

Inter-American Court of Human Rights

Case of Ivcher-Bronstein v. Peru

Judgment of February 6, 2001
(Merits, Reparations and Costs)

In the Ivcher Bronstein case,

the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") composed of the following judges:

Antônio A. Cançado Trindade, President
Máximo Pacheco Gómez, Vice President
Hernán Salgado Pesantes, Judge
Oliver Jackman, Judge
Alirio Abreu Burelli, Judge
Sergio García Ramírez, Judge and
Carlos Vicente de Roux Rengifo, Judge;

also present,

Manuel E. Ventura Robles, Secretary and
Renzo Pomi, Deputy Secretary,

pursuant to Articles 29 and 55 of its Rules of Procedure (hereinafter "the Rules of Procedure"), delivers the following judgment:

I

INTRODUCTION OF THE CASE

1. On March 31, 1999, in accordance with the provisions of Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted an application to the Court against the Republic of Peru (hereinafter "the State" or "Peru"), arising from petition No. 11,762, received by the Secretariat of the Commission on June 9, 1997.

2. The Commission submitted this application for the Court to decide whether the State had violated Articles 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), 20 (Right to Nationality), 21 (Right to Property) and 25 (Judicial Protection), all of them in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, with regard to Baruch Ivcher Bronstein (hereinafter "Mr. Ivcher" or "Mr. Ivcher Bronstein"),

3. According to the facts described by the Commission, the State arbitrarily deprived Mr. Ivcher Bronstein, naturalized Peruvian citizen, majority shareholder, Director and President of Channel 2-*Frecuencia Latina* (hereinafter "Channel 2", "the Channel" or "*Frecuencia Latina*") of the Peruvian television network of his nationality title, in order to remove him from the editorial control of the said channel and restrict his freedom of expression, which he manifested by denouncing grave violations of human rights and acts of corruption.

4. The Commission therefore requested the Court to call on Peru to restore and guarantee to Mr. Ivcher the enjoyment of all his rights and, in particular that it should:

a. Order that Mr. Ivcher Bronstein's Peruvian nationality title be reinstated and that the full and unconditional recognition of his Peruvian nationality be restored, with all attendant rights and prerogatives.

b. Order that Mr. Ivcher Bronstein's enjoyment and exercise of his right to own shares in *Compañía Latinoamericana de Radiodifusión S.A.* be restored along with all his prerogatives as a shareholder in and administrator of that company.

c. Order that Peru must guarantee Mr. Ivcher Bronstein's enjoyment and exercise [of] his right to freedom of expression and, in particular, that the acts of harassment and persecution against him, including the acts against his family and his company [should] cease.

d. Order that the Peruvian State must adopt the necessary legislative and administrative measures to make full reparation and compensate Mr. Ivcher Bronstein for all the material and moral damages that the acts of its administrative and judicial organs have caused him.

The Commission also petitioned the Court to order the State to adopt the necessary legislative and administrative measures to avoid a recurrence of events of this nature, and to investigate and punish those responsible for the violations of the fundamental rights of Mr. Ivcher Bronstein. Lastly, the Commission requested that the State be ordered to pay the costs and reimburse the expenses incurred by the alleged victim in litigating this case, in both the domestic courts and the inter-American system, including reasonable fees for his representatives.

II COMPETENCE OF THE COURT

5. The Court is competent to hear the instant case. Peru has been a State Party to the American Convention since July 28, 1978, and recognized the obligatory jurisdiction of the Court on January 21, 1981.

III PROCEDURE BEFORE THE COMMISSION

6. On June 9, 1997, the Peruvian Congressman, Javier Díez Canseco, advised the Commission that Mr. Ivcher Bronstein might possibly be deprived of his Peruvian nationality. On July 16, 1997, the Dean of the Lima Bar Association, Vladimir Paz de la Barra, filed a petition with the Commission alleging that the State had revoked Mr. Ivcher's Peruvian citizenship.

7. On July 18, 1997, the Commission opened the case and requested the State to provide the corresponding information.
8. On August 26, 1997, Mr. Ivcher requested a hearing with the Commission and, based on this request, the Commission considered him to be the principal petitioner and victim of the alleged violations.
9. Peru replied to the Commission on September 12, 1997, and requested that the petition be declared inadmissible.
10. On October 9, 1997, during its 97th session, the Commission held a hearing on the petition's admissibility.
11. On February 26, 1998, during its 98th session, the Commission held a second hearing on the admissibility of this case.
12. By a note of May 29, 1998, the Commission made itself available to the parties to try and reach a friendly settlement and asked them to reply to this offer within 30 days. Following an extension granted at the request of the State, on July 31, 1998, the latter declared that it did not consider it appropriate to initiate a friendly settlement procedure.
13. On October 8, 1998, during its 100th session, the Commission held a hearing on the merits of the petition.
14. On December 9, 1998, during its 101st session, the Commission adopted Report No. 94/98, which was transmitted to Peru on December 18 that year. In this report, the Commission concluded that:

the Peruvian State arbitrarily deprived Mr. Ivcher of his Peruvian nationality (in violation of the provisions of Article 20(3) of the Convention), as a means of suppressing his freedom of expression (recognized in Article 13 of the Convention), and also violated his right to property (Article 21 of the Convention) and his rights to due process (Article 8(1) of the Convention) and to a simple and prompt recourse to a competent judge or tribunal (Article 25 of the Convention), in violation of the general obligation of the Peruvian State to respect the rights and freedoms of each individual in its jurisdiction, arising from Article 1(1) of the American Convention.

the Commission also recommended the State:

- A. To immediately reinstate Baruch Ivcher Bronstein's Peruvian nationality title and restore full and unconditional recognition of his Peruvian nationality, with all the attendant rights and prerogatives.
- B. To immediately desist from the harassment and persecution of Mr. Ivcher Bronstein, and refrain from any further actions that violate his freedom of expression.
- C. To take the necessary steps to re-establish Baruch Ivcher Bronstein's enjoyment and exercise of his right to own shares in the company and, consequently, restore to him all his prerogatives as a shareholder in and administrator of the company.
- D. To compensate Mr. Ivcher Bronstein for the material and moral damages that the conduct of the administrative and judicial organs of the State caused him [,and]
- E. To adopt the necessary legislative and administrative measures to prevent episodes of this kind in the future.

Lastly, the Commission granted the State a period of two months to adopt measures aimed at fulfilling its recommendations.

15. By a note of March 17, 1999, the State requested the Commission to grant it a 14-day extension in order to comply with the recommendations issued by the Commission and indicated that it waived its right to have that period counted within the period set forth in Article 51(1) of the Convention.

16. On March 18, 1999, the Commission acceded to the State's request and stated that it would grant an extension until March 31, 1999. It also stated that the extension would push back the deadline for filing the application with the Court.

17. When the agreed date for the State to indicate that it had complied with the recommendations had elapsed, without it having communicated with the Commission, the Commission decided to refer the case to the Inter-American Court, under the terms of Article 51 of the Convention.

IV PROCEEDING BEFORE THE COURT

18. On March 31, 1999, the Commission filed the application with the Inter-American Court (*supra* paras. 1, 2, 3 and 4).

19. The Commission appointed Hélio Bicudo and Claudio Grossman as its delegates; Jorge E. Taiana, Hernando Valencia Villa, Christina M. Cerna, Ignacio Alvarez and Santiago Cantón as advisors; and Alberto A. Borea Odría, Elliot Abrams, Viviana Krsticevic and María Claudia Pulido as assistants.

20. Pursuant to Article 34 of the Rules of Procedure, on April 20, 1999, the President of the Court (hereinafter "the President") requested the Commission to correct certain problems in the presentation of the application within 20 days. On May 5, 1999, the Commission corrected the problems.

21. On May 10, 1999, the Secretariat of the Court (hereinafter "the Secretariat") transmitted the application to Peru and informed it about the time limits for answering the application, filing preliminary objections and appointing its agents. It also informed the State that it had the right to appoint a *ad hoc* judge.

22. On May 17, 1999, the Ambassador of Peru to Costa Rica informed the Court that the Office of the Minister for Foreign Affairs of Peru had received the application corresponding to this case on May 12, 1999.

23. On June 8, 1999, the State appointed Mario Federico Cavagnaro Basile as its agent and Sergio Tapia Tapia as deputy agent and indicated the address where communications relating to the case would be officially received.

24. On June 11, 1999, the State filed a brief in which it indicated the discrepancies that, in its opinion, existed with regard to the time period for appointing an *ad hoc* judge, and also requested a reasonable extension of that period. The extension was granted until July 11, 1999.

25. On August 4, 1999, the Minister and the Counselor of Peru's Embassy in Costa Rica appeared before the Secretariat to return the application in this case and

its attachments. These officials delivered a note to the Secretariat, dated August 2, 1999, signed by the Minister for Foreign Affairs, which stated that:

- a. By Legislative Resolution No. 27,152, dated July 8, 1999, [...] the Congress of the Republic approved the withdrawal of [Peru's] recognition of the contentious jurisdiction of the Inter-American Court of Human Rights.
- b. On July 9, 1999, the Government of the Republic of Peru deposited with the General Secretariat of the Organization of American States (OAS) the instrument wherein it declares that, in pursuant to the American Convention on Human Rights, the Republic of Peru is withdrawing the declaration consenting to the optional clause concerning recognition of the contentious jurisdiction of the Inter-American Court of Human Rights [...].
- c. [...] The withdrawal of the recognition of the Court's contentious jurisdiction takes immediate effects as of the date on which that instrument is deposited with the General Secretariat of the OAS, in other words, July 9, 1999, and applies to all cases in which Peru has not answered the application filed with the Court.

Lastly, in the same brief, the State declared that

The notification contained in note CDH-11.762/002, dated May 10, 1999, concerns a case in which the Honorable Court is no longer competent to consider the applications filed against the Republic of Peru, under the contentious jurisdiction provided for in the American Convention on Human Rights.

26. On August 9, 1999, the State sent a note to which was attached a copy of the "supreme resolution" of August 3, 1999, which annulled the appointment of Mario Cavagnaro Basile and Sergio Tapia Tapia as agent and deputy agent, respectively, in the instant case.

27. On August 27, 1999, the International Human Rights Law Group submitted a brief in the capacity of *amicus curiae*.

28. On September 9, de 1999, Curtis Francis Doebbler submitted a brief in the capacity of *amicus curiae*.

29. On September 10, 1999, the Commission submitted its observations concerning Peru's return of the application and its attachments. In its brief, the Commission stated that:

- a. The Court asserted jurisdiction to consider the instant case as of March 31, 1999, the date on which the Commission filed the application. Peru's purported "withdrawal" of its recognition of the Court's contentious jurisdiction on July 9, 1999, and its return of the application and its attachments on August 4, 1999, by Peru, have no effect whatever on the Court's exercise of jurisdiction in the instant case;
- b. A unilateral act of a State cannot divest an international court of jurisdiction it has already asserted; the American Convention contains no provision that would make it possible to withdraw recognition of the Court's contentious jurisdiction, as such a provision would be antithetical to the Convention and have no foundation in law. Even supposing a State could withdraw its recognition of the Court's contentious jurisdiction, formal notification would have to be given one year before the withdrawal could take effect, for the sake of legal certainty and stability.

Finally, the Commission petitioned the Court to find that Peru's return of the application and its attachments in the Ivcher Bronstein case was legally ineffectual,

to continue to exercise jurisdiction over the instant case and to convene a public hearing on the merits of the case at the next procedural opportunity.

30. On September 15, 1999, Alberto A. Borea Odría submitted a brief in the capacity of *amicus curiae*.

31. On September 24, 1999, the Inter-American Court delivered judgment on its competence, in which it decided:

1. To declare that:
 - a. the Inter-American Court of Human Rights is competent to take up the present case;
 - b. Peru's purported withdrawal, with immediate effect, of the declaration recognizing the contentious jurisdiction of the Inter-American Court of Human Rights is inadmissible[;]
2. [t]o continue to examine and process the instant case[;]
3. [t]o commission its President, at the appropriate time, to convene the State of Peru and the Inter-American Commission on Human Rights to a public hearing on the merits of the case, to be held at the seat of the Inter-American Court of Human Rights[, and]
4. [t]o notify Peru and the Inter-American Commission on Human Rights of this judgment.

32. On September 27, 1999, the Minister of Peru's Embassy in Costa Rica appeared at the seat of the court to return the judgment on competence to the Secretariat and to deliver a note from the Embassy, of the same date, indicating the reasons for this conduct, which were the same as those stated in the State's briefs of August 4 and 9, 1999 (*supra* paras. 25 and 26).

33. On September 29, October 4, and November 1, 1999, Peru sent three notes to the Secretariat with its comments on the judgment on competence (*supra* para. 31).

34. On January 21, 2000, the Secretariat requested the Inter-American Commission to present the list of the witnesses and experts offered in its application, who would appear at the public hearing on the merits. This list was filed by the Commission on February 15, 2000, and forwarded to the State on February 17, 2000.

35. On February 21, 2000, the State returned the list of the witnesses and experts offered by the Commission to the Secretariat.

36. On September 13, 2000, the President summoned the State and the Commission to a public hearing on the merits, to be held at the seat of the Court as of November 20 that year, in order to receive the statements of Baruch Ivcher Bronstein, Fernando Viaña Villa, Rosario Lam Torres, Julio Sotelo Casanova, Vladimir Paz de la Barra, Javier Díez Canseco Cisneros, Luis Pércovich Roca, Ángel Páez Salcedo, Fernando Rospigliosi Capurro, Alejandro Miró Quesada Cisneros, Nicolás de Bari Hermoza Ríos, Vladimiro Montesinos Torres, Víctor Huamán del Solar and Percy Escobar, the witnesses offered by the Commission and the reports of Gustavo Gorriti Ellenbogen, Samuel Abad Yupanqui, Beatriz Merino Lucero and Diego García Sayán,

experts also offered by the Commission. Furthermore, the President informed the parties that immediately after this evidence had been received, they could present their final oral arguments on the merits of the case.

37. On September 28, 2000, the Commission informed the Court that, for reasons beyond their control, the witnesses Javier Díez Canseco Cisneros, Ángel Páez Salcedo and Vladimir Paz de la Barra, and the experts Beatriz Merino Lucero and Diego García Sayán, could not appear before the Court, and therefore requested that Enrique Oliveros Pérez, Luis Iberico Núñez, César Hildebrandt Pérez Treviño and Emilio Rodríguez Larraín should be summoned to give evidence. The same day, the Commission informed the Court that the witness Vladimiro Montesinos Torres had been in the Republic of Panama since September 24 that year and asked it to take the necessary steps before the State of Panama to ensure his presence at the public hearing on the merits.

38. The following day, the Secretariat granted Peru ten days to submit its comments on the substitution of witnesses and experts requested by the Commission. The comments were never submitted.

39. On October 2, 2000, the Secretariat requested the Commission to submit information on the measures it had taken to ensure that the witness, Vladimiro Montesinos, received the summons to the public hearing on the merits, and this was submitted on October 4 that year; as a result, the Secretariat subsequently took the necessary steps before Panama's diplomatic authorities.

40. On October 12, 2000, the Inter-American Commission requested the Court to summon Leonor La Rosa Bustamante to give evidence in the public hearing on the merits. The Secretariat granted the State until October 23, 2000, to submit its comments on that request, but it did not do so.

41. On October 24, 2000, the President annulled the summons of the witnesses Javier Díez Canseco Cisneros, Ángel Páez Salcedo and Vladimir Paz de la Barra, and the experts Beatriz Merino Lucero and Diego García Sayán (*supra* paras. 36 and 37); and summoned Enrique Oliveros Pérez, Luis Iberico Núñez, César Hildebrandt Pérez Treviño, Emilio Rodríguez Larraín and Leonor La Rosa Bustamante to give evidence in the public hearing on the merits, to be held at the seat of the Court on November 20 and 21, 2000.

42. On October 31, 2000, the Inter-American Commission accredited the persons who would represent it in the public hearing on the merits.

43. On November 13, 2000, the Inter-American Press Association submitted a brief in the capacity of *amicus curiae*.

44. On November 20 and 21, 2000, the Court received the statement of the witnesses and expert witnesses proposed by the Commission at a public hearing.

There appeared before the Court:

for the Inter-American Commission:

Hélio Bicudo, delegate
Claudio Grossman, delegate
Christina M. Cerna, advisor

Santiago Cantón, advisor
Debora Benchoam, advisor
Alberto A. Borea Odría, assistant
Elliot Abrams, assistant
Viviana Krsticevic, assistant, and
María Claudia Pulido, assistant;

as witnesses proposed by the Inter-American Commission:

Baruch Ivcher Bronstein
Fernando Viaña Villa
Luis Carlos Antonio Iberico Núñez
Julio Genaro Sotelo Casanova
Rosario Beatriz Lam Torres
Emilio Rodríguez Larraín Salinas
Luis Pércovich Roca, and
Fernando Rospigliosi Capurro;

and as an expert proposed by the Inter-American Commission:

Samuel Abad Yupanqui.

Although they had been summoned, the witnesses Alejandro Miró Quesada Cisneros, Leonor La Rosa Bustamante, Nicolás de Bari Hermoza Ríos, Vladimiro Montesinos Torres, Víctor Huamán del Solar, Percy Escobar and Enrique Oliveros Pérez, and the expert Gustavo Gorriti Ellenbogen, all proposed by the Commission, did not appear at the public hearing. César Hildebrandt Pérez Treviño, also proposed by the Commission, informed the Court that he was unable to appear at the hearing.

Although it had been summoned, the State did not appear (*infra* para. 78). At the start of the public hearing, the President read Article 27 of the Court's Rules of Procedure, which authorizes the Court to proceed with the hearing, on its own motion, in the absence of one of the parties (*infra* para. 79).

45. On November 29, 2000, on the instructions of the Court, the Secretariat requested the Commission to submit the documentary evidence justifying the request for payment of costs and expenses submitted in the application brief by December 13 that year, at the latest. On December 12, 2000, the Commission requested an extension of the period, and, following the instructions of the President, an extension was granted until January 8, 2001.

46. On December 15, 2000, on the instructions of the President, the Secretariat requested the parties to file their final written arguments on the case by January 8, 2001, at the latest.

47. On January 8, 2001, the Commission submitted its final written arguments. The same day, it submitted its arguments on expenses and costs, and on January 10, 2001, the attachments thereto were received by the Secretariat, and were forwarded to the State, requesting it to submit its comments on them by January 24, 2001, at the latest.

48. Peru did not submit final written arguments.

49. On January 23, 2001, Peru's Embassy in Costa Rica forwarded copy of Legislative Resolution No. 27.401 of January 18, 2001, in which a single article establishes the following:

Legislative Resolution No. 27.152 is revoked and the Executive Power is instructed to take the necessary measures to annul any results that the said [l]egislative [r]esolution may have had; furthermore, the contentious jurisdiction of the Inter-American Court of Human Rights is fully restored for the State of Peru.

50. On February 1, 2001, submission of the arguments and evidence having concluded, the State filed its comments on the Commission's arguments with regard to expenses and costs.

51. On February 2, 2001, on the instructions of the Court, the Secretariat requested the Commission to forward its comments on the State's brief mentioned in the previous paragraph and on the "supreme resolution" No. 254-2000-JUS of November 15, 2000, in which Peru "accept[ed] the recommendations formulated in the Commission's Report [No.] 94-98 of December 9, 1998 [...]". The comments were submitted on February 5, that year, within the time limit that had been granted.

V

PROVISIONAL MEASURES ADOPTED IN THIS CASE

52. On November 21, 2000, in accordance with Article 63(2) of the Convention and article 25 of the Rules of Procedure, the Inter-American Court issued a decision in which it requested the State:

To adopt, without delay, any necessary measures to protect the physical and mental health and moral integrity and the right to judicial guarantees (a fair trial) of Baruch Ivcher Bronstein, his wife, Neomy Even de Ivcher and his daughters, Dafna Ivcher Even, Michal Ivcher Even, Tal Ivcher Even and Hadaz Ivcher Even[;]

To adopt, without delay, any necessary measures to protect the physical and mental health and moral integrity and the right to judicial guarantees (a fair trial) of Rosario Lam Torres, Julio Sotelo Casanova, José Arrieta Matos, Emilio Rodríguez Larraín and Fernando Viaña Villa.

[...]

The Court based this decision on the following consideration, among others:

That the statements made by the witnesses and the expert during the public hearing on November 20 and 21, 2000, and the final arguments of the Commission, allow the Court to establish *prima facie* the existence of threats to the rights to personal safety and due process of Baruch Ivcher Bronstein, the alleged victim in this case, and also those of some members of his family, certain managers of his companies and other persons related to the events that gave rise to this case [...]

53. On November 22, 2000, the Commission requested the Court to expand the provisional measures ordered in order to protect also Menachem Ivcher Bronstein, Ivcher's brother, and Roger González, who worked for his companies.

54. By an order dated November 23, 2000, the Court requested the State to "adopt immediately, any measures necessary to protect the physical and mental

health and moral integrity and also the right to due process of Menachem Ivcher Bronstein and Roger González”.

55. On December 1, 2000, the State forwarded to the Court a copy of a note of the Supreme Court of Justice of Peru, “in which its President, Víctor Castillo Castillo, report[ed] on the steps taken to comply with the above-mentioned provisional measures”.

56. On January 18, 2001, the Secretariat requested the State to forward its first report on compliance with the measures ordered by the Court, which should have been presented by December 5, 2000. At the time this judgment was adopted, the State had not sent this report.

57. On January 26, 2001, the Commission informed the Court about the situation of the persons protected by the measures.

VI EVIDENCE

DOCUMENTARY EVIDENCE

58. With the application brief, the Commission submitted 43 attachments, comprising 433 documents¹, eight videos², and numerous newspaper articles.

¹. Cf. Annex 1: certificate of Peruvian nationality No. 004644, issued on December 7, 1984, by the Naturalization Department of the Ministry of Foreign Affairs of the Peruvian Republic in favor of Baruch Ivcher Bronstein; “Supreme Resolution” No. 0649/RE issued on November 27, 1984; Annex 2: birth certificates of Baruch Ivcher Bronstein’s daughters, Dafna, Michal, Tal and Hadaz Ivcher, all born in Peru; certification of Neomy Even de Ivcher’s Peruvian nationality title No. 0072, dated October 6, 1989; Annex 3: notarized document No. KR 80397, which attests to the deed increasing the capital and partially modifying the statutes of *Compañía Latinoamericana de Radiodifusión S.A.*, dated January 27, 1986; Annex 4: company constitution deed granted for *Global Phone Internacional S.A.*, December 13, 1996; registered deed constituting the company *Dalkan 2000 S.A.*; notarized document No. 189-190, dated December 23, 1998, certifying that on September 14, 1998, the capital of *Productos Paraíso del Perú S.A.* was increased, the statutes were partially amended, and Mr. Ivcher became chairman of the Board of Directors; deed of August 15, 1997, for share transfer (“transferencia de acciones por anticipa de legitima”), by which Mr. Ivcher ceded his shares to his four daughters; Annex 6: various newspaper articles; Annex 7: various newspaper articles; Annex 8: decision of April 16, 1997, summoning Mr. Ivcher to appear as a witness; decision of May 16, 1997, charging Mr. Ivcher of crimes “Against the Administration of Justice”, against the State before the Office of the Sitting Provincial Attorney for Criminal Matters; decision of May 23, 1997, ordering the opening of proceedings against Mr. Ivcher, his appearance and a provisional attachment of his assets; Annex 9: official note No. 002-97 CCFFAA of the Armed Forces Joint Command dated May 23, 1997; Annex 10: “Supreme Decree” No. 004-97-IN, of May 23, 1997; Annex 11: press communiqué of May 28, 1997, of the Armed Forces Joint Command; public letter of May 28, 1997, signed by the Winter brothers; Annex 12: “Administrative Decision” 393-CME-PJ of June 17, 1997, published in the official gazette, *El Peruano*, on June 18, 1997; “Administrative Decision” No. 399-CME-PJ, delivered by the Judiciary Executive Committee on June 23, 1997, published in the official gazette, *El Peruano*, on June 24, 1997; Constitutional jurisprudence describing File No. 001-96-I/TC and File No. 2919-91-LIMA; Annex 13: “Administrative Decision” No. 001-97-SC and S-CSJ, of June 25, 1997, published in the official gazette, *El Peruano*, on June 26, 1997; “Administrative Decision” No. 002-97-SC and S-CSJ, of June 25, 1997, published in the official gazette, *El Peruano*, on June 27, 1997; decision No. 351 of the Public Law Chamber dated December 13, 1996; decision No. 91 of the Public Law Chamber dated February 12, 1997; decision of February 26, 1997, annulling the Public Law Chamber’s decision of February 12, 1997; Annex 15: note No. 922-97-UA/CSJL, of April 2, 1997, issued by the Administrator of the Superior Court of Justice of Lima, and addressed to Dr. María del Rosario Villaverde, Magistrate of the Office for the Supervision of the Magistrature of the Judiciary; note No. 115-96-INV-MRVE-OCME/PJ, of March 31, 1997, issued by the Office for the Supervision of the Magistrature of the Judiciary addressed to the President of the Superior Court of Justice of Lima;; note No. 818-97-A/CSJL, undated, although 11/03/97 appears written by hand, addressed to the persons responsible for controlling

attendance; note No. 817-97-A/CSJL, of March 11, 1997, addressed to Percy Escobar Lino; note No. 816-97-A/CSJL, of March 11, 1997, addressed to the Judge of the Fourteenth Criminal Court of Lima; note of March 10, 1996, signed by Juan de la Cruz Aybar, Administrative Director of the Superior Court of Lima; note INV 335-95, of November 25, 1996, issued by the Office for the Supervision of the Magistrature, addressed to the President of the Superior Court of Lima; note INV 335-95, of November 27, 1996, from the Office for the Supervision of the Magistrature; note No. 6245-96-UA/CSJL, of November 25, 1996, addressed to Percy Escobar Lino, Lima Criminal Judge; note No. 337-96-UA/CSJL, of October 21, 1996, from the Management of Resources and Services of the Judiciary addressed to the Judiciary Personnel Supervisor; note No. P.D. 58-96 of October 7, 1996, issued by the Office for the Supervision of the Magistrature, addressed to the President of the Superior Court of Lima; decision I. 335-95, issued on October 7, 1996, by the Office for the Supervision of the Magistrature of the Judiciary; note P.D. No. 58-96, of October 4, 1996, from the General Secretariat of the Office for the Supervision of the Magistrature; note No. 4954-96-UA/CSJL, of September 9, 1996, signed by the Administrator of the Superior Court of Lima, addressed to Percy Escobar Lino; decision of September 6, 1996, issued by the Office for the Supervision of the Magistrature of the Judiciary, corresponding to File No. 0058-96; note of April 15, 1996, in which certain disciplinary measures are imposed on Percy Escobar Lino; note Inv. 58-96/JOD/OCMA, of April 3, 1996, issued by the Office for the Supervision of the Magistrature, addressed to the President of the Superior Court of Justice of Lima; note No. 6196-95-UA/CSJL of November 1995, issued by the President of the Superior Court of Justice of Lima and addressed to Rolando Escobar Lino, Secretary of the 22nd Criminal Court of Lima; note of December 23, 1994, appointing Percy Escobar; note INV. No. 30-93, of October 25, 1995, signed by Luis E. Serpa Segura, supreme member, addressed to the President of the Superior Court of Lima; note INV. 30-93, of October 23, 1995, signed by Luis E. Serpa Segura, supreme member and Medallit Cornejo Jurado of the General Secretariat of the Office for Supervision of the Magistrature of the Judiciary; complaint note No. 725-94, of July 5, 1995, issued by the Office for the Supervision of the Magistrature of the Judiciary; note of July 4, 1995, signed by the Chief Supreme Member of the Office for the Supervision of the Magistrature and by the General Secretary of that Office, referring to complaint note. No. 725-94; decision of May 31, 1995, signed by the Chief Supreme Member of the Office for the Supervision of the Magistrature and by the General Secretary of that Office, corresponding to complaint file No. 725-94; note of March 17, 1995, corresponding to File No. 1096-94, identified by hand as R: 207, with the indication SS. Garrote Amaya, Anchante Pérez and Hurtado Herrera; unnumbered decision of December 16, 1994, signed by the judge of the Thirty-fourth Criminal Court of Lima; note of December 13, 1994, corresponding to File No. 3574-90, signed by the Judge of the Thirty-fourth Criminal Court of Lima and by another person whose signature is illegible; note of December 23, 1994, appointing Percy Escobar Lino to serve in the Twenty-second Criminal Court, signed by the President of the Superior Court of Justice of Lima and by the Administrative Secretary of the Superior Court of Lima; note No. 05-94-34o. JEPL-PJ, of December 19, 1994, signed by the Judge of the Thirty-fourth Criminal Court of Lima, addressed to the President of the Superior Court of Justice of Lima; note of December 19, 1994, signed by the Judge of the Thirty-fourth Criminal Court of Lima, making Percy Escobar Lino available to the office of the President of the Superior Court of Justice of Lima; note PD No. 692-91, of February 23, 1993, signed by David Ruelas Terrazas, addressed to the President of the Superior Court of Justice of Lima; letter of July 5, 1995, signed by Manuel Marul Galvez, addressed to President of the Superior Court of Lima, with regard to file 3574-90; certified copy of note PD 692-91, of February 23, 1993, issued by the General Secretariat of the Office for the Internal Control of the Judiciary; order related to PD No. 692-91, of September 14, 1992, deciding to impose disciplinary measures against Percy Escobar Lino; resolution concerning file 1037-96; Annex 16: petition for habeas corpus filed by Baruch Ivcher of May 31, 1997, before the Public Law Chamber; Order No. 7 of June 18, 1997, issued by the Public Law Chamber; brief of June 8, 1997, in answer to the application, signed by the Public Attorney responsible for legal affairs of the Ministry of the Interior; order of the Temporary Commercial Public Law Chamber, of November 7, 1997, regarding case No. 1279-97; Order No. 18, of February 20, 1998, issued by the First Temporary Commercial Public Law Chamber, regarding File No. 975-97; appeal of March 27, 1998; Annex 17: Petition for popular action submitted to the Public Law Chamber of the Superior Court of Lima on June 3, 1997; Petition for popular action submitted to the Public Law Chamber of the Superior Court of Lima on June 3, 1997; order of the Temporary Commercial Public Law Chamber of January 30, 1998, regarding File No. 1173-97; brief of April 15, 1998, submitted by Alberto Borea Odría, and addressed to the Constitutional and Social Chamber of the Supreme Court of Justice; report No. 194-97 dated December 26, 1997, in which the Public Ministry requests that the joined petitions for popular action should be declared substantiated; report of May 12, 1998, issued by the Public Ministry; Annex 18: Order of August 21, 1997, of the Forty-second Criminal Court of Lima; Notification of order of November 7, 1997, regarding File No. 6090-97; Order of January 29, 1998, issued by Criminal Chamber "C", corresponding to File No. 6148-97; Annex 19: various newspaper articles; Annex 20: various newspaper articles; Annex 21: "Directorial Resolution" No. 117-97-IN-050100000000, of July 11, 1997; Annex 22: Petition for habeas corpus filed on July 11, 1997 by Samuel and Mendel Winter Zuzunaga, before the First Temporary Commercial Public Law Court; Annex 23: Brief amending the application of July 14, 1997, by the Winter brothers; brief requesting precautionary measure of suspension filed on July 14, 1997, by Samuel and Mendel Winter Zuzunaga, before the First Temporary Commercial Public Law Court of Lima;

answer to the application, of July 24, 1997, by the Public Attorney responsible for legal affairs of the Ministry of Transport, Communications, Housing and Construction; notification brief of August 1, 1997, addressed to Baruch Ivcher, referring to order No. 12, of the same date, issued by the Temporary Commercial Public Law Court, corresponding to the precautionary measure requested by the Winter brothers; brief requesting annulment filed by Neomy Even de Ivcher, before the Public Law Chamber of the Superior Court of Lima, stamped received on August 28, 1997; Order No. 33, of September 5, 1997, issued by the Temporary Commercial Public Law Court; order of September 12, 1997, issued by the Temporary Commercial Public Law Chamber; order of September 12, 1997, issued by the Temporary Commercial Public Law Chamber, in which the precautionary measure requested by the Winter brothers was adopted; order of October 27, 1997, issued by the Temporary Commercial Public Law Chamber; Annex 24: Petition for habeas corpus filed on July 14, 1997, by Juan Armando Lengua-Balbi, representing Baruch Ivcher, before the First Temporary Commercial Public Law Court; brief requesting precautionary measures filed on July 14, 1997, by Juan Armando Lengua-Balbi, representing Baruch Ivcher, before the First Temporary Commercial Public Law Court; Order No. 5, of August 15, 1997, issued by the First Temporary Commercial Public Law Court; Order No. 13, of August 14, 1997, issued by the First Temporary Commercial Public Law Court; order of September 11, 1997, issued by the First Temporary Commercial Public Law Chamber, regarding case No. 346-97; record of judicial notification on October 16, 1997, of Order No. 11, issued by the First Temporary Commercial Public Law Court; order of October 24, 1997, issued by the Temporary Commercial Public Law Chamber, corresponding to File No. 344-97; Order No. 20 of November 12, 1997, issued by the First Temporary Commercial Public Law Court; order of December 22, 1997, issued by the First Temporary Commercial Public Law Chamber, corresponding to File No. 344-97; notification of June 11, 1998, issued by the Constitutional Court, addressed to Juan Armando Lengua-Balbi, with regard to File No. 112-98; judgment of April 24, 1998, delivered by the Constitutional Court, corresponding to File No. 112-98-AA/TC; Annex 25: Certified copy of the affidavit made by the notary, Manuel Noya de la Piedra and several newspaper articles; Annex 26: Certified copy No. 272-97, issued by the notary Cesar Carpio, corresponding to the minutes of the Extraordinary General Assembly of shareholders of the Company of September 26, 1997 and several newspaper articles; Annex 27: Request for a hearing addressed to the President of the Inter-American Court of Human Rights by Mr. Ivcher Bronstein on August 26, 1997; note of September 10, 1997, from the Executive Secretary of the Commission to Baruch Ivcher Bronstein; request to the Inter-American Commission on Human Rights for precautionary measures by Baruch Ivcher Bronstein, on October 8, 1997; Annex 28: Request for an Recovery Injunction ("Demanda de Interdicto de Recobrar") filed by Neomy de Ivcher, before the Judge of Civil Affairs of Lima, on October 16, 1997; order of January 6, 1998, issued by the First Civil Chamber of the Superior Court of Justice of Lima; order of April 27, 1998 in case 640-98; notification issued by the Temporary Civil Chamber of the Supreme Court of Justice of the Republic, addressed to Mrs. Ivcher, regarding the order of January 18, 1999; order of January 18, 1999, issued by the Temporary Civil Chamber of the Supreme Court of Justice, in the case 640-98; Order No. 1, of October 21, 1997, regarding File No. 58838-97; Annex 29: Brief of application of November 14, 1997, challenging the resolutions of the Extraordinary General Assembly of Shareholders, filed before the Judge for Civil Matters of Lima; notification May 29, 1998, regarding the order of April 20, 1998, issued by the Third Civil Chamber of the Superior Court of Justice of Lima, regarding Order No. 767-A; notification of Order No. 9, of June 22, 1998, issued by Civil Chamber for Abbreviated Proceedings and Hearings of the Superior Court of Justice of Lima; order of August 12, 1998, regarding complaint No. 132-98; notification of order of November 6, 1998, issued by the Permanent Civil Chamber of the Supreme Court of Justice; order of November 6, 1998, regarding case No. 2499-98; Order No. 1, of December 1, 1997, regarding File No. 64120; Annex 30: Notification of order of April 6, 1998, issued by the Commercial Sub-specialized Chamber for Summary and Non-Contentious Proceedings of the Superior Court of Justice of Lima; Order No. 5, of June 10, 1998, regarding File No. 64267-1-97; Order No. 9, of June 10, 1998; order of August 14, 1998, issued by the Commercial Sub-specialized Chamber for Summary and Non-Contentious Proceedings; Order No. 21, of December 14, 1998, issued by the Twenty-first Civil Court of Lima; Order No. 22, of January 5, 1999, regarding File No. 64267-97; Order No. 23, of January 18, 1998, regarding File No. 64267-97; Order No. 5, of January 12, 1998, regarding File No. 64267-97; Annex 31: Brief applying for the convening of an Extraordinary General Assembly of Shareholders, filed by Neomy de Ivcher on December 1, 1997; brief of January 12, 1998, entitled "Hearing on Reparation, Conciliation and Evidence"; Order No. 4, of April 15, 1998, issued by the Commercial Court Sub-Specialized in Summary and Non-Contentious Proceedings; Order No. 13, of June 25, 1998, regarding File No. 64930-97; brief of October 2, 1998, entitled "Minutes of the Hearing on Reparation, Conciliation and Evidence", regarding File No. 64930-97; Order No. 25, of October 7, 1998, regarding File No. 64930-97; Annex 32: Brief of the petition for habeas corpus filed by the Winter brothers on September 7, 1998, before the Public Law Chamber of the Superior Court of Lima; order of October 30, 1998, issued by the First Temporary Commercial Public Law Chamber; order of November 25, 1998, regarding File No. 1679-98; Order No. 109, of February 5, 1999, issued by the Temporary Commercial Public Law Chamber; Annex 33: Complaint of February 5, 1998, submitted by the Provincial Prosecutor of the Office of the Provincial Criminal Prosecutor for taxation and customs matters; decision to open proceedings ("auto apertorio") of February 5, 1998, issued by the Criminal Court for Taxation and Customs Crimes; brief of June 17, 1998,

submitted by Hilda Rosa Valladares Alarcón; decision to open proceedings ("auto apertorio") of June 19, 1998, issued by the Criminal Court for Taxation and Customs Crimes; Provisional declaration of the legal representation of the Office of the National Superintendent of Taxation Administration, made on July 9, 1998; brief requesting annulment of proceedings, filed by Rosario Lam Torres de Alegre on October 1, 1998, before the First Temporary Criminal Chamber of the Supreme Court; petition for habeas corpus of December 4, 1998, filed before the Public Law Chamber of the Superior Court of Lima; Order No. 2, of December 7, 1998, issued by the First Temporary Commercial Public Law Court; Notification of Order No. 3, of December 10, 1998, addressed to Alberto Borea Odría; Notification of Order No. 1, of December 11, 1998, issued by the First Temporary Commercial Public Law Chamber; petition for habeas corpus of January 21, 1999, filed before the Public Law Chamber of the Superior Court of Lima; Notification of Order No. 1, of January 21, 1999, issued by the First Temporary Commercial Public Law Court; petition for habeas corpus of February 5, 1999, filed before the Public Law Chamber of the Superior Court of Lima; Notification of Order No. 1, of February 5, 1999, issued by the First Temporary Commercial Public Law Court; Order No. 1, of February 5, 1999, issued by the First Temporary Commercial Public Law Court; Order of February 17, 1999, issued by the First Temporary Commercial Public Law Chamber; petition for habeas corpus of November 12, 1998, filed before the Public Law Chamber; Order No. 1, of November 18, 1998, issued by the First Temporary Commercial Public Law Court; Notification of Order No. 3, of December 5, 1993, issued by the First Temporary Commercial Public Law Court; order of November 26, 1998, issued by the Temporary Commercial Public Law Chamber; order of December 16, 1998, issued by the Temporary Commercial Public Law Chamber; brief of July 20, 1998, in which Baruch Ivcher Bronstein filed prior issues before the Court for Taxation and Customs matters; stamp legalizing the signature of Mr. Ivcher, issued on July 23, 1998 by the Consular Section of the Peruvian Embassy in Israel; order of December 11, 1998, issued by the First Temporary Criminal Chamber of the Supreme Court of Justice; judgment of November 17, 1998, issued by the Superior Criminal Chamber for Taxation and Customs Crimes of the Supreme Court of Justice of the Republic; order of November 20, 1998, issued by the First Temporary Criminal Chamber of the Supreme Court of Justice; Annex 34: decision to open proceedings ("auto apertorio") of October 19, 1998, issued by the Criminal Court on Taxation and Customs Crimes; complaint submitted on November 16, 1998, by the Provincial Criminal Prosecutor for Taxation and Customs Crimes; order of November 18, 1998, issued by the Criminal Court for Taxation and Customs Crimes; brief of November 25, 1998, filed by Alberto Borea Odría, addressed to the Court for Taxation and Customs Crimes; arrest warrant issued on November 30, 1998, by the Criminal Court for Taxation and Customs Crimes, addressed to the National Director of the Judicial Police; order preventing departure from the country issued on November 30, 1998, by the Criminal Court for Taxation and Customs Crimes, addressed to the National Director of the Judicial Police Force; arrest warrant issued on November 30, 1998, by the Criminal Court for Taxation and Customs Crimes, addressed to the Head of the OCN INTERPOL Lima; brief of January 22, 1999, filed by Alberto Borea Odría, addressed to the Court for Taxation and Customs Crimes; Annex 35: Brief of February 3, 1999, filed by Juan Armando Lengua-Balbi, bringing a complaint before the Inter-American Commission on Human Rights regarding police and judicial harassment of Mr. Ivcher's defense lawyers; judicial notification of December 15, 1998, by the Criminal Court for Taxation and Customs Crimes; judicial summons No. 1681-IC-DIVPMP, of January 22, 1999, of Emilio Rodríguez Larraín by the National Directorate of the Judicial Police Force; judicial notification of November 10, 1998, of Emilio Rodríguez Larraín by the Criminal Court for Taxation and Customs Crimes; judicial summons of Enrique Elías Laroza by the National Directorate of the Judicial Police Force; judicial notification of January 1999, of Enrique Elías Laroza by the Criminal Court for Taxation and Customs Crimes; judicial notification of December 15, 1998, of Enrique Elías Laroza by the Criminal Court for Taxation and Customs Crimes; judicial notification of October 19, 1998, of Enrique Elías Laroza by the Criminal Court for Taxation and Customs Crimes; judicial summons issued by the National Directorate of the Judicial Police Force; judicial notification of November 18, 1998, of Enrique Elías Laroza by the Criminal Court for Taxation and Customs Crimes; Letter No. 029/99 ERLS, of February 4, 1999, signed by Emilio Rodríguez Larraín, addressed to the Director General of the Peruvian National Police Force; Letter No. 027/99 ERLS, of February 4, 1999, issued by the Rodríguez Larraín Lawyer's Office, addressed to the Ombudsman; Letter No. 016/98 ERLS, of January 26, 1999, signed by Emilio Rodríguez Larraín, addressed to the Dean of the Lima Bar Association; Note No. 1786-IC-DIVPMP.Sec, of February 8, 1999, signed by the National Directorate of Support for Justice and Special Protection, addressed to the Prosecutor of the office of the Prosecutor for Taxation and Customs Crimes; Judicial notification of February 12, 1999, of Emilio Rodríguez Larraín by the Criminal Court for Taxation and Customs Crimes; Annex 36: Certificate of registration contained in Note No. 00169050-98, of January 14, 1998, issued by "Identity, Peruvian Identification System"; List entitled "List of Electors, 1998 Municipal Elections", for polling station No. 041344 in voting district: Inca Garcilaso de la Vega University; Sworn declaration by Luis Pércovich Roca of November 24, 1997; Letter of July 1, 1998, signed by Juan Armando Lengua-Balbi, addressed to Prime Minister, Dr. Javier Valle Riestra; Annex 37: Document entitled "Presentan pruebas irrefutables de nacionalidad peruana de Baruch Ivcher, Caso Frecuencia Latina-Canal 2"; Document entitled "A la opinión pública nacional e internacional / El gobierno debe restituir la nacionalidad peruana a Baruch Ivcher"; Letter of July 21, 1984, signed by Baruch Ivcher, addressed to the President of the Republic of Peru,

Fernando Belaúnde; Sworn declaration by Mr. Ivcher dated July 20, 1984; Letter of December 29, 1983, signed by Baruch Ivcher, addressed to PIP General, Director General of Migration of Peru SDG; Police record certificate, No. K 0191432, dated January 4, 1983, issued by the Police Identification Division of Peru's Investigative Police Force; Bulletin No. 2 of the Judicial Register of the Republic of Peru, of April 12, 1983; Note of January 10, 1983, signed by the First Secretary of the Israeli Embassy in Lima, authenticating the translation of the attached document; Record No. 1957680 of the Civil Police Force of Peru, containing personal data and information regarding Mr. Ivcher's request, and also the police certificate, dated March 17, 1983; Record No. 400028 of the Civil Police Force of Peru, containing personal data and information regarding Mr. Ivcher's request, and also the police certificate, dated May 19, 1983; Record No. DL 226711 of the Banco de la Nación, date stamped January 17, 1983, regarding the tax payment of Baruch Ivcher; Record No. 152225 of the Banco de la Nación, of November 14, 1984, regarding the tax payment of Baruch Ivcher; Statement No. 000173 of the Banco de la Nación, of March 17, 1983, regarding the tax payment of Baruch Ivcher (police taxes); Ivcher marriage certificate, No. A-45452, issued by the Ministry of State Religions of Israel; Authentication of the translation of documents, issued on May 29, 1984 by the First Secretary and Consul of the Israeli Embassy in Lima; Note No. RE-Ln 2-19-c/185, of November 16, 1984, issued by the Ministry of Foreign Affairs of Peru, addressed to the Director General of Legal Affairs of the Ministry of Justice; "Birth Registration Certificate No. 275376", issued by the "Department of Health" of the "Palestine Government"; Birth Registration Certificate No. 275376, issued by the Department of Health of the Palestine Government, with regard to Baruch Ivcher Bronstein; Two receipts for payment, numbered 42341 and 42340, both of January 14, 1983, issued by the Banco Central de Reserva; Note No. 3680 DEX-CER, of November 14, 1984, issued by police department for aliens certifying that Baruch Ivcher has no record; Note No. IP-2565/84, of November 13, 1984, issued by the Central National Office of INTERPOL-LIMA, addressed to PIP Colonel, Head of the DEX; Telex No. 25291 ISPOL IL, of October 18, 1984, signed by Eleazar Rodríguez Rodríguez; Letter signed by Bernardo Batievsky Spack, addressed to the President of the Republic of Peru; Letter of September 5, 1997, signed by Luis Vargas, addressed to Enrique Elías, certifying that on December 6, 1984, two certifications of the public deed whereby Baruch Ivcher renounced his nationality were issued at the same time; Certification of December 7, 1984, that Baruch Ivcher paid the fees for a certificate; Letter signed by Carlos Carrillo Quiñones; Letter signed by Máximo Luis Vargas, addressed to the President of the Republic of Peru; Letter signed by Luis Gonzalez Posada, addressed to the President of the Republic of Peru; Letter signed by Jorge Quiroz Castro, addressed to the President of the Republic of Peru; Letter signed by July G. Sotelo, addressed to the President of the Republic of Peru; Letter signed by Tulio Loza Bonifaz, addressed to the President of the Republic of Peru; Letter signed by Fanny Rujman de Even, addressed to the President of the Republic of Peru; Undated letter, signed by Luz Casanova Delgado, addressed to the President of the Republic of Peru; Medical certificate; "Supreme Decree" No. 662, of September 7, 1984, signed by Dr. Jorge Rubio Escudero; Document with personal information and the address of Baruch Ivcher; Document entitled "Record of documents"; Deed renouncing Israeli nationality signed by Baruch Ivcher, whose statement was notarized by Máximo Luis Vargas H., under No. K.8489 of December 6, 1984; Document entitled "Naturalization Requirements"; and various newspaper articles; Annex 38: Letter No. 7-5-M/099, of March 17, 1999, signed by the Peru's Permanent Representative to the Organization of American States; and various newspaper articles; Annex 39: Unofficial translation of extracts from the United States State Department's Report on the human rights situation in Peru in 1998, issued on February 26, 1999; Letter of February 3, 1998 from the United States Embassy to Dr. Armando Lengua-Balbi, containing information on the 1997 State Department's report on human rights in Peru; Document entitled "PERU / Tortura y persecucion politica en Peru", report of Human Rights Watch/Americas of December 1997. Vol 9, No. 4 (B); Resolution Peru II adopted by the General Assembly of the Inter-American Press Association held from November 13 to 18, 1998, in Punta del Este, Uruguay; Document of the Inter-American Press Association, regarding the meeting in San Juan de Puerto Rico from March 13 to 17, 1998; Annex 40: "Administrative Decision" No. 744-CME-PJ, of September 22, 1998; Annex 41: Report of Dr. Jack Bigio Chrem, of October 3, 1997; Legal report of Dr. Jorge Avendaño Valdez, of September 22, 1997; Annex 42: Document entitled "Lo falso, la Verdad / Respuesta al Teniente General PNP Juan Fernando Dianderas Ottone, Director General de la Policía Nacional del Peru, por el Despojo de la Nacionalizacion Peruana al senior Baruch Ivcher Bronstein"; Annex 43: Document entitled "Plan de operaciones PERIODISTAS I", of October 97; Note No. 213/SIE (1B), de October 1, 1997, addressed to Brigadier General Director of Army Intelligence, signed by Enrique Oliveros Pérez; and document entitled "Plan de operaciones PERIODISTAS II", of October 97.

2 Cf. Annex 5: Videotape made in the Military Hospital of the complaint by intelligence agent, Leonor La Rosa, broadcast on April 6, 1997, by Frecuencia Latina-Channel 2's program "Contrapunto"; Videotape of the earnings of Vladimiro Montesinos, broadcast on April 13, 1997, by the program, "Contrapunto", on Frecuencia Latina-Channel 2; Videotape of the complaint broadcast by Frecuencia Latina-Channel 2's program "Contrapunto", reporting on the visit of officers Ibañez and Palomino to the channel's installations; Videotape of the complaint broadcast by Frecuencia Latina-Channel 2's program "Contrapunto", on the helicopter flights over the installation of the Productos Paraíso del Peru factory;

59. During the public hearing, the Commission submitted one video, two books and 34 documents³.
60. The Commission submitted three annexes on expenses and costs, containing 84 documents⁴.
61. The Court proceeded to add five documents to the pool of evidence⁵.

Videotape of announcements promoting the program "Contrapunto" on Channel 2; Videotape of the complaint mentioned above, broadcast on July 13, 1997, by the program "Contrapunto" on Channel 2; Videotape of Judge Percy Escobar, accompanied by the police, entering the installations of Channel 2, on July 19, 1997; Videotape with the press conference called by the Director General of the National Police Force on July 10, 1997.

³ Cf. Videotape entitled "The Ivcher case-Channel 2"; Memorandum No. 1562/03.02.06.025, of May 16, 1996, addressed to CISNEROS; Note of June 1996, addressed to CGE "ALDANA", with reference N/1 032 JUN96 6C.02.37, the subject of which is described as PLAN OCTAVIO II.IV.V.XIII; Memorandum No. 3302/02.03.01.02.013, of June 12, 1996, addressed to CISNEROS; Search warrant No. 1536/1A(2B), of June 18, 1996, addressed to HEAD OF PCIL, referring to "Verification of Information"; Memorandum No. 1818/02.03.05.07.017, of August 25, 1996, addressed to CISNEROS; Note No. 215/SIE(1A), of November 1, 1996, addressed to the Brigadier General, Director of Army Intelligence (DINTE), regarding Note No. 6613/2/B/02.04.05.07 of October 29, 1996; Document entitled "P/O "DOS I" - MAR 97"; Note of the Peruvian Ministry of Defense No. 6121/SIE(1B), of June 1, 1996, addressed to the Brigadier General, Director of Army Intelligence, reference: "transmitting P/O DOS II", signed by Enrique Oliveros Pérez; Note of the Peruvian Ministry of Defense No. 172/SIE(1A), of September 1, 1997, addressed to the Brigadier General, Director of Army Intelligence, signed by Enrique Oliveros Pérez; Memorandum No. 3630/02.04.06.01.013, of November 12, 1996, addressed to CISNEROS; Memorandum No. 1214/2B2(R), of November 13, 1996, addressed to MY. PNP HEAD OF SUPPORT SERVICES; Search warrant No. 1326/2A(1B), of November 15, 1996, addressed to HEAD OF THE PCIL; Memorandum No. 2102/2A(1A), of November 18, 1996, addressed to CISNEROS, Search warrant No. 1313/2A(1B), of November 20, 1996, addressed to HEAD OF THE PCIL; Search warrant No. 3364/2B(1A), of January 7, 1997, addressed to HEAD OF THE PCIL; Memorandum No. 1615/2D(1B), of January 15, 1997, addressed to CISNEROS; Memorandum No. 1314/03.02.06.01.022 of January 12, 1997, addressed to CISNEROS; Note No. 199/SIE(1A) of the Peruvian Ministry of Defense, of March 3, 1997, addressed to the Brigadier General, Director of Army Intelligence, signed by Enrique Oliveros Pérez; Official letter No. 002-97 CCFFAA from the "Armed Forces Joint Command", of May 23, 1997; Note of the "United States Congress", of June 17, 1997, addressed to President Alberto Kenyo Fujimori Fujimori; Document entitled "Más material para las acusaciones contra Trujillo, la Valladares y el resto de los delincuentes" - "Piden 10 años de prisión para empresario israelí"; Interpol note of March 31, 2000, addressed to Rafael Escurredo Rodríguez, by the Director of the Secretary General's Office; Note of the "United States Department of State" of December 23, 1999, signed by the Director of the "Office of Andean Affairs"; book entitled "Situación de la Libertad de Expresión en el Peru / September 1996 - September 2000". Ombudsman; Document entitled "Violaciones a la Libertad de Expresión". It contains a list of examples. Booklet entitled "Separata del Anuario Iberoamericano de Justicia Constitucional" - No. 3, 1999. Published by the Centro de Estudios Políticos y Constitucionales de Madrid; book entitled "El arte del engaño" - "Las relaciones entre los militares y la prensa", by Fernando Rospigliosi and various newspaper articles.

⁴ Cf. File "SEPTEMBER 1997 - DECEMBER 2000 / Expenses incurred as a result of the persecution and political harassment of Mr. Baruch Ivcher", it contains 28 attachments; file: "JANUARY 1999 - DECEMBER 2000 / Special disbursements made directly by Productos Paraíso del Peru S.A.C. as a result of the persecution and political harassment of Mr. Baruch Ivcher", with 40 attachments; file: "SEPTEMBER 1997 - DECEMBER 1998 / Special disbursements made directly by Productos Paraíso del Peru S.A.C. as a result of the persecution and political harassment of Mr. Baruch Ivcher", with 16 attachments.

⁵ Cf. The 1993 Peruvian Constitution, enacted on December 29, 1993, the Decree-law No. 26,111 (Law on General Rules of Administrative Procedure) enacted on December 28, 1992, and published on December 30 that year; the "supreme resolution" No. 254-2000-JUS of November 15, 2000 (accepting the recommendations formulated in report 94/98 issued by the Inter-American Commission on Human Rights), the "Ministerial Resolution" No. 1432-200-IN of November 7, 2000 (declaring null the R.D. No. 117-97-IN-050100000000, which annulled the certificate of Peruvian nationality) and the legislative resolution No. 27401 of January 18, 2001 (which revokes legislative resolution No. 27152).

62. During the public hearing, held on November 20 and 21, 2000, the Court received the statements of the witnesses and the report of the expert offered by the Inter-American Commission. These statements are summarized below.

TESTIMONIAL EVIDENCE

a) Testimony of Luis Carlos Antonio Iberico Núñez, Director of the Channel 2 program, *Contrapunto*, when Baruch Ivcher Bronstein was Chairman of the Board of the Company

Journalist. He has been a member of Congress since July 28, 2000. He began working as a news reporter with *Frecuencia Latina* on October 1, 1985, then he became a journalist for the *Contrapunto* (Counterpoint) program and, in July 1996, he became the director of this program. On September 19, 1997, he resigned owing to the judicial and police operation at the Channel that day.

The harassment of the press in Peru began on April 5, 1992, when Alberto Fujimori carried out the so-called "*autogolpe*" (a coup d'état against himself); subsequently, members of the Army began monitoring all the media, exercising direct censorship so that they would only provide information that accorded with the interests of the National Reconstruction Government.

The investigative journalism conducted by the independent media was the principal object of such harassment in Peru. Different methods were used, such as campaigns of intimidation, libel and slander against journalists by the National Intelligence Service (a unit operated directly by Vladimiro Montesinos) through the Army Intelligence Service. In the case of *Frecuencia Latina*, the businessman, Baruch Ivcher Bronstein, was harassed and he was deprived of his rights, in order to silence the journalists who worked on that Channel.

Contrapunto basically dealt with national political topics and had a "rating" of about 20 points in Lima, which amounted to three million homes throughout Peru. The following were some of the most noteworthy investigations shown on *Contrapunto* and their consequences:

In 1996, following the claim that the drug-trafficker, Demetrio Cháves Peña, was in communication with certain senior military officers who were collaborating with him in drug-trafficking operations, Alberto Venero held a meeting with Mr. Ivcher, during which, in the name of Vladimiro Montesinos, he threatened to reveal the existence of a file implicating him in the sale of arms to Ecuador.

In 1997, the program showed a report about the Secret Service agent, Leonor La Rosa, who was in the Military Hospital as he had been severely tortured, and also about the assassination and mutilation of the agent, Mariela Barreto; the following day, unidentified military helicopters started to fly low over the roof of the manufacturing plant of *Productos Paraíso del Perú S.A.* (hereinafter "*Productos Paraíso del Perú*"), owned by Mr. Ivcher.

All these news reports were then dealt with by the Congress of the Republic and had international repercussions.

Another means of harassment used was the campaign to discredit Mr. Ivcher Bronstein in the magazines *Si* and *Genet*, both strongly influenced by the Army.

Finally, following the report that the Intelligence Service was recording the telephone calls of certain well-known people, the "directorial resolution" which suspended Mr. Ivcher's Peruvian nationality title was published in the official gazette, *El Peruano*. As a result, on September 19, the Police Force, directed by a "rather questionable" judge, intervened the Channel, in order to hand over its administration to Samuel and Mendel Winter Zuzunaga (hereinafter the "Winter brothers" or the "minority shareholders"). Subsequently, the news line changed totally and, at all times, it defended the Government and the Army.

b) Testimony of Baruch Ivcher Bronstein, alleged victim in the case

He arrived in Peru in July 1970 to work for a "small factory called *Productos Paraíso del Perú*" for two years, together with his brother and some business partners. In 1983, he began taking the steps necessary to obtain Peruvian nationality, which he received at the end of 1984. Prior to 1996, he had never been convicted in either a civil or a criminal proceeding, either within or outside Peru.

In 1985, he acquired between 11% and 12% of the shares of Channel 2. In 1986, he obtained 49.53% of the shares and, in 1992, 53.95%, "which is what he [has] today". The Channel changed completely and became one of those with top ratings.

Between December 1995 and February or March 1996, an investigation unit was created and the program *Contrapunto* was restructured. This program denounced the case of the "drug 'plane" and broadcast declarations against Mr. Montesinos of a drug-trafficker, known as "*Vaticano*"; as a result, the tanks and soldiers that had been guarding the Channel since it had suffered a terrorist attack in 1992, were withdrawn. Furthermore, the following day, Alberto Venero visited his offices and said that he had slandered the Army. Mr. Venero also reminded him that he was a naturalized Peruvian and had shares in a mattress factory in Ecuador (at that time, there was much talk of the conflict between Peru and Ecuador). Lastly, Mr. Venero insinuated that he should be very careful, which he took to be a direct threat.

Subsequently, the Channel began to promote the *Contrapunto* programs on Mr. Montesinos, called "*Vladimiro I and II*". At that time, Mr. Venero telephoned him and invited him to lunch with Mr. Montesinos, a meeting that never took place. These programs were broadcast on September 29, 1996. After this, an Army Intelligence Service, agent, known as "*Besitos*" told him that they were investigating his connection with the Ecuadorian army, mentioned that he was a naturalized Israeli and warned him that he should take care because there were those who wanted to kill him.

In January 1997, Mr. Pandolfi, Prime Minister of Peru, and Mr. Joy Way, Deputy, visited his office and offered him the equivalent of 19 million dollars, in soles, in exchange for meeting every Friday to decide which investigations would be transmitted on *Contrapunto* on Sunday, and which would not.

On April 7, 1997, the day after *Contrapunto* had denounced the cases of the Army Intelligence agents, Leonor La Rosa and Mariela Barreto, Peruvian Army helicopters began to fly over the *Productos Paraíso del Perú* factory, very close to the roof, and this went on for months. When a complaint was made, the Prime Minister advised

that the helicopters were carrying out training flights; however, helicopters had never before flown over the factory.

Documents exist that refer to the Government's concern about the existence of investigative journalism teams outside its control. Those concerning the Octavio II, IV, V and XIII plans refer to several television channels. The names of journalists from the *Contrapunto* program appear in them and Mr. Ivcher was mentioned as "a person who was extremely dangerous for national security."

The Octavio Plan was initiated on May 23, 1997, and affected the witness's reputation, owing to publications in magazines that had been bankrupt and began to use State money. The newspaper, *El Mañanero* informed that he was an Israeli, not a Peruvian.

On July 13, 1997, the same day that *Contrapunto* gave information about 197 recordings of telephone conversations of journalists, politicians and, in particular, the former presidential candidate, Javier Pérez de Cuellar, the official gazette, *El Peruano*, published the resolution that took away his nationality. He was never notified of this, or given the opportunity to be represented by a lawyer.

There are approximately 20 or 30 lawsuits against him, and he, his wife, Neomy Even de Ivcher (hereinafter "Mrs. Ivcher" or "Mr. Ivcher's wife"), and his daughter, Michal, are liable to a possible total of over 110 years of prison. His wife won a civil suit that allowed her to convene the shareholders on November 8, 1998, and organize the board of *Compañía Latinoamericana de Radiodifusión S.A.* (hereinafter "the Company"); however, the following day, she was criminally charged with misrepresentation. He has not been allowed to appoint lawyers for his defense in any of the proceedings against him; to the contrary, he has been assigned lawyers *de oficio*.

The *Productos Paraíso del Perú* factory has also been harassed, so that some of the personnel, particularly the managers, are in hiding in Peru or exiled in the United States. Its clients have also been harassed so that they would denounce him, and a criminal proceeding was filed against one of them who refused to sign the charge; this could involve a conviction of 10 or 12 years. Rosario Lam, Imports Manager of *Productos Paraíso del Perú*, was imprisoned for 271 days to try and force her to file a complaint against him. "[T]wo judgments [...] in the same case" were delivered against Julio Sotelo, the Channel's former General Manager and the only person holding his power of attorney in Peru, "one sentencing him [to] four years [and the other to] four years conditionally". Like Rosario Lam, they were not allowed to sleep at night while they were in prison; it was a "psychological war". They tried to stop Emilio Rodríguez Larraín, his wife and daughter's lawyer, through intimidation and he now risked six years in prison.

Lastly, on July 11, 1997, the newspaper *Expreso* published a declaration of Army General Guido Guevara Guerra, President of the Supreme Council of Military Justice, in which he stated that Mr. Ivcher could lose his Peruvian nationality because he had endangered national security by broadcasting information that discredited the Army. The following September 19, they took the channel away from.

c) Testimony of Fernando Viaña Villa, Press Director General of Channel 2, when Baruch Ivcher Bronstein was Chairman of the Board

Journalist. He worked as Press Director General in *Frecuencia Latina* from March 1, 1996, until September 19, 1997. Among other functions, he managed the press area of *Contrapunto*, he had input into the editorial line of the channel (when Mr. Ivcher went abroad, he handled this element) and he controlled the investigation unit, which worked for the whole journalistic area of the channel, but most investigations were destined for *Contrapunto*.

He indicated that *Contrapunto* was launched in 1989 and was very popular with television viewers, because it had a rating of 20 or 25 points, which was equal to "almost half the televisions that were turned on." It had a political content, which is why there were those who wished to silence it, since, in view of its popularity, it was an obstacle for President Fujimori's re-election plans for 2000.

On September 1, 1996, *Contrapunto* denounced the commercial relationship between members of the Army and drug-traffickers, among them one known as "Vaticano", by broadcasting some tapes. As a result, the armored military cars that had guarded the channel since the terrorist attack of July 5, 1992, were withdrawn and, the following day, the Peruvian Navy denied the information in a communiqué. On September 8, *Contrapunto* aired a special feature where they explained the significance of the fact that such communiqués, which provided evidence of corruption, had not been investigated, and it also broadcast two features on Mr. Montesinos. As of September 2, 1996, this resulted in Mr. Ivcher being harassed by Alberto Venero, Vladimiro Montesinos's emissary, who informed him that what he had done could prejudice his investments and continued residence in Peru. In the same way, as of that date, no official guest visited the channel to be interviewed, even Ministers who had done so regularly in the past. Following the special features on Intelligence agents La Rosa and Barreto on April 6, 1997, Army helicopters began to fly over the channel and the *Productos Paraíso del Perú* factory, during the morning, afternoon and night and none of them bore an identification number. Also, the Venevisión channel, "triangulated" with Mr. Montesinos, offered to buy Channel 2 from Mr. Ivcher for more than US\$50.000.000,00 (fifty million United States dollars).

Frecuencia Latina could not be pressured, because Mr. Ivcher always paid his taxes and could not be bribed, since the channel earned profits each year; thus, the only way to remove Mr. Ivcher was through the minority shareholders. In July and August 1996, the Winter brothers held various meetings with Intelligence officers. On May 24, 1997, following an Army communiqué against Mr. Ivcher, he drafted a communiqué to be signed by the journalists. Samuel Winter, Vice President of Channel 2, asked him for a copy. The following week, the Winter brothers signed a document stating that they had no knowledge of the editorial line of the channel, which was obviously untrue. Finally, when the Winter brothers took over the channel on September 19, 1996, the editorial line of *Contrapunto* changed completely.

He had not been harassed.

d) Testimony of Julio Genaro Sotelo Casanova, former Manager of the Company, who made the arrangements for Baruch Ivcher Bronstein to obtain Peruvian nationality

He began working as as Executive Manager of *Productos Paraíso del Perú* in October 1977; then he came to work with Channel 2 as General Manager; later, he ceased working for Mr. Ivcher.

As of January 1983, he participated fully in the Mr. Ivcher's naturalization procedure. On September 17, 1984, he deposited all the documents required to obtain Peruvian nationality with the Ministry of Foreign Affairs. Following an extensive internal process, this Ministry issued the "supreme resolution" signed by the President of the Republic, Fernando Belaúnde. Subsequently, Mr. Ivcher had to renounce his Israeli nationality, and he did this before the public notary, Luis Vargas, in a public instrument dated December 6, 1984. Based on this evidence, his nationality title, numbered 0644, was issued. The public instrument is kept by the notary, who is responsible for recording it in his books.

For the 10 years following the issue of Mr. Ivcher's nationality title, it was never questioned. Then the Government stated that the public instrument was dated July 1990, which was false, because that date corresponded to a request for a copy and not that of the original instrument, which dates from 1984.

He was no longer working with Mr. Ivcher when the problems regarding the nationality title started, because it was claimed that the naturalization file did not exist and that the copies had been lost. Nevertheless, he knew that Mr. Ivcher was not allowed to defend himself and was not notified of the revocation of his nationality title; a simple "directorial resolution" was issued that annulled his nationality title.

In 1998, the copies of the file were found in the files of Interpol, Peru, on page 302 of book G, but the Police Force denied that they existed. When the copies were found, they were forwarded to various well-known people and institutions and the Government was urged to annul the prejudicial administrative resolution, without the need for an administrative or judicial proceeding, since the "directorial resolution" which revoked the nationality title, was of a lower rank than the "supreme resolution" which granted it. There was no reply.

He was included in a criminal proceeding for company administration fraud, general misrepresentation and public misdemeanor. The judge, the prosecutor and the assistant prosecutor were the same as those who intervened in all the proceedings involving Mr. Ivcher. Also, witnesses with their faces covered were heard at all the proceedings. The judgment was never read to him, for health reasons, and he was given a conditional four-year sentence. During the proceeding, he did not know what he was charged with and his defense counsel did not have access to the file. There were briefs in the file, submitted by the authorities themselves, which the judge did not take into consideration. Furthermore, he could not prove his innocence because he did not have access to the Channel 2 documents or to those of the tax authorities and, although he had filed judicial proceedings against SUNAT so that they would be delivered to him, the results had been negative.

While listening to the judgment being read, he was arrested, and was imprisoned for 45 days and, while he was in the San Jorge prison, National Intelligence Service agents entered his cell and lit up his face with a lamp, but as people began "to make a racket", they ran off.

The Peruvian justice system instituted a criminal proceeding against him to create a "large pair of pincers" that would not let Ivcher Bronstein and his family act to defend their rights.

e) Testimony of Luis Percovich Roca, former Minister for Foreign Affairs of Peru, who issued Baruch Ivcher Bronstein's nationality title

He was President of the Chamber of Deputies and the Congress of the Republic and, subsequently, Minister of Fisheries, of the Interior, and for Foreign Affairs, and President of the Council of Ministers.

"He sign[ed] the "supreme resolution" [which granted nationality to Mr. Ivcher] when it had been signed by the President of the Republic", recording that the respective official procedures had been verified by all the relevant officials. He identified as his the signature on the document submitted to him, which corresponded to the said certificate. The naturalization process followed by Mr. Ivcher Bronstein complied with all the requirements established in Article 91 of the 1979 Constitution, Law No. 9168 on naturalization, "Supreme Decree" No. 402 of the Ministry of Foreign Affairs and the directives for the process. He also fulfilled the requirement of renouncing his Israeli nationality.

There was never any legal action or observation that questioned the granting of the nationality title or that requested its annulment; those proceedings were filed 13 years later. Accordingly, the way in which the certificate was annulled is not legal because a "supreme resolution" cannot be annulled by a lower-ranking legal decision. Furthermore, the legislation does not establish any means of annulling nationalization; it only stipulates the official procedures required to obtain nationality. He had never heard of this type of case.

f) Testimony of Rosario Beatriz Lam Torres, Head of Imports, Productos Paraíso del Perú

She began to work for *Productos Paraíso del Perú* on August 17, 1987, as secretary to the presidency and the board, until July 1993, when she became of Head of Imports.

Different types of harassment occurred. With regard to *Productos del Paraíso del Perú*, pressure was put on the customs authorities as of 1997. Under Peruvian law, 10 per cent of imports must be physically appraised, but all the factory's imports were physically assessed. Police and Army helicopters flew very low over the factory for about three months. They also received threatening telephone calls, visits from strange people, and once an incendiary artifact, which they were able to control, was thrown at the building. Finally, the factory was charged with the crime of defrauding the customs and tax authorities. On a personal level, she received threatening telephone calls, she was frequently followed by people in cars with dark windows and the telephones in her house were tapped. Then she was charged with customs and tax offenses, for which she was detained from February 6 to November 17, 1998. She was sentenced to four years with parole; then, on appeal, the sentence was reduced to three years with parole. During the proceeding, she had several lawyers, but none of the evidence that she offered was accepted; the court only evaluated the evidence submitted by the Intelligence Service, which consisted of photocopies of documents that had been adulterated; they never showed the originals.

She was often pressured by the judge and the prosecutor, and also at the offices of the Treasury Police Force, who wanted to charge Mr. Ivcher with having committed those crimes and of having altered invoices in order to increase their value and pay

more taxes, which he would then deduct from his income tax. When she was in the prison, she was the only person imprisoned for that crime; no one had ever been imprisoned for it. She suffered a series of physical ailments owing to the conditions to which she was submitted and the pressures exercised on her in prison. When she was in prison, police arrived with balaclava helmets and flashlights at about 2 a.m. or 3 a.m., they shone the flashlights on her face and did not let her sleep, they also did this when she was in the clinic.

g) Testimony of Emilio Rodríguez Larraín Salinas, lawyer for Baruch Ivcher Bronstein's wife and daughter, and Director of the Company when Mr. Ivcher was Chairman of the Board

Lawyer and advisor to various companies; he was the lawyer for Mr. Ivcher's wife and daughter, Michal, and he assisted them during several proceedings. He was a Director of the Company from 1996 until September 19, 1997, when the administration was handed over to the minority shareholders.

During the time he was a Director, the Winter brothers never expressed any disagreement with the Channel's editorial line, and at meetings, they appeared to have a good relationship with Mr. Ivcher and his family. It was a surprise when they came to an agreement with the Commander General of the Army, on May 23, 1997, and stated that they had no input into the editorial line of Channel 2. Since then, the Winter brothers adopted a hostile attitude towards Mr. Ivcher and the company directors.

On July 11, 1997, the Winter brothers filed the first action for amparo and, two days later, the resolution that deprived Mr. Ivcher Bronstein of his nationality was published in the official gazette, *El Peruano*. There were elements in the text of the former that coincided with the contents of the resolution. The complaint was filed against Mr. Ivcher, but the precautionary measure requested also included Mrs. Ivcher's property, owing to the existing joint ownership through marriage. Although she had not even been summoned to the proceeding, she appeared before the Public Law Chamber of the Superior Court of Lima on August 27, 1997, to request the annulment of the proceeding. The president of the Chamber attempted to bar her report, affirming that Mrs. Ivcher was not a party to the proceeding, but as the media were present at the hearing, the witness told the president that she would make a complaint against him for restricting her right to defense; consequently, after consulting other members of the Chamber, he authorized her to submit her report.

The action for amparo filed by the Winter brothers was admitted immediately, but the proceedings to recognize Mrs. Ivcher's right were delayed by for between eight months and two and a half - almost three - years.

On September 12, the request for annulment was declared without merit, and it was indicated that at no time had Mrs. Ivcher's rights been affected and the only intention of the action for amparo and the precautionary measure was to safeguard the Winter brothers' rights. Consequently, on September 26, he filed a petition for a "recovery injunction" (*interdicto [de] recobrar*), because his clients were being divested of the ownership of their shares. Also, on December 1, 1997, he organized

the convocation of a shareholders' meeting and, finally, on October 7, 1998, the trial judge ordered that this meeting should be held in November that year; Mrs. Ivcher would represent the shares owned jointly through marriage.

On October 19, 1997, after Mrs. Ivcher's right had been recognized in the civil sphere, criminal proceedings were instituted against Mr. and Mrs. Ivcher and their daughter, Michal, Sotelo and Otto Cabello, for crimes relating to the authenticity of documents and their adulteration. Subsequently, Mr. Ivcher's daughter, under his sponsorship, filed a petition "contesting the agreement" (*impugnacion de acuerdo*), which was allowed on November 2, 1998, and on November 18 that year, the preliminary criminal investigation was expanded and Michal was included. There appeared to be a clear relation of cause and effect between the two events.

The foregoing meant that neither Mrs. Ivcher nor her daughter, Michal, could enter Peruvian territory. Therefore, it was not possible to convene the shareholders' meeting and there was no one to represent the shares owned jointly through marriage.

The Winter brothers filed an action for amparo against the judges who had decided in favor of Mrs. Ivcher and her daughter, Michal, requesting that their mandates should be annulled; this is prohibited by Article 139 of Peru's Constitution, which establishes that no one may intervene in a case which is pending before a jurisdictional organ, or contest decisions that have the authority of *res judicata*.

He was also aware that during the shareholders' meeting of November or December 1999, which was not convened publicly and did not include Mr. Ivcher, the minority shareholders, disregarding the necessary quorum for commencing meetings and voting established in Peru's General Company Law, increased the equity capital, which meant that the percentage of share capital held jointly through marriage was reduced from approximately 53% to 38%. As a result, Mr. Ivcher Bronstein held a minority of the shares. In his opinion, this agreement is null and contrary to the law.

There are two criminal charges against him, because he had been a Director of the Company. As a result, he was prohibited from leaving the country for a year, his property could be subject to "eventual" embargos and the prosecutor's charge requested a five-year term of imprisonment. He could suffer wrongful conviction, as in the case of Rosario Lam and Julio Sotelo. He had never been involved in criminal proceedings previously.

All the above-mentioned criminal proceedings were instituted through charges filed by the Winter brothers and Remigio Morales Bermúdez, another minority shareholder of the Company.

h) Testimony of Fernando Rospigliosi Capurro, sociologist and journalist

He published a book entitled "*El Arte del Engaño: Las Relaciones entre los Militares y la Prensa*" (The Art of Deceit: Relations between members of the Army and the Press) on the situation of Peru in recent years.

Since the 1992 coup, he has received telephone calls with death threats, faxes where his name appeared on lists of people who, supposedly, were going to be assassinated and, ultimately, threats via e-mail. There had also been slander, libel

and threat campaigns in anonymous letters and in the sensationalist press, manipulated by the Intelligence Services, where he was accused of being a traitor to his country, a terrorist and a criminal. All this was related to his publications, which regularly referred to military issues, the intelligence services, cases of corruption and human rights violations. For example, the same day that he published articles on the Colina Group, a death squadron, he received a telephone call with a death threat.

The threats generally came from the Armed Forces Intelligence Services. There was a period when they sent faxes to various journalists and television programs that usually investigated military topics. The fax number from which they had been sent appeared on one of them; following a journalistic investigation, it was determined that it belonged to a company owned by Colonel Rubén Wong. Even though this evidence existed, neither the Office of the Prosecutor nor any other body brought the corresponding judicial action. Starting on March 27, 1998, and for the following eight months, the journalists, Angel Páez, head of the investigation unit of the newspaper *La República*, José Arrieta, who had been head of the investigation unit of *Frecuencia Latina*, and he himself, who had been the editor of security matters for the weekly magazine, *Caretas*, and a columnist of *La República*, were accused of being traitors to their country and terrorists, because they had allegedly attacked the Armed Forces and Mr. Montesinos. They obtained favorable decisions from "two of the few honest judges of the Judiciary." Judge Greta Minaya signed the decision on May 10, and it was published on the following day, May 11. On May 12, she was transferred to another post without any reason. The other judge issued a similar decision, signed her report on May 12, published it the same day, and on May 13 was also transferred.

With regard to the campaign to discredit him, the sensationalist press was directly influenced by the Armed Forces. It was proved that several headlines had been sent, via fax, to one of these sensationalist newspapers from the office of Mr. Bresañe, who was in charge of public relations for Army Headquarters. The same headlines appeared simultaneously in the newspapers, which made it evident where they had come from. Furthermore, a group of workers from *El Chato* resigned and denounced, with evidence, that the owner of this newspaper had received almost US\$6.000,00 (six thousand U.S. dollars) for each headline he published; these were sent to the newspaper, which then had to invent the corresponding news article. The idea was to exhibit these newspapers like posters at the sales points.

Another method used was the publication of an apocryphal newspaper, entitled *República*. To do this, they copied the typography and logotype of the newspaper *La República* and began to give away copies in which they attacked the journalists and owner of the original paper. Investigations conducted by a State institution showed that this newspaper was edited and distributed through two sensationalist newspapers involved in the campaign. Despite having identified the source, no prosecutorial or judicial investigation was ever conducted, even though publishing an apocryphal newspaper is a crime.

It was well known that there was considerable interest in controlling the television. To do this, economic pressure was put on the companies. The Office of the Superintendent of Tax Administration was particularly strict with those who criticized the Government, and extremely liberal with those who did not. The State was the most important source of publicity in 1999 and the first half of 2000, owing to the crisis and the recession, but it was used for political purposes and to put pressure on

the media; those who favored the Government were given privileged information and the media that was critical did not even receive information that should be public.

The actions of the Judiciary also had an intimidating effect on the other owners of media, who were frightened when one of them was deprived of the ownership of his medium.

Such cases occurred systematically and not in isolation. The plan for the 1989 coup, which did not happen until 1992, stated that it was necessary to coordinate "self-censorship and the permitted frame of reference [at the time of the coup], with those responsible for the media, entrepreneurs and promoters." The Octavio Plan, the Bermuda Plan and the Narval Plan had been executed since December 1996. One of the results of the complaints about these plans in the press was the search for those who had "leaked" information to the press. The most obvious consequences were the torture of Intelligence agent Leonor La Rosa and the dismembering of agent Mariela Barreto. These were concrete, not theoretical, plans to apply a policy of control over the media. There were various other examples, similar to those mentioned above.

From the moment the Intelligence Service, which was the apparatus that controlled these actions, began to disintegrate, the situation of freedom of expression began to improve in Peru. There has been an opening up. However, it is evident that there is still considerable influence over information policies.

EXPERT EVIDENCE

Expert report of Samuel Abad Yupanqui, Professor of Constitutional Law of the Pontifical Catholic University of Peru and Defense Counsel of the Peruvian Office of the Ombudsman, specialized in constitutional matters

When Mr. Ivcher Bronstein was granted nationality in 1984, Law No. 9148 was in force, and Article 4 established that nationality was granted through a "supreme resolution", but only becomes effective when the nationality title is acquired, after the original nationality has been renounced in a public deed. Once the said resolution has been decreed, the Migration and Naturalization Directorate cannot refuse to issue the title.

Mr. Ivcher was deprived of his nationality through "Directorial Resolution" No. 117 of 1997, published in the official gazette *El Peruano* of July 13, 1997. In Peru, there had never before been a case of a nationality title being cancelled.

The said "directorial resolution" was an administrative act that rescinded Mr. Ivcher's Peruvian nationality title, based on three elements. First, a report prepared by a department of the Ministry of the Interior, which concluded that the file on the acquisition of nationality procedure did not exist in the archives of the Ministry of Foreign Affairs, or in those of any other organ of the public administration. Second, the finding that the legal document where the original nationality was renounced corresponded to 1990, and that, therefore, there was a lack of consistency between this fact and the acquisition of nationality six years previously. Third, that the renunciation had not been established before the competent authorities of the country of origin. Consequently, it was considered that Mr. Ivcher had not respected

the provisions that were in force and had failed to comply with essential steps of the legal procedure, and this resulted in the invalidity of the nationality title and deprived it of legal effect. The causes established in article 12 of the Regulation to the Nationality Law were never expressly invoked.

The acquisition of Peruvian nationality is regulated by three provisions of the Constitution in force. Nationality is recognized as a fundamental right. Article 52 states that Peruvians by birth are those born in the territory of the Republic, and by consanguinity, those born to a Peruvian father or mother. Nationality by option also exists; this occurs when someone who is not Peruvian marries a Peruvian national. Finally, nationality may be acquired by naturalization.

Article 53 of the Constitution stipulates that nationality can only be lost by express renunciation before the Peruvian authorities. The Constitution states that the legislation should establish the form of acquiring or recovering nationality.

Nationality Law, No. 26,574, of January 11, 1996, is currently in force. This determines the competent organ for granting or canceling nationality, the procedure and the requirements. This law also has a regulation that details the requirements for acquiring nationality and establishes how it is lost. Nationality can only be lost by express renunciation before the Migration Directorate or on the grounds established in article 12 of the regulation to the Nationality Law. These include public interest and national interest and also acts that could affect national security. According to Supreme Decree No. 00497 of May 25, 1997, the fact that national security is affected constitutes a reason for cancellation, but this is not reflected in the Constitution, which only mentions loss due to renunciation before the Peruvian authorities. Similarly, article 15 of the regulation indicates that the President of the Republic may cancel naturalization, without stating the cause, when national security so requires, a very broad and general concept, that could make the right to nationality meaningless.

The expansion of the grounds for losing nationality contained in the said regulation is unconstitutional. Since the above-mentioned supreme decree "does not withstand constitutional examination", petitions to have it annulled were filed through popular action, but were rejected by the Public Law Chamber.

Mr. Ivcher acquired Peruvian nationality through a "supreme resolution", and the decision that annulled his nationality title was a "directorial resolution". Within the structure of the Peruvian legal system there are differences between these administrative acts. The "supreme resolution", issued by the Minister and signed by the President of the Republic, ranks highest; it is followed by the "ministerial resolution" and then the "deputy ministerial resolution", and lastly, the "directorial resolution". Consequently, a "directorial resolution" cannot disregard what has been established in a "supreme resolution". If it does, it becomes an invalid legal act.

In Peru, administrative acts are regulated by the Administrative Procedures Law, articles 109 and 110 of which establish the possibility of declaring *de oficio* that an act is invalid when it suffers from a presumption of invalidity, but also establishes a period of six months to do so. In this case, the annulment decision was blatantly outside this period, because 13 years had elapsed and also, if it had been executed within the legal period, a superior official should have declared the invalidity.

The consequences of the loss of an administrative file may be considered from two angles: first, if the file is being processed and second, if it has already been closed. In the latter case, there is an administrative act that enjoys the presumption of legality and right of execution and all the other classic presumptions that administrative law recognizes; therefore, reconstructing it cannot generate any great consequences. The Administrative Procedures Law establishes sanctions for the loss of files, although none were ordered in this case.

On April 24, 1998, the Constitutional Court concluded that the complaint filed by Mr. Ivcher was inadmissible, because the administrative remedies had not been exhausted. The "directorial resolution" that annulled the nationality title was the way to annul an administrative act and, in accordance with the law, when an administrative act is annulled, the administrative remedy is exhausted.

On June 24, 1997, Resolution No. 399 of the Judiciary's Executive Committee was published; it granted the Constitutional and Social Chamber of the Supreme Court the power to remove and appoint the judges of the public law chambers. This meant that, as of that time, jurisprudence was absolutely questionable, because there was no guarantee of effective legal protection. Owing to these appointments, the right to a natural judge was affected, because some of the competencies of the different courts were altered. In this context, it is important to remember that the resolution that annulled Mr. Ivcher's nationality title was dated July 13, 1997.

The Office of the Ombudsman published a report in which it concluded that the "directorial resolution" was null *de jure*, because it contradicted the Constitution and affected the right to nationality, inasmuch as there had not been any renunciation; therefore, it violated the principle of legality and generated legal uncertainty. This report was transmitted to the Ministry of the Interior, but had no effect other than providing information on the antecedents to the case.

Moreover, the precautionary measure issued in favor of the Winter brothers granted them the administration of Channel 2, and, thereby, gave greater weight to the case. There was a legal excess, because, basically, the precautionary measure constituted a judgment.

The legal provision that reserves the ownership of shares in television companies to nationals appears in Legislative Decree No. 702, in the context of the 1979 Constitution. Today, the 1993 Constitution is based on another conception; its article 63, places the investments and properties of foreigners and nationals in the same conditions. However, the previous norm subsists, because it has been recognized by a judgment of the Supreme Court, issued as a result of a popular action. This is not coherent with the Constitution in force.

VII EVIDENCE ASSESSMENT

63. Before examining the evidence it has received, the Court will define its general criteria for the evaluation of evidence and will make some observations that are applicable to this specific case, most of which have been developed previously in the Court's jurisprudence.

64. Article 43 of the Rules of Procedure of the Court stipulates that

[i]tems of evidence tendered by the parties shall be admissible only if previous notification thereof is contained in the application and in the reply thereto [...]. Should any of the parties allege force majeure, serious impediment or the emergence of supervening events as grounds for producing an item of evidence, the Court may, in that particular instance, admit such evidence at a time other than those indicated above, provided that the opposing party is guaranteed the right of defense.

65. In an international tribunal such as the Court, the purpose of which is the protection of human rights, the procedure has special characteristics that distinguish it from proceedings under domestic law. The former is less formal and more flexible than the latter, although this does not mean that it fails to ensure legal certainty and procedural fairness between the parties⁶.

66. As the Court has also indicated, determining a State's international responsibility for the violation of human rights requires greater flexibility in evaluating the evidence provided to the Court, in accordance with the rules of logic and based on experience⁷.

67. Regarding the procedures for offering evidence, the Court has said that

the procedural system is a means of carrying out justice and [...] this cannot be sacrificed in favor of mere formalities. Within certain limits of time and reason, certain omissions or delays in the observance of the procedures, may be exempted, if an adequate balance between justice and legal certainty is maintained⁸.

68. In this case, the State did not present any evidence for the defense at the procedural opportunities indicated in article 43 of the Rules of Procedure. In that respect, the Court considers, as it has in other cases, that, in principle, it is possible to presume that the facts set out in the application about which the State has kept silent are true, provided that conclusions consistent with such facts may be inferred from them⁹.

69. Based on the foregoing, the Court will proceed to examine and evaluate all the elements that comprise the pool of evidence in this case, in accordance with the rule of sound criticism, which will allow the judges to appraise and establish the truth of the alleged facts¹⁰.

70. In particular, with regard to the various newspaper articles contributed by the Commission, the Court reiterates that, although they may not be considered documentary evidence, they are important for two reasons: they corroborate the information offered in some of the evidentiary elements and confirm that the facts referred to are public and generally known¹¹. Therefore, the Court adds those articles to the pool of evidence as an appropriate instrument for verifying the truth of the facts of the case, in conjunction with the other elements contributed.

⁶ Cf. *"The Last Temptation of Christ" case (Olmedo Bustos et al.)*, Judgment of February 5, 2001. Series C No. 73, paras. 49 and 51.

⁷ Cf. *"The Last Temptation of Christ" case (Olmedo Bustos et al.)*, *supra* note 6, para. 50.

⁸ Cf. *Constitutional Court case*, *supra* Judgment of January 31, 2001. Series C No. 71, para 45.

⁹ Cf. *Constitutional Court case*, *supra* note 8, para. 48.

¹⁰ Cf. *"The Last Temptation of Christ" case (Olmedo Bustos et al.)*, *supra* note 6, para. 54.

¹¹ Cf. *Constitutional Court case*, *supra* note 8, para. 53.

71. The documents provided by the Commission during the public hearing were presented after the statutory time limit had elapsed. The Court has maintained that the exception established in Article 43 of the Rules of Procedure is applicable only in the case when the proponent alleges force majeure, grave impediment or supervening events¹². However, although the Commission did not demonstrate such circumstances in this case, the Court admits them, in application of the provisions of Article 44(1) of the Rules of Procedure, as it considers that they are useful for the evaluation of the facts.

72. The 1993 Constitution of Peru, promulgated on December 29, 1993, Decree-law 26.111 (Law on General Norms of Administrative Procedure), "Supreme Resolution" No. 254-2000-JUS of November 15, 2000 (Accepting the recommendations formulated in report 94/98 issued by the Inter-American Commission on Human Rights), "Ministerial Resolution" No. 1432-2000-IN of November 7, 2000 (Annulling R.D. No. 117-97-IN-050100000000, which canceled the Peruvian nationality title), Legislative Resolution No. 27401 of January 18, 2001 (repealing Legislative Resolution No. 27152) (*supra* para. 61) and the evidence contributed by the Commission on expenses and costs are considered useful in order to decide on the instant case and, therefore, are added to the pool of evidence, in accordance with the provisions of Article 44(1) of the Rules of Procedure (*supra* para. 60).

73. Regarding the documentary evidence contributed by the Commission, the Court accords probative value to the documents submitted in the application and at the public hearing that were not contested or challenged, or their authenticity doubted.

74. With regard to the testimonies given in this case, the Court admits them only to the extent that they agree with the purpose of the interrogation proposed by the Commission, and it admits Samuel Abad Yupanqui's expert report, with regard to his knowledge of constitutional issues relating to nationality and due legal process.

75. As for Mr. Ivcher Bronstein's declaration, since he is the alleged victim and has a direct interest in this case, the Court believes that his statements cannot be evaluated on their own, but rather in the context of all the evidence in the proceeding. However, Mr. Ivcher's declarations should be considered to have a special value, to the extent that they may provide greater information on certain facts and alleged violations committed against him¹³. Therefore, the statement referred to is incorporated into the pool of evidence with the above-mentioned considerations.

VIII PROVEN FACTS

¹² Cf. *Cesti Hurtado case*. Judgment of September 29, 1999. Series C No. 56, para. 47.

¹³ Cf. *Cantoral Benavides case*. Judgment of August 18, 2000. Series C No. 69, para. 59.

76. From examining the documents, the statements of the witnesses, the report of the expert and the evidence provided by the Inter-American Commission during the proceedings, the Court considers that the following facts have been proved:

- a) Baruch Ivcher Bronstein, of Israeli origin, was granted Peruvian nationality through "Supreme Resolution" No. 0649/RE of November 27, 1984, issued by the President of the Republic of Peru and also signed by the President of the Council of Ministers and the Minister for Foreign Affairs¹⁴;
- b) on December 6, 1984, Mr. Ivcher Bronstein renounced his Israeli nationality¹⁵;
- c) on December 7, 1984, the Minister for Foreign Affairs of Peru issued Mr. Ivcher nationality title No. 004644¹⁶;
- d) Mr. Ivcher exercised rights that arise from Peruvian nationality during approximately 13 years¹⁷;
- e) Peruvian legislation in force in 1997 established that, it was necessary to be a Peruvian national in order to own companies with licenses for television channels in Peru¹⁸;
- f) in 1986, Mr. Ivcher was the majority shareholder in the Company, which operated Peruvian television's Channel 2¹⁹.

¹⁴ Cf. "Supreme Order" No. 0649/RE issued on November 27, 1984; Sworn declaration by Luis Pércovich Roca of November 24, 1997; testimony of July Sotelo Casanova before the Inter-American Court on November 20, 2000; and testimony of Luis Pércovich Roca before the Inter-American Court on November 20, 2000.

¹⁵ Cf. Deed renouncing Israeli nationality signed by Baruch Ivcher Bronstein, whose testimony was notarized by Máximo Luis Vargas H., under No. K.8489 on December 6, 1984; Sworn declaration by Luis Pércovich Roca of November 24, 1997; testimony of July Sotelo before the Inter-American Court on November 20, 2000; and testimony of Luis Pércovich Roca before the Inter-American Court on November 20, 2000.

¹⁶ Cf. Peruvian nationality title No. 004644, issued on December 7, 1984 by the Department of Nationalization of the Ministry of Foreign Affairs of the Republic of Peru, in favor of Baruch Ivcher Bronstein; sworn declaration by Luis Pércovich Roca of November 24, 1997; "Directorial Order" No. 117-97-IN-050100000000, of July 11, 1997, published in the official gazette, *El Peruano*, entitled "Peruvian nationality title annulled"; testimony of July Sotelo Casanova before the Inter-American Court on November 20, 2000; testimony of Luis Pércovich Roca before the Inter-American Court on November 20, 2000.

¹⁷ Cf. Notarized document No. KR 80397, attesting to the deed increasing the capital and partially modifying the statutes of *Compañía Latinoamericana de Radiodifusión S.A.*, of January 27, 1986; notarized document No. 189-190, of September 14, 1998, in which the capital was increased, the statutes were partially modified and Mr. Ivcher became chairman of the board of *Productos Paraíso del Perú*; record of share transfer (*transferencia de acciones por anticipa de legitima*) of August 15, 1997, by which Mr. and Mrs. Ivcher ceded their shares to their four daughters; Certified copy No. 272-97, issued by the notary, Cesar Carpio, corresponding to the minutes of the extraordinary meeting of the shareholders of *Compañía Latinoamericana de Radiodifusión* of September 26, 1997; testimony of July Sotelo Casanova before the Inter-American Court, on November 20, 2000; and testimony of Luis Pércovich Roca before the Inter-American Court, on November 20, 2000.

¹⁸ Cf. Petition for habeas corpus filed on July 11, 1997, by Samuel and Mendel Winter Zuzunaga, before the First Temporary Commercial Public Law Court; and expert report of Samuel Abad Yupanqui before the Inter-American Court on November 20, 2000.

¹⁹ Cf. Notarized document No. KR 80397, of the deed increasing the capital and partially modifying the statutes of *Compañía Latinoamericana de Radiodifusión S.A.*, of January 27, 1986; testimony of Luis

g) as of 1992, Mr. Ivcher owned 53,95% of the Company's shares, and the Winter brothers, owned 46%²⁰;

h) in 1997, Mr. Ivcher Bronstein was a Director and Chairman of the Board of the Company and was authorized to take decision of an editorial nature with regard to Channel 2's programming²¹;

i) in its program, *Contrapunto*, Channel 2 broadcast the following investigative reports of national interest:

i.1 on April 6, 1997, it denounced the alleged torture of agent Leonor La Rosa by members of the Army Intelligence Service and the alleged assassination of agent Mariela Barreto Riofano²²;

i.2 on April 13, 1997, it denounced the extremely high revenues that it was alleged that Vladimiro Montesinos Torres, advisor to the Peruvian Intelligence Service had obtained²³;

j) as a result of the investigative reports broadcast on the program, *Contrapunto*, Mr. Ivcher was subjected to threatening actions, including: the visit to the Channel 2 offices of members of the Treasury Police Force Directorate and other persons, who recommended that he change the editorial line²⁴; flights of alleged army helicopters over the installations of his

Iberico Núñez before the Inter-American Court, on November 20, 2000; and testimony of Baruch Ivcher Bronstein before the Inter-American Court, on November 20, 2000.

²⁰ Cf. Order No. 33 dated September 5, 1997, issued by the First Temporary Commercial Public Law Court; and testimony of Baruch Ivcher Bronstein before the Inter-American Court on November 20, 2000.

²¹ Cf. Notarized document No. KR 80397, of the deed increasing the capital and partially modifying the statutes of *Compañía Latinoamericana de Radiodifusión S.A.*, of January 27, 1986, recording the minutes of the Extraordinary Shareholders Meeting that agreed to the new distribution of shares and granted the chairmanship of the Board to Baruch Ivcher Bronstein; Order No. 12 of August 1, 1997, issued by the First Temporary Commercial Public Law Court; testimony of Luis Iberico Núñez before the Inter-American Court on November 20, 2000; testimony of Baruch Ivcher Bronstein before the Inter-American Court on November 20, 2000; testimony of Fernando Viaña Villa before the Inter-American Court on November 20, 2000; and testimony of Emilio Rodríguez Larraín before the Inter-American Court on November 20, 2000.

²² Cf. Videotape of the denunciation by Intelligence Agent Leonor La Rosa from the Military Hospital, broadcast on April 6, 1997, by Frecuencia Latina-Channel 2's program, *Contrapunto*; testimony of Luis Iberico Núñez before the Inter-American Court on November 20, 2000; testimony of Baruch Ivcher Bronstein before the Inter-American Court on November 20, 2000; testimony of Fernando Viaña Villa before the Inter-American Court on November 20, 2000; Videotape entitled "*El caso Ivcher-Canal 2*"; and various newspaper articles.

²³ Cf. Videotape of the report on the revenues of Vladimiro Montesinos Torres, broadcast on April 13, 1997, by Frecuencia Latina-Channel 2's program, *Contrapunto*; testimony of Luis Iberico Núñez before the Inter-American Court on November 20, 2000; testimony of Baruch Ivcher Bronstein before the Inter-American Court on November 20, 2000; testimony of Fernando Viaña Villa before the Inter-American Court on November 20, 2000; Videotape entitled "*El caso Ivcher-Canal 2*"; and several newspaper articles.

²⁴ Cf. Videotape of Frecuencia Latina-Channel 2's program *Contrapunto*, recording the visit of officers Ibañez and Palomino to the installations of this channel; testimony of Luis Iberico Núñez before the Inter-American Court on November 20, 2000; testimony of Baruch Ivcher Bronstein before the Inter-American Court on November 20, 2000; testimony of Fernando Viaña Villa before the Inter-American Court on November 20, 2000; and Videotape entitled "*El caso Ivcher-Canal 2*".

factory, *Productos Paraíso del Perú*²⁵; and the opening of a proceeding against him by the National Directorate of Fiscal Police on May 23, 1997²⁶;

k) on May 23, 1997, the Armed Forces Joint Command issued official communiqué No. 002-97-CCFFAA, denouncing Mr. Ivcher for conducting a defamatory campaign of libel with the aim of slandering the Armed Forces²⁷;

l) the same day, May 23, 1997, the Peruvian Executive issued Supreme Decree No. 004-97-IN, which regulated Nationality Law No. 26574, and established the possibility of canceling the nationality of naturalized Peruvians²⁸;

m) this supreme decree was contested twice, by:

m.1)j an action for amparo filed by Mr. Ivcher's lawyer, in a brief of May 31, 1997, before the Public Law Chamber of first instance against the Ministry of the Interior, requesting that articles 12 and 15 of the Regulation

to Nationality Law No. 26574 should be declared inapplicable²⁹. This action for amparo was declared inadmissible on June 18, 1997; Mr. Ivcher appealed this decision³⁰. The appeal was filed before the Temporary Commercial Public Law Chamber of second instance, which on November 7, 1997, declared the nullity of the preceding actions, owing to an error in the notification of the defendant³¹. Returned to

²⁵ Cf. Videotape of the report by Frecuencia Latina-Channel 2's program *Contrapunto*, recording the flight of the helicopters over the installations of *Productos Paraíso del Perú*; testimony of Luis Iberico Núñez before the Inter-American Court on November 20, 2000; testimony of Baruch Ivcher Bronstein before the Inter-American Court on November 20, 2000; testimony of Fernando Viaña Villa before the Inter-American Court on November 20, 2000; testimony of Rosario Lam Torres before the Inter-American Court on November 20, 2000; and Videotape entitled "*El caso Ivcher-Canal 2*".

²⁶ Cf. Videotape of the report by Frecuencia Latina-Channel 2's program *Contrapunto*; order of April 16, 1997, where Baruch Ivcher Bronstein is summonsed as a witness; decision of May 16, 1997, where Baruch Ivcher Bronstein is denounced before the office of the sitting Provincial Criminal Attorney for committing a crime "Against the Administration of Justice", against the State; decision of May 23, 1997, ordering a proceeding to be opened against Baruch Ivcher Bronstein, his appearance and a preventive embargo on his property; and Videotape entitled "*El caso Ivcher-Canal 2*", containing the report broadcast by *Contrapunto* on the different acts of harassment against Baruch Ivcher Bronstein, the journalists and freedom of expression.

²⁷ Cf. Official note No. 002-97-CCFFAA, issued on May 23, 1997, by the Armed Forces Joint Command; testimony of Luis Iberico Núñez before the Inter-American Court on November 20, 2000; testimony of July Sotelo Casanova before the Inter-American Court on November 20, 2000; Videotape entitled "*El caso Ivcher-Canal 2*"; and several newspaper articles

²⁸ Cf. Supreme Decree No. 004-97-IN, of May 23, 1997.

²⁹ Cf. Application for amparo filed before the Public Law Chamber by Baruch Ivcher on May 31, 1997.

³⁰ Cf. Order No. 7 issued by the Public Law Court of June 18, 1997.

³¹ Cf. Order of the First Temporary Commercial Public Law Chamber of November 7, 1997, in case No. 1279-97.

the first instance on February 20, 1998, Judge Percy Escobar again declared that the said action for amparo was inadmissible³²; and

m.2) two petition for popular action filed on June 3, 1997: one submitted by César Raúl Rodríguez Rabanal, Julio S. Cotler Dolberg, Luis Fernando de la Flor Arbulú and Alberto Alfonso Borea Odría before the Public Law Chamber of first instance against the State, requesting that the general effects of articles 12, 13, 15 and 27 of the supreme decree that regulated Nationality Law No. 26574³³ be declared inadmissible; and another filed by Fernando Viaña Villa, Luis Iberico Núñez and Iván García Mayer against the Ministry of the Interior, requesting that articles 12 and 15 of the said decree be declared unconstitutional³⁴. The two complaints were joined³⁵, and on January 30, 1998, they were declared inadmissible³⁶;

n) the composition and attributions of several judicial tribunals were modified:

n.1) on June 17, 1997, the Judiciary's Executive Committee modified the composition of the Constitutional and Social Chamber of the Supreme Court of Justice of Peru, through Administrative Resolution No. 393-CME-PJ³⁷;

n.2) on June 23, 1997, the Judiciary's Executive Committee granted the Constitutional and Social Chamber of the Supreme Court of Justice of Peru the power to create, on a "[t]emporary" basis, higher and temporary public law chambers, and also to "appoint and/or ratify" the members³⁸; and

n.3) on June 25, 1997, the Constitutional and Social Chamber of the Supreme Court of Justice of Peru created temporary commercial public law and administrative law chambers and courts in the Lima Judicial

³² Cf. Order No. 18, of February 20, 1998, issued by the First Temporary Commercial Public Law Court, referring to File No. 975-97.

³³ Cf. Popular action petition filed before the Public Law Chamber of the Superior Court of Lima on June 3, 1997.

³⁴ Cf. Popular action petition filed before the Public Law Chamber of the Superior Court of Lima on June 3, 1997.

³⁵ Cf. Report No. 194-97 of December 26, 1997, in which the Public Ministry requests that the joined public action petitions should be declared admissible; and order of the First Temporary Commercial Public Law Chamber of January 30, 1998, regarding file No. 1173-97.

³⁶ Cf. Order of the First Temporary Commercial Public Law Chamber of January 30, 1998, regarding file No. 1173-97.

³⁷ Cf. Administrative Decision No. 393-CME-PJ of June 17, 1997, published in the official gazette *El Peruano* on June 18 that year.

³⁸ Cf. Administrative Decision No. 399-CME-PJ, issued by the Executive Committee of the Judiciary on June 23, 1997, published in the official gazette, *El Peruano*, on June 24, 1997; Administrative Decision No. 001-97-SC and S-CSJ of June 25, 1997; published in the official gazette, *El Peruano*, on June 26, that year; Administrative Decision No. 002-97-SC and S-CSJ of June 25, 1997, and also the list of errata, relating to the resolution published in the official gazette, *El Peruano*, on June 27, that year; and expert report of Samuel Abad Yupanqui before the Inter-American Court on November 20, 2000.

District; removed the member judges who were experts in public law from their positions and, in their place, appointed new magistrates and judges, including Percy Escobar as judge of the First Temporary Commercial Public Law Court³⁹;

ñ) prior to June 1977, Percy Escobar worked as a court secretary and a criminal judge and had received several disciplinary sanctions in the exercise of his functions⁴⁰;

o) the week prior to July 13, 1997, Channel 2 announced that on that day it would present an investigative report on the unlawful recording of telephone conversations involving candidates of opposition parties, judges and journalists, among others. This program was transmitted on the said date⁴¹;

p) on July 10, 1997, the Director General of the National Police Force submitted the conclusions of Report No. 003-97-IN/05010, issued the same day by the Migration and Naturalization Directorate, according to which the file that supported Mr. Ivcher's nationality title had not been found in the Directorate's archives and there was no evidence that he had renounced his Israeli nationality⁴²;

q) on July 11, 1997, "Directorial Resolution" No. 117-97-IN-050100000000, signed by the Director General of Migration and Naturalization was issued, annulling the Peruvian nationality title of December

³⁹ Cf. Administrative Decision No. 001-97-SC and S-CSJ, of June 25 1997, published in the official gazette "*El Peruano*" the same day; Administrative Decision No. 002-97-SC and S-CSJ, of June 25, 1997; expert report of Samuel Abad Yupanqui before the Inter-American Court on November 20, 2000; and several newspaper articles.

⁴⁰ Cf. Note No. 816-97-A/CSJL, of March 11, 1997, addressed to the judge of the Fourteenth Criminal Court of Lima; note No. 6245-96-UA/CSJL, of November 25, 1996, addressed to Percy Escobar Lino, Lima Criminal Judge; Order No. I 335-95, issued on October 7, 1996, by the Office for the Supervision of the Magistrature of the Judiciary; note No. 6196-95-UA/CSJL, of an illegible day in November 1995, issued by the President of the Superior Court of Justice of Lima, addressed to Rolando Escobar Lino, Secretary of the Twenty-second Criminal Court of Lima; note of December 23, 1994, appointing Percy Escobar; complaint note No. 725-94, of July 5, 1995, by the Office for the Supervision of the Magistrature of the Judiciary; note of December 23, 1994, appointing Percy Escobar Lino to serve on the Twenty-second Criminal Court, signed by the President of the Superior Court of Justice of Lima and by the Secretary for Administrative Matters of the Superior Court of Lima; note No. 05-94-34° JEPL-PJ, of December 19, 1994, signed by the judge of the Thirty-fourth Criminal Court of Lima, addressed to President of the Superior Court of Justice of Lima; note of December 19, 1994, signed by the judge of the Thirty-fourth Criminal Court of Lima, making Percy Escobar Lino available to the Office of the President of the Superior Court of Justice of Lima; Order referring to PD No. 692-91, of September 14, 1992, containing the decision to impose a disciplinary measure on Percy Escobar Lino; Order referring to File No. 1037-96; and several newspaper articles.

⁴¹ Cf. Videotape of announcements promoting the Channel 2 program *Contrapunto*; videotape of the report mentioned above, transmitted on July 13, 1997, by the Channel 2 program *Contrapunto*; testimony of Luis Iberico Núñez before the Inter-American Court on November 20, 2000; testimony of Baruch Ivcher Bronstein before the Inter-American Court on November 20, 2000; and several newspaper articles

⁴² Cf. Videotape containing the press conference convened by the Director General of the National Police Force on July 10, 1997; testimony of July Sotelo Casanova before the Inter-American Court on November 20, 2000; "Directorial Order" No. 117-97-IN-050100000000, of July 11, 1997, entitled "Dejan sin efecto legal título de nacionalidad peruana", published in the official gazette, *El Peruano*; and several newspaper articles

7, 1984, issued to Mr. Ivcher Bronstein. This resolution was published on July 13 that year in the official gazette *El Peruano*⁴³;

r) The Migration and Naturalization Directorate did not contact Mr. Ivcher before issuing the "directorial resolution" which annulled his nationality title, so that he could submit his opinion or any evidence he might possess⁴⁴;

s) the following legal remedies were filed concerning the administration of the Company:

s.1) action for amparo filed by the minority shareholders before the First Temporary Commercial Public Law Court (first instance) on July 11, 1997, to annul the Mr. Ivcher's purchase of the Company's shares⁴⁵;

s.2) brief 'modifying' this action for amparo by the minority shareholders of July 14, 1997, and, on the same day, submission of a request for amparo against Mr. Ivcher, the Ministry of the Interior and the Ministry of Transport, Communications, Housing and Construction, so that they would order the protection of the property rights of the Company that corresponded to the said shareholders⁴⁶. On September 5, 1997, the court of first instance declared the request for amparo admissible⁴⁷.

s.3) request for precautionary measures filed by the minority shareholders before the First Temporary Commercial Public Law Court (first instance) on July 14, 1997, in order to suspend Mr. Ivcher from exercising his rights as majority shareholder of the Company and to suspend his appointment as a director and chairman of the company, to convene judicially an extraordinary shareholders' meeting to elect a new board, and to prohibit the transfer of his shares⁴⁸. On August 1, 1997, Judge Percy Escobar granted this measure and also revoked the Mr. Ivcher's appointment as a director and granted the claimants the

⁴³ Cf. "Directorial Order" No. 117-97-IN-050100000000, of July 11, 1997, entitled "Dejan sin efecto legal titulo de nacionalidad peruana", published in the official gazette *El Peruano*; testimony of Luis Iberico Núñez before the Inter-American Court on November 20, 2000; testimony of July Sotelo Casanova before the Inter-American Court on November 20, 2000; testimony of Emilio Rodríguez Larraín before the Inter-American Court on November 20, 2000; and, various newspaper articles.

⁴⁴ Cf. Testimony of Baruch Ivcher Bronstein before the Inter-American Court on November 20, 2000; and testimony of July Sotelo Casanova before the Inter-American Court on November 20, 2000.

⁴⁵ Cf. Request for amparo filed on July 11, 1997, by Samuel and Mendel Winter Zuzunaga, before the First Temporary Commercial Public Law Court and testimony of Emilio Rodríguez Larraín before the Inter-American Court on November 20, 2000.

⁴⁶ Cf. Brief modifying the petition filed on July 14, 1997 by Samuel and Mendel Winter Zuzunaga, before the First Temporary Commercial Public Law Court.

⁴⁷ Cf. Order No. 33 of September 5, 1997, issued by the First Temporary Commercial Public Law Court; and order of October 27, 1997, issued by the First Temporary Commercial Public Law Chamber.

⁴⁸ Cf. Brief requesting a precautionary measure filed on July 14, 1997, by Samuel and Mendel Winter Zuzunaga, before the First Temporary Commercial Public Law Court de Lima; and testimony of Emilio Rodríguez Larraín before the Inter-American Court on November 20, 2000.

provisional administration of the Company, until the appointment of a new board⁴⁹;

s.4) request for the annulment of all previous judicial acts in the precautionary proceedings, filed by Mrs. Ivcher before the Temporary Commercial Public Law Chamber (second instance) on August 28, 1997⁵⁰. On September 12, 1997, this Chamber declared the "appearance" inadmissible and the annulment unfounded⁵¹.

t) the following recourses were filed against "Directorial Resolution" No. 117-97-IN-050100000000, which annulled Mr. Ivcher's nationality title:

t.1) action for amparo filed by Mr. Ivcher's lawyer on July 14, 1997, before the First Temporary Commercial Public Law Court (first instance) against the Director General of Migration and Naturalization and the public attorney responsible for judicial affairs of the Ministry of the Interior, requesting that the "directorial resolution" be declared null⁵². On August 14, 1997, Judge Percy Escobar declared the action for amparo inadmissible⁵³. This decision was appealed and on October 24, 1997, the Temporary Commercial Public Law Chamber (second instance) declared that all the judicial acts in this process were null and void, owing to an error in the notification of the complaint, and returned the case file to the first instance⁵⁴. There, on November 12, 1997, Judge Percy Escobar once again declared that the request for amparo was inadmissible⁵⁵. This judgment was appealed and the case file was again raised to the second instance, where the judgment that had been appealed was confirmed on December 22, 1997⁵⁶. Lastly, on April 24, 1998, the Constitutional Court confirmed that judgment⁵⁷;

⁴⁹ Cf. Order No. 12, of August 1, 1997, issued by the First Temporary Commercial Public Law Court.

⁵⁰ Cf. Brief requesting annulment filed by Neomy Even de Ivcher, before the Public Law Court of the Superior Court of Lima, on August 28, 1997; and testimony of Emilio Rodríguez Larraín before the Inter-American Court on November 20, 2000.

⁵¹ Cf. Order of September 12, 1997, issued by the First Temporary Commercial Public Law Chamber; and testimony of Emilio Rodríguez Larraín before the Inter-American Court on November 20, 2000.

⁵² Cf. Petition for habeas corpus filed before the First Temporary Commercial Public Law Court on July 14, 1997, by Juan Armando Lengua-Balbi, representing Baruch Ivcher Bronstein.

⁵³ Cf. Order No. 13 of August 14, 1997, issued by the First Temporary Commercial Public Law Court.

⁵⁴ Cf. Order of October 24, 1997, issued by the First Temporary Commercial Public Law Chamber, corresponding to File No. 344-97.

⁵⁵ Cf. Order No. 20 of November 12, 1997, issued by the First Temporary Commercial Public Law Court, corresponding to File No. 1221-97.

⁵⁶ Cf. Order of December 22, 1997, issued by the First Temporary Commercial Public Law Chamber, corresponding to File No. 344-97.

⁵⁷ Cf. Notification of June 11, 1998, issued by the Constitutional Court, addressed to Juan Armando Lengua-Balbi, with regard to File No. 112-98; and judgment of April 24, 1998, issued by the Constitutional Court, corresponding to File No. 112-98-AA/TC.

t.2) request for precautionary measures before the First Temporary Commercial Public Law Court (first instance), filed on July 14, 1997, in order to suspend the effects of the "directorial resolution" until the conclusion of the amparo process⁵⁸. On August 15, 1997, Judge Percy Escobar, head of this Court, declared the request for precautionary measures inadmissible⁵⁹. This decision was appealed and on September 11, 1997, the Temporary Commercial Public Law Chamber (second instance) declared that all the judicial acts in the process were null and void, owing to an error in the notification of the complaint and returned the case file to the first instance⁶⁰. Subsequently, on October 16, 1997, Judge Percy Escobar again declared the request for precautionary measures inadmissible⁶¹;

u) on September 19, 1997, the Winter brothers assumed control of Channel 2⁶²;

v) after the Winter brothers assumed control of Channel 2, the journalists who worked on the program *Contrapunto* were prohibited from entering the Channel⁶³ and the program's editorial line was modified⁶⁴;

w) on September 26, 1997, a general meeting of the Company's shareholders was held, attended by the Winter brothers and Remigio Morales Bermúdez Pedraglio, all of them minority shareholders, at which the members of the board were removed and new members were elected⁶⁵;

x) Mr. Ivcher's wife filed various civil proceedings in order to obtain recognition of her rights as co-owner of her husband's shares in the Company. These proceedings were unfruitful⁶⁶;

⁵⁸ Cf. Brief requesting precautionary measures filed before the First Temporary Commercial Public Law Court on July 14, 1997, by Juan Armando Lengua-Balbi, representing Baruch Ivcher Bronstein.

⁵⁹ Cf. Order No. 5 of August 15, 1997, issued by the First Temporary Commercial Public Law Court.

⁶⁰ Cf. Order of September 11, 1997, issued by the First Temporary Commercial Public Law Chamber, with regard to case No. 346-97.

⁶¹ Cf. Judicial notice of resolution No. 11, dated October 16, 1997, issued by the First Temporary Commercial Public Law Court.

⁶² Cf. Videotape of the entry of Judge Percy Escobar, assisted by the police, into the installations of Channel 2, on July 19, 1997; testimony of Luis Iberico Núñez before the Inter-American Court on November 20, 2000; testimony of Baruch Ivcher Bronstein before the Inter-American Court on November 20, 2000; testimony of Fernando Viaña Villa before the Inter-American Court on November 20, 2000; testimony of Emilio Rodríguez Larrain before the Inter-American Court on November 20, 2000; and numerous newspaper articles.

⁶³ Cf. Certified copy of the certification made by the notary, Manuel Noya de la Piedra; and newspaper article.

⁶⁴ Cf. Testimony of Luis Iberico Núñez before the Inter-American Court on November 20, 2000; and testimony of Fernando Viaña Villa before the Inter-American Court on November 20, 2000.

⁶⁵ Cf. Certified copy No. 272-97, corresponding to the minutes of the extraordinary shareholders meeting of *Compañía Latinoamericana de Radiodifusión S.A.*, held on September 26, 1997; testimony of Emilio Rodríguez Larrain before the Inter-American Court on November 20, 2000; and numerous newspaper articles.

- y) Mr. Ivcher Bronstein, his family, lawyers, managers and clients of his companies were the subject of criminal complaints⁶⁷ and other acts of intimidation⁶⁸.
- z) on November 7, 2000, the State annulled the "directorial resolution" that annulled Mr. Ivcher's nationality title⁶⁹;

⁶⁶ Cf. Brief requesting annulment filed by Neomy Even de Ivcher, before the Public Law Chamber of the Superior Court of Lima, with a stamped receipt dated August 28, 1997; petition for a recovery injunction (*Interdicto de Recobrar*) filed by Neomy Even de Ivcher, before the Lima civil judge, on October 16, 1997; petition contesting the agreements of the extraordinary general shareholders meeting, filed before the Lima civil judge by Neomy Even de Ivcher on November 14, 1997; petition for the convocation of a extraordinary general shareholders meeting, filed before the Lima civil judge, by Neomy Even de Ivcher, with a stamped receipt dated December 1, 1997; testimony of Baruch Ivcher Bronstein before the Inter-American Court on November 20, 2000; and testimony of Emilio Rodríguez Larraín before the Inter-American Court on November 20, 2000.

⁶⁷ Cf. Videotape of the trial for defrauding the customs authorities of income, held *in absentia* of Baruch Ivcher Bronstein; order of May 16, 1997, where it was decided to denounce Baruch Ivcher Bronstein before the office of the sitting Provincial Criminal Attorney for committing a crime "Against the Administration of Justice", against the State; petition with an illegible number of February 5, 1998, signed by the Provincial Attorney of the office of the Criminal Provincial Attorney for Taxation and Customs Crimes; decision to open File No. 98-0030 (*auto de apertorio*) of February 5, 1998, issued by the Criminal Court for Taxation and Customs Crimes; request for measures to the Criminal Court for Taxation and Customs Crimes, by the Provincial Criminal Prosecutor, of July 17, 1998; decision to open File No. 98-0030-0101JT01 of June 19, 1998, issued by the Criminal Court for Taxation and Customs Crimes; decision to open File No. 2269-98-SDTA of October 19, 1998, issued by the Criminal Court for Taxation and Customs Crimes; petition presented on November 16, 1998, by the Provincial Prosecutor of the office of the Provincial Criminal Prosecutor for Taxation and Customs Crimes, formulating a criminal accusation against Michal Ivcher Even and expanding the accusation against Baruch Ivcher Bronstein, Neomy Even de Ivcher and Alberto José Cabello Ortega; decision to open File No. 2269-98 of November 18, 1998, issued by the Criminal Court for Taxation and Customs Crimes, in which a preventive embargo against the property of the defendants was ordered; order of arrest issued on November 30, 1998, by the Criminal Court for Taxation and Customs Crimes, against Baruch Ivcher Bronstein, Neomy Even de Ivcher and Michal Ivcher Even, addressed to the National Director of the Judicial Police Force; order preventing Baruch Ivcher Bronstein, Neomy Even de Ivcher and Michal Ivcher Even from leaving the country, issued on November 30, 1998, by the Criminal Court for Taxation and Customs Crimes, and addressed to the National Director of the Judicial Police Force; order of capture issued against Baruch Ivcher, Neomy de Ivcher and Michal Ivcher Even, issued on November 30, 1998, by the Criminal Court for Taxation and Customs Crimes, addressed to the Head of the OCN INTERPOL Lima; judicial notification of November 9, 1998 by the Secretary of the Taxation and Customs Crimes Court with regard to the summons issued to Emilio Rodríguez Larraín; judicial summons with illegible number and date, addressed to Enrique Elías Laroza by the National Directorate of the Judicial Police Force; testimony of Baruch Ivcher Bronstein before the Inter-American Court on November 20, 2000; testimony of July Sotelo Casanova before the Inter-American Court on November 20, 2000; testimony of Rosario Lam Torres before the Inter-American Court on November 20, 2000; testimony of Emilio Rodríguez Larraín before the Inter-American Court on November 20, 2000; and newspaper article.

⁶⁸ Cf. Videotape of the report broadcast by Channel 2's *Contrapunto*, concerning threats to and harassment of journalists; testimony of Luis Iberico Núñez before the Inter-American Court on November 20, 2000; testimony of Baruch Ivcher Bronstein before the Inter-American Court on November 20, 2000; testimony of July Sotelo Casanova before the Inter-American Court on November 20, 2000; testimony of Rosario Lam Torres before the Inter-American Court on November 20, 2000; testimony of Fernando Rospigliosi Capurro before the Inter-American Court on November 21, 2000; Videotape entitled "*El caso Ivcher-Canal 2*", containing the denunciation broadcast by *Contrapunto* about different acts harassing Baruch Ivcher Bronstein, journalists and freedom of expression.

⁶⁹ Cf. "Ministerial Resolution" No. 1432-2000-IN, adopted on November 7, 2000, published in the official gazette, *El Peruano*, on November 8 that year, headed: R.D. No. 117-97-IN-050100000000, which revoked the Peruvian nationality title, is annulled.

aa) on November 15, 2000, Peru agreed to comply with the recommendations formulated in Report No. 94/98 of the Inter-American Commission⁷⁰; and

bb) the Inter-American Commission submitted elements to justify the expenses and costs of processing this case and the Court retained the right to evaluate them⁷¹.

IX PRIOR CONSIDERATIONS ON MERITS

77. Having defined the proven facts that it considers relevant, the Court must examine the Inter-American Commission's arguments, in order to decide whether or not the proven facts engage the State's international responsibility, owing to the alleged violation of the American Convention, and determine the legal consequences of the alleged violations, if it is determined that the case has the pertinent merits. However, the Court believes that it should first examine the arguments submitted by the Commission concerning the State's failure to appear in the instant case.

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78. As we have said previously (*supra* para. 44), the State did not submit any defense nor did it attend the hearings to which it was summonsed⁷². In this respect the Commission stated that:

a) the Inter-American Court declared that Peru's purported "withdrawal" of the contentious jurisdiction, by which it tried to prevent this Court from hearing all the cases in which the State had not answered the application, was inadmissible; despite this decision, Peru did not answer the Commission's arguments and it did not attend the hearing of the instant case.

⁷⁰ Cf. "Supreme Resolution" No. 254-2000-JUS, adopted on November 15, 2000, published in the official gazette *El Peruano*, on November 16 that year headed: The recommendations formulated in Report 94-98 issued by the Inter-American Commission on Human Rights are accepted.

⁷¹ Cf. File: "SEPTEMBER 1997-DECEMBER 2000 / Expenses incurred owing to the political persecution and harassment of Mr. Baruch Ivcher", containing 28 attachments; file: "JANUARY 1999-DECEMBER 2000 / Extraordinary expenses incurred directly by *Productos Paraíso del Perú S.A.C.* owing to the political persecution and harassment of Mr. Baruch Ivcher", containing 40 attachments; file: "SEPTEMBER 1997-DECEMBER 1998 / Extraordinary expenses incurred directly by *Productos Paraíso del Perú S.A.C.* owing to the political persecution and harassment of Mr. Baruch Ivcher", containing 16 attachments.

⁷² In the brief of February 1, 2001 (*supra* para. 49) the State indicated that the Congress of the Republic recently adopted Legislative Order No. 27,401, establishing that the Executive was carrying out all the necessary actions to annul the results deriving from the "purported withdrawal" of the contentious jurisdiction of the Court by the previous Government. It also indicated that it considered that it was particularly important to promote a policy of rapprochement and collaboration with the inter-American human rights system and, insofar as this case was concerned, to initiate discussions leading to a friendly settlement, in the framework of the commitment assumed by the present Government, expressed in "Supreme Order" No. 254-2000-JUS, which allowed Mr. Ivcher to recover the ownership and administration of the Company.

Although the American Convention does not regulate this possibility, Article 27 of the Rules of Procedure is clear when it establishes that, should a party fail to appear, the Court shall, on its own motion, complete the consideration of the case;

b) faced with the inexistence of a precedent in the inter-American system, we can take into consideration the provisions of article 53(1) and 53(2) of the Statute of the International Court of Justice, which provides that whenever one of the parties does not appear before the Court or cannot defend its case, "the other party may request [the Court] to decide in favor of its application" and the jurisdictional organ must evaluate if this has sufficient grounds, *de jure* and *de facto*, in order to declare it admissible; and

c) in order to decide if an application has legal merits, the Court is not restricted to the arguments of the parties, and the absence of one of them has fewer repercussions for the resolution of the case. Since the Court knows the law and is not restricted to the legal arguments of the parties, the State's failure to appear does not affect the Court's capacity to determine the legal merits of the application. In this hypothesis, it would be more difficult to decide if the application is admissible with regard to the facts, because the definition of these may depend on the parties. However, in the case *sub judice* neither the facts nor the law are contested.

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79. Article 27 of the Rules of Procedure of the Court establish that

1. When a party fails to appear in or continue with a case, the Court shall, on its own motion, take such measures as may be necessary to complete the consideration of the case.
2. When a party enters a case at a later stage of the proceedings, it shall take up the proceedings at that stage.

80. This Court observes that the appearance of the parties to the proceeding is a procedural duty and not a legal obligation, because the failure of the parties to take part in the proceedings does not result in any precise sanction against this omission, nor does it affect the evolution of the proceeding, but rather it could produce a prejudice for the party that decides not to exercise fully his right to defend himself or to perform the procedural actions that are in his interest, in accordance with the principle *audi alteram partem*⁷³.

81. With regard to the arguments presented by the Commission, it is sufficient to say that the Court has brought the case to a completion, on its own motion, and has evaluated the pool of evidence and the arguments submitted during the proceedings and, on this basis, the Court exercises its jurisdictional functions and delivers judgment⁷⁴.

⁷³ Cf. *Constitutional Court case*, *supra* note 8, para. 60.

⁷⁴ Cf. *Constitutional Court case*, *supra* note 8; para. 61.

82. As has been recognized in international jurisprudence, the absence of one party at any state of the case does not affect the validity of the judgment⁷⁵, so that, pursuant to Article 68(1) of the Convention, Peru's obligation to comply with the decision of this Court in the instant case is in force⁷⁶.

X
VIOLATION OF ARTICLE 20
(RIGHT TO NATIONALITY)

The Commission's arguments

83. With regard to Article 20 of the Convention, The Commission argues that:

a) in "Supreme Resolution" No. 0649-RE, of November 27, 1984, the President of Peru resolved: a) to grant Peruvian nationality to Mr. Ivcher; b) to record this in the respective register; and c) to issue him the corresponding nationality title, once he had renounced his original nationality in a public instrument;

b) on December 6, 1984, Mr. Ivcher Bronstein renounced his Israeli nationality in a document drawn up before a public notary and, the following day, after having officially received the document with the renunciation of Israeli nationality, the Minister for Foreign Affairs of Peru issued him the nationality title, which was also signed by the Minister Counselor Director of Nationalization and the Deputy Minister and Secretary General;

c) according to Articles 20 and 29(b) of the American Convention and articles 2(21) and 53 of Peru's Constitution, no authority has the power to deprive a Peruvian of nationality. According to the domestic law of Peru, Peruvian nationality may only be lost by a voluntary act of express renouncement. Therefore, any procedure that deprives a Peruvian citizen of his nationality is arbitrary;

d) Mr. Ivcher Bronstein never renounced his Peruvian nationality, but his nationality title was revoked and, in consequence, he was deprived of the administration of Channel 2 and all his fundamental rights as a Peruvian citizen;

⁷⁵ Cf. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 23, para. 27. See also, Cf., *inter alia*, *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Jurisdiction of the Court, Judgment, I.C.J. Reports 1973, p. 7, para. 12; *Fisheries Jurisdiction (United Kingdom v. Iceland)*, Merits, Judgment, I.C.J. Reports 1974, p. 9, para. 17; *Nuclear Tests (Australia v. France)*, Judgment of 20 December 1974, I.C.J. Reports 1974, p. 257, para. 15; *Aegean Sea Continental Shelf*, Judgment, I.C.J. Reports 1978, p. 7, para. 15; and *United States Diplomatic and Consular Staff in Tehran*, Judgment, I.C.J. Reports 1980, p. 18, para. 33.

⁷⁶ Cf. *Constitutional Court case*, *supra* note 8; para. 62.

e) the effects of the annulment of the nationality title are similar to those of the loss of nationality; the most important of those effects occurred on August 1, 1997, when, based on the above-mentioned annulment, Judge Percy Escobar granted the precautionary measures requested by the minority shareholders (*supra* para. 76.s.3), thus violating other "rights embodied in the American Convention: the right to property and the right to freedom of expression"; and

f) the penalty that Peru considered imposing on Mr. Ivcher Bronstein arose from an "act of the State itself", because the reason invoked for the annulment of the nationality title was that the nationalization file, which it is the State's obligation to conserve, had not been found in the official archives; the loss could not produce consequences for Mr. Ivcher Bronstein.

The State's arguments

84. Peru did not submit any argument on this point, because it did not appear before the Court in the case *sub judice* (*supra* para. 78).

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The considerations of the Court

85. Article 20 of the American Convention establishes that:

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the State in whose territory he was born, if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

86. The right to nationality is recognized by international law. This Court considers that it is a right of the individual and has stated that

[n]ationality is an inherent right of all human beings. Not only is nationality the basic requirement for the exercise of political rights, it also has an important bearing on the individual's legal capacity⁷⁷.

87. With regard to Article 20 of the Convention, the Court has established that this includes two aspects:

[t]he right to a nationality provides the individual with a minimum measure of legal protection in international relations, through the link his nationality establishes between him and the State in question; and second, the protection therein accorded the individual against the arbitrary deprivation of his nationality, without which he would be deprived for all practical purposes of all his political rights as well as of those civil rights that are tied to the nationality of the individual⁷⁸.

⁷⁷ Cf. *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 32.

88. Although it has traditionally been accepted that the determination and regulation of nationality are the competence of each State, as this Court has stated, the evolution in this matter shows that international law imposes certain limits on a State's discretionality and that, in the regulation of nationality, it is not only the competence of States, but also the requirements of the integral protection of human rights that intervene⁷⁹.

89. Peru's domestic legislation recognizes the right to nationality. Thus, according to Article 2(21) of the Peruvian Constitution, "[e]very person has the right [...] to his nationality. No one may be deprived of it". In the same way, Article 53 of the Constitution provides that "Peruvian nationality is not lost, unless it is expressly renounced before the Peruvian authorities".

90. The Court observes that it has been proved that Mr. Ivcher was an Israeli citizen until 1984, and that, subsequently, he acquired Peruvian citizenship by naturalization (*supra* para. 76.a). It should be recalled that both the American Convention and Peru's domestic legislation recognize the right to nationality without making a distinction about the way in which it was acquired, either by birth, naturalization or some other means established in the law of the respective State.

91. In this regard, the Court has declared that

[n]ationality can be deemed to be the political and legal bond that links a person to a given state and binds him to it with ties of loyalty and fidelity, entitling him to diplomatic protection from that State. In different ways, most States have offered individuals who did not originally possess their nationality the opportunity to acquire it at a later date, usually, through a declaration of intention made after complying with certain conditions. In these cases, nationality no longer depends on the fortuity of birth in a given territory or on parents having that nationality; it is based on a voluntary act aimed at establishing a relationship with a given political society, its culture, its way of life and its values⁸⁰.

92. The International Court of Justice has also referred to this issue:

Requesting and obtaining [naturalization] is not a common act in the life of an individual. It entails the rupture of a relation of fidelity and the establishment of another relation of fidelity. It entails far-reaching consequences and a profound change in the destiny of the persons who obtains it⁸¹.

93. In this case, it is proved that Mr. Ivcher Bronstein acquired the title of Peruvian nationality on December 7, 1984, after he had renounced his Israeli nationality (*supra* para. 76.b and c). This act linked both Mr. Ivcher and his family to the political society, the culture, the way of life and the values of Peru.

⁷⁸ Cf. *Castillo Petruzzi et al. case*. Judgment of May 30, 1999. Series C No. 52, para. 100; and *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, *supra* note 77, para. 34.

⁷⁹ Cf. *Castillo Petruzzi et al. case*, *supra* note 78, para. 101.

⁸⁰ Cf. *Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica*, *supra* note 77, para. 35.

⁸¹ Cf. *Nottebohm Case (second phase)*, Judgment of April 6, 1955: *I.C.J. Reports 1955*, p. 24.

94. It has also been proved that on July 11, 1997, "Directorial Resolution" No. 117-97-IN-050100000000, signed by the Director General of Migration and Naturalization, annulled this nationality title, stating that there had been "substantial omissions that invalidate[d] it [*ipso jure*], because the required, prior renunciation of his nationality before the competent Peruvian authorities had not been confirmed, and it had not been confirmed in writing that he had done so before his country of origin"⁸².

95. From the foregoing, it is evident that Mr. Ivcher did not expressly renounce his nationality, which is the only way of losing it, according to the Peruvian Constitution, but was deprived of it when his nationality title, without which he was unable to exercise his rights as a Peruvian national, was annulled. Moreover, the procedure used to annul the nationality title did not comply with the provisions of domestic legislation, because, according to Article 110 of Peru's Law on General Norms of Administrative Procedures, a nationality title may only be annulled within the six months following the date on which it was acquired (*infra* para. 109). Since this certificate was annulled in July 1997, 13 years after it had been granted, the State failed to comply with the provisions of its domestic legislation and arbitrarily deprived Mr. Ivcher of his nationality, violating Article 20(3) of the Convention.

96. Furthermore, the authorities who annulled Mr. Ivcher's nationality title did not have competence. As it has been established (*supra* para. 76.a), Mr. Ivcher Bronstein acquired Peruvian nationality through a "supreme resolution" of the President, and his nationality title was signed by the Minister for Foreign Affairs; however, he lost his nationality as the result of a "directorial resolution" of the Migration and Naturalization Directorate, which is undoubtedly of a lower rank than the authority that granted the corresponding right (*supra* para. 76.q), and, consequently, could not deprive the act of a superior of its effects. Once again, this demonstrates the arbitrary character of the revocation of Mr. Ivcher's nationality, in violation of Article 20(3) de the American Convention.

97. In view of the foregoing, the Court concludes that the State violated the right to nationality embodied in Article 20(1) and 20(3) of the American Convention, with regard to Baruch Ivcher Bronstein.

XI VIOLATION OF ARTICLE 8 (JUDICIAL GUARANTEES)

The Commission's arguments

98. With regard to Article 8 of the Convention, the Commission alleges that:

- a) the right to due process or the "right to a procedural defense" is a guarantee applicable to all types of judicial or administrative procedures that involve the determination of a right and is fundamental to the rule of law;

⁸² Cf. Simple copy of the "Directorial Order" No. 117-97-IN-050100000000, of July 11, 1997, headed: Peruvian nationality title annulled, published in the official gazette *El Peruano*.

b) in administrative and judicial procedures where an individual's rights and obligations are determined, a series of specific guarantees are applicable with regard to his right to defense for the protection of those rights;

c) Mr. Ivcher's was deprived of his nationality title arbitrarily. When the resolution that annulled this title was issued, Mr. Ivcher was never summonsed, he did not received any prior detailed communication on the matter being examined by the authorities, with information on the corresponding charges, he was not informed that the nationalization file had been mislaid, he was not asked to submit copies in order to reconstruct it, nor was he allowed to present witnesses to support his position; in brief, he was not allowed to exercise the right of defense;

d) the act by which Mr. Ivcher was deprived of his nationality title was time-barred, because the corresponding resolution was issued when more than 13 years had elapsed since the title had been granted, even though Peruvian legislation establishes that the public administration's authority to annul its resolutions extinguishes after six months, calculated from the time those resolutions are adopted;

e) by modifying the composition of the courts of law (*supra* para. 76.n), the principle of the natural judge (*juez natural*) was also altered and judges of questionable independence and impartiality were appointed;

f) the different actions that Mr. Ivcher filed in order to defend his rights were slow and ineffective, in contrast to the promptness and effectiveness with which the actions filed by the minority shareholders of the Company were processed; and

g) the administrative act annulling Mr. Ivcher's nationality title was issued by the Migration and Naturalization Directorate, a body that was incompetent to do this, because the nationality title had been issued by the Minister of Foreign Affairs of Peru, and only the President of the Republic, as his superior in rank, was empowered to annul the said administrative act by a "supreme resolution".

The State's arguments

99. Peru did not submit any arguments on this issue, since it did not appear before the Court in the case *sub judice* (*supra* para. 78).

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Considerations of the Court

100. Article 8(1) and 8(2) of the American Convention establish 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 and other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- a. The right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- b. Prior notification in detail to the accused of the charges against him;
- c. Adequate time and means for the preparation of his defense;
- d. The right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with this counsel;
- e. The inalienable right to be assisted by counsel, provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f. The right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g. The right not to be compelled to be a witness against himself or to plead guilty, and
- h. The right to appeal the judgment in a higher court.

A. ADMINISTRATIVE PROCEDURE

101. As we have established, the Migration and Naturalization Directorate, an administrative body, was the authority that issued the "directorial resolution" that annulled Mr. Ivcher Bronstein's nationality title. Consequently, the Court deems that, in the context of the administrative procedure, it is pertinent to consider how Article 8 of the American Convention applies to the facts of this case.

102. Although Article 8 of the American Convention is entitled "Right to a Fair Trial", its application is not limited strictly to judicial remedies, "but to a series of requirements that must be observed by the procedural bodies"⁸³ so that a person may defend himself adequately against any act of the State that could affect his rights⁸⁴.

103. The Court has established that, although this article does not stipulate minimum guarantees in matters which concern the determination of the rights and obligations of a civil, labor, fiscal or any other nature, the minimum guarantees established in paragraph 2 of the article should also apply to those categories and, therefore, in that respect, a person has the right to due process in the terms recognized for criminal matters, to the extent that it is applicable to the respective procedure⁸⁵.

⁸³ *Cf. Judicial Guarantees in States of Emergency* (Articles 27(2), 25 and 8 American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 27

⁸⁴ *Cf. Constitucional Tribunal case, supra* note 8, para. 69.

104. Based on the foregoing, the Court believes that both the jurisdictional organs and those of any other nature that exercise functions of a substantially jurisdictional nature have the obligation to adopt just decisions based on full respect for the guarantee of due process established in Article 8 of the American Convention⁸⁶.

105. In this respect, although Article 8(1) of the Convention alludes to the right of every person to a hearing by a "competent tribunal" for the "determination of his rights", this article is also applicable in situations in which a public rather than a judicial authority issues resolutions that affect the determination of such rights⁸⁷.

106. In this specific case, there are sufficient elements to affirm that, during the administrative proceedings that were conducted in order to prepare Report No. 003-97-IN/05010 (*supra* para. 76.p), the Migration and Naturalization Directorate did not inform Mr. Ivcher that his nationalization file could not be found in the institution's archives, nor was he asked to present copies in order to reconstruct it; he was not told about the charges of which he was accused, that is, that he had adulterated this file and not complied with the requirement of renouncing his Israeli nationality, and, lastly, he was not allowed to present witnesses to support his position.

107. Despite the foregoing, this Directorate issued the "directorial resolution" which annulled Mr. Ivcher's nationality title. This was the culmination of a process that, as we have indicated, was conducted with the exclusive presence of the public authorities, in particular the Migration and Naturalization Directorate, and during which, Mr. Ivcher was prevented from intervening, fully informed, in all the stages, despite being the person whose rights were being determined.

108. The Court also emphasizes that Mr. Ivcher Bronstein acquired Peruvian nationality by a "supreme resolution", and his nationality title was signed by the Minister for Foreign Affairs; however, as indicated in the previous section (*supra* para. 76.q), Mr. Ivcher lost his nationality as the result of a "directorial resolution", which was undoubtedly of lesser rank than the one granting him the corresponding right.

109. Lastly, the authority that annulled Mr. Ivcher's nationality title was not competent. This incompetence arises not only because of its subordinate nature with regard to the authority that issued the certificate, but from the text of the Peruvian legislation. Thus, article 110 of the single amended text of the Law of General Norms of Administrative Procedures establishes that:

The annulment [...] shall be declared by an official of a higher rank than the one that issued the resolution to be annulled. In the case of a supreme resolution, the annulment shall also be declared by a supreme resolution.

110. These considerations are sufficient, in the opinion of the Court, to declare that the procedure conducted by the Migration and Naturalization Directorate did not

⁸⁵ Cf. *Constitutional Court case, supra* note 8, para. 70; and *Exceptions to the Exhaustion of Domestic Remedies* (Articles 46(1), 46(2)(a) and 46(2)(b), American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990. Series A No. 11, para. 28.

⁸⁶ Cf. *Constitucional Tribunal case, supra* note 8, para. 71.

⁸⁷ Cf. *Constitucional Tribunal case, supra* note 8, para. 71.

meet the conditions of due process required by Article 8(1) and 8(2) of the Convention.

B. JUDICIAL PROCEDURE

111. In order to defend his rights, Mr. Ivcher filed various recourses before the Peruvian courts of law. On this point, the Court will proceed to consider the application of Article 8 of the American Convention to the facts of the instant case in the context of the judicial procedure.

112. One of the basic principles about the independence of the judiciary is that every person has the right to a hearing by an ordinary court, under the procedures established by law⁸⁸. Those courts must be competent, independent and impartial, according to Article 8(1) of the American Convention⁸⁹.

113. In the instant case, it has been established that: a) a few weeks before the "directorial resolution" that annulled Mr. Ivcher's nationality title was issued, the Judiciary's Executive Committee modified the composition of the Constitutional and Social Chamber of the Supreme Court of Justice (*supra* para. 76.n.1); b) on June 23, 1997, the said Committee adopted a norm giving this Chamber the power to create, on a "[t]emporary basis" superior chambers and courts of public law, and also to "appoint and/or ratify" their members, which effectively occurred two days later (*supra* para. 76.n.2 and 3); c) the First Temporary Commercial Public Law Court was established and Percy Escobar, who had previously been a court secretary and criminal judge, was appointed as the judge of this court (*supra* para. 76.n.3); and d) Judge Escobar heard several of the recourses filed by Mr. Ivcher in defense of his rights as a shareholder of the Company, and also those filed by the Winter brothers (*supra* para. 76.s.3 and 76.t).

114. The Court considers that, by creating *temporary* public law chambers and courts and appointing judges to them at the time that the facts of the case *sub judice* occurred, the State did not guarantee to Mr. Ivcher Bronstein the right to be heard by judges or courts "previously established by law", as stipulated in Article 8(1) of the American Convention.

115. The foregoing leads this Court to indicate that those judges did not meet the standards of competence, impartiality and independence required by Article 8(1) of the Convention.

⁸⁸ Cf. Basic Principles on the Independence of the Judiciary, adopted by the Seventh Congress of the United Nations on the Prevention of Crime and the Treatment of the Offender, held in Milan, from 26 August to 6 September 1985, and confirmed by the General Assembly in resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985; see also *Constitutional Court case*, *supra* note 8, para. 73; and *Castillo Petruzzi et al. case*, *supra* note 78, para. 129.

⁸⁹ Cf. *Castillo Petruzzi et al. case*, *supra* note 78, para. 130.

116. Consequently, the Court concludes that the State violated the right to a fair trial embodied in Article 8(1) and 8(2) of the American Convention, with regard to Baruch Ivcher Bronstein.

XII
VIOLATION OF ARTICLE 21
(RIGHT TO PRIVATE PROPERTY)

The Commission's arguments

117. With regard to Article 21 of the Convention, the Commission alleges that:

- a) the right to property embodied in the Convention guarantees the free exercise of the attributes of this, understood to be the right to dispose of it in any legal way, possess it, use it and prevent any other person interfering in the enjoyment of that right;
- b) the right to property includes all of a person's patrimonial rights, that is, those that affect both tangible and intangible property of any value;
- c) although Mr. Ivcher was not formally deprived of his right to the property of the shares of the Company, in practice, the rights that conferred the ownership of the actions on him were suspended through judicial decisions and, therefore, he was arbitrarily deprived of the exercise of the fundamental rights that such ownership implied;
- d) for a shareholder of a commercial company, the right to sell his shares and to participate in company decisions by exercising his vote at shareholders' meetings, and also to receive legally and statutorily agreed dividends, are fundamental attributes of the right to property;
- e) the Peruvian authorities have not only prevented Mr. Ivcher from exercising the ownership of the shares, but also his wife, whose nationality was not in discussion;
- f) the decision to deprive Mr. Ivcher of his nationality and, subsequently, to prevent him and his family from exercising their rights to property, are the result of the deliberate effort to suppress his freedom of expression; and
- g) the minority shareholders, exceeding the administrative authority of the Company, proceeded to increase its share capital in secret, without consulting Mr. Ivcher and without the quorum established in the Company's by-laws; in this way, they intended to become the owners of 60% of the shares of the Company, so that they could take any decision without requiring the agreement of Mr. Ivcher, who became a minority shareholder.

The State's arguments

118. Peru did not submit any arguments on this issue, since it did not appear before the Court in the case *sub judice* (*supra* para. 78).

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The considerations of the Court

119. Article 21 of the American Convention establishes that:

1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.
2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and other form of exploitation of man by man shall be prohibited by law.

120. Article 21 of the American Convention recognizes the right to private property. In this respect, it establishes: a) that [e]veryone has the right to the use and enjoyment of his property"; b) that such use and enjoyment may be subordinated, by law, to "social interest"; c) that a person may be deprived of his property for reasons of "public utility or social interest and in the cases and according to the forms established by law"; and d) that this deprivation shall be upon payment of just compensation.

121. Therefore, the Court must evaluate whether the State deprived Mr. Ivcher of his property and interfered in some way in his legitimate right to its "use and enjoyment".

122. "Property" may be defined as those material objects that may be appropriated, and also any right that may form part of a person's patrimony; this concept includes all movable and immovable property, corporal and incorporeal elements, and any other intangible object of any value.

123. From Mr. Ivcher's testimony, it may be concluded that, in 1985, he owned shares in the Company and that, in 1986, they represented 49,53% of the capital. By 1992, his participation amounted to 53,95%, and he was therefore the Company's majority shareholder. Obviously, this participation in the share capital could be evaluated and formed part of its owner's patrimony from the moment of its acquisition; as such, that participation constituted a property over which Mr. Ivcher had the right to use and enjoyment.

124. To determine whether Mr. Ivcher was deprived of his property, the Court should not restrict itself to evaluating whether a formal dispossession or expropriation took place, but should look beyond mere appearances and establish the real situation behind the situation that was denounced⁹⁰.

⁹⁰ Cf. *Eur. Court H.R., Case of Belvedere Alberghiera S.R.L. v. Italy, Judgment of 30 May, 2000*, para. 53.

125. It has been proved that in July 1997, Mr. Ivcher's nationality title was annulled. Based on this act and, pursuant to the legislation that required that owners of telecommunications media companies should be of Peruvian nationality, in August 1997, Judge Percy Escobar: a) ordered a precautionary measure that suspended the exercise of Mr. Ivcher's rights as majority shareholder and chairman of the Company and revoked his appointment as a director the Company; b) ordered that an extraordinary general meeting of the shareholders of the Company should be judicially convened in order to elect a new board and prevent the transfer of Mr. Ivcher's shares, and c) granted the minority shareholders provisional administration of the Company until a new board was appointed (*supra* para. 76.s.3).

126. The consequences of the precautionary measure ordered were immediate and evident: they prevented Mr. Ivcher Bronstein from acting as director and chairman of the Company, so that he could not continue directing the editorial line of Channel 2; he was also deprived of the possibility of taking part in board meetings, where the minority shareholders took important decisions, such as removing the members of the board, including Mr. Ivcher, appointing new members and even increasing the Company's capital; finally, he could not transfer his shares, receive dividends from them and exercise the other rights that corresponded to him as a shareholder of the Company.

127. The International Court of Justice has made a distinction between the rights of a company's shareholders from those of the company itself, indicating that domestic legislation grants shareholders specific direct rights, such as receiving the agreed dividends, attending and voting at general meetings and receiving part of the assets of the company when selling their shares⁹¹. This Court observes that the said precautionary measure obstructed Mr. Ivcher's use and enjoyment of such rights; also, when his wife, as co-owner of her husband's shares, tried to enforce those rights, the measures she took were ineffective. Consequently, the Court concludes that Mr. Ivcher was deprived of his property, in violation of the provisions of Article 21(2) of the Convention.

128. The Court must now determine whether the above-mentioned deprivation was in accordance with the American Convention. In order for the deprivation of the property of a person to be compatible with the right to property embodied in the Convention, it should be based on reasons of public utility or social interest, subject to the payment of just compensation, and be restricted to the cases and according to the forms established by law.

129. In the instant case, there is no evidence or argument to confirm that the precautionary measure ordered by Judge Percy Escobar was based on reasons of public utility or social interest; to the contrary, the proven facts in this case coincide to show the State's determination to deprive Mr. Ivcher of the control of Channel 2, by suspending his rights as a shareholder of the Company that owned it.

130. Moreover, there is no indication that Mr. Ivcher has been compensated for the deprivation of the enjoyment and use of his property, or that the measure that affected him was adopted according to the law. It must also be recalled that, in this judgment, the Court has concluded that the procedures relating to the restriction of Mr. Ivcher's rights with regard to the Company, including the procedure by which

⁹¹ Cf. *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 36, para. 47.

Judge Percy Escobar ordered the precautionary measure, did not satisfy the minimum requirements of due legal process (*supra* para. 115). In this respect, the Court observes that when a procedure is conducted in violation of the law, the corresponding legal consequences should also be considered illegal. Consequently, the deprivation of the use and enjoyment of Mr. Ivcher's rights relating to his shares in the Company was inappropriate, and this Court considers that it was arbitrary, and, therefore, not in accordance with the provisions of Article 21 of the Convention.

131. In view of the foregoing, the Court concludes that the State violated the right to private property established in Article 21(1) and 21(2) of the American Convention, with regard to Baruch Ivcher Bronstein.

XIII VIOLATION OF ARTICLE 25 (JUDICIAL PROTECTION)

The Commission's arguments

132. With regard to Article 25 of the Convention, the Commission alleges that:

- a) the Court has interpreted Article 25 of the Convention in order to guarantee, *inter alia*, a simple, prompt and effective recourse for the protection of the fundamental rights of the person;
- b) the domestic recourses filed by Mr. Ivcher Bronstein to obtain reparation of his rights were ineffective. Such recourses consisted of an action for amparo against the "directorial resolution" that annulled his nationality title; a request for a precautionary measure to suspend the effects of this "directorial resolution"; a recourse against the resolution that admitted the precautionary measure that gave the administration of Channel 2 to the minority shareholders, and an action for amparo to question Articles 12 and 13 of the Regulations to Nationality Law No. 26574; and
- c) the violation of Article 25 of the Convention consists in the absence of a simple and prompt recourse before a competent tribunal to remedy the situations denounced. The judicial proceedings filed against Mr. Ivcher left both him and his family defenseless.

The State's arguments

133. Peru did not submit any arguments on this issue, since it did not appear before the Court in the case *sub judice* (*supra* para. 78).

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The considerations of the Court

134. Article 25(1) of the American Convention establishes that:

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.

135. This Court has reiterated that the right of everyone to a simple and prompt recourse or any other recourse to a competent judge or tribunal for protection against acts that violate his fundamental rights

is one of the basic pillars, not only of the American Convention but also of the rule of law itself in a democratic society, within the meaning of the Convention [...]. By attributing functions of protection to the domestic legislation of the States Parties, Article 25 is closely related to the general obligation in Article 1(1) of the American Convention⁹².

136. The Court has also stated that:

The inexistence of an effective recourse against the violation of the rights recognized by the Convention constitutes a transgression of the Convention by the State Party in which such a situation occurs. In that respect, it should be emphasized that, for such a recourse to exist, it is not enough that it is established in the Constitution or in the law or that it should be formally admissible, but it must be truly appropriate to establish whether there has been a violation of human rights and to provide everything necessary to remedy it. Those recourses that are illusory, owing to the general conditions in the country or to the particular circumstances of a specific case, shall not be considered effective⁹³.

137. Recourses are illusory when it is shown that they are ineffective in practice, when the Judiciary lacks the necessary independence to take an impartial decision, or in the absence of ways of executing the respective decisions that are delivered. They are also illusory when justice is denied, when there is an unjustified delay in the decision and when the alleged victim is impeded from having access to a judicial recourse⁹⁴.

138. The Court considers that it has been proved that Mr. Ivcher Bronstein filed a series of recourses before the domestic tribunals, principally in order to defend his rights as a Peruvian citizen and shareholder of the Company.

139. The domestic tribunals that decided the judicial recourses filed by Mr. Ivcher did not satisfy the minimum requirements of independence and impartiality that Article 8(1) of the Convention establishes as essential elements of due legal process,

⁹² Cf. *Constitutional Court case*, *supra* note 8, para. 90; *Bámaca Velásquez case*. Judgment of November 25, 2000. Series C No. 70, para. 191; *Cantoral Benavides case*, *supra* note 13, para. 163; *Durand and Ugarte case*. Judgment of August 16, 2000. Series C No. 68, para. 101; *Villagrán Morales et al. (the "Street Children" case)*. Judgment of November 19, 1999. Series C No. 63, para. 234; *Cesti Hurtado case*, *supra* note 12, para. 121; *Castillo Petruzzi et al. case*, *supra* note 78, para. 184; *Paniagua Morales et al. case*. Judgment of March 8, 1998. Series D No. 37, para. 164; *Blake case*. Judgment of January 24, 1998. Series C No. 36, para. 102; *Suárez Rosero case*. Judgment of November 12, 1997. Series C No. 35, para. 65; and *Castillo Páez case*. Judgment of November 3, 1997. Series C No. 34, paras. 82 and 83.

⁹³ Cf. *Constitutional Court case*, *supra* note 8, para. 89; and *Judicial Guarantees in States of Emergency* (Articles 27(2), 25 and 8, American Convention on Human Rights), *supra* note 83, para. 23.

⁹⁴ Cf. *Judicial Guarantees in States of Emergency* (Articles 27(2), 25 and 8 American Convention on Human Rights), *supra* note 83, para. 24.

and which would have led to obtaining a decision in accordance with the law. Consequently, the recourses were not effective (*supra* para. 115).

140. Likewise, the general circumstances of this case indicate that the judicial recourses filed by Mr. Ivcher to defend his shareholder's rights were not simple and prompt; to the contrary, as the witness Emilio Rodríguez Larraín declared during the public hearing, "they were only resolved after a long time", which contrasts with the process given to the actions filed by the minority shareholders of the Company, which were resolved promptly.

141. Lastly, the civil and criminal complaints filed against both Mr. Ivcher and his family and his company officials and lawyers, as a result of which the liberty of some of them was restricted and the permanence in the country of others was discouraged, reveals a situation of persecution and denial of justice.

142. In view of the foregoing, the Court concludes that the State violated the right to judicial protection embodied in Article 25(1) of the Convention, with regard to Baruch Ivcher Bronstein.

XIV VIOLATION OF ARTICLE 13 (FREEDOM OF THOUGHT AND EXPRESSION)

The Commission's arguments

143. With regard to Article 13 of the Convention, the Commission alleges that:

- a) the deprivation of Mr. Ivcher Bronstein's nationality title was not the result of a routine review to verify the status of all the files of naturalized Peruvians; its primary objective was to violate Mr. Ivcher's right to freedom of expression;
- b) the fact that, under Mr. Ivcher's direction, Channel 2 transmitted news reports that were critical of the Government and that, when he was separated from it, the journalists who produced those programs were dismissed, thus terminating the transmission of such news reports, shows that the deprivation of Mr. Ivcher's nationality, was a means of reprisal and served to silence investigative journalism;
- c) the Convention embodies the right to disseminate information and ideas artistically or in any other way, and establishes that the exercise of this right may not be subject to prior censorship, without engaging subsequent liability, and may not be the object of restriction by indirect ways and means;
- d) Article 13 of the Convention corresponds to the broad concept of the freedom of expression and autonomy of the individual; its purpose is to protect and promote access to information, ideas and expression of all type and, thus, strengthen the operation of pluralist democracy;
- e) freedom of expression allows open discussion of moral and social values and facilitates political discussion, which is crucial for democratic values;

- f) both the European Court of Human Rights (hereinafter “the European Court”) and the United Nations Human Rights Committee have recognized that freedom of expression is not limited to allowing acceptable ideas and opinions to circulate, but also those that are unpopular and minority;
- g) in a democratic society, the press has the right to inform freely and to criticize the Government, and the population has the right to be informed of what is happening around it;
- h) in Peru, systematic repressive practices are carried out, designed to silence investigative journalists who have denounced irregularities in the conduct of the Government, the Armed Forces and the National Intelligence Service;
- i) the exercise of freedom of expression in Peru is not protected, in practice, by effective judicial guarantees that allow the investigation, punishment and reparation of abuses and crimes against journalists; and
- j) the overall evaluation of the attacks on investigative journalism reveals the existence of a plan designed to persecute and harass investigative journalists, by the Intelligence Services, the Security Forces and other State institutions. This is shown by the persistence over time and the similarity of the campaigns of harassment and persecution, and also the similitude of the investigation and denunciation activities of the victims.

The State’s arguments

144. Peru did not submit any arguments on this issue, since it did not appear before the Court in the case *sub judice* (*supra* para. 78).

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The considerations of the Court

145. Article 13(1), 13(2) and 13(3) of the American Convention establishes that:

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a. Respect for the rights or reputations of others;
 - b. The protection of national security, public order, or public health or morals.
3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

146. Regarding the content of the right to freedom of thought and expression, those who are protected by the Convention have not only the right and freedom to express their own thoughts, but also the right and freedom to seek, receive and disseminate information and ideas of all types. Consequently, freedom of expression has both an individual and a social dimension:

it requires that, on the one hand, no one may be arbitrarily harmed or impeded from expressing his own thought and therefore represents a right of each individual; but it also implies, on the other hand, a collective right to receive any information and to know the expression of the thought of others⁹⁵.

These two dimensions must be guaranteed simultaneously.

147. With regard to the first dimension of the right embodied in the said article, the individual right, freedom of expression is not exhausted in the theoretical recognition of the right to speak or write, but also includes, inseparably, the right to use any appropriate method to disseminate thought and allow it to reach the greatest number of persons. In this respect, the expression and dissemination of thought and information are indivisible, so that a restriction of the possibilities of dissemination represents directly, and to the same extent, a limit to the right to free expression⁹⁶.

148. Regarding the second dimension of the right embodied in Article 13 of the Convention, the social element, we should indicate that freedom of expression is a medium for the exchange of ideas and information between persons; it includes the right to try and communicate one's points of view to others, but it implies also everyone's right to know opinions, reports and news. For the ordinary citizen, the right to know about other opinions and the information that others have is as important as the right to impart their own⁹⁷.

149. The Court considers that both dimensions are of equal importance and should be guaranteed simultaneously in order to give total effect to the right to freedom of expression in the terms of Article 13 of the Convention⁹⁸. The importance of this right is further underlined if we examine the role that the media plays in a democratic society, when it is a true instrument of freedom of expression and not a way of restricting it; consequently, it is vital that it can gather the most diverse information and opinions.

150. Furthermore, it is essential that the journalists who work in the media should enjoy the necessary protection and independence to exercise their functions comprehensively, because it is they who keep society informed, and this is an indispensable requirement to enable society to enjoy full freedom.

⁹⁵ Cf. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Articles 13 and 29, American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30; and *"The Last Temptation of Christ" case* (Olmedo Bustos et al.), *supra* note 6, para. 64

⁹⁶ Cf. *"The Last Temptation of Christ" case* (Olmedo Bustos et al.), *supra* note 6, para. 65.

⁹⁷ Cf. *"The Last Temptation of Christ" case* (Olmedo Bustos et al.), *supra* note 6, para. 66.

⁹⁸ Cf. *"The Last Temptation of Christ" case* (Olmedo Bustos et al.), *supra* note 6, para. 67.

151. The Court has understood this by indicating that

the same concept of public order in a democratic society requires the guarantee of the widest possible circulation of news, ideas and opinions, as well as the widest access to information by society as a whole. Freedom of expression constitutes the primary and basic element of the public order of a democratic society, which is not conceivable without free debate and the possibility that dissenting voices be full heard⁹⁹.

152. The European Court has also recognized this criterion, when it stated that freedom of expression constituted one of the essential pillars of democratic society and a fundamental condition for its progress and the personal development of each individual. This freedom should not only be guaranteed with regard to the dissemination of information and ideas that are received favorably or considered inoffensive or indifferent, but also with regard to those that offend, are unwelcome or shock the State or any sector of the population¹⁰⁰.

153. According to the European Court, the foregoing is of particular importance when applied to the press. It not only implies that it is the task of the media to transmit information and ideas on matters of public interest, but also that the public has the right to receive them¹⁰¹.

154. When evaluating an alleged restriction or limitation to freedom of expression, the Court should not restrict itself to examining the act in question, but should also examine this act in the light of the facts of the case as a whole, including the circumstances and context in which they occurred¹⁰². Taking this into consideration, the Court will examine whether, in the context of the instant case, there was a violation of Mr. Ivcher Bronstein's right to freedom of expression.

155. The European Court has emphasized that Article 10(2) of the European Convention, on freedom of expression, leaves a very reduced margin to any restriction of political discussion or discussion of matters of public interest¹⁰³. According to this Court,

[...] the acceptable limits to criticism are broader with regard to the Government than in relation to the private citizen or even a politician. In a democratic system, the acts or omissions of the Government should be subject to rigorous examination, not only by the legislative and judicial authorities, but also by public opinion¹⁰⁴.

⁹⁹ Cf. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Articles 13 and 29 American Convention on Human Rights), *supra* note 95, para. 69.

¹⁰⁰ Cf. *"The Last Temptation of Christ" case (Olmedo Bustos et al.)*, *supra* note 6, para. 69; *Eur. Court H.R., Handyside case, judgment of 7 December 1976, Series A No. 24*, para. 49; *Eur. Court H.R., The Sunday Times case, judgment of 26 April 1979, Series A No. 30*, paras. 59 and 65; *Eur. Court H.R., Barthold judgment of 25 March 1985, Series A no. 90*, para. 55; *Eur. Court H.R., Lingens, judgment of 8 July 1986, Series A No. 103*, para. 41; *Eur. Court H.R Müller and Others judgment of 24 May 1988, Series A No. 133*, para. 33; and *Eur. Court HR, Otto-Preminger-Institut v. Austria judgment of 20 September 1994, Series A No. 295-A*, para. 49.

¹⁰¹ Cf. *Eur. Court H.R., The Sunday Times case, supra* note 100, para. 65.

¹⁰² Cf. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Articles 13 and 29 American Convention on Human Rights), *supra* note 95, para. 42; *Eur. Court H.R., Müller and Others judgment of 24 May 1988, Series A No. 133*, para. 32; and *Eur. Court H.R., case of Sürek and Özdemir v. Turkey, judgment of 8 July 1999, para. 57 (iii)*.

¹⁰³ Cf. *Eur. Court H.R., case of Sürek and Özdemir v. Turkey, supra* note 102, para. 60.

¹⁰⁴ Cf. *Eur. Court H.R., Case of Sürek and Özdemir v. Turkey, supra* note 102, para. 60.

156. In the instant case, it has been established that, in 1997, Mr. Ivcher was the majority shareholder of the Company, which operated Peruvian television's Channel 2; moreover, he was a Director and Chairman of the Board of this Company and was authorized to take editorial decisions on programming. In April 1997, in its program *Contrapunto*, Channel 2 aired investigative reports of national interest, such as reports on possible torture committed by members of the Army Intelligence Service against the agent, Leonor La Rosa, the alleged assassination of the agent, Mariela Barreto Riofano, and the extremely high revenues that it was alleged that Vladimiro Montesinos Torres, adviser to the Peruvian Intelligence Service had obtained.

157. The testimonies of Luis Carlos Antonio Iberico Núñez, Baruch Ivcher Bronstein and Fernando Viaña Villa demonstrated the extensive audience that Channel 2 had throughout the country in 1997. Both Mr. Ivcher and the journalists who worked for *Contrapunto* were fully entitled to investigate and disseminate events of public interest such as those denounced between April and July 1997 in this medium, in the exercise of the right to freedom of expression protected by Article 13 of the Convention.

158. In the same way, it has been shown that, as a consequence of the editorial line assumed by Channel 2, Mr. Ivcher was the object of threatening actions of various types. For example, after the emission of one of the reports mentioned in the previous paragraph, the Armed Forces Joint Command issued an official communiqué in which it denounced Mr. Ivcher for conducting a defamatory campaign intended to slander the Armed Forces (*supra* para. 76.k). Also, the same day the Armed Forces issued this communiqué, Peru's Executive Branch issued a supreme decree regulating the Nationality Law and establishing the possibility of canceling the nationality of naturalized Peruvians (*supra* para. 76.l).

159. It has also been proved that only days after Channel 2 had announced the presentation of a investigative report on the unlawful recording of the telephone conversations of opposition candidates, the Director General of the National Police Force advised that the file in which Mr. Ivcher's nationality title was processed could not be found and, that it had not been certified that he had renounced his Israeli nationality; as a result, it was arranged to annul the said nationality title by a "directorial resolution".

160. In view of the foregoing, on August 1, 1997, Judge Percy Escobar ordered the suspension of the exercise of Mr. Ivcher's rights as majority shareholder and president of the Company and his appointment as a director of the Company was revoked, an extraordinary shareholders meeting was judicially convened to elect a new Board and Mr. Ivcher was prohibited from transferring his shares. Moreover, he granted the provisional administration of the Company to the minority shareholders, until a new Board was appointed, thus taking the control of Channel 2 away from Mr. Ivcher Bronstein.

161. The Court has verified that, after the minority shareholders of the Company assumed its administration, the journalists who had been working for *Contrapunto* were prohibited from entering the Channel and the program's editorial line was modified (*supra* para. 76.v).

162. In the context of the facts indicated above, this Court observes that the resolution that annulled Mr. Ivcher's nationality title constituted an indirect means of restricting his freedom of expression, as well as that of the journalists who worked and conducted investigations for *Contrapunto* of Peruvian television's Channel 2.

163. By separating Mr. Ivcher from the control of Channel 2 and excluding the *Contrapunto* journalists, the State not only restricted their right to circulate news, ideas and opinions, but also affected the right of all Peruvians to receive information, thus limiting their freedom to exercise political options and develop fully in a democratic society.

164. In view of the foregoing, the Court concludes that the State violated the right to freedom of expression embodied in Article 13(1) and 13(3) of the Convention, with regard to Baruch Ivcher Bronstein.

XV
NON-COMPLIANCE WITH ARTICLE 1(1)
(OBLIGATION TO RESPECT RIGHTS)

The Commission's arguments

165. Regarding Article 1(1) of the Convention, the Commission alleges that:

- a) the Court has stated that it is a principle of international law that the State should respond for the acts and omissions of its agents even if they are acting beyond their competence or in violation of domestic law and that all violations of the rights recognized in the Convention by official authorities may be attributed to the State; and
- b) both the arbitrary deprivation of Mr. Ivcher Bronstein's nationality title, and the acts that violated his right to due legal process, freedom of expression, property and effective legal ownership constituted an additional violation of the State's obligation embodied in Article 1(1) of the Convention.

The State's arguments

166. Peru did not submit any arguments on this issue, since it did not appear before the Court in the case *sub judice* (*supra* para. 78).

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The considerations of the Court

167. Article 1(1) of the Convention establishes that:

[t]he 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.

168. Based on Article 1(1) of the American Convention, this Court has already established that the State is obliged to respect the rights and freedoms recognized in it¹⁰⁵ and to organize the public authorities in order to ensure to all persons subject to its jurisdiction the free and full exercise of human rights¹⁰⁶. According to the legal norms on state international responsibility applicable under international human rights law, the act or omission of any public authority, whatsoever its rank, constitutes an act which may be attributed to the State and engages its responsibility in the terms of the of the American Convention¹⁰⁷.

169. The Court observes that, pursuant to what has been established in this judgment, the State violated Articles 20, 8, 21, 25 and 13 of the American Convention, with regard to Mr. Ivcher Bronstein, so that it has failed to comply with its general obligation to respect the rights and freedoms recognized in it and to ensure their free and full exercise, as stipulated in Article 1(1) of the Convention.

170. Therefore, the Court concludes that the State failed to comply with the general obligation of Article 1(1) of the American Convention.

XVI APPLICATION OF ARTICLE 63(1)

The Commission's arguments

171. With regard to Article 63(1) of the Convention, the Commission requested the Court:

a) to order Peru to re-establish and guarantee to Mr. Ivcher the integral enjoyment of his violated rights and, in particular,

a.1) to order the re-establishment of Mr. Ivcher's Peruvian nationality title and its full and unconditional recognition, with all corresponding rights and attributes;

a.2) to order the re-establishment of the enjoyment and exercise of Mr. Ivcher's right to property over his shares in the Company and to order that he should recover all his attributes as shareholder and administrator of the Company;

a.3) to order Peru to ensure to Mr. Ivcher the enjoyment and exercise of his right to freedom of expression and, in particular,

¹⁰⁵ Cf. *Constitutional Court case*, *supra* note 8, para. 109.

¹⁰⁶ Cf. *Constitutional Court case*, *supra* note 8, para. 109.

¹⁰⁷ Cf. *Constitutional Court case*, *supra* note 8, para. 109.

to cease the acts of harassment and persecution against him and against his family and his company;

a.4) to order Peru to make reparation and fully compensate Mr. Ivcher for all the material and moral damage that the actions of the Peruvian administrative and judicial organs have caused him;

b) to order Peru to adopt the necessary legislative and administrative measures to avoid a repetition of acts of the same nature in the future;

c) to order Peru to investigate and punish those responsible for the violation of Mr. Ivcher's fundamental rights; and

d) to order Peru to pay the costs and reimburse the expenses in which Mr. Ivcher incurred to litigate this case, both nationally and internationally, as well as reasonable fees for his representatives.

172. On January 8, 2001, at the request of the Court (*supra* paras. 47 and 60), the Commission submitted arguments concerning the expenses and costs of this case and attached the evidentiary documents that it considered justified those expenses. These arguments are summarized below:

a) the expenses incurred in litigating this case at the national and international level were assumed by Mr. Ivcher from his personal accounts, and by his company, *Productos Paraíso del Perú*. These expenses include professional fees, office maintenance, payment of telephone services and communications, and medical attention for Rosario Lam;

b) *Productos Paraíso del Perú* incurred expenses of US\$3,142,346.00 (three million one hundred and forty-two thousand three hundred and forty-six United States dollars) and 9,687,498.00 (nine million six hundred and eighty-seven thousand four hundred and ninety eight) Peruvian soles, which is equal to US\$3,104,967.00 (three million one hundred and four thousand nine hundred and sixty-seven United States dollars). Mr. Ivcher incurred expenses US\$1,557,513.00 (one million five hundred and fifty-seven thousand five hundred and thirteen United States dollars). This gives a total amount disbursed by Mr. Ivcher's company and from his personal accounts of US\$7,804,826.00 (seven million eight hundred and four thousand eight hundred and twenty-six United States dollars); and

c) the amounts mentioned do not include the "remaining expenses" that Mr. Ivcher has had to incur, or the fees corresponding to this case and the actions filed in Lima, which amount to US\$1,000,000.00 (one million United States dollars), or the fees

corresponding to the reparations stage before the Inter-American Court.

173. In its brief of February 5, 2001 (*supra* para. 51), referring to the State's position (*infra* para. 174), the Commission indicated that, since Peru had not fully complied with its recommendations, it was reiterating the claims set out in its briefs for the application and final arguments (*supra* paras. 1 and 47).

The State's arguments

174. In its brief of February 1, 2001 (*supra* para. 50), Peru expressed its willingness to reach a friendly settlement and to that end, it will appoint an agent in order to respond to the Commission's claims.

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The considerations of the Court

175. Article 63(1) de the American Convention establishes that

[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

176. In the instant case, the Court has already established that Peru violated Articles 20(1), 20(3), 8(1), 8(2), 21(1), 21(2), 25(1), 13(1) and 13(3) of the American Convention.

177. This Court has constantly reiterated in its jurisprudence that it is a principle of international law that all violations of an international obligation that produce a damage entail the obligation to repair this adequately¹⁰⁸.

178. The reparation of the damage caused by the violation of an international obligation requires full restitution (*restitutio in integrum*), which consists of re-establishing the previous situation and repairing the consequences of the violation, as well as payment of an indemnity as compensation for the damage caused¹⁰⁹.

179. As a consequence of the violations to the rights embodied in the Convention indicated in this case, the Court must rule that the victim be guaranteed the enjoyment of his violated rights and freedoms. The Court observes that, in "Supreme Resolution" No. 254-2000-JUS, of November 15, 2000, the State accepted the recommendations formulated in the Commission's Report No. 94/98 of December

¹⁰⁸ Cf. *Constitutional Court case*, *supra* note 8, para. 118; *Suárez Rosero case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of January 20, 1999. Series C No. 44, para. 40. See also, *Factory at Chorzów*, Jurisdiction, Judgment No. 8, 1927, *P.C.I.J.*, Series A, No. 9, p. 21; and *Factory at Chorzów*, Merits, Judgment No. 13, 1928, *P.C.I.J.*, Series A, No. 17, p. 29; *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, *I.C.J. Reports* 1949, p. 184.

¹⁰⁹ Cf. *Constitutional Court case*, *supra* note 8, para. 119.

9, 1998 (*supra* para. 76.aa), and that, in “Ministerial Resolution” No. 1432-2000-IN of November 7, 2000, it declared null and void the “directorial resolution” annulling Mr. Ivcher’s nationality (*supra* para. 76.z).

180. Consequently, the Court considers that the State has already responded to the Commission’s request concerning the return of Mr. Ivcher’s nationality title and, therefore, that request is now immaterial.

181. With regard to the violation of Article 21 of the Convention, the Court believes that the State should facilitate the conditions so that Mr. Ivcher Bronstein, whose Peruvian nationality has been restored, may take the necessary steps to recover the use and enjoyment of his rights as majority shareholder of *Compañía Latinoamericana de Radiodifusión S.A.*, as he was until August 1, 1997, in the terms of domestic legislation (*supra* para. 76.s.3). As for the recovery of dividends and other receipts that would have corresponded to Mr. Ivcher as majority shareholder and officer of the Company, domestic law should also apply. To that end, the respective petitions should be submitted to the competent national authorities.

182. With regard to Article 13 of the Convention, the Court considers that the State should guarantee Mr. Ivcher the right to seek, investigate and disseminate information and ideas through Peruvian television’s Channel 2-Frecuencia Latina.

183. In accordance with extensive international jurisprudence, the Court considers that obtaining a judgment that protects the victims’ claims is, in itself, a form of satisfaction¹¹⁰. However, it also believes, particularly taking into account the acts of persecution suffered by the victim (*supra* para. 76.y), that an additional compensation for moral damages should be granted¹¹¹. This should be established fairly, on the basis of a prudent appraisal, since it is not possible to assess it precisely¹¹².

¹¹⁰ Cf. “*The Last Temptation of Christ*” case (*Olmedo Bustos et al.*), *supra* note 6, para. 99; *Constitutional Court case*, *supra* note 8, para. 122; *Blake case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 55; *Suárez Rosero case. Reparations*, *supra* note 108, para. 72; *Castillo Páez case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 84; *Neira Alegría et al case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of September 19, 1996. Series C No. 29, para. 56; and *El Amparo case. Reparations* (Article 63(1) American Convention on Human Rights). Judgment of September 14, 1996. Series C No. 28, para. 62.

¹¹¹ Cf. *Blake case. Reparations*, *supra* note 110, para. 55; *Castillo Páez case. Reparations supra* note 110, para. 84; and *El Amparo case. Reparations*, *supra* note 110, para. 35; and Cf., *inter alia*, *Cour eur. D. H.*, arrêt *Kruslin* 24 April 1990, Series A no. 176-A, p. 25, para. 39; *Cour eur. D. H.*, arrêt *McCallun* of 30 August 1990, Series A no. 183, p. 17, para. 37; *Cour eur. D. H.*, arrêt *Wassink* du 27 septembre 1990, Series A no. 185-A, p. 15, para. 41; *Cour eur. D. H.*, arrêt *Koendjibiharie* du 25 octobre 1990, Series A no. 185-B, p. 42, para. 34; *Cour eur. D. H.*, arrêt *Darby* du 23 octobre 1990, Series A no. 187, p. 14, para. 40; *Cour eur. D. H.*, arrêt *Lala c. Pays-Bas* du 22 septembre 1994, Series A No. 297-A, p. 15, para. 38; *Cour eur. D. H.*, arrêt *Pelladoah c. Pays-Bas* du 22 septembre 1994, série A no. 297-B, p. 26, para. 44; *Cour eur. D. H.*, arrêt *Kroon et autres c. Pays-Bas* du 27 octobre 1994, série A no. 297-C, p. 59, para. 45; *Cour eur. D. H.*, arrêt *Boner c. Royaume-Uni* du 28 octobre 1994, série A no. 300-B, p. 76, para. 46; and *Cour eur. D. H.*, arrêt *Ruiz Torija c. Espagne* du 9 décembre 1994, série A no. 303-A, p. 13, para. 33.

¹¹² Cf. *inter alia*, *Loayza Tamayo case. Reparations* (Article 63(1), American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 139; *Caballero Delgado and Santana case. Reparations* (Article 63(1), American Convention on Human Rights). Judgment of January 29, 1997. Series C No. 31, para. 50; *Castillo Páez case, Reparations*, *supra* note 110, para. 84; *Neira Alegría et al. case. Reparations*, *supra* note 110, para. 58; and *El Amparo case, Reparations*, *supra* note 110, para. 50; and, *inter alia*, *Eur Court H.R.*, *Kenmache v. France (Article 50) judgment of 2 November 1993*, Series A No. 270-B, p. 16, para. 11.

184. Based on the foregoing, the Court finds that it is fair to grant the victim a compensation of US\$20,000,00 (twenty thousand United States dollars) for moral damages.

185. Regarding the Commission's request to order Peru to adopt the necessary legislative and administrative measures to avoid a repetition of events of the same nature in the future, it is a well known public fact that the State has already taken steps to this end (*supra* note 72), so that the Court finds that it does not need to take a decision in that regard.

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186. The Court considers that States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories to human rights violations¹¹³. Based on this obligation, the State has the obligation to avoid and combat impunity, which has been defined as "the overall lack of investigation, tracking down, capture, prosecution and conviction of those responsible for violating the rights protected by the American Convention¹¹⁴".

187. Consequently, Peru should investigate the facts that resulted in the violations established in this judgment in order to identify and punish those responsible.

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188. With regard to the expenses and costs in this case, the Court considers that it is appropriate to recall, as has been stated on other occasions¹¹⁵, that it must evaluate prudently the specific scope of the costs, taking into account not only their justification and the circumstances of the concrete case, but also the nature of the international jurisdiction for the protection of human rights and the characteristics of the respective proceeding, which has its own distinctive character that differs from that of other proceedings of a national or international nature, and observing the standards established by this Court in the resolution of other cases.

189. To this effect, the Court considers that it is fair to grant the victim the amount of US\$50,000.00 (fifty thousand United States dollars) in reimbursement of the costs and expenses incurred in the domestic and the international jurisdictions.

190. In accordance with its usual practice, this Court reserves to itself the authority to monitor full compliance with this judgment. The case will be closed once the State has fully complied with the provisions of this judgment.

XVII DECISIONS

¹¹³ Cf. Constitutional Court, *supra* note 8, para. 123; and *Blake case. Reparations*, *supra* note 110, para. 65.

¹¹⁴ Cf. Constitutional Court, *supra* note 8, para. 123; and

¹¹⁵ Cf. Constitutional Court case, *supra* note 8, para. 125; and *Suárez Rosero case, Reparations*, *supra* note 108, paras. 92 and 97.

191. Therefore,

THE COURT,

unanimously,

1. finds that the State violated the right to nationality embodied in Article 20(1) and 20(3) of the American Convention on Human Rights with regard to Baruch Ivcher Bronstein.

2. finds that the State violated the right to a fair trial embodied in Article 8(1) and 8(2) of the American Convention on Human Rights, with regard to Baruch Ivcher Bronstein.

3. finds that the State violated the right to judicial protection embodied in Article 25(1) of the American Convention on Human Rights, with regard to Baruch Ivcher Bronstein.

4. finds that the State violated the right to property embodied in Article 21(1) and 21(2) of the American Convention on Human Rights, with regard to Baruch Ivcher Bronstein.

5. finds that the State violated the right to freedom of expression embodied in Article 13(1) and 13(3) of the American Convention on Human Rights, with regard to Baruch Ivcher Bronstein.

6. finds that the State failed to comply with the general obligation established in Article 1(1) of the American Convention on Human Rights, in relation to the violations of the substantive rights indicated in the previous conclusions in this judgment.

7. finds that the State should investigate the facts that gave rise to the violations established in this judgment in order to identify and punish those responsible.

8. finds that the State should facilitate the conditions to enable Baruch Ivcher Bronstein to take the necessary steps to recover the use and enjoyment of his rights as majority shareholder of *Compañía Latinoamericana de Radiodifusión S.A.*, as he was until August 1, 1997, under the terms of domestic legislation. With regard to the recovery of dividends and other amounts that he would have received as majority shareholder and officer of that company, domestic law should also apply. To this end, the respective claims should be submitted to the competent national authorities.

9. finds that, in fairness, the State must pay Baruch Ivcher Bronstein compensation for moral damages in the amount of US\$20,000.00 (twenty thousand United States dollars), or the equivalent in Peruvian currency at the time the payment is made.

10. finds that, in fairness, the State must pay Baruch Ivcher Bronstein, in reimbursement of the costs and expenses arising in the internal and the international jurisdictions, the sum of US\$50,000.00 (fifty thousand United States dollars), or the equivalent in Peruvian currency at the time payment is made.

11. finds that it shall monitor compliance with this judgment and only when it has been fulfilled will it consider the case closed.

Done in San José, Costa Rica, on February 6, 2001, in the Spanish and English languages, the Spanish text being authentic.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez
Pesantes

Hernán Salgado-

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary

