is essential to its existence and survival. It is not possible to say that there is a due process when the trial does not take place before a competent court, independent and unbiased, or the defendant is not aware of the charges being made against him, or he does not have the possibility to present evidence and pleas, or control by a higher body is excluded.

14. "The absence or unawareness of those rights destroy the due process and may not be corrected with the desire to prove that despite the non-existence of procedural guarantees the judgment issued by the court at the end of an irregular criminal procedure is fair. To consider that it is enough to achieve a supposedly fair result, that is, a judgment pursuant to the act performed by the subject, so that the way in which it was obtained can be acquiesced, is equivalent to going back to the idea of 'the end justifies the means' and the lawfulness of the result purges the unlawfulness of the procedure. Today the formula has been inverted: 'the legitimacy of the means justifies the end reached'; that is, it is only possible to reach a fair judgment, which verifies justice in a democratic society, when the (procedural) means used to issue it have been licit.

15. "If to determine the need or relevance of a right in the course of the process – with the purpose of determining if in its exercise it is indispensable or dispensable— one were to resort to the examination and demonstration of its effects on each judgment, case by case, one would incur in a dangerous relativization of the rights and guarantees, which would take the development of criminal justice back to a previous time. With this concept it would be possible –and inevitable—to submit all rights to the same examination: the influence that the lack of a defense counsel, the ignorance of the charges, an irregular detention, the application of tortures, the non-awareness of the procedural means of control, and so forth have on a judgment would have to be weighed case by case. The consequence would be the destruction of the concept of the due process, with all the consequences that would derive from that.

16. When I issued that *Opinion* --several years ago-- I examined the consequences that the serious defects of the procedure could entail over the process as a whole and the judgment issued in it. In this sense, I mentioned that the violation of the process "has the consequences that are necessarily produced by an illicit act of these characteristics: reversal and responsibility. This does not mean impunity, because it is possible to order the repeat of the trial so that it is developed in a regular manner. This possibility is widely known in procedural law and does not require greater consideration."

17. In the evolution of the jurisprudence of the Inter-American Court not only the concept of a due process must be assessed, but also its extension to matters different to and even distant from criminal subjects, taking as a reference, however, in all that results rationally applicable, the characteristics it has in criminal matters --which are more widely explored and detailed – in order to ensure an ample and

certain protection.

18. In that jurisprudence the dynamic, expansive nature of the due process –to which I referred in my mentioned *Concurring Opinion* to *OC-16*-- can also be observed, to which new data that contributes to the most complete protection of the rights –and juridical rights deposited in them— through this notion is added. The incorporation of the right to know of the possibility to receive consular assistance, which favours the foreign detainee, has become plausible and its non-observance, negative, or detriment vitiates the procedure and deprives the judgment issued over those weak grounds of validity. This affirmation, originally made by the Inter-American Court in the *OC-16,* was later collected in the solution of cases before the International Court of Justice: *LaGrand*, of *Germany v. United States*, and *Avena and other Mexicans*, of *Mexico v. United States*.

B) *Due process and fight against crime*

19. Upon starting to know of the *Case of Fermín Ramírez v. Guatemala* and issuing the corresponding judgment, the Court has established once again the sense and limits of its function: a) know the need of the State to fight crime with strength, task that constitutes a peremptory duty of the latter, and b) at that same time it ensures that said indispensable battle be carried out as per the Law and pursuant to the principles and rights it recourses. When deciding, the Inter-American Court acts pursuant to its strict jurisdiction: it rules on the basis of the compatibility or incompatibility of a certain act of the State, subject to controversy, with the terms of the American Convention that the Court itself applies. It cannot do anything else. It is a court of human rights, not a criminal court. The research of criminal acts and the imposition of punishments corresponds to national courts. The Court does not question this function, it does not invade it, it does not prevent it. It has never tried to do so. It respects it.

20. The Inter-American Court has never assumed the defense –or the indictment—of the possible responsible parties of an illicit act. It has strictly limited its actions, and will continue to do so, to deciding upon the interpretation and application of the legal code it can invoke: the American Convention on Human Rights. The national instances must apply, with great care and efficiency, respecting the stipulations of this Convention, the norms that correspond to them: the criminal codes and other bodies of law called upon to punish criminal acts. Whoever has read the decisions of the Inter-American Court, even superficially, will have noticed that this has been its invariable position. It could not be any different.

21. In the judgment corresponding to the *Case of Castillo Petruzzi*, of May 30, 1999, the Court held that "it is not empowered to issue a judgment regarding the nature and seriousness of the crimes attributed to the alleged victims," and it stated that it would not examine "the alleged criminal responsibility of the alleged victims, which corresponds to the national jurisdictions." (paras. 89-90) Finally, the Tribunal declared the existence of certain violations in the process against the defendants that had motivated the examination of the case and stated "that it would guarantee them a new trial with the complete observance of the due process of law." (operative paragraph 13).

22. In the case referred to in the judgment to which I attach this *Concurring Opinion,* the State was not charged with a brutal violation of the guarantees inherent to the

due process. In several occasions notorious transgressions that involve the mistreatment of the defendant in order to obtain a confession, an irregular and prejudged investigations, acts of courts that lack independence or impartiality, complete deprivation of the right to a defense, obstruction of justice, elimination of the access to evidence, absence of ideal means of appeal, and other violations of the same nature have been brought to the consideration of the Court. This case is about a violation of another type: inconsistency between the indictment and the punishment, which implies –despite it does not offer a dramatic appearance or immediately offends social consciousness—a restriction to the right to a defense, which is the most valued right for the person who is subject to trial and it has an effect on the final decision of the court that convicts. Any person who supposes the possibility of being taken to a criminal trial --and who is absolutely free of this possibility? --, knows that the law acknowledges the right to a defense and trusts that he will have access to it.

23. It is probable that whoever observes this matter may consider that it is a mere procedural technicality. The separation between the so-called "technicalities" and serious violations is a matter frequently analyzed by the writers of the procedure and it is not foreign to debate in different circles of opinion. Now, it is important to mention that behind the so-called "technicalities", which some observers minimize and even attribute adverse results for security and justice, we find real human rights that must be respected. Finally, the moral and political strength of the democratic society is also measured through its capacity to attend to the specific rights of individuals and at the same time serve the objectives of security and justice demanded by society and that are the reason of existence of the legal system.

C) *Principle of consistency between the indictment and the judgment*

24. In the *Case of Fermín Ramírez v. Guatemala*, the Inter-American Court examined some matters of the due process that it had not known of previously. Today it has not focused, as in so many other cases, on the natural judge, the independence and impartiality of the judge, the possibility to appoint defense counsel and receive its assistance, the structure of the evidence, the appeal against convictions, the reliability of the confession and others that have consistently been in its view. In this case, information of the criminal process in a democratic society has been put into game: the consistency between the indictment and the judgment, which not only involves a logical connection between two procedural acts of extreme importance, but it also involves the defendant's right to a defense –because it affects it deeply--, and therefore it is projected over the totality of the process and falls upon the validity of the judgment itself.

25. Even more so, the consistency I am referring to –which avoids legal decisions on the margin of the indictment made by a body different to and with independence from the judge—constitutes a regular expression of the division of powers and characterizes the accusatory criminal procedural system. In effect, it puts in evidence the separation between the accusing body and the body that issues the judgment, and acknowledges the persecutory function of the first and not the latter. If this was not so, that is, if the judge could exceed the terms of the indictment, ignore them, or substitute them at his discretion, we would be in the presence of an inquisitive judicial performance: the judicial body would itself include facts and charges in the sentence that have not been presented by the prosecution, and it would become, in great measure, an accusing agent.

26. In the democratic criminal process, the defendant, subject of the process, invested with procedural rights that allow it to hold and ensure its material rights, faces certain charges over which he awaits a judicial decision. Based on them, which are the "matter of the trial", it develops the acts of the defense. Thus the importance that he know, from the beginning of the process –and even more so, from the beginning of the process against him and since he is detained prior to his presentation before the judge--, the acts he is charged with, in order to be able to prepare his defense. This does not mean he must be informed of technical matters regarding the charges against him, but instead certainty regarding –and of course that his defense counsel also be informed—what acts are attributed to him, how they are said to be committed, how they were carried out, etcetera, so that he may have the necessary elements to contradict the indictment and, in the end, obtain a fair judgment.

27. The above not only substantiates the demand for precise, complete, and opportune information regarding the accusation –which is a fundamental right of the defendant, a crucial part of the due process, without which the condition of the defendant as subject of the trial to be reinstated as object of the investigation is declined--, but also the essential relationship that must exist between the indictment that presents the subject of the process and the judgment that decides this matter, not another or others that could be related to it, but that in any case were not subject of the evidence, the debate, the defense, and therefore could only be, in any case, matters for a different process in which the corresponding guarantees of information and defense are observed.

28. The conviction that the defendant must know, from the time of his arrest, the charges against him –not just their technical names, that say little or nothing to the common individual, but the acts that are being attributed--, has installed itself in the modern procedure of democratic orientation. It is found, for example, in the demand that those who arrest the alleged offender inform him of the charges, of the possibility to refer to them, to remain silent, and to appoint a defense counsel. The similar must occur when the defendant appears before the judge of his cause. The same norm must be observed –as already mentioned—when the subject is a foreigner and he is notified of the possibility to resort to the assistance of the consul of his nationality.

29. In my opinion, nothing should oppose what the State law calls reclassification of the facts, that is, their observation from another technical perspective, under a classification or designation different to the one initially given, but keeping their identity invariable, as the matter or subject of the process. In this case the defense made and that continues to be made by the defendant and his defense counsel continues to be valid, because it has referred and refers to facts that have not been altered, changed, or increased, instead they have simply been designated with other terms. Said in another way: the facts are not altered; the only thing that changes is the *nomen juris* with which they are designated, and this variation does not have an effect different to that of a technical depuration in the use of concepts, but it does not affect the defense. Up to here, if we talk of a reclassification of the facts. And if things remain here, there is no violation to the right to a defense.

30. This is not what happens if what the judgment of the Inter-American Court has designated as "factual basis" of the criminal process is modified. If this occurs, the prosecutor that makes a new accusation must promote the acts that lead to a re-channeling of the process and, if it does not suggest it, the court itself must

spontaneously decide it, since in a final analysis it is the latter who responds for the good operation of the trial, this is, for the due development of the process, attending to the demands of the law and the requirements of justice. This was not what occurred in the case that is now before us. It is true that some facts from the original indictment and the judgment with which the process was closed coincide, but it is also true that others, of great importance, do not coincide at all.

31. To prove the above one just has to observe the criminal description of aggravated rape in Article 175, in relation with 173, of the Criminal Code of Guatemala, and that of aggravated murder (called "murder" in the national criminal code), formulated in Article 132, in relation with 123 of the same code. Rape is forced carnal knowledge perpetrated against a women –states Article 173—and there is the possibility –states 175, that describes the complementary aggravated figure—that "with motive or as a consequence of the rape" the victim may die. Instead, murder is the deprivation of life –pursuant to Article 123—carried out in the form, with the means, under the impulse, or with the purpose described in Article 132. Thus, each punishable act is integrated by its own elements, characteristics that must be proposed in the indictment and that are or must be subject to the examination of the defendant and his defense. If the conviction is issued for acts different to those stated in the indictment, the consistency between the latter and the judgment will be breached. Only the integrity of that link proves that the defendant adequately exercised the right to a defense acknowledged by the State and that it is obliged to respect and guarantee.

32. In the light of Article 8 of the American Convention, a judgment adopted in this manner is not valid. Now, this does not mean, at all, that the Inter-American Court is freeing the defendant of his responsibility, nor does it mean that it is declaring that such responsibility exists. It is only issuing one conclusion: the violation of the due process deprives the judgment of judicial support and obliges the State, as has been mentioned by the Court, to proceed with, if it decides to do so, a new trial in which the requirements of the due process are observed in order to reach the conclusion derived from the facts put forward by the accuser, the evidence presented by the parties or brought forward by the court, and the debate regarding them –not regarding other facts. Therefore, there is not a risk of impunity but a demand for justice pursuant to the stipulations of the American Convention, which the State has ratified.

33. It is important to point out, always regarding this matter, but also related to the one I will proceed to examine below, that the alleged change in the classification of the facts, that in this case has actually been a modification of the facts themselves –modification that may or may not have reflected reality; this is not being discussed by the Inter-American Court, because it does not have the power to do so—produces consequences of great importance. In effect, the punishment established for aggravated rape is imprisonment of 30 to 50 years, except when the victim is younger than 10 years old (Article 132 bis of the Criminal Code), which does not occur in this case. Instead, the punishment for murder is the death of the inmate when certain circumstances of the act are present, the occasion, the motives, or the commission of the act reveals "a greater specific dangerousness of the agent." This reference gave place to the examination of the Court and determined the conclusions I will proceed to comment.

D) *Dangerousness of the agent*

34. In this case the problem that arises from the old expression introduced in the second to last paragraph of Article 132 is presented: the "greater specific dangerousness of the agent," concept that was revised by the parties in the process before the Inter-American Court and through writs of *amici curiae* that we will analyze carefully. The concept of dangerousness has been eradicated by more modern currents of the Criminal law of democratic orientation –modern, however, with almost one century of validity--, which have insisted on the need to eliminate this notion of substantive nature, to replace it with guiding information of the criminal reaction, the entity of the crime, and the guiltiness of the agent.

35. The positivism that pervaded in the last third of the XIX century permeated in multiple criminal codes, among them the spate of Latin American codes with which our XX century begun. The lessons of positivism, whose appeal lies in the consideration of the causal factors of the crime, both in general and in the specific dynamics of the agent, were widely received by professionals and students, among which we were politically active for a long time. The "scientific" appeal of positivism and the rejection of the judicial formalism hid the risks that it had on liberty and democracy and the advantages of the latter for the same purposes. Dangerousness arose based on the hypothesis of the intervention of the State.

36. Based on its dangerousness, the offender –current or future-- could be punished not for what he has already done, his behavior, his illegal activity, damaging and culpable, but for what he is, his personality, his tendencies, his possible decisions, and future and probable behavior, appreciated in the only way it could be: through predictions. In the end, this generates a criminal system based on the situation of the perpetrator –in which the reaction is in function of the person--, which contrasts the Criminal system based on the crime, act or behavior committed –in which the reaction is to the behavior actually displayed by the agent, the damage or the risk actually produced, the proven guilt.

37. For the purposes of the trial before the Inter-American Court, the matter may be considered from a double perspective: as a breach of the right to evidence and to a defense, in the sense that the indictment did not include the charge of dangerousness and therefore the defendant was not given the chance to disprove it; as a transgression of the freedom from criminal ex post facto laws, which states that only a law adjusted to the act committed may be applied. In the Commission's application the first perspective, of procedural nature, prevailed; in the decision of the Court, which does not reject that approach, but instead complements it, the second, of material nature, prevails.

38. The Court considered that the inclusion of dangerousness as an element of the criminal description or as a factor for the determination of the punishment, in its respective cases, does not comply with the freedom from ex post facto laws that states the punishment of illicit acts or behaviors performed with guilt, but it does not authorize the sanction based on a combination of the certainty of pasts acts and the speculation on future behaviors. In the end, it would not have been satisfactory for the application of the Pact of San Jose, considered as a single legal body, to ensure the defendant the possibility to defend himself from the accusation of being dangerous, that is, of the prediction of possible crimes in sometime in the future. What is required is a complete elimination of the reference to dangerousness. Thus, the disposition of the Court in the chapter on reparations, where the possibility of a new trial subordinated to the due process is mentioned, but it also states that it is necessary to, in order to comply with Article 2 of the Convention, reform Article 132

of the Criminal Code.

E) *Pardon*

39. Finally, the Court has dealt with the matter of pardon, appeal to which the accused convicted to death must have access, in the terms of Article 4 of the American Convention. Obviously, to have the right to present this appeal does not necessarily mean the right to a favourable response. The pardon is gradually being removed from criminal legislation. In it we still find the remote power of pardon of the absolute monarch, lord of lives and estates, who precisely because of that could dispose of the life of the accused, saving him from the death ordered by the court. The criminal rationality, found in the political and judicial rationality, suggests that this figure should be eliminated, without this preventing the establishment, in its place, of appropriate substitutes that allow the conversion of the punishment imposed when there are causes that justify it.

40. The Court appreciates that the State lacks a certain and adequate regimen regarding the pardon. If this subsists, a matter that concerns a State decision, it must not be extent of precise rules regarding the authority called to grant it, the grounds for its granting, and the procedure to decide on it. On the contrary, it would be an expression of pure discretion, foreign to a Constitutional State in a democratic society. Even when it is a power to pardon, it is necessary that it be exercised with clarity and rationality.

Sergio García Ramírez
Judge

Pablo Saavedra Alessandri
Secretary