Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Baruch Ivcher Bronstein v. Peru
Doc. Type:	Judgment (Competence)
Decided by:	President: Antonio A. Cancado Trindade; Vice President: Maximo Pacheco-Gomez; Judges: Oliver Jackman; Alirio Abreu-Burelli; Sergio Garcia-Ramirez; Carlos Vicente de Roux-Rengifo Judge Hernan Salgado-Pesantes, who had presided over the Court's proceedings until September 16, 1999, disqualified himself effective that date from the drafting and adoption of this Judgment.
Dated:	24 September 1999
Citation:	Ivcher Bronstein v. Peru, Judgment (IACtHR, 24 Sep. 1999)

In the Ivcher Bronstein case,

the Inter-American Court of Human Rights (hereinafter "the Court", "the Inter-American Court" or "the Tribunal"), pursuant to Article 29 of the Court's Rules of Procedure (hereinafter "the Rules of Procedure"), enters the following judgment on competence in relation to the purported withdrawal on the part of the Republic of Peru (hereinafter "the State" or "Peru") of its recognition of the Court's contentious jurisdiction.

I. INTRODUCTION OF THE CASE

1. On March 31, 1999, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed an application with the Court involving a case that had originated in a petition (number 11,762) received at the Commission's Secretariat on March 7, 1997.

II. FACTS SET FORTH IN THE APPLICATION

2. In the following paragraphs, the Court summarizes the relevant facts in the case, as alleged by the Commission in the application:

a) A resolution issued by the President of the Republic of Peru on November 27, 1984, agreed to grant Israeli-born Mr. Baruch Ivcher Bronstein (hereinafter "Mr. Ivcher") Peruvian citizenship on the condition that he renounce his Israeli citizenship;
b) On December 6, 1984, Mr. Ivcher renounced his Israeli citizenship; the following day the Minister of Foreign Affairs issued his Peruvian citizenship papers;

c) One must have Peruvian citizenship to own shares in businesses licensed to operate television channels in Peru. In mid 1992, Mr. Ivcher owned 53.95% of the shares in the Compañía Latinoamericana de Radiodifusión S.A. (hereinafter "the Company"), the business that ran Channel 2 television in Peru; the Winter Zuzunaga brothers –Samuel and Mendel- (hereinafter "the Winter brothers") owned the remaining 46% stake in the company;

d) In April 1997, Channel 2's program "Contrapunto" aired reports of torture committed by members of the Peruvian Army's Intelligence Service, and of the millions paid to Mr. Vladimiro Montesinos Torres, an Intelligence Service advisor. Because of these exposés, agents from the National Treasury Police Bureau suggested to Mr. Ivcher that he change his editorial stance;

e) On May 23, 1997, the National Treasury Police Bureau instituted proceedings against Mr. Ivcher, who did not appear because he was abroad. An arrest warrant was issued for Mr. Ivcher for failure to answer a summons to appear in court. That very day, the Executive issued a supreme decree regulating the Nationality Act and stipulating that naturalized Peruvians could lose their citizenship;

f) On June 3, 1997, Mr. Ivcher filed a petition seeking a writ of amparo, given the threat to his citizenship that the recent decree could pose. The writ of amparo was denied on February 20, 1998. Other actions seeking to have the decree in question declared unconstitutional were dismissed;

g) In June 1997, by an administrative resolution the Peruvian Government altered the composition of the Constitutional and Social Chamber of Peru's Supreme Court. Later, that Chamber removed from its bench those judges who specialized in public law and replaced them;

h) On July 10, 1997, as Channel 2 was announcing its broadcast of a report on the tapping of the phone lines of opposition candidates, the Director General of the National Police held a press conference where he explained the findings of a report done by the Office of the Director of Immigration and Naturalization to the effect that the file containing the documents required for Mr. Ivcher to receive his citizenship papers had not been located. It also reported that there was no proof that Mr. Ivcher had ever renounced his Israeli citizenship. On July 11, 1997, the Director General of Immigration and Naturalization issued a decision that had the effect of stripping Mr. Ivcher of the rights and privileges inherent in Peruvian citizenship;

i) As a result of a petition of amparo filed by the Winter brothers, Mr. Percy Escobar, provisional Criminal Judge appointed to the Special Public-Law Court, ordered suspension of Mr. Ivcher's rights as majority shareholder in the Company and his appointment as Director and President. He also ordered that a Special Shareholders Assembly be called to elect a new board of directors. He prohibited transfer of Mr. Ivcher's assets and gave the Winter brothers tentative control of the Company;

j) The challenges brought by Mr. Ivcher starting in July 1997 seeking to have the decision that had revoked his citizenship vacated and its consequences suspended did not prosper;

k) On September 19, 1997, Judge Percy Escobar, assisted by Peruvian police, handed over management of the Company to the Winter brothers and refused to allow the journalists who worked on the "Contrapunto" program to enter the premises; and

l) Mr. Ivcher's voter registration was shown as nullified on the voter role for the elections held in Peru on October 12, 1998.

III. PROCEEDINGS WITH THE COMMISSION

3. On June 9, 1997, Peruvian Congressman Javier Diez Canseco advised the Comission that Mr. Ivcher might possibly loss his Peruvian citizenship. On July 16, 1997, the Dean of the Lima Bar Association, Mr. Vladimir Paz de la Barra, filed a complaint with the Commission alleging that the Peru had revoked Mr. Ivcher's Peruvian citizenship.

4. The Commission formally opened the case on July 18, 1997, and requested information from the State in regard thereto.

5. On August 26, 1997, Mr. Ivcher requested a hearing with the Commission; as of this request, the Commission regarded him as the principal petitioner and victim of the alleged violations.

6. Peru replied to the Commission on September 12, 1997, and requested that the petition be declared inadmissible.

7. On October 9, 1997, during the Commission's 97th session, a hearing was held concerning the petition's admissibility.

8. On February 26, 1998, during the Commission's 98th session, a second hearing was held on the instant case's admissibility.

9. By note of May 29, 1998, the Commission placed itself at the disposition of the parties to attempt a friendly settlement, and asked that they reply within 30 days. Following an extension granted at the State's request, on July 31, 1998, the latter informed the Commission that it believed it was inadvisable to institute a friendly settlement proceeding.

10. On October 8, 1998, at its 100th session, the Commission held a hearing on the merits.

11. On December 9, 1998, at its 101st session, the Commission approved Report No. 94/98, which was forwarded to the State on December 18, 1998. In that report, the Commission concluded that:

The State arbitrarily stripped Mr. Ivcher of his Peruvian nationality (in violation of Article 20(3) of the Convention), as a means to suppress his freedom of expression (recognized in Article 13 of the Convention). It also violated his right to property (Article 21 of the Convention), his rights to due process (Article 8(1) of the Convention) and to a simple and prompt recourse to a competent court or tribunal (Article 25 of the Convention), in violation of the Peru's generic obligation to respect the rights and freedoms of all persons subject to its jurisdiction, as stipulated in Article 1(1) of the American Convention.

12. The Commission made the following recommendations to the State:

A. To immediately reinstate Mr. Ivcher Bronstein's Peruvian nationality title and restore full and unconditional recognition of his Peruvian nationality, with all attendant rights and prerogatives.

B. To immediately desist from the harassment and persecution of Mr. Ivcher Bronstein and to refrain from any further actions that violate his right to freedom of expression.
C. To take the necessary steps to reestablish Mr. Baruch Ivcher Bronstein's enjoyment and exercise of his right to own shares in the Compañía Latinoamericana de Radiodifusión S.A. and with that restore to him all his prerogatives as a shareholder and administrator of that business.
D. To indemnify Mr. Ivcher Bronstein for the material and moral damages that the conduct of the administrative and judicial organs of the State caused him.
E. To adopt the legislative and administrative measures necessary to prevent episodes of this kind in the future.

The Commission also decided to forward the report in question to the State and gave it two months to adopt the measures necessary to fulfill the recommendations made.

12. By note of March 17, 1999, the State requested a 14-day extension from the Commission so as to endeavor to arrive at an amicable solution to the Commission's recommendations and stipulated that it waived its right to have those 14 days counted toward the period set forth in Article 51(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

13. On March 18, 1999, the Commission acceded to the State's request and ordered that the 14-day extension was to push back the deadline for filing an application with the Court. The new deadline would be March 31, 1999.

14. When the agreed deadline for the State to show evidence of fulfillment of the recommendations passed without that evidence being produced, the Commission decided to refer the case to the Court, under the terms of Article 51 of the Convention.

IV. PROCEEDINGS WITH THE COURT

15. On March 31, 1999, the Commission filed an application for the Court to decide whether articles 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), 20 (Right to Nationality), 21 (Right to Private Property) and 25 (Right to Judicial Protection) of the American Convention had been violated, all in relation to Article 1(1) (Obligation to Respect Rights) thereof. It also petitioned the Court to find that the State must restore to Mr. Ivcher Bronstein the full enjoyment of his violated rights and guarantees, specifically:

a. To order that Mr. Ivcher Bronstein's Peruvian nationality title be reinstated and that full and unconditional recognition of his Peruvian nationality be restored, with all attendant rights and prerogatives.
b. To order that Mr. Ivcher Bronstein's enjoyment and exercise of his right to own his shares in the Compañía Latinoamericana de Radiodifusión S.A. be restored to him, along with all his prerogatives as a shareholder in and administrator of that business.c. To 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 cease.
d. To order that the material and moral damages that the conduct of Peru's administrative and judicial organs caused to Mr. Ivcher Bronstein be redressed and that he be paid damages.

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

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

17. Pursuant to Article 34 of the Court's Rules of Procedure, on April 20, 1999 the President requested that the Commission correct certain problems in the presentation of the application and gave it 20 days in which to do so.

18. On May 5, 1999, the Commission corrected the problems with the documentation submitted with the application.

19. On May 10, 1999, the Secretariat of the Court (hereinafter "the Secretariat") notified the State of the application and advised it of the time limits for answering the application, filing preliminary objections and designating its agents. The State was also advised that it had the right to designate an ad hoc judge.

20. On May 17, 1999, the Ambassador of Peru in Costa Rica informed the Court that the application in this case had been received on May 12 of that year at the Office of the Minister of Foreign Affairs of Peru.

21. On June 8, 1999, the State designated Mr. Marío Federico Cavagnaro Basile as agent and Mr. Sergio Tapia Tapia as alternate agent. It indicated the address where all communications relative to the case would be received.

22. On June 11, 1999, the State presented a brief wherein it listed what it considered to be discrepancies regarding the time period for designating an ad hoc judge and requested a reasonable extension of the time limit given for that purpose. An extension was given so that the new time limit expired on July 11, 1999.

23. On August 4, 1999, the Minister and Counselor of Peru's Embassy in Costa Rica appeared before the Inter-American Court in San Jose, Costa Rica, to return the application filed in the Ivcher Bronstein case and its attachments.Said officials delivered a note to the Secretariat, dated August 2, 1999, and signed by the Minister of Foreign Affairs of Peru, which states the following:

a. By Legislative Resolution No. 27152, 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 the instrument wherein it declares that, 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 recognition of the Court's contentious jurisdiction takes immediate effect 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 that same brief the State wrote that "notification contained in note CDH-11,762/002, dated May 10, 1999, concerns a case in which that 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."

24. 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 the following:

a. The Court asserted jurisdiction to consider the instant case as of March 31, 1999, the dated 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, have no effect whatever on the Court's exercise of jurisdiction in the instant case;
b. A unilateral action by 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 juridical security and continuity.

Finally, the Commission petitioned the Court to find that Peru's return of the application in the Ivcher Bronstein case and its attachments was legally ineffectual and to continue to exercise jurisdiction over the instant case.(**)

** On August 27 and September 9 and 15, 1999, the International Human Rights Law Group, Mr. Curtis Francis Doebbler and Mr. Alberto Borrea-Odría, respectively, filed amicus curiae briefs, which were not formally added to the case files.

V. COMPETENCE

A. FACTS:

25. The Commission submitted the application in the Ivcher Bronstein case on March 31, 1999. The Court forwarded note CDH-11,762/002 to the State on May 10, 1999, wherein it notified Peru of the application and sent it a copy of both the application and its attachments. The Court also advised the State that it had one month to designate an agent and alternate agent, two months to file preliminary objections and four months to answer the application.

26. By a second note of May 10, 1999, CDH-11,762/003, the Court informed the State that it had 30 days in which to designate an ad hoc judge.

27. On May 17, 1999, Peru advised the Secretariat that it had received notification of the case on May 12, 1999. On June 8, it designated its agent and alternate agent and gave Peru's Embassy in San José, Costa Rica, as the address to which communications should be directed.

28. By note of July 16, 1999, received at the Secretariat of the Court on July 27 of that year, the General Secretariat of the OAS reported that on July 9, 1999, Peru had presented an instrument wherein it advised that it was withdrawing its declaration consenting to the optional clause in the American Convention recognizing the contentious jurisdiction of the Court.

It also sent a copy of the original of that instrument, dated Lima, July 8, 1999. There, the Minister of Foreign Affairs of Peru stated that by Legislative Resolution No. 27,152 of July 8, 1999, the Congress of the Republic had approved the withdrawal in the following terms:

… that in accordance with the American Convention on Human Rights, the Republic of Peru is withdrawing the declaration whereby it consents to the optional clause recognizing the contentious jurisdiction of the Inter-American Court of Human Rights, a declaration given by the Peruvian government at the time.

This withdrawal of recognition of the Inter-American Court's contentious jurisdiction will take effect immediately and will apply to all cases in which Peru has not answered the application filed with the Court.

29. On August 4, 1999, the Minister and Counselor of the Embassy of Peru in Costa Rica appeared at the Secretariat of the Inter-American Court and stated that they were returning the application in the Ivcher Bronstein case and its appendices. The Secretariat made a record of these documents' return.

30. Peru has been a State Party to the American Convention since July 28, 1978. In its instrument of ratification of the Convention, the Government noted that the Convention had been approved by Decree Law No. 22,231, of July 11, 1978, and had become State law. On the honor of the Republic, it pledged to abide by the Convention. On January 21, 1981, Peru recognized the contentious jurisdiction of the Court as follows:

[a]s prescribed in paragraph 1 of Article 62 of the American Convention, the Government of Peru hereby declares that it recognizes as binding, ipso facto, and not requiring special

agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of the Convention.

This recognition of jurisdiction is for an unspecified period and on condition of reciprocity.

31. Exercising its jurisdiction, the Court took cognizance of the Ivcher Bronstein case on March 31, 1999, the date on which it formally received the corresponding application, filed in accordance with articles 48, 50, and 51 of the Convention and Article 32 of the Court's Rules of Procedure.

B. LAW:

32. The Court must settle the question of Peru's purported withdrawal of its declaration recognizing the contentious jurisdiction of the Court and of its legal effects. The Inter-American Court, as with any court or tribunal, has the inherent authority to determine the scope of its own competence (compétence de la compétence/Kompetenz-Kompetenz).

33. The Court cannot abdicate this prerogative, as it is a duty that the Convention imposes upon the it, requiring it to exercise its functions in accordance with Article 62(3) thereof. That provision reads as follows:

The jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or by a special agreement.

34. The jurisdiction of the Court cannot be contingent upon events extraneous to its own actions. The instruments consenting to the optional clause concerning recognition of the Court's binding jurisdiction (Article 62(1) of the Convention) presuppose that the States submitting them accept the Court's right to settle any controversy relative to its jurisdiction. An objection or any other action taken by the State for the purpose of somehow affecting the Court's jurisdiction has no consequence whatever, as the Court retains the compétence de la compétence, as it is master of its own jurisdiction.

35. Interpreting the Convention in accordance with its object and purpose (cf., infra 39), the Court must act in a manner that preserves the integrity of the mechanism provided for in Article 62(1) of the Convention. That mechanism cannot be subordinated to any restrictions that the respondent State might add to the terms of its recognition of the Court's binding jurisdiction, as that would adversely affect the efficacy of the mechanism and could obstruct its future development.

36. Acceptance of the Court's binding jurisdiction is an ironclad clause to which there can be no limitations except those expressly provided for in Article 62(1) of the American Convention. Because the clause is so fundamental to the operation of the Convention's system of protection, it cannot be at the mercy of limitations not already stipulated but invoked by States Parties for internal reasons.

37. The States Parties to the Convention must guarantee compliance with its provisions and its effects (effet utile) within their own domestic laws. This principle applies not only to the substantive provisions of human rights treaties (in other words, the clauses on the protected rights), but also to the procedural provisions, such as the one concerning recognition of the Tribunal's contentious jurisdiction. [FN1] That clause, essential to the efficacy of the mechanism of international protection, must be interpreted and applied in such a way that the guarantee that it establishes is truly practical and effective, given the special nature of human rights treaties (cf. infra 42 to 45) and their collective enforcement.

[FN1] European Commission of Human Rights, Applications No. 15299/89, 15300/89 and 15318/89, Chrysostomos et al. v. Turkey (1991), Decisions and Reports, Strasbourg, C. E., [1991] vol. 68, pp. 216-253.

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38. Article 31(1) of the 1969 Vienna Convention on the Law of Treaties (hereinafter "the Vienna Convention") provides that:

A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

[…]

39. Article 62(1) of the American Convention stipulates that a State Party may, upon depositing its instrument of ratification or adherence to this Convention, or at any subsequent time, declare "that it recognizes as binding, ipso facto, and not requiring any special agreement, the jurisdiction of the Court on all matters relating to the interpretation or application of this Convention." There is no provision in the Convention that expressly permits the States Parties to withdraw their declaration of recognition of the Court's binding jurisdiction. Nor does the instrument in which Peru recognizes the Court's jurisdiction, dated January 21, 1981, allow for that possibility.

40. An interpretation of the Convention done "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose" leads this Court to the view that a State Party to the American Convention can only release itself of its obligations under the Convention by following the provisions that the treaty itself stipulates. In the instant case, under the Convention, the only avenue the State has to disengage itself from the Court's binding contentious jurisdiction is to denounce the Convention as a whole (cf. infra 46, 50); if this happens, then the denunciation will only have effect if done in accordance with Article 78, which requires one year's advance notice.

41. Article 29(a) of the American Convention provides that no provision of the Convention shall be interpreted as permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in the Convention or to restrict them to a greater extent than is provided for therein. Any interpretation of the Convention that allows a State Party

to withdraw its recognition of the Court's binding jurisdiction, as Peru would in the instant case, would imply suppression of the exercise of the rights and freedoms recognized in the Convention, would be contrary to its object and purpose as a human rights treaty, and would deprive all the Convention's beneficiaries of the additional guarantee of protection of their human rights that the Convention's jurisdictional body affords.

42. The American Convention and the other human rights treaties are inspired by a set of higher common values (centered around the protection of the human person), are endowed with specific supervisory mechanisms, are applied as a collective guarantee, embody essentially objective obligations, and have a special character that sets them apart from other treaties. The latter govern mutual interests between and among the States Parties and are applied by them, with all the juridical consequences that follow therefrom for the international and domestic legal systems.

43. In its Advisory Opinion OC-2/82, of September 24, 1982, titled The Effect of Reservations on the Entry into Force of the American Convention on Human Rights (Arts. 74 and 75), the Court found that:

… modern human rights treaties in general, and the American Convention in particular, are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States. Their object and purpose is the protection of the basic rights of individual human beings irrespective of their nationality, both against the State of their nationality and all other contracting States. In concluding these human rights treaties, the States can be deemed to submit themselves to a legal order within which they, for the common good, assume various obligations, not in relation to other States, but towards all individuals within their jurisdiction. (paragraph 29)

44. That finding is consistent with the case-law of other international jurisdictional bodies. For example, in its Advisory Opinion on Reservations to the Convention for the Prevention and Punishment of the Crime of Genocide (1951), the International Court of Justice held that with treaties of this nature, "the contracting States do not have any individual advantages or disadvantages nor interests of their own, but merely a common interest; hence the Convention's raison d'être is to accomplish its purposes."

45. For their part, the European Commission and Court of Human Rights (hereinafter "the European Commission" and "the European Court") have arrived at similar findings. In the Austria vs. Italy case (1961), the European Commission declared that the obligations undertaken by the States Parties to the European Convention on Human Rights (hereinafter "the European Convention") "are essentially objective in nature, and intended to protect the fundamental rights of human beings against violations on the part of the High Contracting Parties, rather than to create subjective and reciprocal rights between the High Contracting Parties." [FN2] Similarly, in Ireland vs. the United Kingdom (1978), the European Court held the following:

Unlike international treaties of the classic kind, the Convention comprises more than mere reciprocal engagements between contracting States. It creates, over and above a network of

mutual, bilateral undertakings, objective obligations which, in the words of the Preamble, benefit from a "collective enforcement". [FN3]

In the Soering vs. United Kingdom case (1989), the European Court declared that in interpreting the European Convention "regard must be had to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms…. Thus, the object and purpose of the Convention as an instrument for the protection of individual human beings require that its provisions be interpreted and applied so as to make its safeguards practical and effective." [FN4]

[FN2] European Commission of Human Rights, Decision as to the Admissibility of Application No. 788/60, Austria vs. Italy case, Yearbook of the European Convention on Human Rights, The Hague, M. Nijhoff, 1961, p. 140.
[FN3] European Court of Human Rights, Ireland vs. United Kingdom case, judgment of 18 January 1978, Series A no. 25, p. 90, paragraph 239.
[FN4] European Court of Human Rights, Soering Case, decision of 26 January 1989, Series A no. 161, paragraph 87.

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46. The optional clause recognizing the contentious jurisdiction of the Inter-American Court is of particular importance to the operation of the system of protection embodied in the American Convention. When a State consents to that clause, it binds itself to the whole of the Convention and is fully committed to guaranteeing the international protection of human rights that the Convention embodies. A State Party may only release itself from the Court's jurisdiction by renouncing the treaty as a whole (cf. supra 40, infra 50). The instrument whereby it recognizes the Court's jurisdiction must, therefore, be weighed in light of the object and purpose of the Convention as a human rights treaty.

47. No analogy can be drawn between the State practice detailed under Article 36(2) of the Statute of the International Court of Justice and acceptance of the optional clause concerning recognition of the binding jurisdiction of this Court, given the particular nature and the object and purpose of the American Convention. The European Court of Human Rights ruled similarly in its judgment on preliminary objections in the Loizidou vs. Turkey case (1995), in connection with optional recognition of the European Court's binding jurisdiction (Article 46 of the European Convention, before Protocol XI to the European Convention entered into force on January 1, 1998). [FN5] The European Court held that the European Convention was a law-making treaty. [FN6]

[FN5] European Court of Human Rights, Case of Loizidou vs. Turkey (Preliminary Objections), judgment of 23 March 1995, Series A no. 310 p. 25, paragraphs 82 and 68.
[FN6] Ibid., p. 25, paragraph 84.

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48. In effect, international settlement of human rights cases (entrusted to tribunals like the Inter-American and European Courts of Human Rights) cannot be compared to the peaceful settlement of international disputes involving purely interstate litigation (entrusted to a tribunal like the International Court of Justice); since, as is widely accepted, the contexts are fundamentally different, States cannot expect to have the same amount of discretion in the former as they have traditionally had in the latter.

49. A unilateral juridical act carried out in the context of purely interstate relations (e.g. recognition, promise, protest, renunciation) and independently self-consummated, can hardly be compared with a unilateral juridical act carried out within the framework of treaty law, such as acceptance of an optional clause recognizing the binding jurisdiction of an international court. That acceptance is determined and shaped by the treaty itself and, in particular, through fulfillment of its object and purpose.

50. A State that recognized the binding jurisdiction of the Inter-American Court under Article 62(1) of the Convention, is thenceforth bound by the Convention as a whole (cf. supra 40 and 46). The goal of preserving the integrity of the treaty obligations is from Article 44(1) of the Vienna Convention, which is based on the principle that the denunciation (or "withdrawal" of recognition of a treaty's mechanism) can only be vis-à-vis the treaty as a whole, unless the treaty provides or the Parties thereto agree otherwise.

51. The American Convention is very clear that denunciation is of "this Convention" (Article 78) as a whole, and not denunciation of or "release" from parts or clauses thereof, since that would undermine the integrity of the whole. Applying the criteria of the Vienna Convention (Article 56(1)), it does not appear to have been the Parties' intention to allow this type of denunciation or release; nor can denunciation or release be inferred from the character of the American Convention as a human rights treaty.

52. Even supposing, for the sake of argument, that "release" was possible –a hypothetical that this Court rejects-, it could not take effect immediately. Article 56(2) of the Vienna Convention stipulates that a State Party must give "not less than 12 months' notice" of its intention to denounce or withdraw from a treaty. This is to protect the interests of the other Parties to the treaty. The international obligation in question, even when undertaken by means of a unilateral declaration, is binding for the State. The latter is thenceforth "legally required to follow a course of conduct consistent with its declaration", and the other States Parties are authorized to demand that that obligation be honored. [FN7]

[FN7] Nuclear Tests case (Australia vs. France), Judgment of 20 December 1974, ICJ Reports 1974, p 268, paragraph 46; Nuclear Tests case (New Zealand vs. France), Judgment of 20 December 1974, ICJ Reports 1974, pp. 473 and 267, paragraphs 49 and 43, respectively.

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53. Despite the fact that it is optional, the declaration of recognition of the contentious jurisdiction of an international tribunal, once made, does not give the State the authority to change its content and scope at will at some later date: "… The right of immediate termination of

declarations with indefinite duration is far from established. It appears from the requirements of good faith that they should be treated, by analogy, according to the law of treaties, which requires a reasonable time for withdrawal from or termination of treaties that contain no provision regarding the duration of their validity." [FN8] Thus, in order for an optional clause to be unilaterally terminated, the pertinent rules of the law of treaties must be applied. Those rules clearly preclude any possibility of a termination or "release" with "immediate effect".

[FN8] Cf. Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Jurisdiction and Admissibility, Judgment of 26 November 1984, ICJ Reports 1984, p. 420, para. 63 and cf. p. 418, paragraphs 59 and 60.

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54. For the foregoing reasons, the Court considers inadmissible Peru's purported withdrawal of the declaration recognizing the contentious jurisdiction of the Court effective immediately, as well as any consequences said withdrawal was intended to have, among them the return of the application, which is irrelevant.

55. Given the foregoing, the Court considers that it must continue to adjudicate the Ivcher Bronstein case in accordance with Article 27 of its Rules of Procedure.

VI. OPERATIVE PARAGRAPHS

56. Now therefore,

THE COURT

DECIDES

unanimously

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 of the declaration recognizing the contentious jurisdiction of the Inter-American Court of Human Rights is inadmissible.

2. To continue to examine and process the instant case.
3. To commission its President, at the appropriate time, to convene the State 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.
4. To notify Peru and the Inter-American Commission on Human Rights of this judgment.

Done in Spanish and English, the Spanish version being authentic, in San José, Costa Rica, on the 24thday of September 1999.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez
Oliver Jackman
Sergio García-Ramírez
Alirio Abreu-Burelli
Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary