

**Order of the
Inter-American Court of Human Rights
of August 27, 2010***

Case of Ivcher Bronstein v. Peru

Monitoring Compliance with Judgment

Having Seen:

1. The Judgment on merits, reparations, and costs (hereinafter "the Judgment") issued in the instant case by the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") of February 6, 2001.
2. The Judgment on Interpretation of the Judgment on Merits of February 6, 2001, (*supra* Having Seen 1) issued by the Court on September 4, 2001.
3. The Orders of the Inter-American Court of June 1, 2001, and September 21, 2005, regarding Monitoring Compliance with Judgment in the instant case.
4. The Order of the Inter-American Court of November 24, 2009, regarding Monitoring of Compliance with Judgment in the instant case, whereby the Court declared that the procedure to monitor compliance with the outstanding operative paragraphs shall be kept open, namely:
 - a) to investigate the facts that led to the violations set forth in the Judgment in order to identify and punish those responsible (*operative paragraph seven of the Judgment of February 6, 2001*); and,
 - b) to facilitate the conditions to allow Baruch Ivcher Bronstein to take the necessary steps to regain the use and enjoyment of his rights as a majority shareholder of the Compañía Latinoamericana de Radiodifusión [Latin-American Radio-Diffusion Company S.A.], as was the case until August 1, 1997, in accordance with domestic legislation and competent authorities (*operative paragraph eight of the Judgment of February 6, 2001*).

* Judge Diego García-Sayán, of Peruvian nationality, excused himself from hearing the monitoring of compliance with Judgment in the instant case, in conformity with Articles 19(2) of the Statute and 20 of the Court's Rules of Procedure.

5. The communications of January 15, February 11, March 26, May 18, and July 23, 2010, whereby the State (hereinafter “the State” or “Peru”) referred to compliance with the Judgment.

6. The briefs of February 16, April 9, May 4 and July 23 and 26, 2010, whereby the victim’s representatives (hereinafter “the representatives”) submitted their observations on the status of compliance with the Judgment.

7. The communications of April 29, May 14, and August 3, 2010, whereby the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted its observations regarding the state of compliance with the Judgment.

Considering that:

1. Monitoring compliance with its decisions is an inherent power of the judicial functions of the Court.

2. Peru is a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since July 28, 1978, and that it recognized the obligatory jurisdiction of the Court on January 21, 1981.

3. In conformity with Article 67 of the American Convention, the Court’s judgments shall be fully and promptly complied with by the State. In addition, Article 68(1) of the American Convention stipulates that “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” Therefore, States must ensure that the rulings set out in the Court’s decisions are implemented domestically.”¹

4. The obligation to comply with the rulings of the Court corresponds to a basic principle of the law on the international responsibility of the State —supported by international jurisprudence— according to which the States must comply with their international conventional obligations in good faith (*pacta sunt servanda*) and, as previously held by the Court and pursuant to Article 27 of the Vienna Convention on the Law of Treaties of 1969, States may not invoke the provisions of its internal laws as justification to neglect its existing international responsibility.² The conventional obligations of the States Parties binds all State branches and bodies.³

¹ Cf. *Case of Baena Ricardo et al. v. Panama. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60; *Case of Baena Ricardo et al. v. Panama*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering Clause five, and *Case of Vargas Areco v. Paraguay*. Monitoring Compliance with Judgment. Order of the President of the Inter-American Court of Human Rights of July 20, 2010, Considering Clause three.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35; *Case of Baena Ricardo et al. v. Panama*, *supra* note 1, Considering Clause five, and *Case of Vargas Areco v. Paraguay*, *supra* note 1, Considering Clause four.

³ Cf. *Case of Castillo Petruzzi et al. v. Peru*. Monitoring Compliance with Judgment. Order of the Court of November 17, 1999. Series C No. 59, Considering Clause three; *Case of Baena Ricardo et al. v. Panama*, *supra* note 1, Considering Clause five, and *Case of Vargas Areco v. Paraguay*, *supra* note 1, Considering Clause four.

5. The States Parties to the Convention must ensure compliance with its provisions and their effectiveness (*effet utile*) within their respective domestic legal systems. This principle applies not only in connection with the substantive provisions of human rights treaties (*i.e.* those dealing with provisions on protected rights) but also in connection with procedural norms, such as those concerning compliance with the Court's decisions. These obligations are intended to be interpreted and enforced in such a manner that the protected guarantee is truly practical and effective, bearing in mind the special nature of human rights treaties.⁴

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6. Regarding the obligation to investigate the events that led to the violations identified in the Judgment so as to identify and punish those responsible (*operative paragraph seven of the Judgment*), the State did not submit any information.

7. The Court observes that on March 30, 2005, Mr. Ivcher Bronstein submitted a request for provisional measures to protect his life and that of his next of kin "as well as [to] protect [his] personal security and [...] other protected rights, which are seriously threatened" by the lack of investigation into the events of the instant case, among other claims. Between 2005 and 2006, the parties presented different observations regarding this request. The Court observes that since March 2006 there have been no specific claims referring to the alleged urgent and extremely serious events or the need to prevent irreparable damage to persons included in said request. Without prejudice to the above, the relevant information has been taken into account as part of monitoring compliance with the instant case.

8. In 2010, representatives stated, "throughout all these years the State [...] has refused to investigate and punish the individuals involved in the violation of Mr. Ivcher's fundamental rights, which was perpetrated by the State." In addition, the representatives reported that, "an action initiated by [Messrs.] Winter Zuzunaga is pending." "This action, brought before a Peruvian Arbitration Court, seeks to regain control of the Compañía Latinoamericana de Radiodifusión (CLRSA)". They also stated, "there are other proceedings pending [and] they [will] inform the Court thereof."

9. For its part, the Commission "worryingly observ[ed] that the State has not provided any information regarding compliance with this obligation [since] the lack of [this] information and the delay in processing proceedings creates a real risk of coming to the end of the prescriptive period." Based on the foregoing, the Commission "request[ed] the Court to request that the State provide specific and up-to-date information on the steps taken in the criminal proceedings on a domestic level."

10. In this regard, the Court reiterates that as indicated continuously in its jurisprudence, pursuant to Article 1(1) of the American Convention, the State has the duty to avoid and combat impunity, which has been defined by the Court as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the human rights protected by the American Convention."⁵ In addition, the Court has

⁴ Cf. *Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, para. 37; *Case of Baena Ricardo et al. v. Panama*, *supra* note 1, Considering Clause six, and *Case of Vargas Areco v. Paraguay*, *supra* note 1, Considering Clause five.

⁵ Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 173; *Case of El Amparo v. Venezuela*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of February 4, 2010, Considering Clause eighteen, and *Case of Heliodoro*

warned that the State “has the obligation to use all legal means at its disposal to combat the situation, since impunity fosters chronic recidivism of human rights violations and complete defenselessness of victims and their relatives.”⁶ This obligation implies the duty of the States Parties to the Convention to organize their governments and, more generally, all structures through which it exercises public power, so as to legally ensure the free and full exercise of human rights.⁷

11. Hence, due to its importance, the obligation to investigate must be executed in a specific way, in accordance with standards provided for in international laws and jurisprudence, which state that investigations must be prompt, thorough, impartial, and independent.⁸

12. In addition, the Court reiterates that in criminal matters, the prescriptive period causes the termination of punitive objectives due to the passage of time, and as a general rule, limits the punitive power that the State holds to prosecute illicit behavior and punish the perpetrators.⁹ Therefore, prescriptive periods, in certain cases, allows the guilty party to oppose an undefined or endless criminal prosecution, thus acting as a corrective to the delays that the bodies in charge of criminal prosecution may incur while exercising their duties.

13. Although prescription is a guarantee of due process that the judge must properly observe for all persons accused of a crime,¹⁰ its invocation and application is unacceptable when it has clearly been proven that the passage of time has been determined by procedural actions or omissions aimed to, in bad faith or negligence, cause or allow impunity. In this regard, the Court reiterates what it has stated on other occasions, that “[t]he exercise of effective judicial protection requires [...] the judges to lead the process in such a way to avoid inappropriate delays and hindrances that lead to impunity, and thus frustrate the adequate judicial protection of human rights.”¹¹ Likewise, the Court has indicated, “when a State has ratified an international treaty such as the American Convention, its judges, as part of the State apparatus, are also bound by it, which obligates

Portugal v. Panama. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 28, 2010, Considering Clause eighty-one.

⁶ Cf. *Case of the “White Van” (Paniagua Morales et al.)*, *supra* note 5, para. 173; *Case of El Amparo*, *supra* note 5, Considering Clause eighteen, and *Case of Heliodoro Portugal*, *supra* note 5, Considering Clause twenty-one.

⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 166; *Case of El Amparo*, *supra* note 5, Considering Clause eighteen, and *Case of Heliodoro Portugal*, *supra* note 5, Considering Clause twenty-one.

⁸ Cf. *Case of Castillo Páez v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of April 3, 2009, Considering Clause thirteen; *Case of Ivcher Bronstein v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 24, 2009, Considering Clause thirteen, and *Case of Heliodoro Portugal*, *supra* note 5, Considering Clause twenty-one.

⁹ Cf. *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 41; *Case of the Gómez Paquiyauri Brothers v. Peru*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of May 3, 2008, Considering Clause thirteen, and *Case of Ivcher Bronstein*, *supra* note 8, Considering Clause sixteen.

¹⁰ Cf. *Case of Barrios Altos*, *supra* note 9, para. 41; *Case of the Gómez Paquiyauri Brothers*, *supra* note 9, Considering Clause thirteen, and *Case of Ivcher Bronstein*, *supra* note 8, Considering Clause seventeen.

¹¹ Cf. *Case of Bulacio v. Argentina. Merits, Reparations, and Costs*. Judgment of September 18, 2003. Series C No. 100, para. 115; *Case of Bulacio v. Argentina*. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 26, 2008, Considering Clause eighteen, and *Case of Ivcher Bronstein*, *supra* note 8, Considering Clause seventeen.

them to ensure that the effects of the provisions of the Convention are not diminished.”¹² That is to say, the rights of victims prevail over the prescription guarantee when situations arise that obstruct the obligation to identify, prosecute, and punish those responsible for a crime.

14. Referring to the principle of *ne bis in idem*, in its jurisprudence the Court has indicated that it is not applicable when: i) the actions of the court that heard the case, and decided to dismiss it or absolve the person responsible for a violation of human rights or of international law, intended to shield the accused from his/her criminal liability; ii) the procedure was not conducted independently or impartially in accordance with the guarantee of due process, or iii) there was no real intention to bring the responsible to justice. A judgment delivered in such circumstances produces an “apparent” or “fraudulent”¹³ final decision. Therefore, the authority of a final judgment can be discussed before this Court when it affects the rights of individuals protected by the Convention and it is proven that there are grounds to question the final judgment.¹⁴ In another case against Peru, this Court 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.”¹⁵

15. The Court observes that the State has not submitted information regarding progress with compliance with this obligation. In this regard, the Court reiterates to the State the request to submit organized, detailed, complete, and up-to-date information on the causes that led to the objection and application of the prescription period in three of the criminal actions related to this case, as cited in the Order to Monitor Compliance with Judgment of the Court of November 24, 2009 (*supra* Having Seen 4). Furthermore, if necessary, the Court asked the State to submit copies of the relevant parts of the corresponding files. The Court also deems it necessary for the State to provide organized, detailed, complete, and updated information on the steps taken and the progress in each of the proceedings concerning the instant case, including information about the “agreement for efficient collaboration.”

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16. Regarding the need to facilitate conditions that allow Baruch Ivcher Bronstein to take the steps necessary to recover the use and enjoyment of his rights as a majority shareholder of CLRSA, as was the case until August 1, 1997, in compliance with domestic legislation (*operative paragraph eight of the Judgment*), through the brief of July 23, 2010,

¹² Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, Merits, Reparations, and Costs.* Judgment of September 26, 2006. Series C No. 154, para. 124; *Case of Bulacio, supra* note 11, Considering Clause eighteen, and *Case of Ivcher Bronstein, supra* note 8, Considering Clause seventeen.

¹³ Cf. *Case of Carpio Nicolle et al. v. Guatemala. Merits, Reparations, and Costs.* Judgment of November 22, 2004. Series C No. 117, para. 131; *Case of La Cantuta v. Peru. Merits, Reparations, and Costs.* Judgment of November 29, 2006. Series C No. 162, para. 153, and *Case of Ivcher Bronstein, supra* note 8, Considering Clause eighteen.

¹⁴ Cf. *Case of Genie Lacayo v. Nicaragua.* Request for Review of the Judgment on Merits, Reparations, and Costs. Order of the Inter-American Court of Human Rights of September 13, 1997. Series C No. 45, para. 10 to 12; *Case of Almonacid Arellano et al., supra* note 12, para. 154, and *Case of Ivcher Bronstein, supra* note 8, Considering Clause eighteen.

¹⁵ Cf. *Case of Castillo Petruzzi et al. v. Peru. Merits. Reparations, and Costs.* Judgment of May 30, 1999. Series C No. 52, para. 219.

the State “declare[d] its compliance with [...] operative paragraph eight of the Judgment [in the instant case], hence it request[ed] the Court to bring to a close the [m]onitoring of this [item].” The State attached a copy of Resolution No. 0110160000009 of July 15, 2010, issued by the Superintendencia Nacional de Administración Tributaria [Tax Administration National Superintendence] (SUNAT).

17. Furthermore, the representatives confirmed that “[through] Resolution No. 0110160000009 of July 15, 2010 [...], [SUNAT] finally acknowledge[d] and execut[ed] [...] the Court’s [...] [J]udgment and the Order to Monitor Compliance of [...] November 24, 2009,” and requested “the closing of the tax related claims of the instant case.”

18. Based on the information submitted, the Commission “value[d] that the State had complied with said operative paragraph and request[ed] the Court confirms likewise.”

19. In this regard, the Court observes that Resolution No. 0110160000009 of July 15, 2010, issued by SUNAT, ruled that in compliance with the Court’s Order on Monitoring of Compliance of November 24, 2009, in the instant case (*supra* Having Seen 4), “compensation for tax debt payments made in the periods indicated in the Judgment on Merits and [in the aforementioned] Order [...] shall be paid, such [that] these payments are credited to the current installment payment plan” of CLRSA. Therefore, SUNAT ordered: 1) “to modi[fy] the amount of debt and number of payments in the Régimen Especial de Fraccionamiento Tributario-REFT [Special Regime for a Tax Installment Payment Plan] (Law 27344), Essalud” and 2) “to modify the amount of debt and monthly payments of tax debt [...], Treasury,” all with regards to CLRSA. Finally, the aforementioned SUNAT Resolution concluded that “[t]he tax debt accrued between August 1, 1997, and December 6, 2000, [...] is not chargeable to the taxpayer [CLRSA].”

20. Taking the information and observations of the parties into account, as well as the corresponding analysis of Resolution No. 0110160000009 of July 15, 2010, issued by the SUNAT, the Court declares full compliance with the pending obligation regarding operative paragraph eight of the Judgment.

Therefore:

The Inter-American Court of Human Rights,

in exercising 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 compliance with Considering paragraph 20 of the instant Order, the State has fully complied with the following operative paragraph of the Judgment:

- a) Facilitate the conditions to allow Baruch Ivcher Bronstein to take the steps necessary to recover the use and enjoyment of his rights as a majority shareholder of the Latin-American Radio-Diffusion Company S.A., as was the case up until August 1, 1997, in accordance with domestic legislation and in compliance with the

competent authorities (*operative paragraph eight of the Judgment of February 6, 2001.*)

2. That it will keep the monitoring compliance procedure open with regard to the operative paragraph pending compliance in the instant case:
 - a) To investigate the facts that led to the violations set forth in the Judgment in order to identify and punish those responsible (*operative paragraph seven of the Judgment of February 6, 2001*); and,

Decides:

1. To request the State to adopt all measures necessary to promptly and effectively comply with the operative paragraph pending compliance as set forth by the Court in the Judgments of February 6 and September 4, 2001, in accordance with the provisions of Article 68(1) of the American Convention on Human Rights. Therefore, the State must report, in an organized, detailed, complete, and up-to-date manner, on the steps taken and the progress made in each of the processes included in the instant case, emphasizing the causes of the objection and the application of prescription periods in three of the criminal procedures concerned, submitting, if necessary, the relevant parts of the corresponding files.
2. To request the State to submit to the Inter-American Court of Human Rights, by December 6, 2010 at the latest, a report indicating all measures adopted to comply with the reparation ordered by this Court that is pending compliance, in compliance with Considering Clauses 10 to 15, as well as Declarative Paragraph two of the instant Order.
3. To request the Inter-American Commission on Human Rights and the victim's representatives to submit their observations on the State report mentioned in the previous operative paragraph, within six and four weeks, respectively, following receipt of said report.
4. To continue monitoring the operative paragraph pending compliance from the Judgments of February 6 and September 4, 2001.
5. To request the Secretariat of the Court to notify the State, the Inter-American Commission of Human Rights and the victim's representatives of the instant Order.

Leonardo A. Franco
President-in-Office

Manuel E. Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alesandri
Secretary

So directed,

Leonardo A. Franco
President-in-Office

Pablo Saavedra Alessandri
Secretary