

Ivcher Bronstein v. Peru

ABSTRACT¹

This is a landmark case in the history of the Inter-American Court of Human Rights. The events in the case led to the downfall of Alberto Fujimori's regime in Peru. Before fleeing the country, Fujimori's government tried to withdraw Peru's acceptance of jurisdiction of the Court, to no avail. On the merits, the case made history for being one of the few decided by the Court on the right not to be derived arbitrarily of nationality, property rights, and freedom of expression.

I. FACTS

A. Chronology of Events

July 1970: Baruch Ivcher Bronstein, an attorney of Israeli nationality, arrives in Peru to run *Productos Paraíso*, a mattress manufacturing company.²

1984: Mr. Ivcher Bronstein is granted Peruvian nationality.³ Since immigrants of the State are not permitted to own radio or television channels, obtaining Peruvian nationality now permits Mr. Ivcher Bronstein to do so.⁴

As required by State law, Mr. Ivcher Bronstein surrenders his Israeli nationality, before public notary Mr. Luis Vargas, in a public document dated December 6, 1984.⁵

1985: Mr. Ivcher Bronstein obtains about 11% of the shares of

1. Griselda Perez, Author; Monica Rodriguez, Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. *Ivcher Bronstein v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 62(b) (Feb. 6, 2001); *Ivcher-Bronstein v. Peru*, Admissibility Report, Report No. 20/98, Inter-Am. Comm'n H.R., Case No. 11.762, ¶ 10 (Mar. 3, 1998); CATHERINE M. CONAGHAN, *FUJIMORI'S PERU: DECEPTION IN THE PUBLIC SPHERE* 148 (2006).

3. *Ivcher-Bronstein v. Peru*, Merits, Reparations, and Costs, ¶ 62(b).

4. *Ivcher-Bronstein v. Peru*, Admissibility Report, ¶ 1.

5. *Ivcher-Bronstein v. Peru*, Merits, Reparations, and Costs, ¶ 20.

Frecuencia Latina – Canal 2 (the “Channel”), one of the nation’s leading television channels.⁶

1986: Mr. Ivcher Bronstein acquires 49.53% of the shares of the Channel.⁷

1992: Mr. Ivcher Bronstein attains 53.95% of the shares of the Channel.⁸ The Channel’s leadership completely restructures the Channel and begins broadcasting an investigative news program called *Contrapunto* (Counterpoint).⁹ As a result, the Channel gains great popularity.¹⁰ In cause of Mr. Ivcher Bronstein’s lack of journalism background, he allows producers and journalists to determine the content of *Contrapunto*.¹¹

June 5, 1992: The *Sendero Luminoso*, a communist terrorist organization, sets off a car bomb outside the Channel.¹² Three employees die and the Channel’s building is damaged.¹³ As a result, State tanks and soldiers guard the Channel’s premises.¹⁴

1996: *Contrapunto* begins to broadcast drug-trafficking allegations against Mr. Vladimiro Montesinos Torres, President Alberto Fujimori’s national intelligence advisor.¹⁵ Subsequently, the State withdraws the tanks and soldiers guarding the Channel’s premises.¹⁶

August 16, 1996: Mr. Alberto Venero Garrido, Mr. Montesinos Torres’s emissary, visits Mr. Ivcher Bronstein’s office and tells him that he has “slandered the Army.”¹⁷ Mr. Venero Garrido, further, insinuates that Mr. Ivcher Bronstein should be very careful, which Mr. Ivcher

6. *Id.* ¶ 62(b).

7. *Id.*

8. *Id.*

9. *Id.*; Carlos E. Loumiet & David da Silva Cornell, *The Ivcher Affair*, DERECHOS HUMAN RIGHTS, <http://derechos.net/doc/peru/ivcher.html> (last visited Aug. 25, 2013).

10. *Ivcher-Bronstein v. Peru*, Merits, Reparations, and Costs, ¶ 62(b).

11. *Id.*

12. Gustavo Goritti, *Tres Muertos en un atentado en Lima Contra la Sede de un Canal de Television*, EL PAIS (June 6, 1992), http://elpais.com/diario/1992/06/06/internacional/707781607_850215.html.

13. *Id.*

14. *Ivcher Bronstein v. Peru*, Merits, Reparations, and Costs, Judgment, ¶ 62(b).

15. CATHERINE M. CONAGHAN, *FUJIMORI’S PERU: DECEPTION IN THE PUBLIC SPHERE* 1, 147 (2006).

16. *Ivcher Bronstein v. Peru*, Merits, Reparations, and Costs, ¶ 62(b).

17. *Id.*; CATHERINE M. CONAGHAN, *FUJIMORI’S PERU: DECEPTION IN THE PUBLIC SPHERE* 147 (2006).

Bronstein interprets as a direct threat.¹⁸

Subsequently, *Contrapunto* begins to investigate and report on Mr. Montesinos Torres.¹⁹ At that time, Mr. Venero Garrido invites Mr. Ivcher Bronstein to lunch with Mr. Montesinos Torres, but the meeting never takes place.²⁰

September 1996: *Contrapunto* broadcasts a program on Mr. Montesinos Torres.²¹ After the broadcast, an army intelligence service agent, known as “Besitos,” tells Mr. Ivcher Bronstein that his connection with the Ecuadorian army is under investigation.²² Besitos tells Mr. Ivcher Bronstein that, as a naturalized Israeli, he needs to take care of himself because people want him dead.²³

December 12 and 17, 1996: Mr. Ivcher Bronstein records videos with the Channel reporters, where he explains that he was told to stop covering the State’s administration.²⁴

January 1997: Mr. Adolfo Pandolfi, Prime Minister of Peru, and Mr. Joy Way, Deputy, visit Mr. Ivcher Bronstein’s office.²⁵ They offer Mr. Ivcher Bronstein nineteen million dollars to only report stories approved by them.²⁶

April 6, 1997: The Channel reports the murder of Ms. Mariela Bareto Riofano, an army intelligence agent, whose mutilated corpse was found in the outskirts of Lima.²⁷ The Channel reveals that Ms. Bareto Riofano was in a relationship with Major Santiago Martin Rivas, leader of *Grupo Colina* (a paramilitary anti-communist gang).²⁸

The report is followed by an exclusive interview with Ms. Leonor La Rosa Bustamante, a colleague of Ms. Bareto Riofano.²⁹ From her bed in a military hospital, Ms. La Rosa Bustamante claims that she was

18. *Id.*

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. CATHERINE M. CONAGHAN, *FUJIMORI’S PERU: DECEPTION IN THE PUBLIC SPHERE* 147 (2006).

25. *Ivcher Bronstein v. Peru*, Merits, Reparations, and Costs, ¶ 62(b).

26. *Id.*

27. CATHERINE M. CONAGHAN, *FUJIMORI’S PERU: DECEPTION IN THE PUBLIC SPHERE* 147 (2006).

28. *Id.*

29. *Id.*

tortured during an interrogation by fellow army intelligence agents.³⁰ These two stories seem to connect a series of odd events to army intelligence agents, including the carjacking and burning of a congressman's vehicle, unexplained gunfire aimed at a previous government minister, and the kidnapping of a newspaper editor.³¹ President Fujimori quickly denies the correlation.³²

State intelligence agents immediately administer an impromptu tax audit on the Channel.³³ Prime Minister Pandolfi first denies this ever took place.³⁴ However, when shown the Channel's entry and exit logs with his agents signatures, he states that the agents were fired and are under investigation.³⁵ This audit does not uncover anything unseemly, as Mr. Ivcher Bronstein is a diligent taxpayer.³⁶

April 7, 1997: Military helicopters fly at very low levels over *Productos Paraiso*, the mattress company of Mr. Ivcher Bronstein.³⁷ The State claims that these flights are for training purposes, but local residents and Mr. Ivcher Bronstein have never witnessed such training in the area.³⁸

Legislators, who oppose the President, seek an investigation on the Bareto-La Rosa incidents and the State quickly resolves the cases.³⁹ The army's intelligence agents are quickly found guilty of torturing Ms. La Rosa Bustamante.⁴⁰ Simultaneously, the State criminally charges Ms. La Rosa Bustamante with leaking intelligence information.⁴¹

April 13, 1997: The Channel reports that an insider from the national tax administration leaked information showing that National Intelligence Advisor, Montesinos Torres's income is far more than others in the public sector.⁴² Congress calls on Prime Minister Pandolfi for an official explanation.⁴³

Prime Minister Pandolfi explains that Mr. Montesinos Torres

30. *Id.*

31. *Id.*

32. *Id.* at 147-48.

33. *Id.* at 148.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.* at 149.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

works as an attorney on private matters when he is off-duty.⁴⁴ Mr. Montesinos Torres later states that he was on-duty twenty-four hours a day.⁴⁵ As more questions arise, Prime Minister Pandolfi maintains that principles of confidentiality preclude him from the disclosure of any information on this matter.⁴⁶

May 11, 1997: The Channel learns and reports that the State is preparing “Operation Bulldozer” to prevent the release of any information that is unfavorable to the State.⁴⁷

May 13, 1997: Mr. Ivcher Bronstein fears the worst and leaves the State despite a summons to appear, as a witness, to charges against the agents who conducted the impromptu tax audit.⁴⁸

May 23, 1997: The State’s armed forces release an official communication that condemned Mr. Ivcher Bronstein for defaming the State’s armed forces.⁴⁹

On the same day, the State releases a new law, Supreme Decree No. 004-97-IN, allowing the State to revoke a person’s citizenship for acts damaging “national security” or the “public interest” or for violating any of the procedures in the naturalization process.⁵⁰

May 31, 1997: Mr. Ivcher Bronstein’s attorney files an *amparo* action, challenging the new Supreme Decree, with the Public Law Chamber of First Instance.⁵¹

June 17, 1997: The State’s Judiciary Executive Committee adopts a law that modifies the structure of the Social Chamber of the Supreme Court

44. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* at 150.

50. *Id.*; Ivcher Bronstein v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 76(l) (Feb. 6, 2001).

51. Ivcher Bronstein v. Peru, Merits, Reparations, and Costs, ¶ 76(m)(1). *Amparo* is a word unique to Latin American countries. Immigration and Refugee Board of Canada, Mexico: “*Amparo*” Lawsuits and Their Implementation in the Legal System, REFWORLD (Jan. 15, 2008), <http://www.refworld.org/docid/47d6548cc.html>. Its meaning is close to protection or shelter in English. *Id.* Latin American countries created *amparo* remedies as a human rights protection mechanism after the Declaration of Human Rights was announced in 1948. *Id.* The action for *amparo* can be invoked whenever an individual believes any of his or her constitutional rights, or rights originating from international treaties, have been violated. *Id.*

of Justice.⁵²

June 18, 1997: The court declares the *amparo* action inadmissible.⁵³ Mr. Ivcher Bronstein appeals the decision on his action for *amparo* to the Temporary Commercial Public Law Chamber of second instance.⁵⁴

June 23, 1997: In accordance with the law adopted on June 17, the Judiciary Executive Committee creates a temporary superior chamber and public law, and grants itself the ability to appoint or ratify their members.⁵⁵

June 25, 1997: The State creates the First Temporary Commercial Public Law Court.⁵⁶ Judge Percy Escobar, amongst others, is appointed as a judge of this new court.⁵⁷

July 10, 1997: General Fernando Dianderas, Director General of National Police, holds a press conference to announce that the State could not find Mr. Ivcher Bronstein's citizenship file in the General Bureau of Immigration and Naturalization.⁵⁸

July 13, 1997: The Channel airs a program with evidence that the State conducted a massive wiretapping of about 197 recordings, targeting journalist and opposing politicians during the 1995 presidential reelection.⁵⁹

Moments later, the State announces that they are revoking Mr. Ivcher Bronstein's citizenship, under Directorial Resolution 117-97-IN-050100000000.⁶⁰

July 14, 1997: Mr. Ivcher Bronstein's attorney files an action for *amparo*, seeking to have the Directorial Resolution nullified, in the First Temporary Commercial Public Law Court.⁶¹

In an attempt to prevent Mr. Ivcher Bronstein from exercising his

52. Ivcher Bronstein v. Peru, Merits, Reparations, and Costs, ¶ 76(n)(1).

53. *Id.* ¶ 76(m)(1).

54. *Id.*

55. *Id.* ¶ 113.

56. *Id.* ¶ 76(n)(3).

57. *Id.*

58. *Id.* ¶ 20.

59. CATHERINE M. CONAGHAN, FUJIMORI'S PERU: DECEPTION IN THE PUBLIC SPHERE 151 (2006).

60. *Id.* at 151-2; Ivcher Bronstein v. Peru, Merits, Reparations, and Costs, ¶ 76(t).

61. Ivcher-Bronstein v. Peru, Merits, Reparations, and Costs, ¶ 76(s)(3).

rights, as majority shareholder, director and chairman, over the Channel, the minority shareholders file a request for precautionary measures in the First Temporary Commercial Public Law Court.⁶²

August 1, 1997: Judge Escobar issues a precautionary measure revoking Mr. Ivcher Bronstein's rights as majority shareholder, chairman, and director of the Channel.⁶³ He grants the minority shareholders, Mr. Mendel Winter Zuzunaga and Mr. Samuel Winter Zuzunaga (the "Winter Brothers"), provisional administration of the Channel and orders a shareholder meeting to convene in order to establish a new board and prohibit the transfer of Mr. Ivcher Bronstein's shares.⁶⁴

Thereafter, under the Winter Brothers' management, the Channel only broadcasts stories favorable to the State.⁶⁵

August 14, 1997: Judge Percy Escobar declares the action for *amparo*, on the Directorial Resolution, inadmissible.⁶⁶ Mr. Ivcher Bronstein appeals.⁶⁷

August 28, 1997: Ms. Neomy Even de Ivcher, Mr. Ivcher Bronstein's wife, appears before the court to request an annulment of the proceeding granting the Winter Brothers precautionary measures.⁶⁸

September 12, 1997: The Court finds Ms. Even de Ivcher's appearance and request for annulment without merit.⁶⁹

September 19, 1997: The Winter Brothers and police take over the Channel's buildings.⁷⁰ The Winter Brothers prohibit *Contrapunto* staff from entering the premises and restructure the editorial line.⁷¹

September 26, 1997: Mr. Emilio Rodriguez, Mr. Ivcher Bronstein's attorney, files a petition for a "recovery injunction," because the State

62. *Id.*

63. *Id.*

64. *Id.*

65. CATHERINE M. CONAGHAN, *FUJIMORI'S PERU: DECEPTION IN THE PUBLIC SPHERE* 152 (2006).

66. *Ivcher Bronstein v. Peru, Merits, Reparations, and Costs*, ¶ 76(t)(1).

67. *Id.*

68. *Id.* ¶ 76(s)(4).

69. *Id.* ¶¶ 62(g), 76(s)(4)

70. CATHERINE M. CONAGHAN, *FUJIMORI'S PERU: DECEPTION IN THE PUBLIC SPHERE* 152 (2006).

71. *Ivcher Bronstein v. Peru, Merits, Reparations, and Costs*, ¶ 76(b).

divested Mr. Ivcher Bronstein of his shares.⁷²

October 7, 1997: The trial judge orders shareholders to hold a meeting in November; Ms. Even de Ivcher needs to be present to represent the shares she jointly owns with her husband.⁷³

October 19, 1997: The State institutes criminal proceedings against Mr. and Ms. Ivcher Bronstein and their daughters.⁷⁴ The State claims that they did not provide authentic documents in their request for Peruvian Naturalization.⁷⁵ As a result, neither Ms. Ivcher nor her daughters can enter the State and cannot attend the shareholders' meeting.⁷⁶

The Winter brothers file an action against the judges who ordered a shareholders' meeting on October 7th, and request that the judgment be annulled.⁷⁷ The Court denies the Winter brothers' request.⁷⁸

October 24, 1997: The court of second instance declares all judicial acts undertaken in the action for *amparo*, on the Directorial Resolution, as null and void because there was an error in notifying the defendant of the complaint, and remanded the case the court of first instance.⁷⁹

November 7, 1997: Pursuant to the appeal on the action for *amparo*, on the Supreme Decree, the Temporary Commercial Public Law Chamber declares the previous actions null because there was an error in notifying the defendant, and remand the case.⁸⁰

November 12, 1997: Judge Percy Escobar once again declares the action for *amparo*, on the Directorial Resolution, inadmissible.⁸¹ The judgment is appealed.⁸²

December 22, 1997: The court of second instance affirms the judgment of November 12, 1997.⁸³

72. *Id.* ¶ 62(g).

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* ¶ 76(t)(1).

80. *Id.* ¶ 76(m)(1).

81. *Id.* ¶ 76(t)(1).

82. *Id.*

83. *Id.*

February 20, 1998: The action for *amparo*, on the Supreme Decree, goes back to the Court of first instance.⁸⁴ Judge Percy Escobar, once more, declares the action inadmissible.⁸⁵

April 24, 1998: The Constitutional Court confirms the December 22, 1997 judgment.⁸⁶

November 7, 2000: The State annuls the Directorial Resolution that stripped Mr. Ivcher Bronstein's nationality.⁸⁷

B. Other Relevant Facts

The State's President, Mr. Alberto Fujimori, is first appointed to office in 1990.⁸⁸ This begins a decade of an extremely corrupt and controversial reign.⁸⁹ During Mr. Fujimori's time in office, his National Intelligence Advisor, Montesinos Torres, is recognized as a criminal ally.⁹⁰

President Fujimori's resignation comes a few months after a video leak of Mr. Montesinos Torres bribing a congressman is released.⁹¹ After the release of the video, Mr. Montesinos Torres flees the State.⁹² He leaves behind vast amounts of evidence that he committed a series of corrupt and criminal acts while serving President Fujimori.⁹³ President Fujimori escapes to Tokyo, under the guise that he is taking a diplomatic trip.⁹⁴ The President resigns in November of 2000 while in Tokyo.⁹⁵

II. PROCEDURAL HISTORY

A. Before the Commission

June 9, 1997: Congressman Javier Diez Canseco files a petition before

84. *Id.* ¶ 76(m)(1).

85. *Id.*

86. *Id.* ¶ 76(t)(1).

87. *Id.* ¶ 76(z).

88. CATHERINE M. CONAGHAN, *FUJIMORI'S PERU: DECEPTION IN THE PUBLIC SPHERE 1* (2006).

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

the Commission, on behalf of Mr. Ivcher Bronstein.⁹⁶

July 16, 1997: Dr. Vladimir Paz de la Barra, Dean of the Lima Bar Association, files a second petition, where he informs the Commission that the State has revoked Mr. Ivcher Bronstein's citizenship.⁹⁷

July 18, 1997: The Commission opens Case No. 11.762 and requests that the State provide information within 60 days.⁹⁸

July 28, 1997: The Commission receives a letter from Congressman Javier Díez Cansecos, where he alleges that Mr. Ivcher Bronstein's right to citizenship was violated.⁹⁹

July 30, 1997: The Commission adopts provisional measures in which they order the State to restore Mr. Ivcher Bronstein's citizenship.¹⁰⁰

September 2, 1997: The State asks for a deadline extension.¹⁰¹ The Commission grants a fifteen-day extension.¹⁰²

September 12, 1997: The State requests the Commission deem the petition inadmissible.¹⁰³

October 9, 1997: The Commission holds a hearing on the admissibility of the petition.¹⁰⁴

February 26, 1998: The Commission holds a second hearing.¹⁰⁵

May 29, 1998: The Commission makes itself available for a settlement and asks the parties to inform them of a decision within thirty days.¹⁰⁶

July 31, 1998: The State rejects the Commission's proposal of a

96. Ivcher Bronstein v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 6 (Feb. 6, 2001).

97. *Id.*

98. Ivcher Bronstein v. Peru, Admissibility Report, Report No. 20/98, Inter-Am. Comm'n H.R., Case No. 11.762, ¶ 24 (Mar. 3, 1998).

99. *Id.* ¶ 25.

100. *Id.* ¶ 27.

101. Ivcher Bronstein v. Peru, Admissibility Report, ¶ 29.

102. *Id.*

103. Ivcher Bronstein v. Peru, Merits, Reparations, and Costs, ¶ 9.

104. *Id.* ¶ 10.

105. *Id.* ¶ 11.

106. *Id.* ¶ 12.

settlement.¹⁰⁷

October 8, 1998: The Commission holds a hearing on the merits of the case.¹⁰⁸

December 9, 1998: The Commission adopts Report No. 94/98.¹⁰⁹ The Commission finds that the State “arbitrarily deprived Mr. Ivcher Bronstein of his Peruvian nationality” in violation of Article 20(3) (Prohibition of Arbitrary Deprivation of Nationality) of the Convention.¹¹⁰ The Commission also finds that the State violated Articles 13 (Freedom of Thought and Expression), Article 21 (Right to Property), 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal), and 25 (Right to Judicial Protection) in conjunction with Article 1(1) of the Convention.¹¹¹

The Commission recommends that the State: (i) reinstate Mr. Ivcher Bronstein’s Peruvian nationality, (ii) immediately stop harassing and persecuting Mr. Ivcher Bronstein, (iii) re-establish his right to his shares and administration of the Channel, (iv) compensate Mr. Ivcher Bronstein for the damages he sustained, and (v) adopt preventative legislative and administrative measures.¹¹² The Commission grants the State two months to adopt measures that seek to implement the recommendations.¹¹³

March 17, 1999: The State requests a fourteen day extension to comply with the Commission’s recommendations.¹¹⁴

March 18, 1999: The Commission accepts the State’s request and extends the deadline until March 31, 1999.¹¹⁵ The State, however, fails to provide any further communication and the Commission refers the case to the Court.¹¹⁶

107. *Id.*

108. *Id.* ¶ 13.

109. *Id.* ¶ 14.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* ¶ 15.

115. *Id.* ¶ 16.

116. *Id.*

B. Before the Court

March 31, 1999: The Commission submits the case to the Court after the State failed to adopt its recommendations.¹¹⁷

July 9, 1999: The State informs the Court that it no longer recognizes the jurisdiction of the Inter-American Court.¹¹⁸

August 27, 1999: The International Human Rights Law Group submits an *amicus curiae* brief.¹¹⁹

September 9, 1999: Curtis Francis Doebbler submits an *amicus curiae* brief.¹²⁰

September 15, 1999: Alberto A. Borea Odría submits an *amicus curiae* brief.¹²¹

September 24, 1999: The Court rules that the State's "purported withdrawal" from the Court's jurisdiction is inadmissible, and the Court is competent to hear the case.¹²²

November 13, 2000: The Inter-American Press Association submits an *amicus curiae* brief.¹²³

1. Violations Alleged by Commission¹²⁴

Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal)

Article 13 (Freedom of Thought and Expression)

Article 20(3) (Prohibition of Arbitrary Deprivation of Nationality)

Article 21 (Right to Property)

117. *Id.* ¶ 17.

118. Ivcher Bronstein v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 4 (June 1, 2001); *see also* Constitutional Court v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 71, ¶ 18 (Jan. 31, 2001).

119. Ivcher Bronstein v. Peru, Merits, Reparations, and Costs, ¶ 27.

120. *Id.* ¶ 28.

121. *Id.* ¶ 30.

122. *Id.* "Having Seen" ¶ 5. The State submits a letter to the Court regarding the withdrawal of contentious jurisdiction of the Court on September 28, 1999. Mediante Nota N 5-9N/71, *El Perú y la Corte Interamericana de Derechos Humanos*, (Sept. 29, 1999) (Peru).

123. Ivcher Bronstein v. Peru, Merits, Reparations, and Costs, ¶ 43.

124. *Id.* ¶ 176.

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims¹²⁵

Same violations alleged by the Commission.

III. MERITS

A. *Composition of the Court*

Antônio Augusto Cançado Trindade, President

Máximo Pacheco Gómez, Vice-President

Hernán Salgado Pesantes, Judge

Oliver H. Jackman, Judge

Alirio Abreu Burelli, Judge

Sergio García Ramírez, Judge

Carlos Vicente de Roux Rengifo, Judge

Manuel E. Ventura Robles, Secretary

Renzo Pomi, Deputy Secretary

B. *Decision on the Merits*

February 6, 2001: The Court issued its Judgment on Merits, Reparations and Costs.¹²⁶

The Court found unanimously that Peru had violated:

Articles 20(1) (Right to A Nationality) and 20(3) (Prohibition of Arbitrary Deprivation of Nationality), in relation to Article 1(1) of the Convention, to the detriment of Mr. Ivcher Bronstein,¹²⁷ because:

The State unlawfully deprived Mr. Ivcher Bronstein of his Peruvian

125. *Ivcher Bronstein v. Peru*, Admissibility Report, Report No. 20/98, Inter-Am. Comm'n H.R., Case No. 11.762, ¶ 6 (Mar. 3, 1998). Mr. Enrique Elias served as representative of Mr. Ivcher Bronstein.

126. *Ivcher Bronstein v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74 (Feb. 6, 2001).

127. *Id.* ¶¶ 83-97.

Nationality.¹²⁸ While the regulation of nationality is usually left to each State's competence, the State's discretion has limits where necessary to protect human rights.¹²⁹ Moreover, the State's own Constitution provides: "Peruvian nationality is not lost, unless it is expressly renounced before the Peruvian authorities."¹³⁰ The only exception to this rule is that the State may annul an individual's Peruvian nationality "within the six months following the date on which it was acquired."¹³¹

The Court found that the State did not comply with Article 20 (Right to a Nationality) for several reasons.¹³² First, there was nothing to indicate that Mr. Ivcher Bronstein expressly renounced his Peruvian nationality; yet, the State deprived him of his nationality and he was unable to exercise his rights as a Peruvian national.¹³³ Second, the procedure used to annul his nationality was arbitrary because the law was adopted thirteen years after nationality had been granted, well after the six-month period exception.¹³⁴ Third, while he obtained Peruvian nationality through a Supreme Decree signed by the Minister of Foreign Affairs, it was removed through a Directorial Resolution issued by the Migration and Naturalization Directorate.¹³⁵ Because the Migration and Naturalization Directorate is of a lower rank than the Supreme Decree, the Migration and Naturalization Directorate lacked the competence required by law to remove citizenship.¹³⁶ As a result, the Court determined that the State violated Articles 20(1) (Right to Nationality) and 20(3) (Prohibition of Arbitrary Deprivation of Nationality).¹³⁷

Articles 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) and 8(2) (Right to be Presumed Innocent), in relation to Article 1(1) of the Convention, to the detriment of Mr. Ivcher Bronstein,¹³⁸ because:

*The State failed to grant Mr. Ivcher Bronstein a fair trial.*¹³⁹ While an

128. *Id.* ¶ 97.

129. *Id.* ¶ 88.

130. *Id.* ¶ 89.

131. *Id.* ¶ 95.

132. *Id.* ¶ 97.

133. *Id.* ¶ 95.

134. *Id.*

135. *Id.* ¶ 96.

136. *Id.*

137. *Id.* ¶ 97.

138. *Id.* ¶¶ 100-16.

139. *Id.* ¶ 116.

*individual has the right to a competent, impartial, and independent trial that is administered in a reasonable time, this rule extends to administrative remedies.*¹⁴⁰

The Court found that the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) and 8(2) (Right to be Presumed Innocent), through the State's administrative procedure for various reasons.¹⁴¹ First, the State charged Mr. Ivcher Bronstein with forging documents in his naturalization file and with not complying with the naturalization requirements.¹⁴² The State did so without informing Mr. Ivcher Bronstein that his naturalization file could not be found, asking him to provide copies of his file, or allowing him to present witnesses.¹⁴³ Second, the State did not permit him to intervene at any time, despite the fact that the State was taking action that could affect his rights.¹⁴⁴ Instead, the State issued the Directorial Resolution and annulled his citizenship.¹⁴⁵ Third, as indicated in the above section, the administrative body that revoked his nationality was of a lower rank than the body that determined he was eligible for citizenship.¹⁴⁶ Fourth, the agency that revoked Mr. Ivcher Bronstein's Peruvian citizenship was not competent, as State legislation requires an annulment to be issued by an authority of a higher rank than the office that revoked Mr. Ivcher Bronstein's citizenship.¹⁴⁷

The Court also found that the State violated Articles 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) and 8(2) (Right to be Presumed Innocent) through the State's judicial procedure.¹⁴⁸ The creation of a temporary public law and the appointment of a new judge did not guarantee Mr. Ivcher Bronstein's right to be heard by a previously established legal system.¹⁴⁹ For this reason, the judge failed to meet the competence, impartiality and independence standards required by this Article.¹⁵⁰ As a result, the Court determined that the State violated 8(1) (Right to a Hearing Within

140. *Id.* ¶¶ 102-05.

141. *Id.* ¶ 116.

142. *Id.* ¶ 106.

143. *Id.*

144. *Id.* ¶ 107.

145. *Id.*

146. *Id.* ¶ 108.

147. *Id.* ¶ 109.

148. *Id.* ¶¶ 111-16.

149. *Id.* ¶ 114.

150. *Id.* ¶ 115.

*Reasonable Time by Competent and Independent Tribunal) and 8(2) (Right to be Presumed Innocent).*¹⁵¹

Article 21 (Right to Private Property), in relation to Article 1(1) of the Convention, to the detriment of Mr. Ivcher Bronstein,¹⁵² because:

*The State deprived Mr. Ivcher Bronstein of his right to the Channel's shares.*¹⁵³ *Article 21 (Right to Private Property) protects an individual's use and enjoyment his property.*¹⁵⁴ *While the law can subordinate this use and enjoyment, the State may not deprive a person of his property without just compensation, except for public utility or social interest reasons.*¹⁵⁵

*The Court found that the State violated Article 21 (Right to Private Property).*¹⁵⁶ *The majority ownership in the Channel was property that Mr. Ivcher Bronstein was entitled to use and enjoy.*¹⁵⁷ *Despite this, the measure issued by the State on August 1, 1997 deprived Mr. Ivcher Bronstein from acting as director and chairman.*¹⁵⁸ *He was also prevented from transferring his ownership and from joining board meetings where important decisions were made.*¹⁵⁹ *Nothing indicated that this deprivation of the use and enjoyment of Mr. Ivcher Bronstein's property was for public utility or social interest, nor was there any compensation provided.*¹⁶⁰ *As a result, the Court determined that the State violated Article 21 (Right to Private Property).*¹⁶¹

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) of the Convention, to the detriment of Mr. Ivcher Bronstein,¹⁶² because:

*The State failed to provide Mr. Ivcher Bronstein appropriate judicial protection.*¹⁶³ *Every person has the right to a simple, prompt hearing*

151. *Id.* ¶ 116.

152. *Id.* ¶¶ 119-31.

153. *Id.* ¶ 131.

154. *Id.* ¶ 120.

155. *Id.*

156. *Id.* ¶ 131.

157. *Id.* ¶ 123.

158. *Id.* ¶ 126.

159. *Id.*

160. *Id.* ¶¶ 128-30.

161. *Id.* ¶ 131.

162. *Id.* ¶¶ 134-42.

163. *Id.* ¶ 131.

*and competent court or tribunal when their fundamental rights are violated.*¹⁶⁴ *Illusory recourses, that are ineffective because (1) the judiciary lacks independence, competence and impartiality, (2) justice is denied, (3) there is an unjustified delay in providing a decision, and (4) the claimed victim cannot gain access to a judicial recourse, do not meet this standard.*¹⁶⁵

*The Court found that the State failed to comply with Article 25(1) (Right of Recourse Before a Competent Court), for various reasons.*¹⁶⁶ *First, the courts that dealt with Mr. Ivcher Bronstein's complaints failed to meet the minimum requirements of an independent and impartial court.*¹⁶⁷ *As a result, the State denied Mr. Ivcher Bronstein access to effective recourses.*¹⁶⁸ *Second, while the minority shareholders obtained a simple and prompt resolution, Mr. Ivcher Bronstein's attempts to defend his shareholder rights were not addressed or resolved promptly.*¹⁶⁹ *Finally, the civil and criminal lawsuits against the Ivcher family, which kept them out of the country and restricted their liberty, constituted persecution and denied them justice.*¹⁷⁰ *Accordingly, the Court determined that the State violated Article 25(1) (Right of Recourse Before a Competent Court).*¹⁷¹

Article 13 (Freedom of Thought and Expression), in relation to Article 1(1) of the Convention, to the detriment of Mr. Ivcher Bronstein,¹⁷² because:

*The State deprived Mr. Ivcher Bronstein of his right to freedom of thought and expression.*¹⁷³ *Every individual has the right to freedom of thought and expression, including the "freedom to seek, receive and impart information and ideas of all kinds."*¹⁷⁴ *The State may not prohibit this freedom in foresight of a failure to respect others rights or reputations, or for the protection of national security, public health, public order, or morals, but it may impose subsequent liability.*¹⁷⁵

164. *Id.* ¶ 134.

165. *Id.* ¶¶ 135-37.

166. *Id.* ¶ 142.

167. *Id.* ¶ 139.

168. *Id.*

169. *Id.* ¶ 140.

170. *Id.* ¶ 141.

171. *Id.* ¶ 142.

172. *Id.* ¶¶ 143-162.

173. *Id.* ¶ 164.

174. *Id.* ¶ 145.

175. *Id.*

Further, the State does not have the right to control the dissemination of ideas and opinions by the media.¹⁷⁶ The Court views freedom of thought and expression as a two way street: not only is there a right to express oneself but also a right to receive information and have the knowledge of others' opinions.¹⁷⁷ The right is not limited to opinions favored by the State, it extends to those that are not welcomed by or shock the State.¹⁷⁸

The Court found that the State did not comply with Article 13 (Freedom of Thought and Expression) for several reasons.¹⁷⁹ First, the State threatened Mr. Ivcher Bronstein for exercising his Article 13 right to release news regarding the State, including news about National Intelligence Advisor Montesinos' income scandal, and that of the Ms. Barreto Riofano's death.¹⁸⁰ The State then removed his Peruvian nationality to prevent him from broadcasting unfavorable stories about the State.¹⁸¹ The State then seized Mr. Ivcher Bronstein's ownership interest in the Channel, effectively depriving him of any ability to publish further news stories.¹⁸² After this occurred, minority shareholders prohibited the Channel's journalists from entering the premises and modified its editorial line.¹⁸³ In light of these occurrences, the Court concluded that both Mr. Ivcher Bronstein's and the journalists' freedom of expression were restricted.¹⁸⁴

Second, removing Mr. Ivcher Bronstein's control from the Channel and restricting the circulation of news, ideas, and opinions to the public also violated the rights of all Peruvians.¹⁸⁵ As a result, the Court determined that the State violated Article 13 (Freedom of Thought and Expression).¹⁸⁶

C. Dissenting and Concurring Opinions

[None]

176. *Id.*

177. *Id.* ¶ 146.

178. *Id.* ¶ 152.

179. *Id.* ¶ 164.

180. *Id.* ¶ 156.

181. *Id.* ¶ 159.

182. *Id.* ¶ 160.

183. *Id.* ¶ 161.

184. *Id.* ¶ 162.

185. *Id.* ¶ 163.

186. *Id.* ¶ 164.

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Judgment as a Form of Reparation

The Court explained that the Judgment is a form of reparation in itself.¹⁸⁷

2. Reinstate Ownership Rights¹⁸⁸

The Court ordered the State to reinstate Mr. Ivcher Bronstein's rights as a majority shareholder in the Channel.¹⁸⁹

3. Recover Dividends and Other Income

The Court directed the State to recover the dividends and other income that Mr. Ivcher Bronstein should have received during his removal as shareholder and chairman of the Channel.¹⁹⁰

4. Guarantee the Right to Freedom of Expression

The Court directed the State to guarantee Mr. Ivcher Bronstein's right to investigate and make public the information and ideas through the Channel.¹⁹¹

5. Investigate and Punish those Responsible

The Court indicated that the State should investigate and punish those responsible for the acts that resulted in the aforementioned violations.¹⁹²

B. Compensation

187. *Id.* ¶ 183.

188. *Id.* ¶ 178. The Court did not order the State to reinstate Mr. Ivcher Bronstein's Peruvian citizenship, as the State did so before the time of judgment.

189. *Id.* ¶ 179.

190. *Id.* ¶ 181.

191. *Id.* ¶ 182.

192. *Id.* ¶ 187.

The Court awarded the following amounts:

1. Pecuniary Damages

[None]¹⁹³

2. Non-Pecuniary Damages

The Court awarded \$20,000 to Mr. Ivcher Bronstein as compensation for moral damages.¹⁹⁴

3. Costs and Expenses

The Court awarded \$50,000 to Mr. Ivcher Bronstein for the costs and expenses incurred in pursuing this case before international and domestic courts.¹⁹⁵

4. Total Compensation (including Costs and Expenses ordered):

\$70,000

C. Deadlines

[None]

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 21, 2000: The Court issued a Provisional Measure ordering the State to protect the physical, psychological, and moral integrity, and the right to the legal guarantees of Mr. Ivcher Bronstien, Ms. Even de Ivcher, their daughters, Dafna Ivcher Even, Michal Ivcher Even, Tal Ivcher Even, Hadaz Ivcher Even, as well as Mr. Rosario Lam Torres, Mr. Julio Sotelo Casanova, Mr. Jose Arrieta Matos, Mr. Emilio

193. *Id.* ¶ 184.

194. *See* IV. A. 3. Recover Dividends and Other Income, above.

195. *Id.* ¶ 189.

Rodriguez Larrain, and Mr. Fernando Viaña Villa.¹⁹⁶

The Court required the State to report back no later than December 5, 2000 about the Provisional Measure and to submit reports on the provisional measures every two months.¹⁹⁷

November 23, 2000: The Court issued a Provisional Measure ordering the State to protect the physical, psychological, and moral integrity, and the right to the legal guarantees of Mr. Menachem Ivcher Bronstein, Mr. Ivcher Bronstein's brother, and Mr. Roger Gonzalez.¹⁹⁸ It also reemphasized the reporting requirements from the November 21, 2000 Provisional Measure.¹⁹⁹

February 1, 2001: In a letter to the Court, the State indicated that it recognized that it is a party to the American Convention and accepted the jurisdiction of the Court.²⁰⁰ The letter essentially rescinded the State's previous attempt to withdraw from the Courts' jurisdiction.²⁰¹

March 14, 2001: The Court issued a Provisional Measure to lift the requirements imposed on the State and the Commission through the Provisional Measures dated November 21, 2000 and November 23, 2000 and to close the file on Provisional Measures²⁰²

The Court found that the State cooperated with the Commission's request.²⁰³ The State allowed the Ivcher family to return to the State, cancelled the arrest warrants, and reinstated Mr. Ivcher Bronstein's shareholder and chairman rights.²⁰⁴ Therefore, the Court found that there was no longer an extremely grave and urgent need for a Provisional Measure as required by Article 63.2.²⁰⁵

June 1, 2001: In a Monitoring Compliance Report, the Court recognized that the State reiterated that it was bound by the American

196. *Ivcher Bronstein v. Peru*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Decides" ¶¶ 1-2 (Nov. 21, 2000).

197. *Id.* ¶ 3.

198. *Ivcher Bronstein v. Peru*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Decides" ¶ 1 (Nov. 23, 2000).

199. *Id.* ¶¶ 2-3.

200. *Ivcher Bronstein v. Peru*, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 10 (June 1, 2001).

201. *See id.*

202. *Ivcher Bronstein v. Peru*, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Decides" ¶¶ 1-3 (Mar. 14, 2001).

203. *Id.* "Considering" ¶ 4.

204. *Id.*

205. *Id.*

Convention and accepted the jurisdiction of the Inter-American Court.²⁰⁶

September 21, 2005: The Court issued a Monitoring Compliance report where it reiterated the State's obligations to investigate and punish those responsible for Mr. Ivcher Bronstein's rights; to reinstate Mr. Ivcher Bronstein's shareholder rights and compensate him for lost income and dividends; and to compensate Mr. Ivcher Bronstein.²⁰⁷ The Court required the State to submit a detailed report on compliance measures no later than January 30, 2006.²⁰⁸

November 24, 2009: In a Monitoring Compliance report, the Court recognized that the State compensated Mr. Ivcher Bronstein, 20,378,402.22 nuevo soles, for lost dividends, unpaid fees and income and compensated Mr. Ivcher Bronstein for his pecuniary and non-pecuniary damages.²⁰⁹

The Court noted that the State partially complied with the requirement to investigate and punish those responsible for these violations, and the requirement to allow Mr. Ivcher Bronstein to recuperate his rights as a majority shareholder in the Chanel.²¹⁰ The Court will continue to monitor the State's compliance with these orders.²¹¹

August 27, 2010: In a Monitoring Compliance Report, the Court recognized that the State fully complied with its obligation to allow Mr. Ivcher Bronstein to recover his position as a majority shareholder.²¹² The State must still investigate and punish those responsible for the human rights violations in this case.²¹³ The Court ordered the State to report on its compliance no later than December 6, 2010.²¹⁴

206. Ivcher Bronstein v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Having Seen" ¶ 4, "Decides" ¶ 1 (June 1, 2001).

207. Ivcher Bronstein v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Decides" ¶ 1 (Sept. 21, 2005).

208. *Id.* ¶ 2.

209. Ivcher Bronstein v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶¶ 1 (a)-(c), "Considering" ¶ 23 (Nov. 24, 2009).

210. *Id.* "Declares" ¶¶ 2(a)-(b).

211. *Id.* "Declares" ¶¶ 3(a)-(b).

212. Ivcher Bronstein v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Declares" ¶ 1(a) (Aug. 27, 2010).

213. *Id.* "Declares" ¶ 2(a).

214. *Id.* "Decides" ¶ 2.

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[*Ivcher Bronstein v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 74 \(Feb. 6, 2001\).*](#)

[*Ivcher Bronstein v. Peru, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) \(Feb. 6, 2001\).*](#)

3. Provisional Measures

[*Ivcher Bronstein v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Mar. 14, 2001\).*](#)

[*Ivcher Bronstein v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 23, 2000\).*](#)

[*Ivcher Bronstein v. Peru, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 21, 2000\).*](#)

4. Compliance Monitoring

[*Ivcher Bronstein v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Aug. 27, 2010\).*](#)

[*Ivcher Bronstein v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 24, 2009\).*](#)

[*Ivcher Bronstein v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 27, 2009\) \(Available only in Spanish\).*](#)

[*Ivcher Bronstein v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Sept. 21, 2005\) \(Available only in Spanish\).*](#)

[Ivcher Bronstein v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(June 1, 2001\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[Ivcher Bronstein v. Peru, Admissibility Report, Report No. 20/98, Inter-Am. Comm'n H.R., Case No. 11.762 \(Mar. 3, 1998\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

Ivcher Bronstein v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.762 (Feb. 6, 2001).

VIII. BIBLIOGRAPHY

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Mediante Nota N 5-9N/71, *El Perú y la Corte Interamericana de Derechos Humanos*, (Sept. 29, 1999) (Peru).

Alex Amado Rivadeneyra, *Análisis del Caso Baruch Ivcher vs Perú. Libertad de Expresión y Poder Político en Vía de Colisión*, REVISTA INTERNauta DE PRÁCTICA JURÍDICA 20, 23 (2007).