

## **SEPARATE OPINION OF HERNAN SALGADO PESANTES**

I have concurred with the majority vote in the instant case because I deem that the violations of the basic rights of Daniel Tibi and of members of his family have been proven. Knowing of these grave violations of the rights of a person and being an Ecuadorian citizen leads me to the following considerations.

2. The State of Ecuador cannot allow and must not tolerate violations of the most basic rights to fair trial due to the irresponsibility of certain judges and members of the police force, whether part of INTERPOL or of the judiciary. They are an affront against the country.

3. Ecuador must absolutely eradicate torture and cruel and inhumane treatment as means of investigation of a crime. I would hope that by the current time (2004) those methods have been left behind. The Ecuadorian State ratified (in 1999) the Inter-American Convention against Torture, and therefore its provisions have become a part of our legal system, as have the provisions of the American Convention.

4. It is not possible for Ecuadorian criminal judges, such as those who acted in the instant case, to transform preventive custody into life-long burial, with respect to which one might evoke Dante's inscriptions on the doors to hell. If, as in the instant case, the judge objectively observes that there is no evidence to serve as grounds for preventive custody, how can it be maintained with no time limit? It would seem that these judges become unaware of the irreversible damage done to a human being in those months and even years of "preventive detention."

5. Justice bodies must act within legal and reasonable terms to issue their rulings and decisions. The remedies regarding judicial liberty must be decided immediately to protect the detainee against arbitrariness. And if these remedies are in order – according to the Law- they cannot be denied under any pretext.

6. The judges who acted in the instant case, especially the first one who began the proceeding, are responsible for this supra-national ruling against the Ecuadorian State; the State has the right of repetition, against them and against the policemen who acted, for all the compensations that it pays, in addition to the criminal liability.

7. There must be no place for impunity, which also breaches the Ecuadorian Constitution that proclaims the effectiveness of human rights as a fundamental duty of the State.

Hernán Salgado-Pesantes  
Judge

Pablo Saavedra-Alessandri  
Secretary