

**PARTIALLY DISSENTING OPINION
OF JUDGE CECILIA MEDINA QUIROGA**

1. I agree with the dissenting opinion of Judge Diego Rodríguez- Pinzón. This is not the first time I dissent from the Court in relation to the possible joint violation of Articles 8 and 25¹ and on those occasions, I have given similar reasons to the ones expressed in the Opinion of Judge Rodríguez.

2. However, on this occasion, I would like to clarify my position in relation to Article 25. By giving a dissenting opinion in a private case, I would like to refer only to the problem of the case at hand and not make a detailed analysis of every provision. So far, in my opinions, I have departed from the foundation- in an attempt to prevent the modification of the constant case-law of the Court- that Article 25 established the right to have a simple, prompt and effective recourse to protect the human rights of the people. This understanding came from the fact that the Court has permanently united these three characteristics implying that these three characteristics are applied to a right to a remedy and my arguments were intended to struggle in order for the Court not to forget the existence of a writ of amparo enshrined in Article 25.

3. Actually, from the reading of the preparatory documents of the Convention it is evidenced that this provision does not only establish the recourse of a writ -simple and prompt- but also, a second type of recourse that, though not simple or prompt, is effective.

The original definition of the rule was “[e]very person has the right to an effective, simple and prompt recourse [...]”.² When the Government of the Dominican Republic submitted its observations and comments to this Project, it pointed out that there could be cases where the protection would be “effective”, though not “simple and prompt” and also mentioned that the only necessary criterion to legitimate a recourse was that such would be “effective”. Immediately afterwards, the State proposed a new text that is, in this part, identical to the text approved as final version.³ During the discussion about the article, the Mexican delegate requested the amendment of the text and repeated the original formula of “a simple, prompt and effective recourse.” The American delegate had another proposal that referred to the text of the Dominican Republic, without mentioning it, but the delegate noted, upon its presentation, that he “did not believe [words] would change the meaning.”

4. As it frequently occurs with these preparatory documents, the discussion was not, in fact, ended with a clear opinion; otherwise, it was left like that, maybe without noticing the consequences that could have. Hence, there are two ways of interpreting article 25. In both interpretations, however, it must be read that, regardless of its type, the recourse must be effective, that is, must be “capable of producing the result for which it was designed.”⁴

¹ Dissenting Opinion of Judge Cecilia Medina Quiroga, *Case of López Álvarez v. Honduras; Merits, Reparations and Costs*. Judgment of February 1, 2006; Series C N° 141; Concurring Opinion of Judge Cecilia Medina Quiroga, *Case of Gómez Palomino v. Perú*. Merits, Reparations and Costs. Judgment of November 22, 2005, Series C N°136; Partially Dissenting Opinion of Judge Cecilia Medina Quiroga, *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004, Series C N°110; Partially Dissenting Opinion of Judge Cecilia Medina Quiroga, *Case of the 19 Tradesmen*. Judgment of July 5, 2004. Series C N°. 109.

² See Specialized Inter-American Conference on Human Rights, *Proceedings and Documents*, San José, Costa Rica, November 7/22, 1969, (OEA/Ser.K/XVI/1.2), p. 22

³ *Ibid.*, p. 66.

⁴ *Case of Velásquez Rodríguez.*, para. 66

5. Even with that interpretation of the provision, my petitions are still valid regarding the fact that the creation of a simple and prompt recourse cannot be put aside in the development of the case-law of the Convention, which is, without any doubt, a description of the classic Latin-American writ of amparo, extremely useful for countless situations. I repeat what I have said on several occasions: the Court has used the idea of a simple and prompt recourse to examine the development of a criminal procedure, which is never simple nor prompt and has used the notion of a reasonable time as enshrined in Article 8 to evaluate the promptness of the recourse. I cannot agree with this idea. I neither agree with the idea of that, by unifying rights, the system is strengthened. The development of each right grants a greater range of possibilities to the individuals.

6. With regard to this case in particular, I believe that there were recourses, not the amparo, that were effective according to the definition of effectiveness provided by the Court. On the contrary, the proceeding that was initiated as a result of some of these resources had a delay that, in no way, can be considered reasonable and therefore, I agree with the opinion that there has been a violation of Article 8.

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary