

SEPARATE OPINION
CASE OF ZAMBRANO VÉLEZ ET AL. V. ECUADOR

I have cast my vote to approve, unanimously, the present Judgment in the case of Zambrano Vélez et al. v. Ecuador, but I feel it necessary to clarify my position on an issue that has been considered during the deliberation of this case and in various cases before the Court over the last three years.

It concerns the interpretation and application of Articles 8(1) and 25 of the Convention in conjunction with Article 1(1) and hence, the nature and purpose of the aforementioned provisions.

Chapter I of the American Convention (General Obligations) refers to the obligations of the States Parties to this instrument: Article 1 (Obligation to Respect Rights) and Article 2 (Domestic Legal Effects). These are provisions of a general nature that permeate all the rights protected in Chapter II (Civil and Political Rights). These protected rights have their own ontological nature, they protect inherent juridical rights, which may be violated by a State Party as a result of certain acts that also entail the violation of Article 1(1) and, if applicable, Article 2, which as I have indicated are provisions of a general nature. This is not the nature of Articles 8 and 25, which also have a specific ontological content, but not as provisions of the Convention with general application and consequently, they can be violated by the State, together with other rights, always in conjunction with Article 1(1), which establishes the general obligation of the States Parties to respect and ensure the rights included in Chapter II of the Convention¹.

Article 1(1) of the Convention establishes that:

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 8(1) indicates textually that:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

While Article 25 states that:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

¹ Cf. IACHR., *Case of the Constitutional Court*. Judgment of January 31, 2001. Series C No. 71; IACHR, *Case of Cantos*. Judgment of November 28, 2002. Series C No. 97; ICHR, *Case of Almonacid-Arellano et al.* Judgment of September 26, 2006. Series C No. 154; ICHR, *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)*. Judgment of November 24, 2006. Series C No. 158.

2. The States Parties undertake:
 - a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
 - b) to develop the possibilities of judicial remedy; and
 - c) to ensure that the competent authorities shall enforce such remedies when granted.

Moreover, the Court has declared the violation of Article 1(1) of the Convention independently of other violations of other articles². In addition, the violation of Articles 8(1) and 25 has also been considered and declared autonomously, without considering them in relation to Article 1(1) of the Convention³. In addition, the Court has applied Articles 8(1) and 25 in relation to articles of the Convention other than Article 1(1)⁴.

Consequently, suggesting that the Court should consider that it cannot declare the violation of Articles 8(1) and 25 independently, as an autonomous violation, but only in relation to another substantive right which cannot be Article 1(1), is to affirm that the American Convention does not protect the right to justice and would be an attempt to bestow on Articles 8(1) and 25 the nature of general provisions, which would permeate the entire Convention just as Article 1(1), and the result of this would be to denature the very content of Articles 8(1) and 25.

To change the Court's case law on this issue, after the more than 20 years of exercising its jurisdictional function, is confusing, in addition to being inappropriate and unnecessary. It introduces an element of distortion in the deliberation of future cases.

Manuel E. Ventura-Robles
Judge

Pablo Saavedra-Alessandri
Secretary

² Cf. IACHR, *Case of the "Street Children" (Villagrán-Morales et al.)*. Judgment of November 19, 1999. Series C No. 63.

³ Cf. IACHR, *Case of Baena-Ricardo et al.* Judgment of February 2, 2001. Series C No. 72; and ICHR, *Case of Las Palmeras*. Judgment of December 6, 2001. Series C No. 90.

⁴ Cf. IACHR, *Case of Servellón-García et al.* Judgment of September 21, 2006. Series C No. 152; ICHR, *Case of Vargas-Areco*. Judgment of September 26, 2006. Series C No. 155.