# Order of the
# Inter-American Court of Human Rights
# of November 24, 2009*
# Case of Ivcher Bronstein *v.* Peru

## *(Monitoring Compliance with Judgment)*

**Having Seen:**

1. The Judgment of merits, reparations and costs (hereinafter, "the Judgment") issued in the present case by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on February 6, 2001, in which it was provided that the State must:

> [...]
> 7. [...] investigate the facts that generated the violations established in the [...] Judgment to identify and sanction those responsible for such violations [;]
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> 8. [...] facilitate the conditions so that Baruch Ivcher Bronstein may take the steps necessary to recuperate the use and enjoyment of his rights as a majority shareholder of the Latin-American Radio-Diffusion Company S.A., as he was until August 1, 1997, in the terms of the internal legislation. Regarding the compensation related to the dividends and the other payments that he was due as a majority shareholder and employee of said Company, internal law must equally be applied. For all of this, the respective petition must be submitted to the competent national authorities[;]
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> 9. [...] pay to Baruch Ivcher Bronstein an indemnity of US$20,000 (twenty thousand dollars of the United States of America) or its equivalent in Peruvian currency at the moment the payment is made for reasons of moral damage[, and]
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> 10. [...] to pay to Baruch Ivcher Bronstein, as a reimbursement of the costs and expenses generated in the internal jurisdiction and the international jurisdiction, the sum of US$50,000 (fifty thousand dollars of the United States of America) or its equivalent in Peruvian currency at the moment the payment is made.
> [...]

2. The Order of the Inter-American Court of June 1, 2001, regarding the Supervision of Compliance with the Judgment of the present case, as well as the cases of *Castillo Páez, Loayza Tamayo, Castillo Petruzzi and others,* and *the Constitutional Tribunal*, in which the Court decided:

> 1. [t]o take note of the fulfillment on the part of the State of Peru of the Judgments regarding Competence issued in the cases of *The Constitutional Tribunal* and *Ivcher Bronstein* on September 24, 2009, and the advances registered until the date of the issuance of this Order in the fulfillment of the Judgments issued by the Court in the cases of *Castillo Páez, Loayza Tamayo, Castillo Petruzzi and others, Ivcher Bronstein* and *the Constitutional Tribunal*.
> [...]

3. The Judgment of Interpretation of the Judgment of the Merits of February 6, 2001, (*supra* Having Seen 1) issued by the Court on September 4, 2001, through which it decided,

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* Judge Diego García-Sayán, of Peruvian nationality, was excused from hearing the Monitoring Compliance with Judgment of the present case, in accordance with Articles 19.2 of the Statute of Article 20 of the Rules of the Court.

*inter alia*:

> […]
> 2. [t]hat in order to determine the indemnity that may correspond to the pecuniary damage caused to Mr. Ivcher, attention must be paid to the result coming from the terms of the Peruvian legislation, formulating the respective claims before the competent national authorities in order to resolve them.

4. The Order of the Inter-American Court of September 21, 2005, regarding the Supervision of Compliance of the Judgment in the present case, in which it declared:

> 1. [t]hat it will keep open the procedure of supervision of compliance of the points pending fulfillment in the present case, namely:
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> a) "[…] to investigate the facts that generated the violations established in the […] Judgment to identify and sanction those responsible for such violations," (seventh operative paragraph of the Judgment of February 6, 2001);
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> b) "[…] to facilitate the conditions so that Baruch Ivcher Bronstein may take the steps necessary to recuperate the use and enjoyment of his rights as a majority shareholder of the Latin-American Radio-Diffusion Company S.A., as he was until August 1, 1997, in the terms of the internal legislation. The compensation related to the dividends and the other payments that he was due as a majority shareholder and employee of said Company, internal law must equally be applied. For all of this, the respective request must be submitted to the competent national authorities," (eighth operative paragraph of the Judgment of February 6, 2001);
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> c) "[…] to pay Baruch Ivcher Bronstein an indemnity of US$20,000 (twenty thousand dollars of the United States of America) or its equivalent in Peruvian currency at the moment the payment is made for moral damages," (ninth operative paragraph of the Judgment of February 6, 2001)[,] and
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> d) "[…] to pay Baruch Ivcher Bronstein, as a reimbursement of costs and expenses generated in the internal jurisdiction and in the international jurisdiction, the sum of US$50,000 (fifty thousand dollars of the United States of America) or its equivalent in Peruvian currency at the moment the payment is made." (tenth operative paragraph of the Judgment of February 6, 2001).
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> […]

5. The Order of the President of the Court (hereinafter "the President") of February 27, 2009, through which, in the exercise of the powers of the Court for the supervision of compliance with its decisions, and in consultation with the other Judges of the Tribunal, decided to call a meeting with the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission"), the State of Peru (hereinafter "the State" or "Peru") and the representatives of the victim (hereinafter "the representatives") to a private hearing with the goal that the Tribunal obtain information from the State regarding the fulfillment of the Judgments issued in this case, and to hear the observations of the Commission and the representatives in this respect.

6. The private hearing was held during the XXXVII Extraordinary Period of Sessions of the Inter-American Court in the city of Santo Domingo, Dominican Republic, at the Supreme Court of Justice on March 31, 2009.[1] During the course of said private hearing, the State,

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[1] The following people appeared at the hearing: Mr. Juan Pablo Albán Alencastro, Specialist of the Executive Secretary; for the representatives, Mr. Baruch Ivcher Bronstein, José Carlos Ugaz Sánchez-Moreno and Gustavo Raúl Gómez Morante; and for the State, Ms. Delia Muñoz Muñoz, Agent and Public Supranational Specialized Attorney, and Mr. Antenor José Escalante González, Attorney of the National Superintendence of Tax Administration – SUNAT and Colón Heraldo Cruz Negrón, Commissioner of National Contributing Principals of SUNAT.

the Commission, and the representatives referred to the points pending of compliance in the present case.

7. The communications of February 9, August 14, September 27, and December 21 of 2006; August 31, October 5, and November 6 of 2007; September 23 and October 1 of 2008, and April 29, June 10, 17, and 29, July 14, August 24, September 18 and November 3 of 2009, through which the State referred to its compliance with the Judgment.

8. The briefs of October 7, November 14 and December 7 of 2005; March 17, April 3, May 4 and 30, June 27, September 26 and October 10 of 2006; January 19 and November 6 and 15 of 2007; January 23 and 30, April 18, October 17, November 18 and December 2 of 2008, and April 23, June 17, 19 and 30, August 6, September 9 and 14 and November 11 of 2009, through which Mr. Baruch Ivcher Bronstein and his representatives presented their observations in relation to the state of compliance with the Judgment.

9. The communications of May 15, July 10 and November 2 of 2006; February 6 and November 28 of 2007; December 31 of 2008 and June 30 and September 14 of 2009, through which the Inter-American Commission presented its observations in relation to the state of compliance with the Judgment.

10. The briefs of December 3 and 18 of 2007 presented by the State, the communications of January 23 and 30 of January 2008 sent by Mr. Ivcher Bronstein and the brief of February 22, 2008, submitted by the Inter-American Commission, all of which refer to an article published in the magazine "Caretas," on November 22, 2007, in which "the nationality of Mr. Baruch Ivcher Bronstein had been p[ut] into question." On April 23, 2009, the representatives submitted documentation related to this point, as part of the appendixes of the complementary pleadings to those presented orally during the private hearing (*supra* Having Seen 6).

## Considering:

1. That the supervision of compliance with its decisions is an inherent capability of the jurisdictional functions of the Court.

2. That Peru is a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since July 28, 1978, and recognized the contentious jurisdiction of the Court on January 21, 1981.

3. That Article 68(1) of the American Convention stipulates that "[t]he State Parties to the Convention promise to fulfill the decisions of the Court in any case in which they are a party." Therefore, the States must assure the implementation at the domestic level of that provided by the Tribunal in its decisions.[2]

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[2] *Cf. Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, paragraph 131; *Caracazo v. Venezuela. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of September 23, 2009, considering third, and *Cantoral Huamani and Garcia Santa Cruz v. Peru. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of September 21, 2009, considering third.

4. That in virtue of the definite and un-appealable character of the judgments of the Court, according to that established in Article 67 of the American Convention, the decisions of the Court must be fulfilled by the State within the time frame established for such purpose and in a complete manner.

5. That the obligation to comply with the Court's judgments conforms to a basic principle of the law on the international responsibility of States, as supported by international case law, under which States are required to comply with their international treaty obligations in good faith *(pacta sunt servanda)* and, as previously held by the Court and provided for in Article 27 of the Vienna Convention on the Law of Treaties of 1969, States cannot invoke their municipal laws to escape their pre-established international responsibility.[3] The State Parties' obligations under the Convention bind all State branches and organs.[4]

6. That the State Parties to the Convention must guarantee compliance with the provisions thereof and their effects (*effet utile*) at the domestic-law level. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.*, those addressing the protected rights), but also in connection with their procedural provisions, such as those concerning compliance with the Court's decisions. These obligations are to be interpreted and enforced in a manner such that the protected guarantee is truly practical and effective, considering the special nature of human rights treaties.[5]

7. That the State parties to the Convention that have accepted the Court's adjudicatory jurisdiction have a duty to honor the obligations ordered by the Court. Peru, therefore, must take all measures necessary to effectively comply with that provided by the Court in the Judgments of February 6 and September 4, 2001. This obligation includes the State's duty to report to the Court on the measures adopted to comply with what the Court ordered in that Judgment. This obligation of the State to tell the Court how it is complying with what the Court ordered is, therefore, essential in order to assess the status of compliance.[6]

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3 *Cf. International Responsibility for the Expedition and Application of Laws Violating the Convention (Articles 1 and 2 of the American Convention on Human Rights*). Consultative Opinion OC-14/94 of December 9, 1994. Series A, No. 14, paragraph 35; *Caracazo case, supra* note 2, considering fifth, and *Cantoral Haumani Garcia Santa Cruz case, supra* note 2, considering fifth.

4 *Cf. Castillo Petruzzi et al. v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 1999. Series C No. 59, considering third; *Caracazo case, supra* note 2, considering fifth, and *Cantoral Huamani and Garcia Santa Cruz case, supra* note 2, considering fifth.

5 *Cf. Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, paragraph 37; *Caracazo case, supra* note 2, considering sixth, *and Cantoral Huamani and Garcia Santa Cruz case, supra* note 2, considering sixth.

6 *Cf. "Five Pensioners" v. Peru. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 17, 2004, considering fifth; *Cantoral Huamani Garcia Santa Cruz, supra* note 2, considering seventh, and *Palamara Iribarne v. Chile, Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of September 21, 2009, considering seventh.

8. That regarding the duty to investigate the facts that generated the violations established in the Judgment to identify and sanction those responsible for the same, the State presented information in relation to the following processes and complaints:

a) Case file No. 1360-2003, against Victor Hugo Huamán del Solar, responsible for signing the order that removed the Peruvian nationality from Mr. Ivcher, for the offense against the Public Administration for the crime committed against it and the State. The Superior Criminal Court of Lima archived the process by declaring well-founded the exception of the statute of limitations invoked by the accused, revoking the judgment of the Eleventh Specialized Criminal Court in Lima on November 30, 2004, which had sentenced him to three years of imprisonment;

b) Case file No. 29-2004 against Vladimiro Montesinos Torres and others for offenses against the Public Administration and freedom of expression for the crime committed against the State and against Mr. Ivcher Bronstein. The judgment of the Fourth Special Criminal Court of the Superior Court of Justice of Lima of February 5, 2009, [that] "condemn[ed] him […] as the author of the offense against the Public Administration – Active Aggravated Bribery […] against the State, and as such, the court sentence[ed] him to seven years of imprisonment […] and disqualified him from obtaining a term of office, positions, jobs, or commissions of a public character, […] fix[ing] six thousand soles […] for reparation." In agreement with the Official Act No. 147-2009-DDHH/PJ of March 25, 2009, the case file referred to reported an "Appeal of Nullity brought by the defendant, Case File No. 939-2009, that […] has been before the Prosecutor's Office since March 19, 2009;"

c) Case file No. 16-2004 against Guido Guevara Guerra and Raúl Talledo Valdivieso for the offense of Illicit Association to Commit a Criminal Offense against the State, the violation of freedom of expression against Baruch Ivcher Bronstein, as well as the abuse of authority and slanderous complaints committed against the State. Through Resolution No. 05-2008 of February 15, 2008, the Second Special Criminal Court of the Supreme Court of Justice "declar[ed] well-founded […] the [e]xception of *res judicata* formulat[ed] [by Mr. Talledo Valdivieso – Member Instructor of the Supreme Council of Military Justice during the year 1997-] in the instruction that is followed […] by the offense of Illicit Association to Commit a Criminal Offense against the State[, and also declared] well-founded the [e]xception of statute of limitations [and,] as a consequence[,] extinguished the criminal action with regard to the offense of the Violation of Freedom of Expression committed against Baruch Ivcher Bronstein[, as well as] Abuse of Authority and Slanderous Complaints committed against the State[. Finally, the Court] confirm[ed] the judgment [that absolved Mr. Talledo Valdivieso] of the prosecuting accusation for Lack of Fulfillment of Duties of Function committed against the State [and] provid[ed] for the annulment of [his] criminal record." In this respect, the State emphasized that in this case "the Judge […] declar[ed] appropriate the means of protection[,] act[ing] in accordance with the criteria of the Inter-American System of [Human] Rights that permits the application of the statute of limitations as a means of defense." Regarding Mr. Guevara Guerra, the State informed that it has reserved its judgment "until captured;"

d) Order No. 394 of April 19, 2007, through which it was resolved: 1) "to [a]rchive permanently the investigation begun on its own initiative against Pedro Adrian Infantes Mandujano, the ex-Member of the Superior Court of Lima, for the

presumed commission of the offenses of abuse of authority, breach of duty, and illicit association to commit a criminal offense, which had extinguished the criminal action by the death of the accused," and 2) "there is no place to issue a declaration regarding the investigation begun on its own initiative against Sixto Muñoz Sarmiento and Jorge Eduardo Gonzáles Campos, ex-Superior Members of the Superior Court of Lima, for the presumed commission of the offenses of abuse of authority and breach of duty, which had operated in the time frame of the statute of limitations." In the eighth operative paragraph of said order, it indicated that the material facts of the investigation in this process against Percy Escobar Lino, ex-Judge of the First Corporative Transitory Specialization Court in Public Law, include those that also were the object of another instruction, the reason for which "it was resolved to permanently archive the […] investigation in the issue regarding the charges formulated against [said] person being investigated." The recourse of appeal against said order was declared unfounded by Order No. 847-2007-MP-FN on July 24, 2007, "confirming the challenged decision in all its holdings;"

e) Case file No. 150-2002, "charge against the ex-Prosecutor of the Nation Blanca Nélida Colán Maguiño and the ex-Supreme Provisional Members Carlos Saponara Milligan and Ismael Benigno Paredes Losano for the offenses of Illicit Association to Commit a Criminal Offense, Abuse of Authority, Lack of Fulfillment of the Functions and Corruption of an Employee, committed against the State, [that] are found in the Provisional Archive due to the pre-existence of a criminal process against Blanca N[é]lida Col[á]n Maguiño for the offense of Illicit Association to Commit a Criminal Offense […] against the Special Criminal Court of the Supreme Court of the Republic." With relation to the others investigated, it was provided "to obtain certified copies of the Authoritative Agreement of the Board of Supreme Prosecutors to the merit of which [the] Supreme Prosecutor [of Contentious Administration] can resolve the preliminary investigation of the charges presented against [said] Supreme Provisional Prosecutors;"

f) Case files Numbers 3-2003 and 4-2003, special processes of efficient collaboration, corresponding to Mr. Winter Zuzunaga, minority shareholders of the Latin-American Radio-Diffusion Company S.A. (hereinafter, "CLRS"), that "currently are in processing before the Sixth Special Criminal Court […], due to the fact that it was so provided by the Second Special Criminal Court, and [that] given [its] nature […], the information of the same is reserved," and

g) "together with the charges formulated [that, in agreement with the State], are found in the phase of prosecutorial investigation or have been archived."[7]

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[7] A) Complaint 321-01 before the 7th Criminal Provincial of Lima against "[t]hose that are responsible," for the offense against the Public Administration committed against the State and Baruch Ivcher Bronstein, that was permanently closed on January 15, 2002, taking as true the respective order because no recourse of complaint was brought; b) Complaint 409-28 before the 6th Provincial Prosecutor's Office of Lima against Marina Estela Villar Vega de Tipiani, for the offense against the public faith – forgery, committed against Baruch Ivcher Bronstein, that was permanently closed on July 17, 1998. On August 8, 2002, such resolution was confirmed; c) Complaint 103-03 before the 6th Provincial Prosecutor's Office of Lima against Jorge Chávez Lobatón for the offense against the public faith and other committed against Baruch Ivcher, that was permanently closed on June 14, 2004, taking as true the respective order as no recourse of complaint was brought; d) Complaint 430-04 before the 49th Criminal Provincial of Lima against Guillermo Paredes Vaudenay, Daniel Flores Bermejo *et al.*, for the offense against the public tranquility – illicit association to commit a criminal offense, against the jurisdiction function – false accusations *et al.*, committed against the State and Baruch Ivcher Bronstein, in which the permanent closing of actions was provided against Melchor Erazo Ricapa, Dante Nicanor Palacios Guerrero, Guillermo Enrique Paredes Vaudenay and Francisco Daniel Bermejo Flores. On July 12, 2005, a recourse of complaint was presented and elevated to accusation at the 7th Superior Criminal Prosecutor's Office of Lima; e) Complaint 606-1996 before the

9. That with regard to the processes and accusations referred to by the State, Mr. Ivcher indicated the following:

a) with relation to the process No. 1360-2003, regarding the removal of his nationality, which he described as "surprising" the fact that the Provincial Criminal Prosecutor of Lima "[had] declar[ed] well-founded the statute of limitations invoked by Victor Hugo Huamán del Solar." According to Mr. Ivcher, "the statute of limitations of this criminal process had been due to […] constant delays and [to] the possibility [of] that [Mr. Huamán del Solar] was absent from the country while it was processed." "In sum, Víctor Hugo Huamán Del Solar had benefitted from the passage of time in his favor without receiving a sentence for having signed the order that removed the Peruvian nationality [from Baruch Ivcher];"

b) regarding the process No 29-2004 against Vladimiro Montesinos and others, Mr. Ivcher pointed out that he was obligated to bring the corresponding charge on May 28, 2002, "due to the inaction of the Peruvian State, that [was] the obligated party [to do it], according to that resolved by the Judgment [of the Court]." At the same time, the evidence stands out that sustained the prosecutorial charge for the offenses of active bribery "that were contributed by [h]im […], without the Peruvian State […] which ha[d] been capabl[e] of driving, compiling, gathering, organizing, and continuing with the charges and investigations that the Inter-American Court […] had ordered it to carry out;"

c) in the process No. 16-2004 against Guido Guevara Guerra and Raúl Talledo Valdivieso, the lack of fulfillment with the obligation concerning the way that "there is no condemnatory judgment for the persons that violated the rights of Mr. Ivcher;"

d) "today [Mr. Percy Escobar Lino] is in prison, precisely for being connected with the criminal network of Montesinos and Fujimori;"

e) "the State has not given information regarding the legal situation of the ex-Specialized Prosecutor of Tax Offenses and Customs Hilda Valladares Alarcón, who was in charge of accusing [Mr. Ivcher] for the inexistent offenses during [his] persecution and that previously, with the fall of the [r]egime of Fujimori and Montesinos, avoided for a long time to realize the punishable facts that were committed while persecuting [him]," and

f) concerning the "agreements of efficient collaboration" endorsed between the Ad-Hoc Government Attorney's Office for the cases of corruption and the brothers Winter Zuzunaga, who informed that "they recognized their complicity and accomplice parts in the offenses of embezzlement and illicit association to commit a criminal offense" in order to benefit themselves of the reduction of their sentence to

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37th Criminal Provincial Prosecutor's Office of Lima against Einhorn Hain Naftali, for the offense against the jurisdiction function – false accusations committed against Baruch Ivcher, that was formalized on December 5, 1996, and f) Complaint against Sergio Carlos Tapia Tapia committed against Baruch Ivcher Bronstein, that was derived through Official Act No. . 53-2003-D-MUPFPEDCF-MP-FN to the Second Specialized Provincial Prosecutor's Office for offenses of corruption of the employees, "which at the same time filed it as accusation No. 14-2003 and that accumulated to the accusation 24-2002 that was formalized on July 14, 2002, and that previously[,] on January 31, 2005, formalized an [a]mplification of the complaint before the Third Special Criminal Court."

> three years of prison and the payment of a civil reparation of US$4,073,407 in the process that followed for "having […] received money from Vladimiro Montesinos for making an increase of capital in [the business], reducing [the] participation [of Mr. Ivcher] and deliver[ing] the control of the editorial line to the Peruvian State." Regarding this in particular, Mr. Ivcher provided that it is "absolutely suspicious that the Ad-Hoc Government Attorney's Office endorsed […] an agreement in that only the devolution of money […] obtained [by] Winter of […] Vladimiro Montesinos was accepted, without any type of additional compensation to the favor of the Peruvian State, and that in the execution of this agreement, the Ad-Hoc Government Attorney's Office had only accepted the payment of US$120,000 on the part of each one of the [brothers] Winter Zuzunaga, when the total of the reparation is more than US$4 million dollars." Therefore, Mr. Ivcher concluded that it was necessary that the State inform about the terms of this agreement.

10. That the Commission concluded that "there are no […] definitive results in the process of fulfillment of [this] holding of the Sentence" and that "the delay in the processing of the trials generates the justified fear to fulfill the time frames in order to declare the statute of limitations of the same." Concretely, the Commission lamented the declaration of the statute of limitations in one of the processes "[because] this Tribunal issued an express order to carry forth this investigation; and […] because this statute of limitations had operated after eight years that the State had knowledge of the order given by this Court. Therefore, [that] the State delayed the process of administration of justice […] until [its] total uselessness." Without prejudice, the Commission indicated that "the hope remain[ed] for information regarding concrete results in the criminal processes that were carried forth in the internal scope."

11. That at the same time, the Commission made note that the State "did not inform if the persons that welcomed the law of efficient collaboration had paid the civil reparation, or questioned Mr. Ivcher." Therefore, the Commission urged the Court to request from the Peruvian State "detailed information both in relation to the irregularities pointed out respecting the agreement of efficient collaboration between the State and the [brothers] Winter Zuzuana, […] and of the concrete acts that had been developed in relation [to the fulfillment of this obligation.]

12. That this Court deems it necessary to reiterate what it has consistently stated in its past decisions about the fact that, pursuant to the obligation enshrined in Article 1(1) of the American Convention, the State has the duty to prevent and fight impunity, which has been defined by the Court as "the overall failure to investigate, search, arrest, prosecute and convict those responsible for violations of the rights protected by the American Convention.[8] In this regard, the Court has held that the State "has the obligation to combat this situation by all legal means available, as impunity fosters the chronic repetition of human rights violations and renders victims and their next of kin completely defenseless."[9]

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8 *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, paragraph 173; *Bamaca Velazquez v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of January 27, 2009, considering twenty-fourth, and *Tiu Tojin v. Guatemala. Merits, Reparation and Costs*. Judgment of November 26, 2008. Series C No. 190, paragraph 69.

9 *Cf. Ituango Massacres v. Colombia. Preliminary Exception, Merits, Reparations and Costs*. Judgment of July 1, 2006. Series C No. 148, paragraph 299; *Bamaca Velasquez case, supra* note 8, considering twenty-fourth, and *Vargas Areco v. Paraguay. Merits, Reparations and Costs.* Judgment of September 26, 2006. Series C No. 155, paragraph 81.

This obligation implies the duty of the State Parties to the Convention to organize the entire government apparatus and, in general, all structures through which public power is exercised, in such a manner as to be capable of legally ensuring the free and full exercise of human rights.[10]

13. That the obligation to investigate may not be performed rashly; rather, it must be conducted in accordance with the standards set by international laws and precedents, according to which investigations should be prompt, thorough, impartial and independent.[11]

14. That the State has contributed information regarding the processes and accusations in progress to investigate the facts that generated the violations established in the Judgments and of this manner to identify and, in its case, sanction those responsible for the same. At the same time, the Court has taken note of the information referred to in a special process, a so-called "agreement of efficient collaboration," signed between the State and two of the persons involved in the violations declared in the Judgment, whose objective also would be oriented toward the determination of responsibilities and reparations linked with this case.

15. That, nevertheless, this Tribunal observes that more than 8 years have passed since it issued its Judgments and that the State has not clarified the totality of the facts and determined the corresponding responsibilities for the violations declared in the present case, a situation that maintains impunity and has generated the corresponding plea and application of the exception of statute of limitations regarding the three concrete criminal actions (*supra* Considering 8.a, 8.c and 8.d). In the specific case of the process No. 1360-2003, regarding Mr. Huamán del Solar, the representatives alleged that the admission of the exception of statute of limitations resulted as "surprising," in the manner that it had been generated by the delays in the fulfillment of the time frames promoted by the accused himself (*supra* Considering 9.c).

16. The Court considers it pertinent to reiterate its consistent case law in this regard and remind the State that "in criminal matters, the statute of limitations determines the extinction of the punitive intention owing to the passage of time and, in general, limits the punitive power of the State to prosecute the unlawful conduct and punish the perpetrators."[12] Therefore, the statute of limitations, in certain cases, permits the accused to oppose a criminal prosecution indefinitely or permanently, operating this way as punishment to the organs in charge of the criminal prosecution facing the delay that may fall in the execution of their duties.

17. That if then the statute of limitations is a guarantee of due process that must be

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10 *Cf. Velasquez Rodriguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, paragraph 166; *Bamaca Velasquez, supra* note 8, considering twenty-fourth, and *Tiu Tojin, supra* note 8, paragraph 69.

11 *Cf. Bamaca Velasquez, supra* note 8, considering thirtieth.

12 *Cf. Barrios Altos v. Peru. Merits.* Judgment of March 14, 2001. Series C No. 75, paragraph 41; *Gómez Paquiyauri Brothers v. Peru. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of May 3, 2008, considering thirteenth, and *Albán Cornejo et al. v. Ecuador. Merits, Reparation and Cost.* Judgment of November 22, 2007. Series C No. 171, paragraph 111.

duly observed by the judge for any and all people accused of an offense,[13] the invocation and application of the same is unacceptable when it has been clearly proven that the passage of time has been determined by procedural actions or omissions directed, with bad faith or negligence, to provide for or permit impunity. In this respect, the Court has pointed out many times in other opportunities, in the sense that "[t]he right to effective judicial protection therefore requires that the judges direct the process in such a way that undue delays and hindrances do not lead to impunity, thus frustrating adequate and due protection of human rights."[14] At the same time, the Tribunal has pointed out that "when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention; this forces them to see that all effects of the provisions embodied in the Convention are not adversely affected."[15] This means that the guarantee of the statute of limitations transfers to the rights of the victims when situations are presented that obstruct the obligation to identify, judge, and sanction those responsible for an offense.

18. That in its prior jurisprudence this Court has pointed out, referring to the principle of *ne bis in idem*, that this is not applicable when: i) the actions of the tribunal that heard the case and decided to stay the case or absolve the one responsible of a violation of human rights or international law obeyed the purpose of removing the accused of his/her criminal responsibility; ii) the procedure was not instructed independently or impartially in accordance with the due procedural guarantees, or iii) there was no real intention of submitting the one responsible to the action of justice. A pronounced sentence of the indicated circumstances produces "apparent" or "fraudulent" *res judicata*.[16] Also, before this Tribunal eventually can discuss the authority of *res judicata* of a decision when rights of individuals protected by the Convention are affected and it demonstrates that a reason for questioning *res judicata* exists.[17] Precisely in another case against Peru, this Tribunal declared that "[i]f the proceedings upon which the judgment rests have serious defects that strip them of the efficacy they must have under normal circumstances, then the judgment will not stand."[18]

19. That the information contributed by the parties permits the Tribunal to determine only that in the three processes referred to, the statute of limitations of the criminal actions were declared and that in one of those the exception of *res judicata* was also declared well-

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13 *Cf. Barrios Altos case, supra* note 12, paragraph 41; *Gómez Paquiyauri Brothers case, supra* note 12, considering thirteenth, *Albán Cornejo et al. case, supra* note 12, paragrah. 111

14 *Cf. Bulacio v. Argentina. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of November 26, 2008, considering eighteenth.

15 *Cf. Almonacid Arellano et al. v. Chile. Preliminary Exception, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, paragraph 124; *Bulacio case, supra* note 14, considering eighteenth, y *Boyce et al. v. Barbados. Preliminary Exception, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 169, paragraph 78.

16 *Cf. Carpio Nicolle et al. v. Guatemala. Merits, Reparations and Costs.* Judgment of November 22, 2004. Series C No. 117, paragraph 131*; La Cantuta v. Peru. Merits, Reparations and Costs.* Judgment of November 29, 2006. Series C No. 162, paragraph 153, and *Almonacid Arellano et al. case, supra* note 15, paragraph 154.

17 *Cf. Genie Lacayo v. Nicaragua. Request for Revision of Sentence, Reparations and Costs.* Order of the Court of September 13, 1997. Series C No. 45, paragraphs 10 through 12; *La Cantuta case, supra* note 16*,* paragraph 153, y *Almonacid Arellano et al. case, supra* note 15*,* paragraph 154.

18 *Cf. Castillo Petruzzi et al. v. Peru. Merits, Reparations and Costs.* Judgment of May 30, 1999. Series C No. 52, paragraph 219.

founded (*supra* Considering 8.a, 8.c, 8.d, 9.a, 9.c, and 10). Nevertheless, the elements of proof about the reasons for which the time frame of statute of limitations ran in the three processes referred to is not recorded, without arriving at an observation of the concrete results of the same. Also, the Tribunal does not count upon elements to determine if the processes are barred for reason of directed procedural actions or omissions with clear bad faith or negligence that provide for or permit impunity. Therefore, the Court requires that sufficient information be presented to determine if, in fulfillment of that ordered in the Judgment, the judges directed the respective processes to avoid undue delays or hindrances that lead to impunity, frustrating in this way the due judicial protection of human rights (*supra* Considering 17). Also, the Tribunal requires information that permits it to valuate if reasons exist, like previous signals (*supra* Considering 18), to question the declaration of "*res judicata*" in the process against Mr. Talledo Valdivieso.

20. That, by reason of that shown, it is essential that the State present the information ordered, complete and updated regarding the causes that originated the opposition and application of the time frame of the statute of limitations in the three criminal actions referred to, sending, if it is the case, copies to the relevant parties of the respective case files. Also, the Tribunal considers it necessary that the State offer ordered, detailed, complete and up-dated information about the procedures carried out and the advance of each one of the processes concerned with the present case, including information about the so-called "efficient collaboration agreement."

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21. That regarding the duty of facilitating the conditions so that Baruch Ivcher Bronstein may take the steps necessary to recuperate the use and enjoyment of his rights as a majority shareholders of CLRSA, as he was until August 1, 1997, and of the reimbursement related to the dividends and other payments that were accorded to him as majority shareholder and employee of said company, both in the terms of internal legislation, the State and Mr. Ivcher informed that in the fulfillment of the judgment of the Inter-American Court "the Specialized Court of Public Law of the Superior Court of Justice of Lima issued the order of March 30, 2001, by means [of] which[:] (a) declared null the judicial resolutions that illegally granted to the minority shareholders the administration of [the company]; (b) declared null all the acts made by said shareholders for the protection of such orders [between September 5, 1997 until March 30, 2001, inclusive] and, (c) ordered the restoration of the legal activity of [the company] on September 5, 1997, and as a consequence, the restoration of the administrative structure that it had […] before the violation of the fundamental rights of [Mr.] Ivcher." Beginning then, through the brief of July 23, 2003, Mr. Ivcher brought an arbitration demand against the Ministry of Justice of the Peruvian State, which protection is provided for in Law 27775, the Peruvian norm that regulates the procedure of execution of judgments issued by supranational tribunals.

22. That the petition of Mr. Ivcher included three principal claims and one accessory claim, meaning: 1) to order and declare that the State pay S/. 34'408,721.72 for profits and dividends not received, S/. 62'266,016.55 for the loss of value of the company and US$1,506.068.57 for remuneration not received; 2) to order and declare that the State pay US$ 3'002,147.84 and S/. 9'544,313.00 for the reason of pecuniary and non-pecuniary damages; 3) to order and declare that the State pay US$ 5'891,343.78 and S/. 16'443,801.27 for the deprivation of the use and enjoyment of their goods, and 4) to order the State to take charge of the inherent expenses of arbitration. On the date of July 4,

2005, the Arbitral Tribunal declared well-founded in part the first payment and unfounded the three remaining payments, including the accessory claim. It therefore results that the award concluded that "[o]f of two aspects incorporated in the Operative Paragraph [Eight] of the Judgment [of the Inter-American Court], the Arbitral Tribunal consider[ed] that the first already had been fulfilled, [so that] on the date the petition was brought, Mr. Ivcher had already recuperated his rights as majority shareholder of [the] CLRSA, a situation that has not varied to this date."

23. That in the fulfillment of the award referred to, the State emphasized that on December 22, 2005, it paid to Mr. Ivcher the sum of S/. 20'378,402.22 (twenty million, three hundred seventy eight thousand, four hundred two and twenty-two cents of new soles), which represents: S/. 12'131,743.00 for dividends left unpaid, US$ 931,021.00 for fees left unpaid, and S/. 5,044,878.00 for the loss of value of the company. The State highlighted that it did not cancel the interests generated for said amounts after the arbitral award, so that "[o]n the date of December 20, 2005, Mr. Baruch Ivcher Bronstein communicated to the Vice[m]inister of Justice that […] renounce[ed] to pay [them]," so that the Peruvian State "cancel[ed] the total of that ordered […] before December 30, 2005."

24. That on the other hand, the State pointed out that "in none of the operative paragraphs [of the Judgments issued by the Court in this case] does there exist any regulation regarding the tax material, nor an authorization given to [CRLSA] to not pay taxes to the [p]eruvian State." Therefore, the State alleged that the request of Mr. Ivcher in the sense that "he orders the Peruvian State to abstain from charging the taxes not only of the per[i]od of 1997-2000 but also the per[i]od of 2001-2003 referred to, […] configures an abuse of the right to the protection conferred [on him]." It fits to emphasize that if Mr. Ivcher also requested the arbitral award "[that] orders the Peruvian State to assume the costs of the tax debt generated by [the company] through the illegal administration of [the brothers Winter]," the Arbitral Tribunal declared "unfounded" said payment under three arguments: 1) "the tax debt [generated by the Winter Administration] did not directly affect the wealth of the plaintiff, nor of the company of which he was a shareholder, that did not participate in this process and for which achievement cannot attribute the effects of this Award;" 2) "[i]f the intention of Mr. Ivcher is to find a connection between the precarious tax situation of CLRSA and his personal wealth, which in reality would correspond to allege the loss of the value of his business," that had been raised in this award, it would imply a duplicity of claims, and 3) "[t]he anti-legal acts attributed to the State did not directly cause […] that [the] tax situation of CLRSA had deteriorated before the Prosecutor, but also Mr. Ivcher pointed out [in his petition] this claim originated in the non-payment accumulated of the tax debt generated by the previous administration." Notwithstanding, the Arbitral Tribunal "consider[ed] it necessary to refer to the possibility offered by Mr. Ivcher so that the Peruvian State assume the responsibility for the tax obligations previously indicated [through] a compensation," highlighting that '[i]f [said] compensation to which Mr. Ivcher refers can operate or not among the reciprocal debts and credits that CLRSA ha[d] with the Tax Administration, this must be determined in a distinct instance from [said] arbitration." In this sense, the State pointed out that the resolution of the arbitral process "[c]onstituted […] *res judicata* and [hence] rejects the intention to reopen said payment [about tax material] for the route of supervision of compliance with the [j]udgment[s] of the [Inter-American] Court," "be[ing] unaware of the tax obligations of […] legal persons that have been part of the process […], or that correspond[ed] to previous or subsequent time periods to the administration of the [brothers] Winter." In agreement with the State, "the [Arbitral] Tribunal accept[ed] the points [raised by Mr. Ivcher], after having analyz[ed] them and not finding a causal nexus, reject[ed his] tax

protection." Regarding the potential compensation referred to in the award, the State pointed out that "said declaration only is referring to the eventual claims that the [CLRSA] may make regarding the obligations that it believes it has the right to compensation for; without the importance that any material exists that removes it from the [judgments issued by the Inter-American Court] that are pending fulfillment."

25. That also the State pointed out that, notwithstanding the result of the arbitral award, Mr. Ivcher has used the Judicial Power through the processes of constitutional protection. Concretely, the State informed of the judgment of the Constitutional Tribunal of Peru on May 20, 2008, that established that" the [Inter-American] Court nor the judgment of merits nor the interpretative judgment have referred in an explicit manner to the tax debt that the [company] maintains with the Peruvian State […]. Therefore, despite any other previous consideration, it may be said […] that the process of protection is not the way to execute the judgments of the Inter-American Court." In the same way, the Constitutional Tribunal concluded that the Arbitral Award "constitutes the adequate way […] to effect the fulfillment of its [J]udgment of February 6, 2001. In this way, the result of such occasion, that that since it was not appealed at the right opportunity, it has the effect of *res judicata*, conforming to Article 50 of the Law of Arbitration (Law No. 26572) and cannot be material for a new analysis at this instance." Also, said Tribunal pointed out that "it is not the first try of the company referred to neglect its tax obligations with the tax authority, seeking protection on this occasion in a judgment of the Inter-American Court […] that declar[ed] in favor of the personal rights of Mr. Ivcher, not for all the members that made up the [CLRSA], to the favor that now he requests the condemnation of the tax debt." Therefore, the State affirmed that the Constitutional Tribunal "also enter[ed] into the subject matter of the merits of the obligation of not charging taxes."

26. That also, the State made note that "the company […] requested from the Tax Administration the return of the amounts paid to the Tax Authority during the administration of the [brothers] Winter, corresponding to the Income Tax for 1995 to 1998. For said [request], the Tax Administration began the verification of the fulfillment of the tax obligations of the periods that [were] the object of the request for the return [and] determined the lack of fulfillment of the tax obligations on the part of the company." Also, in agreement with the State, "[t]he conduct of the SUNAT toward said company has been uniform regardless of the constitution of its shareholders, [so that] including the period between 1997 and 2000, the corresponding collections were executed of 15 million soles, an amount that is included in the request for protection that [Mr.] Ivcher made to the […] Court." In this way, the SUNAT "did not make any distinction regarding the company, [so that] independently of who were the members, managers, directors, […] administration, what it does, what it verifies, is simply […] if there is a tax to pay or not." For the State "must keep in mind that the taxes operate for the generation by economic events and do not correspond to the Administration to determine if it comes from illicit operations or not […]. Consequently, the considerations of fact alleged (actions of usurpation) do not have a connection with the requirements of the tax debt of [the CLRSA]." Also, the State highlighted that "Mr. Baruch Ivcher Bronstein is a third party near to the legal tax relationship that exists between the SUNAT and the [CLRSA]."

27. That the State also indicated that "the affirmations offered in the oral pleading [of Mr. Ivcher] about the terrible situation that crossed the [CLRSA], as a consequence of the collection of the taxes that the tax authority-SUNAT came demanding," are not true. In this respect, the State referred to the acquisitions of stocks of the company on the part of Mr. Ivcher Bronstein and his wife, for the hiring of new artists and the launching of new

television programs. Finally, the State pointed out that it neither "adjusts the facts that occurred" "the central idea that [Mr.] Ivcher outlines [in the sense that] the company […] always pa[id its debts] to the tax authority, and [that], therefore these debts exist only beginning from the unfortunate intervention of the Winter administration." Also, the State informed that in the year 1994 "the amount of [the] tax debt of [the CLRSA] was more than […] $7 million dollars" and that, in this context, said company received the "exchange of the tax debt for public services in favor of the State and/[or] organs of the State, which were appli[ed] between 1994 and 1995."

28. That Mr. Ivcher did not question having received a payment made in his favor by the State for the dividends and fees let unpaid and for the loss of value of the company, in accordance with that resolved by the Arbitral Tribunal (*supra* Considering 23).

29. That Mr. Ivcher Bronstein pointed out that "[t]he Peruvian State has pursued, through distinct ways, to elude the fulfillment of the judgment of merits that constitutes 'RES JUDICATA', to expect to obligate[him] for the payment of taxes generated by the Peruvian State itself, as a consequence of the removal of [his] nationality." Also, regarding that resolved in the arbitral award, the representatives highlighted that the present case does not deal with "the formality [and difference between a] legal entity and its members," but the fact that produces the "capture of the State" "is done to a deprived legal entity to violate the right to property of a citizen and to control a means of communication." "The tax debt […] is not a product of a regular activity, [the CLRSA] did not lose money or end up owing the State because it did bad business" [the c]hannel […] had this tax accumulated because it carried the money of the company, there was not only one investment in these years, there is no new building, there are no television machines, there are no new programs, nor new artists […] hir[ed], the money that the company generated […] carried it and this is the reason for which they could not pay the taxes." Also, he pointed out that "natural persons may have their rights violated precisely through legal entities that are the vehicles used as in this case to prejudice them."

30. That also, Mr. Ivcher pointed out that "during the period that the Peruvian State […] controll[ed] [the company], this is, the years 1997 to 2000, it did not fulfill with honor the tax obligations generated during part of this period […]. On August 1, 1997, [the] company […] did not owe taxes to the Peruvian State [and] was found in a favorable financial economic situation because it counted, according to the balances at that moment, upon money in CAJA [and] banks that reached approximately US$8,300,000." "[W]hen the channel as recuperated by [Mr.] Ivcher on December 6, 2000, [it] had accumulated a tax debt of approximately US$7,000,000." Also, Mr. Ivcher emphasized that "during the administration of 'Latin Frequency' through [the Winters, the Peruvian State – through the SUNAT-] did not put pressure upon, process, or seize any account or asset of [the company] to demand the payment of the unpaid taxes." Regarding the processes of constitutional protection, Mr. Ivcher pointed out that "[i]t is true that he had managed to obtain cautionary provisional measures that had suspended the intentions of SUNAT to coercively charge [the company] the taxes left unpaid by the Peruvian State itself. Nevertheless, this situation is provisional and nothing assures [him] that […] later the Peruvian State will not try again to coercively demand these taxes."

31. That also, Mr. Ivcher specified that the company received a special system of tax partition in January 2001, "because even the Court had not issued its judgment." "To deliver the judgment of February 6, 2001, and the jurisdiction order of the Peruvian Judicial

Power of March 30, 2001, […] the company failed to pay to the SUNAT both the debt contracted for the […] [illegal] administration of the State and of the [brothers] Winter, as well as also the part of the running debt generated during the new administration, because the funds did not exist in the company." Regarding this point, the representatives pointed out that "respecting the [tax] period 2001-2003, [the State] must abstain from charging moratorium interest and fines connected with the tax debt […], each time that said debt could not be paid timely as a direct consequence of the lack of fulfillment on the part of the State."

32. That specifically in relation to the resolution of the Constitutional Tribunal of Peru, Mr. Ivcher indicated that "the General Law of Arbitration then current did not permit the review of the merits of the controversy at the judicial headquarters [, in a way that at that moment] he could not challenge the arbitral award." Also, the representatives highlighted that "of the 10 magistrate judges that heard this action at distinct instances, only 3 have declared a decision regarding the merits of the matter (1 Founded, 1 Unfounded [and] 1 Null), while 7 have resolved for reasons of form to declare it Inadmissible, every time that being understood as the only way that it could be resolved is if the collection of the taxes in question damaged or breached that ordered in the [eighth] operative paragraph of the [J]udgment […] of the Inter-American Court." Therefore, the representatives concluded that "both the Arbitral Tribunal as well as the Constitutional Tribunal [have] referr[ed] to formal aspects of the controversy without entering into a discussion of the merits, which evidences that the [P]eruvian State does not have the capacity to execute the [J]udgment of the [Inter-American Court] in its [eighth] operative paragraph." The representatives indicated that "[i]t is unacceptable that on one hand the State tries to distinguish between a natural person and a legal entity in order to deny the right of the execution of the judgment regarding the replacement of the previous state of divestment […], and on the other, to deny this distinction in order to affirm that the tax debts are charged independently of the natural persons that make up the legal entity, even though this had been usurped by the State itself."

33. That the Commission "consider[ed] it positive that the State had fulfilled the payment of the sum established in the […] arbitral award [respecting] the compensation of dividends and pending payments in favor of Mr. Ivcher."

34. That also, the Commission "manifest[ed] its special worry for the fact that the Peruvian State tried to collect the taxes generated during the time in that [the company] was in the hands of the Winters and of the State," so that this "openly contradicts the spirit of the Judgment of the Court respecting the violation of the right of property and of freedom of expression of the harmed party." Also, the Commission pointed out that "the express reference that the Court made to facilitate the 'conditions' of use and enjoyment of the rights of Mr. Ivcher as a majority shareholder implies that these rights be returned to the mentioned company without demanding the payment for the taxes that had been generated during the per[i]od that it was under the control of the Peruvian State itself and of the minority shareholders." "If the company, at this moment, was up to date with the payment of the taxes, [t]his must be the condition in that it was returned to Mr. Ivcher Bronstein, having therefore paid any tax debts that had been generated during [said] period." Also, the Commission considered that it must "identify if the rejection of the period of tax release was for a lack of jurisdiction of the Arbitral Tribunal, or was for a lack of merit in the substance[, because] if it was the first, […] such *res judicata* did not exist that the State is alleging about the subject matter of the tax release, [so that] it h[ad] not been resolved regarding the substance." (Therefore, the Commission requested the Court that "it

require the State to adopt the concrete means in order to stop the acts that impede the use and enjoyment of the rights of Mr. Ivcher Bronstein as majority shareholder of the [company and that, p]articularly, […] request the State to not collect from the [company] the taxes generated during the period [of reference]."

35. That in relation to the judgment issued by the Constitutional Tribunal of Peru, the Commission pointed out that the Court "must remind the […] State of the obligation to repair, which governs in all the aspects of international law […], and cannot be modified or breached by the obligated State invoking regulations of its internal law."

36. That the Court remembers what it stipulated in paragraph 178 of the Judgment, in the sense that the reparation of harm occasioned by the infraction of an International obligation requires full restitution (*restitutio in integrum*), that consists of (1) the reestablishment of the previous situation, and (2) the reparation of the consequences that the infraction produced, as well as (3) the payment of indemnity as compensation for the harms occasioned. Therefore, in the Judgment, the Tribunal declared that the harm occasioned for the violation of the rights of Mr. Ivcher as majority shareholder of the CLRS demands a reparation from the State that implies, according to that provided in the Decision, to facilitate the condition so that he recuperates the use and enjoyment of said rights, like her was until the moment prior to the violated referred to, in the terms of the internal legislation and before the competent national authorities (supra Having Seen 1). Also, said reparation demands, according to the Judgment, the relative compensation for the dividends and the other payments that were corresponded to him as a majority shareholder and employee of said company (supra Having Seen 1). Therefore, it corresponds to the Tribunal to analyze the fulfillment of these two aspects of the means of reparation ordered in the Eighth Operative Paragraph of the Judgment.

37. That to analyze first that which relates to the compensation for the loss of dividends and other payments that correspond to Mr. Ivcher, the Tribunal observed that, directed toward the fulfillment of the Judgment of the Inter-American Court and in application of the Peruvian legislation that governs the processing of execution of judgments issued by supranational tribunals, Mr. Ivcher brought an arbitral petition against the State. On July 4, 2005, the Arbitral Tribunal determined that the State must pay to Mr. Ivcher an indemnity for the damages caused (*supra* Considering 22). Therefore, in fulfillment of the resolution of the Arbitral Tribunal, on December 22, 2005, the State paid to Mr. Ivcher a sum of money corresponding to the dividends and fees left unpaid, as well as for the loss of the value of the company. As a consequence, this Court declared the fulfillment of that ordered in the Eighth Operative Paragraph of the Judgment, regarding the "compensation related to the dividends and the other payments that were corresponded [to Mr. Ivcher Bronstein] as a majority shareholder and employee" of the company CLRSA.

38. That as pointed out previously, in addition to the granting of an indemnity as compensation for the harms caused, the *restitutio in integrum* demands also the reestablishment of the situation prior to the violation. In this sense, the relation of the recuperation of the "use and enjoyment of his rights as majority shareholders of the [CLRS], as he was until August 1, 1997," the Tribunal valuates that the State, through the order of March 30, 2001, of the Specialized Court of Public Law of the Superior Court of Justice of Lima (*supra* Considering 21), had declared null the judicial resolutions that illegally granted the administration of CLRSA to the minority shareholders, that also had declared null all the acts made by said shareholders to the protection of such orders

between September 5, 1997, and March 30, 2001, and that, as a consequence, had ordered the restoration of the legal activity and the administrative structure that the company had before the violations of human rights that the State committed against Mr. Ivcher. The Court understands that such measures tend toward the re-establishment of the situation prior to the declared violation.

39. That notwithstanding the aforementioned, Mr. Ivcher and the Commission alleged that this aspect of that ordered in the Judgment cannot be fulfilled until the State abstains from collecting the tax debt generated by the CLRSA through the illegal administration of the Winters between August 1, 1997, and December 6, 2000, and consider that said debt is one of the direct consequences of the declared violations in the present case.

40. That, in this sense, this Tribunal has noted that Mr. Ivcher requested the Arbitral Tribunal "[that] orders the Peruvian State to assume the cost of [said] tax debt," and that he declared unfounded "said payment, so that he considered, among other reasons, that "the tax debt [generated by the Winter Administration] did not directly affect the personal wealth of [Mr. Ivcher], but that the company of which he was a shareholder," (*supra* Considering 24). On the other hand, Mr. Ivcher presented a request for constitutional protection on this point that was rejected on May 20, 2008, by the Constitutional Tribunal of Peru (*supra* Considering 25) so that, according to such Tribunal, "the constitutional protection process is not the way to execute the judgments of the Inter-American Court." Also, the Constitutional Tribunal pointed out that the result of the Arbitral Tribunal had the effect of *res judicata* and that the Judgment of the Inter-American Court was declared in favor of "the personal rights of Mr. Ivcher, not of all the members that made up the [CLRSA], in favor of which the debt relief from the tax debt is now requested."

41. That if in the Judgment, this Court issued to "the competent national authorities" the fulfillment of that ordered in the eighth Operative Paragraph, it is understood that the same are not at liberty to resolve the issue in a contrary manner to that determined by this Tribunal in the Judgment. In this respect, the Court remembers that established in paragraph 123 of its Judgment, in the sense that, contrary to that resolved by the Arbitral Tribunal, the participation in the shareholder capital of the company effectively constitutes the good regarding which Mr. Ivcher has the right of use and enjoyment, in light of the American Convention. Therefore, by the means in which said shareholder capital appears to be affected by the tax debt generated between August 1, 1997, and December 6, 2000, by the administration of the Winter brothers, who took power of the company illegally with the acquiescence of the State, also will appear the affect of the right to property of Mr. Ivcher for the acts imputable to the State.

42. That as also pointed out previously (*supra* Considering 38 and 41), it results that at the beginning of the month of August of 1997, the moment just before the violation of the rights of Mr. Ivcher Bronstein, the CLRSA did not have any tax debt with the State. It was only due to the illegal management of the company that generated the material tax debt of the present controversy.

43. That, therefore, the Court considers that the tax controversy pending resolution impedes Mr. Ivcher from being able to be fully restituted regarding the use and enjoyment of his right as a majority shareholder of the CLRSA, just as he was until August 1, 1997, due to, according to that provided previously, the debt which affected the capital of the company, regarding which Mr. Ivcher has a right to property as a shareholder. In this way,

the fulfillment of the eighth Operative Paragraph of the Judgment remains pending.

44. That, finally, the Court observes that the Arbitral Tribunal declared that "[o]f the two aspects incorporated in the [eighth] Operative Paragraph of the Judgment [of the Inter-American Court], […] the first h[as] already been completed[, so that] on the date the petition was brought, Mr. Ivcher had already recuperated his rights as majority shareholder of [the] CLRSA, a situation that has not varied to this date." In this respect, this Tribunal specifies that it corresponds to the Inter-American Court, and not to the Arbitral Tribunal, to declare the fulfillment or lack thereof of that ordered in the Judgment. Also, the Tribunal observes that the General Law of Arbitration then current does not permit the review of the merits of the present controversy at the judicial headquarters, meaning that at that moment Mr. Ivcher could not have challenged the result of the arbitral award in relation to the tax debt that was generated between August 1, 1997, and December 6, 2000 (*supra* Considering 32). Notwithstanding, the Tribunal reiterates that the fulfillment of that ordered by the Inter-American Court cannot be seen as conditional or limited by regulations of internal law (*supra* Considering 5).

45. That in view of all the aforementioned and in accordance with the eighth Operative Paragraph and paragraph 123 of the Judgment, it corresponds to the competent authorities of the State in this material to adopt the measures and procedures necessary to abstain from collecting those taxes, fines and/or moratorium interest generated during the illegal administration of the CLRSA between August 1, 1997, and December 6, 2000, with the goal of re-establishing the use and enjoyment of the rights of Mr. Ivcher Bronstein as a majority shareholder of the company, conforming to his position until August 1, 1997, and with the goal of guaranteeing that his right to personal wealth regarding said capital is not affected by tax debts generated by illicit acts of the State itself.

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46. That regarding the duty to pay Baruch Ivcher Bronstein an indemnity of US$20,000 (twenty thousand dollars of the United States of America) for moral damage and the return of the costs and expenses generated in the internal jurisdiction and in the international jurisdiction for an amount of US$50,000 (fifty thousand dollars of the United States of America) or its equivalent in Peruvian currency at the moment the payment is made, the State indicated that both amounts were paid, satisfying "[that] recognized by Mr. Ivcher Bronstein himself in [his] brief of October [6], 2005, presented before the Inter-American Court."

47. That Mr. Ivcher confirmed having received the payment of the respective amounts for indemnity for moral damage and the return of the costs and expenses, according to that ordered in the Judgment.

48. That the Commission observed that in agreement with that informed by the State and Mr. Ivcher, the obligation of payment of the indemnity and the return of the costs and expenses has been fulfilled.

49. That, as a consequence, this Tribunal declares fulfilled the state obligation consisting of paying Baruch Ivcher Bronstein an indemnity for moral damage and the

return of the costs and expenses, in accordance with that established in the ninth and tenth Operative Paragraphs of the Judgment.

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50. That the State informed about an article published in the Peruvian magazine "Caretas," on November 22, 2007, in which "the nationality of Mr. Baruch Ivcher Bronstein had been p[ut] into question." In this respect, the State provided that at the internal level "steps have been undertaken for the verification and critical contrast of the sources that have been used for [said] magazine […], with the goal to proceed to satisfy the [l]aw."

51. That about this in particular, the representatives issued information related to a supposed criminal accusation brought by the Executive Secretary of the National Council of Human Rights of Peru against Mr. Ivcher Bronstein for the presumed commission of an offense against the patrimony-(fraud). Nevertheless, a copy of the Order of the Permanent File had been sent previously that resolved "there is no place for the formaliza[tion of said] criminal accusation."

52. That in its opportunity, the Commission expressed that "[t]he information presented by the Peruvian State […] does not have any relation to the obligations derived by the [J]udgment of February 6, 2001, that are pending fulfillment."

53. That regarding this point, the Court considers that the issues related with the nationality of Mr. Ivcher Bronstein were resolved in the Judgment on the merits and was not within the state obligations, which are the object of the procedure of the supervision of compliance with the Judgment of the present case, except that related to the obligation to investigate the facts that generated the violations established in the Judgment on the merits (*supra* Considering 19 and 20). Therefore, the Tribunal does not find it pertinent tomake a declaration in the present proceeding regarding the publication.

**Therefore:**

**The Inter-American Court of Human Rights,**

in exercise of its authority to monitor compliance with its decisions and in accordance with Articles 33, 62(1), 62(3), 65, 67 and 68(1) of the American Convention on Human Rights, 25(1) and 30 of its Statute, and 30(2) of its Rules of Procedure

**Declares:**

1. That in accordance with that provided in the Considering paragraphs 37 and 49 of the present Order, the State has fulfilled the following operative paragraphs of the Judgment:

> a) to compensate the dividends and the other payments that corresponded to Mr. Ivcher Bronstein as a majority shareholder and employee of the Latin-American Radio-Diffusion Company S.A., in application of the internal law and in submission to the competent national authorities (*eighth operative paragraph of the Judgment of February 6, 2001*);

b) to pay to Baruch Ivcher Bronstein an indemnity of US$20,000 (twenty thousand dollars of the United States of America) or its equivalent in Peruvian currency at the moment the payment is made for moral damages (*ninth operative paragraph of the Judgment of February 6, 2001*), and

c) to pay to Baruch Ivcher Bronstein, as a reimbursement of the costs and expenses generated in the internal jurisdiction and in the international jurisdiction, the sum of US$50,000 (fifty thousand dollars of the United States of America) or its equivalent in Peruvian currency at the moment the payment is made (tenth operative paragraph of the Judgment of February 6, 2001).

2. That in accordance with that provided in the Considering paragraphs 19, 20, 43, 44, and 45 of the present Order, the State has partially fulfilled the following operative paragraphs of the Judgment:

a) to investigate the facts that generated the violations established in the Judgment in order to identify and sanction those responsible for the same (*seventh operative paragraph of the Judgment of February 6, 2001*) and

b) to facilitate the conditions so that Baruch Ivcher Bronstein may take the steps necessary to recuperate the use and enjoyment of his rights as a majority shareholder of the Latin-American Radio-Diffusion Company S.A., as he was prior to August 1, 1997, in the terms of the internal legislation and in submission to the competent authorities (*eighth operative paragraph of the Judgment of February 6, 2001*).

3. That to maintain open the procedure of supervision of compliance with the judgment of the points pending observance in the present case, namely:

a) to investigate the facts that generated the violations established in the Judgment in order to identify and sanction those responsible of the same (*seventh operative paragraph of the Judgment of February 6, 2001*) and

b) to facilitate the conditions so that Baruch Ivcher Bronstein may take the steps necessary to recuperate the use and enjoyment of his rights as a majority shareholder of the Latin-American Radio-Diffusion Company S.A., as he was prior to August 1, 1997, in the terms of the internal legislation and in submission to the competent authorities (*eighth operative paragraph of the Judgment of February 6, 2001*).

**And Decides:**

1. To require the State to adopt all the measures that are necessary to give effective and prompt observance to the points pending fulfillment that were ordered by the Tribunal in the Judgments of February 6 and September 4, 2001, in accordance with that stipulated in Article 68(1) of the American Convention on Human Rights; in particular, the State must: a) inform in an ordered, detailed, complete, and updated manner on the proceedings carried out and the advance of each one of the processes included in the present case, putting emphasis on the causes that originated the opposition and application of the time frame of the statute of limitations in three of the criminal actions concerned, presenting, if it is the

case, copies to the relevant parties of the respective case files, and b) to abstain from collecting those taxes, fines and/or moratorium interests generated during the illegal administration of the CLRSA between August 1, 1997, and December 6, 2000, with the goal to guarantee that the right to personal wealth of Mr. Ivcher Bronstein regarding said capital does not appear to be affected by tax debts generated by illicit acts of the State itself.

2. To request the State to present to the Inter-American Court of Human Rights, no later than March 19, 2010, a report indicating all the adopted measures in order to fulfill the reparations ordered by this Court that are pending fulfillment, in accordance with that provided in the Considering paragraphs 19, 20, 43, 44 and 45, as well as the Having Seen points 2 and 3 of the present Order.

3. To request the Inter-American Commission on Human Rights and the representatives to present their observations to the report of the State mentioned in the previous operative paragraph, in the time frames of six and four weeks, respectively, beginning from the reception of the report.

4. To continue monitoring the points pending fulfillment of the Judgments of February 6, and September 4, 2001.

5. To require the Secretary of the Court to notify this Order to the State, the Inter-American Commission on Human Rights, and the representatives of the victim.

Cecilia Medina Quiroga
President

Sergio García Ramírez

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Pablo Saavedra Alesandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary