

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 20/98; Case 11.762
Session:	Ninty-Eighth Regular Session (17 February – 6 March 1998)
Title/Style of Cause:	Baruch Ivcher Bronstein v. Peru
Doc. Type:	Decision
Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume.
Dated:	3 March 1998
Citation:	Ivcher v. Peru, Case 11.762, Inter-Am. C.H.R., Report No. 20/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by:	APPLICANT: Ariel Dulitzky
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. BACKGROUND

1. Baruch Ivcher Bronstein, a Peruvian citizen and entrepreneur, was chairman of the board of directors and majority shareholder of "Frecuencia Latina-Canal 2" television. He acquired Peruvian nationality by virtue of a supreme decree, as required under the existing law. Under both the law in force at the time and the present law, aliens are not permitted to own a radio or television channel in Peru.

2. In early 1997, Television Channel 2 devoted several programs in its series "Contrapunto" to reports of alleged irregularities within the government, the most prominent being the programs that featured on the case of Army Intelligence Service (Servicio de Inteligencia del Ejército - SIE) agents Mariela Barreto Riofano and Leonor La Rosa Bustamante, the first of whom had been tortured and murdered. The coverage made public the private income tax declarations of Dr. Vladimiro Montecinos Torres, a presidential advisor and member of the National Intelligence Service (Servicio de Inteligencia Nacional - SIN); another important program revealed cases where the intelligence services had tapped the phones of various Peruvian officials and prominent figures.

3. After these news stories were aired, a number of congressmen sought a congressional investigation, whereupon a number of events occurred which Frecuencia Latina blamed on various agencies of the State, such as irregular investigations of Frecuencia Latina by officials from the Office of the National Tax Administration Superintendent, and military helicopter overflights of Mr Ivcher's businesses at various hours of the day. Frecuencia Latina continued to broadcast its news stories, which included programs on the operations planned against the media to threaten journalists and the opponents of the Government, as well as phone tapping of journalists, politicians and government officials.

4. On May 23, 1997, the Armed Forces Joint Command released Official Communiqué No. 002-97 CCFFAA, which mentions Baruch Ivcher and underscores the fact that he was a naturalized Peruvian citizen. The press communiqué accused Baruch Ivcher of using the media to wage a campaign to slander the Armed Forces by misrepresenting situations, twisting facts and broadcasting "obviously malicious" commentaries. It added that slander of that type was unacceptable to the Armed Forces, which refused to accept the "tendentious and malicious campaign waged, because it was an abuse of freedom of expression and an attempt to alienate the public from the Armed Forces."

5. Then, on May 28, 1997, Supreme Decree No. 004-97-IN was published, which approves the regulations governing Nationality Act No. 26,574, Article 12 of which states that "naturalized citizenship shall be canceled ... D. For acts that could be detrimental to the national security and the interests of the State." Article 27 states that "Acquired Peruvian citizenship is lost ... "for the reasons stipulated in Article 12 of the Nationality Act." According to the petitioners, these Regulations Governing the Nationality Law ... give the President of the Republic the authority to revoke an individual's nationality, in flagrant violation of articles 2, paragraph 21, and 53 of the Peruvian Constitution.

II. PETITIONERS

6. On June 9, 1997, a petition was received at the Commission in which Peruvian Congressman Javier Díez Canseco alleged facts leading to a reasonable presumption that the Peruvian State was setting the stage to arbitrarily strip Peruvian entrepreneur Baruch Ivcher Bronstein, the majority shareholder of television channel "Frecuencia Latina", of his citizenship, in violation of Article 20(3) of the American Convention.

7. Later, on July 17, 1997, the dean of the Lima Bar Association, Mr. Vladimir Paz de la Barra, filed a complaint on the victim's behalf, alleging that the Peruvian State had stripped Baruch Ivcher Bronstein of his Peruvian citizenship, thereby violating Article 20(3) of the American Convention on Human Rights.

8. On August 26, 1997, Mr. Baruch Ivcher Bronstein, the victim, attached a note addressed to the Commission wherein he requested a hearing with the Commission for himself and his attorney, thereby becoming a party to the proceedings already underway with the Commission.

9. Mr. Ivcher, by letter dated February 27, 1998, addressed to Ambassador Jorge Taiana, the Executive Secretary of the IACHR, appointed Mr. Ariel Dulitzky, co-Director of the Center for Justice and International Law (CEJIL), as one of his representatives in this case.

III. FACTS

10. In 1984, Mr. Baruch Ivcher Bronstein, an Israeli-born attorney, became a naturalized Peruvian citizen, certified by nationality document No. 004644, approved by Supreme Resolution No. 0649-RE of November 27, 1984, and signed by the Minister of Foreign Affairs.

11. On July 10, 1997, PNP General Fernando Dianderas Ottone, Director General of the National Police, held a press conference to announce the findings of report No. 003-97-IN-05010 of July 10, 1997, prepared by the General Bureau of Immigration and Naturalization, to the effect that the file for citizenship document No. 004644, pertaining to Baruch Ivcher B, approved by Supreme Resolution No. 0649-RE of November 27, 1984, signed by the then Minister of Foreign Affairs, in keeping with Naturalization Act No. 9148, was not to be found at the General Bureau of Immigration and Naturalization.

12. That press conference was followed by publication of Directorial Resolution No. 117-97-IN-050100000000 dated July 11, 1997, in the Official Gazette El Peruano of July 13, 1997. In that administrative resolution, the Government "revokes" Baruch Ivcher Bronstein's Peruvian citizenship document because of "substantive omissions that invalidate it ipso jure, because the proper Peruvian authorities were not shown proof of his having first renounced his original nationality nor did he show any document confirming that the authorities of his country of origin were advised that he was renouncing his citizenship of birth." The resolution is signed by PNP Colonel Víctor Hugo Huamán del Solar, Director General of Immigration and Naturalization.

13. The preamble of the resolution emphasized the fact that no copy or record was on file of the original naturalization procedure that Baruch Ivcher B. followed. It also stressed his failure to formally renounce his citizenship of birth -Israeli; according to the directorial resolution, the first notarized evidence of his having renounced his citizenship of birth was dated July 6, 1990, which meant that no such evidence could have been seen at the time he was granted Peruvian citizenship on December 7, 1984.

14. Baruch Ivcher B. then applied for a writ of Amparo against Directorial Resolution No. 117-97-050100000000 (which revoked his citizenship document) with Lima Superior Court's Public Law Chamber. The ruling on his petition seeking to have the resolution nullified, dated August 14, 1997, dismissed it as being unfounded. An appeal was filed to challenge the ruling. The Provisional Public Law Chamber heard the petition and, in a ruling dated October 24, 1997, nullified all proceedings because of a mistake made in the notification of the action. With that the case was returned to the lower courts. Once the case records were returned to the lower court, the latter handed down a new judgment, dated November 12, 1997, which declared that no cause for action had been shown. The petitioner appealed that ruling, again with the Provisional Public Law Chamber, which in a ruling of December 22, 1997, upheld the lower-court ruling. The petitioner challenged this decision before the Constitutional Court, which has not yet taken up the case. It should be added that the Court in question is currently functioning with only four of its seven members.

15. In the same filing, the petitioner sought a restraining order to suspend the effects of the directorial resolution that stripped him of his citizenship. That petition was denied on August 15, 1997. When the ruling was appealed, the same Lima Superior Court Public Law Chamber, in a ruling dated September 11, 1997, nullified all the proceedings owing to an error in the notification of the defendant. When the case was returned to the lower court, on October 16, 1997, the presiding judge, Dr. Percy Escobar, again denied the request for a restraining order. The appeal on that ruling was decided by the Provisional Public Law Chamber which, on

December 11, 1997, upheld the lower court's ruling, declaring that the provisional measure requested was out of order.

16. At the same time, on July 11, 1997, Mr. Mendel Winter Zuzunaga and Mr. Samuel Winter Zuzunaga, minority shareholders in Frecuencia Latina, filed their own petition of amparo seeking nullification of Mr. Baruch Ivcher B.'s purchase of shares in that television channel; they argued that because Mr. Ivcher was an Israeli citizen, he should have been barred from purchasing those shares and that the purchases should be declared null and void. In the same application, they petitioned the court for a provisional measure to allow them to take control of the channel's administration. In the lower court, the Judge of the First Public Law Chamber acceded to their request on August 1, 1997; his ruling was upheld on September 12, 1997, by Lima Superior Court's Provisional Public Law Chamber; the result was that Mr. Baruch Ivcher B.'s appointment as Director of the Latin American Radio Broadcasting Corporation and as Chairman of the Board of Directors of that body was revoked until the question of his Peruvian nationality was decided by the competent authority.

17. On September 19, 1997, the brothers Winter Zuzunaga, minority shareholders in the television channel, took over its control and immediately barred from the premises a number of journalists and officials identified as being in Ivcher's camp. That list was formalized and certified by Notary Public Manuel Noya de la Piedra.

18. Mr. Baruch Ivcher filed for a remedy of cassation against the resolution that handed over control of the channel to the minority shareholders. That application was denied, thus leaving control of the channel in the hands of the minority shareholders.

19. For his part, the victim filed another remedy of amparo challenging articles 12 and 13 of the Regulations governing Nationality Act No. 26.574. The lower court dismissed his application on the grounds that it was unfounded. The case was then taken to the Provisional Public Law Chamber which, on November 12, 1997, nullified the proceedings because of an error in the notification of the defendant, and sent the case back to the lower court.

20. For their part, Frecuencia Latina journalists Fernando Vian Villa et al. and Alberto Borea Odria et al. filed class action suits challenging articles 12 and 13 of the Regulations governing the Nationality Act.

21. On October 23, 1997, the Inter-American Press Association passed a resolution at its 53rd General Assembly wherein it pointed out that with the silencing of Television Channel 2 for having reported government violations of human rights, freedom of press in Peru had been seriously compromised; it therefore resolved to urge repeal of the resolution that stripped Baruch Ivcher of his Peruvian citizenship, thereby permitting him, as the channel's majority shareholder, to remain in control of the channel.

IV. PROCEEDINGS BEFORE THE COMMISSION

22. On June 9, 1997, the Inter-American Commission on Human Rights (hereinafter the "Commission") received a petition filed against the Republic of Peru (hereinafter the "Peruvian

State" or the "State") by Congressman Javier Díez Canseco. There Congressman Díez Canseco alleged that judging from the events occurring in Peru at that time, the victim could well be on the verge of being stripped of his Peruvian citizenship.

23. Later, on July 16, 1997, the Commission received a second petition filed against the Peruvian State, this time by the Dean of the Lima Bar Association, Dr. Vladimir Paz de la Barra, wherein he charged that the Peruvian State had revoked the Peruvian citizenship given to Baruch Ivcher Bronstein. The petition was based on Article 53 of the Constitution, which protects citizenship; Article 6 of Law No. 26.574, which stipulates that naturalization shall be either approved or canceled, as appropriate, by virtue of a supreme resolution, the argument being that the directorial resolution was unconstitutional. This petitioner added that the violation of the Peruvian legal system was also a serious violation of Article 20(3) of the American Convention on Human Rights.

24. On July 18, 1997, the Commission instituted proceedings by sending a communication to the Peruvian State requesting information within 60 days and assigning the case number 11.762.

Provisional measures

25. On July 28, 1997, the Commission received a note from the first petitioner and Peruvian Congressman Javier Díez Canseco, dated July 14, 1997, alleging that events had transpired at that time which had resulted in a violation of Mr. Baruch Ivcher B.'s right to citizenship. The note added information relating to the underlying motives and preambular paragraphs of the resolution that stripped the victim of his nationality. The note stated that at a press conference, the Director General of the National Police purportedly explained that "no record has been found at any office of the Bureau of Immigration and Naturalization to confirm the existence of the file that led to Mr. Ivcher's Nationality Document No. 004644", which was why the Director of the Service issued the resolution in question.

26. In the same application, the petitioner asked the Commission to "agree to the appropriate provisional measures", to avoid irreparable harm.

27. On July 30, 1997, the Commission sent a letter to the Peruvian State requesting that, pursuant to Article 29 of the Commission's Regulations, effective provisional measures be adopted to restore Peruvian citizenship to Baruch Ivcher Bronstein, since the latter could be irreparably harmed if stripped of it.

28. On August 26, 1997, the Commission received a letter dated August 26, 1997, wherein Mr. Baruch Ivcher Bronstein requested a hearing with the Commission to denounce the Peruvian State's violation of his rights.

29. On September 2, 1997, the Peruvian State requested that the Commission extend the deadline for providing the Commission with information. The Commission responded by granting a 15-day extension.

30. On September 12, 1997, the Permanent Representative of Peru provided the Commission with a report on the case in question, prepared by the National Human Rights Council. There the Commission was asked to declare the petition inadmissible by virtue of articles 46 and 47 of the American Convention on Human Rights and the corresponding articles of the Commission's Regulations, since at the time a number of proceedings were in progress in domestic courts; were the Commission to take up the case, it would be taking over cases now pending in the Peruvian courts, as the remedies under domestic law had not been exhausted.

31. On September 18, 1997, the Permanent Representative of Peru sent the Commission a report prepared by the Council for the Defense of Human Rights, Memorandum No. 1613-97-JUS-/CNDH-SE, where the State addresses the matter of the provisional measures requested by the Commission via note of July 30, 1997; in that note the State had been asked to adopt "effective provisional measures to restore Peruvian citizenship to Mr. Baruch Ivcher B."

32. That memorandum began by pointing out that the petition was inadmissible on the grounds that the remedies under domestic law had not been exhausted. Its response to the Commission's request for provisional measures was that the principles at issue in regard to the provisional measures were the same as those at issue in the merits in the case, a case being heard by the domestic courts at that time. It therefore asked that the Inter-American Commission on Human Rights, "based on articles 46(1)(a) and 47(a) of the Convention, articles 35(a) and 37(1) of its Regulations, and articles 19(a) and 23(1) of its Statute, declare the petition inadmissible. The Commission cannot take up a proceeding for provisional or precautionary measures since no organ other than the Peruvian judiciary may rule on the merits of a case, or its ancillary issues or provisional measures, as that would constitute interference in the independence of the judicial organs of the Peruvian State and flagrant disregard for the maxim of the law that holds that the finding on the merits of a case will determine the outcome of ancillary issues."

33. The Peruvian response went on to say that under Article 139 of the Constitution now in force, no authority could take over cases pending in the courts, or interfere in the courts' exercise of their functions. Therefore, any pronouncement on the disputed issue or precautionary measures would constitute interference in the autonomy of the judicial organs of the State.

34. On September 19, 1997, the Commission received additional information from Congressman Javier Díez Canseco where he reported developments in the domestic proceedings surrounding this case.

Hearing

35. On October 9, 1997, at the Commission's 97th session, a hearing was held with representatives of the Peruvian Government and of the petitioners, Mr. Enrique Elías, attorney for the victim, and the Dean of the Lima Bar Association, Vladimir Paz de la Barra. The representatives for the two sides gave their arguments.

36. The petitioners asked the Commission to take immediate action, arguing that this was one of the exceptions provided for in Article 46 of the Convention. They pointed out that the court of last resort in the instant case was having serious operating difficulties, and was either prohibited

from or unable to follow the proper legal procedure, which was to serve as court of last instance and review this case.

37. Secondly, the petitioners argued that at the lower-court level something very serious had transpired, since for a variety of reasons the judge assigned to the court did not hear the case; instead, an alternate judge was named. On 15 different occasions the alternate judge had been cited for such egregious errors and transgressions as loss of case files, unlawful delays in proceedings, fraudulent notifications and others. As Secretary of the Court, he was one who would now decide the case at the lower-court level, which adversely affected due process.

38. This, in the petitioners' judgment, did not ensure the necessary guarantees of an independent, impartial and fair court. The petitioners also pointed out that the three judges presiding over the case in the court of second instance had thus far managed to drag the proceedings out for four months. A decision was handed down nullifying all proceedings in the case on the grounds that the Director of Immigration supposedly was not properly notified, which was not true because he was served on time and in the proper manner. The petitioners are seeking to have the case admitted on the grounds that guarantees of due process of law do not exist in Peru; they are also asking the Commission to seek immediate precautionary measures to prevent irreparable harm from being done to the victim.

39. For its part, the Government stressed that the facts in the instant case are being litigated in the domestic courts, so that the Commission should declare the petition inadmissible on the grounds of a failure to exhaust the remedies under domestic law.

40. On October 9, 1997, the victim, Baruch Ivcher Bronstein, attached a brief to the petition he filed with the Commission against the Peruvian State, alleging that he had been stripped of his Peruvian nationality in violation of Article 20(3) of the American Convention; that his right to retain and exercise the privileges of the right of ownership, protected under Article 21(1) of the Convention, was violated when his loss of citizenship caused him to lose control over a sizeable share of his assets; that the right to freedom of the press and freedom of expression established in Article 13 of the Convention was violated when he was forced off the board of directors of "Frecuencia Latina Canal 2" television, and that his right of self-defense, to due process of law and to judicial protection, established in articles 8 and 25 of the Convention, were violated when he was arbitrarily stripped of his nationality via an administrative decision that resulted from an administrative action of which he was never notified and of which he learned only when the decree stripping him of his nationality was published. A series of irregularities in this judicial process and thereafter denied him his right of self-defense, leaving him with no means to defend himself.

41. The pertinent parts of the victim's petition and other documents added thereafter were forwarded to the Peruvian Government as "additional information" on November 25, 1997; the Government was given 15 days in which to comment.

42. As for the exhaustion of domestic remedies, the petitioner stated that in the instant case, "for applications seeking writs of habeas corpus and amparo, the Peruvian Judiciary has no

independent and honest judges who ensure that amparo is an effective means to defend the constitutional rights invoked."

43. On October 17, 1997, the Commission received a brief alleging that at the present time the State's duties and obligations cannot be performed because of a problem of unrestrainability created by the amendment introduced in the Code of Civil Procedure with Laws Nos. 26.599 and 26.756. The constitutionality of both these laws was being challenged in the Constitutional Court. This, in the victim's judgment, exacerbates his situation; the harm he is suffering is irreparable because any action seeking to redress the damage caused is ineffective. Hence, urgent precautionary measures are needed.

44. In another brief filed that same date, the victim enclosed a list of background information on Dr. Percy Escobar, judge on Lima's Provisional Public Law Bench and who, in the petitioner's judgment, "was appointed to the bench for political reasons, despite the fact that he did not have the ethical and professional qualifications for the office"; Dr. Percy was the one who heard the application that Mr. Ivcher filed in the lower courts seeking a writ of amparo. Enclosed was a copy of Memorandum No. 922-97-UA/csjl, to which was attached a full record of the disciplinary measures ordered against Judge Percy Escobar.

45. On October 20, 1997, Mr. Ivcher presented a memorandum to the Commission, to which he attached a notarized document dated December 6, 1984, which was issued on July 6, 1990, in which Baruch Ivcher's renunciation of his Israeli nationality is made official, as well as an explanation provided by the Notary Public, Dr. Máximo L. Vargas, who twice provided testimony about the above mentioned public document.

46. Later, in filings dated November 19 and December 3, 1997, and January 6, January 29 and February 11, 1998, the victim provided additional information and stood by the arguments made previously in connection with the admissibility of the case.

47. For its part, in notes dated December 2, 1997, January 15, 1998, January 16, 1998 and January 27, 1998, the Peruvian State provided additional information to reinforce its argument that the case was inadmissible because not all remedies before the Peruvian courts had been exhausted.

48. On February 26, 1998, during the Commission's 98th period of sessions, the Commission held a second admissibility hearing on this case. At this hearing, information was provided that a final internal remedy was pending before the Peruvian courts, presented on January 16, 1998 by Baruch Ivcher before the Constitutional Court, against the judgment of the court of appeals which had denied the writ of amparo. Also, it was added that pursuant to its governing law, the Constitutional Court has a time period of 20 days within which to decide a writ of amparo presented to it.[FN1]

[FN1] Law No. 26.435. Organic Law of the Constitutional Court. Article 43 provides that "The Court, has a maximum time period of ... 20 days, for dealing with cases concerning the denial of a writ of amparo ...".

V. ADMISSIBILITY

49. The three petitions satisfy the formal requirements established in Article 46 of the Convention for admissibility. The petitions were filed within the time frame stipulated in Article 46(b) of the Convention and Article 38 of the Commission's Regulations, and were filed with the Commission within the 6-month period stipulated in the American Convention. It is worthwhile noting that the victim was the last to file a petition, and he is now regarded as the principal petitioner.

50. In keeping with Article 46(c) of the Convention and Article 39 of the Commission's Regulations, in the Commission's knowledge the subject of this petition is not pending with any other international body for settlement.

51. The Peruvian State raised a preliminary objection arguing the petitioner's failure to exhaust the remedies under domestic law, pointing out that the facts in the instant case were being litigated in several actions now before the domestic courts, which meant that the remedies under domestic law had not been exhausted.

52. The petitioner argued that in the instant case, the exception allowed in Convention Article 46(2) to the rules requiring exhaustion of the remedies under domestic law applied because in Peru there was no effective remedy to protect the violated rights or due process of law to ensure the independence and impartiality that a court must have when hearing a case, which is a violation of Articles 25 and 8 of the Convention. It was also alleged that there had been an unwarranted delay in ruling on the remedies invoked, especially the ruling by the Provisional Public Law Chamber in case No. 246-97, dated September 11, 1997; that case was the appeal challenging the earlier decision that denied the precautionary measure sought in the action seeking a writ of amparo against the decision that stripped Mr. Baruch Ivcher B. of his nationality. That September 11 ruling vacated all proceedings conducted theretofore.

53. Thus far, seven months after the directorial resolution stripping Mr. Baruch Ivcher of his nationality was issued, the victim has not yet obtained a final judgment settling his nationality status once and for all. On three different occasions, the appellate court has nullified all proceedings in his case and returned the case to the lower court, thus delaying and complicating his case. At the same time, the very same court has already handed down definitive rulings on the Winter brothers' cases, in their favor, thus taking away the victim's control of the administration of the television channel through application of Directorial Resolution No. 11-97-IN-050100000000. In other words, both the lower court and the appellate court have treated Baruch Ivcher Bronstein as a de facto alien and declared him to be an alien.

54. Throughout the proceedings, especially at the hearing held at the 97th session, the State failed to demonstrate that the Peruvian legal system had simple, efficient and effective remedies for the victim's situation.

55. Mr. Baruch Ivcher Bronstein's present situation is extremely disturbing, as he appears to have suffered virtually irreparable damage. While the Government maintains that he is an undocumented Peruvian, the courts of first and second instance have handed over control of Frecuencia Latina Canal 2 television to minority shareholders, even though Mr. Ivcher is its majority shareholder and was its chairman. As these court rulings were premised on the fact that Mr. Ivcher was not a Peruvian citizen and because, under the present law, no alien may own a television channel, the channel's administration is no longer in Mr. Ivcher's hands.

56. As a consequence of the foregoing, even if Mr. Ivcher were to win the cases brought in the domestic courts, the damages he has already sustained are of enormous magnitude and would be very difficult to redress in full. These damages are aggravated day by day and require a simple and effective remedy. For that reason, the Commission, without prejudging the facts but applying the maxim that requires it to opt for the interpretation of the law that best protects human rights, agreed to seek precautionary measures for Mr. Ivcher. These measures were requested by letter dated July 30, 1997.

57. In that note the Government was asked to take the precautionary measures needed to prevent the victim from being stripped of his nationality, so that he might be regarded as a citizen in the legal action he has brought, thereby avoiding irreparable harm to him.

58. The Peruvian State replied to the Commission by stating that the case was being heard by the courts and that under the Constitution no authority may seize itself of matters already being heard by the courts. Peruvian domestic law provided adequate tools to protect those rights, such as amparo, and that in fact the victim had requested a similar precautionary measure, which was being decided by the courts.

59. The Government's refusal and the judicial system's delay in ruling on this case, place the petitioner in a defenseless situation and have thus far been ineffective in avoiding harm to the victim, although eventually everything might well be settled and any wrong done by the regular courts might eventually be fully righted. That could happen with the ruling to be handed down by the Constitutional Court.

60. The Peruvian State has not taken any precautionary measure to maintain the victim's status quo until such time as the merits of the case are settled in the national courts. Peru's lower courts have refused Mr. Ivcher's application seeking precautionary measures; when that ruling was appealed, the Superior Court declared all proceedings conducted thus far to be null and void which, the petitioner argues, has delayed the proceedings by approximately four months. The conclusion drawn from these facts is that the domestic remedies have been neither swift nor effective in preventing harm of such severity. This harm becomes greater with the passage of time, given the nature of the rights involved, since the victim has been severed from his employment as chairman of Frecuencia Latina Channel 2 television. The fact that harm has materialized in the interim, before the domestic courts handed down a final ruling on the applications filed seeking writs of amparo, demonstrates how slow and ineffective the remedies in this case have been, and gives the Commission grounds to declare the case admissible.

61. As for the passive legitimation, because Peru is a State party to the American Convention, having ratified it on July 28, 1978, the Commission is competent to take up the present case.

VI. CONCLUSIONS

62. The Commission concludes that the petition satisfies the admissibility requirements established in Article 46 of the American Convention.

63. As for the Peruvian State's objections asserting that the remedies under domestic law have not been exhausted, no credible evidence has been shown during the proceedings, especially during the hearings before the Commission in October 1997 and February 1998, to demonstrate that effective domestic remedies do exist. Therefore, the Commission considers that in the instant case, the exceptions established in article 46(2) (a), and (c) of the American Convention on Human Rights apply; hence, the remedies under domestic law need not be exhausted for the Commission to take up the petition.

64. The foregoing notwithstanding, the Commission might eventually declare the petition inadmissible if, when examining the merits of the case, it finds some change in circumstances, which includes the possibility of full reparations to the victim.

65. Hence, the Commission declares the instant case admissible although it will re-visit the issues in greater depth when examining the merits of the case.

66. To publish the present admissibility report in its Annual Report to the OAS General Assembly.