SEPARATE OPINION OF JUDGE ALBERTO PÉREZ PÉREZ IN THE CASE OF SUÁREZ PERALTA *v.* ECUADOR

1. The purpose of this separate opinion is exclusively to make it clear that the references to the right to health contained in the judgment do not mean that the Court is assuming competence with regard to this right in particular, or to the economic, social and cultural rights in general. The contentious competence of the Court is established in Article 62 of the American Convention, and in paragraph 6 of Article 19 of the Protocol of San Salvador, without prejudice to the pertinent provisions in other inter-American human rights conventions.

2. In this regard, it is worth recalling what Judge Sergio García Ramírez indicated in his separate opinion in the case of Albán Cornejo *v*. Ecuador, when he stated that:

> "[t]he protection of health does not constitute, at the present time, a right that is currently justiciable under the Protocol of San Salvador. However, it is possible – and appropriate – to examine the issue, as the Court has in this case, from the perspective of the preservation of the rights to life and to integrity, and even from the standpoint of access to justice when the violations of those juridical rights – the core of the corresponding rights – gives rise to a claim for justice,"

and that:

> "In such cases, as in others, the State obligation is not limited to the hypothesis in which the State itself, through its own entities, organs or officials, provides health care services" – in other words, provides immediate attention to the protection of life and personal integrity,"

but also includes

> "both the situations in which it has delegated a service, which private individuals provide on the orders of and on behalf of the State, and also the essential supervision of private services related to rights of the greatest social interest, such as health, the control of which must of necessity be exercised by the public authorities. When deciding on a violation of human rights and on State responsibility, the private nature of the institution and of the employees, officials or professional who work in it should not be forgotten; but neither should the public and/or social relevance of the function that they and it have assumed, which cannot fall outside the interest, duty and supervision of the State."

3. This is what has been done in this Judgment in which it was concluded that "a situation of risk [resulted], which the State was aware of, that materialized in adverse effects on the health of Melba Suárez Peralta" and that, "[t]herefore, the State of Ecuador incurred international responsibility for the absence of prevention and the failure to guarantee the right to personal integrity of Melba Suárez Peralta, in violation of Article 5(1) of the American Convention in relation to Article 1(1) of this instrument" (para. 154). Concordantly, in the operative paragraphs, it was determined that "[t]he State is responsible for the violation of the obligation to guarantee the right to personal integrity, recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Melba del Carmen Suárez Peralta, in the terms of paragraphs 134 to 154 of this Judgment" (declarative paragraph 4).

Alberto Pérez Pérez
Judge

Pablo Saavedra Alessandri
Secretary