

SEPARATE CONCURRING OPINION OF JUDGE HERNÁN SALGADO PESANTES

As a result of this case, we have reflected once more on the so-called *right to the truth* and, although this right is not set out in the American Convention, there is an implicit reference to it in some of its provisions, such as Articles 8, 11, 14 and 25.

The *right to the truth* has been shaped in a historical context where the State's abuse of power has caused serious conflicts, particularly when the forced disappearance of persons has been used by State agents. In these circumstances, the community demands the *right to the truth* as a means of permitting reconciliation and overcoming friction between the State and society.

From the foregoing, it is clear that the *right to the truth* -at least up until now- has a collective and general nature, a type of extended right, whose effectiveness should benefit society as a whole. However, under certain circumstances, such as those of forced disappearance, this extended nature should not prevent a person or a family from claiming the right to obtain the truth.

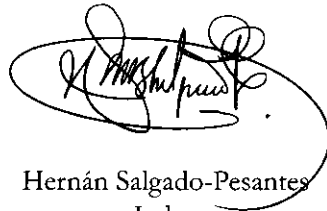
In Article II (*in fine*) of the Inter-American Convention on Forced Disappearance of Persons, when the elements that constitute forced disappearance are established, they include "... *the absence of information or a refusal to acknowledge that deprivation of freedom and to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.*"

This reference leads us to recall Articles 8 and 25 of the American Convention, which, as we have said, implicitly contain the *right to the truth*, since the person who has recourse to justice is seeking clarification of certain facts, particularly in criminal matters. As regards freedom of thought and expression, specifically the right to information, society requires that this should be truthful, which makes us think that there also are elements of the *right to the truth* in this area.

In my opinion, the doctrine that is developed should take into account issues such as the following:

- The nature of this faculty or prerogative to obtain the truth is essentially moral, since the conduct opposed to the truth is lying; and it has a subjective content that must be defined, so as not to fall into negative subjectivism;
- The failure to tell, reveal or establish the truth may give rise to different degrees of responsibility (unintentional error, premeditation, etcetera);

In any case, axiology or legal evaluation must construct a solid doctrine that allows the *right to the truth* to be included in positive law and, at the same time, determines to what extent such a right can and should be applied.

A handwritten signature in black ink, enclosed within a large, hand-drawn oval. The signature is stylized and appears to read "Hernán Salgado-Pesantes".

Hernán Salgado-Pesantes
Judge

A handwritten signature in black ink, consisting of a cursive name followed by a large capital letter "R".

Manuel E. Ventura-Robles
Secretary