

Inter-American Court of Human Rights

Case of Ivcher-Bronstein v. Peru

Judgment of September 4, 2001 (Interpretation of the Judgment of the Merits)

In the Ivcher Bronstein Case,

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

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

Also present:

Manuel E. Ventura Robles, Secretary, and
Pablo Saavedra Alessandri, Deputy Secretary;

pursuant to Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Article 58 of the Court's Rules of Procedure¹ (hereinafter "the Rules of Procedure"), decides the following request filed by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on May 4, 2001, and by Baruch Ivcher Bronstein (hereinafter "Mr. Ivcher" or "Mr. Ivcher Bronstein") on May 8, 2001, seeking interpretation of the judgment delivered by the Court on February 6, 2001, in the Ivcher Bronstein Case (hereinafter "the judgment on the merits") against the State of Peru (hereinafter "the State," "the Peruvian State," or "Per

I

COMPETENCE AND COMPOSITION OF THE COURT

1. Article 67 of the Convention provides that:

[T]he judgment of the Court shall be final and not subject to appeal. In case of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties,

* Judge Máximo Pacheco Gómez informed the Court that for reasons of *force majeure*, he was unable to participate in the deliberations and decision on this judgment.

¹ Pursuant to the Court's March 13, 2001 Order on Transitory Provisions of the Court's Rules of Procedure, this Judgment on interpretation of the merits is delivered in accordance with the Rules of Procedure adopted by the Court on September 16, 1996.

provided the request is made within ninety days from the date of notification of the judgment.

Under that article, the Court is competent to interpret its own judgments. When considering a request for interpretation, the Court shall be composed, whenever possible, of the same judges who delivered the judgment whose interpretation is being sought (Article 58(3) of the Rules of Procedure). In this instance, the Court is composed of the same judges who delivered the judgment on the merits, whose interpretation has been requested by the Inter-American Commission and by Mr. Ivcher Bronstein.

II INTRODUCTION OF THE REQUESTS FOR INTERPRETATION

2. On May 4 and 8, 2001, the Inter-American Commission and Mr. Ivcher, respectively, each filed a request for interpretation of the judgment on the merits, pursuant to Article 67 of the American Convention.

3. By note of June 1, 2001, the Secretariat of the Court (hereinafter "the Secretariat") forwarded to Peru a copy of the requests for interpretation and, in accordance with Article 58(2) of the Rules of Procedure, invited it to present whatever comments it deemed relevant by no later than July 1, 2001.

4. On July 2, 2001, the State presented its written comments on the request for interpretation, which it supplemented via a brief dated July 3, 2001.

III PURPOSE OF THE REQUESTS FOR INTERPRETATION

5. In its request for interpretation, the Commission asked the Court to stipulate "that the liability of the Peruvian State encompasses all elements that constitute reparations under international law[,] [which are] material and moral damages, other forms of non-pecuniary reparations, and the costs and expenses incurred in the domestic and international jurisdictions." For his part, Mr. Ivcher Bronstein asked the Court "to interpret the reparations obligations arising from the judgment [...] and the procedure that must be followed for a just compensation that constitutes *restitutio in integrum* for the damages caused [...]".

6. Both requests for interpretation were based on the fact that on April 16, 2001, Peru sent Mr. Ivcher a note to the following effect:

As to the comment in your note concerning payment of compensation as reparations for any material damages caused as a result of the violation of your rights, I have made inquiries and coordinated with the State authorities concerned. I have been told that from the findings of in the judgment delivered by the Inter-American Court, it is the Peruvian Government's understanding that the only payments ordered are those to compensate for moral damages and reimburse court costs. It is the Government's interpretation of the judgment that no additional compensation of any kind is either recognized or contemplated. The Government, therefore, does not share your interpretation of the Court's judgment, to the effect that an obligation of this type is ordered.

7. As the preceding paragraphs show, the clarification sought in both requests for interpretation concerned the scope of the reparations the Court awarded in its

judgment on the merits, in particular the matter of reparations for material damages. As the purpose of both requests is the same, this Court will decide them jointly.

IV ADMISSIBILITY

8. Under Article 67 of the Convention, the request for interpretation must be filed "within ninety days from the date of notification of the judgment." The Court has established that the parties were given notice of the judgment on the merits in this case on February 9, 2001. The requests for interpretation were, therefore, presented within the required time limit (*supra* 2).

9. The State's comments were received at the Secretariat of the Court on July 2 and 3, 2001, by which time the deadline the Court had set for that purpose had already passed. They were, therefore, submitted extemporaneously. Applying the criterion of reasonableness and timeliness, the Court is nonetheless admitting the written comments, inasmuch as they were received at the Secretariat one and two days after the deadline, respectively (*supra* 3 and 4), a delay that does not tilt the balance that the Court must keep between the protection of human rights and the principle of legal certainty and justice.²

10. Concerning judgments of interpretation, the Court has held that

[t]he transparency of this Court is enhanced by clarification, when it so deems appropriate, of the content and scope of its Judgments, thereby dissipating any doubts about them and that they not be challenged by merely formal considerations.³

11. The Court must now turn its attention to the question of whether the issues that the request for interpretation raises meet the standard set in the applicable rules.⁴ Article 58 of the Rules of Procedure provides that:

[t]he request for interpretation, referred to in Article 67 of the Convention, may be made in connection with judgments on the merits or on reparations and shall be filed with the Secretariat. It shall state with precision the issues relating to the meaning or scope of the judgment of which the interpretation is requested.

12. The requests for interpretation filed by the Commission and by Mr. Ivcher are based on the fact that there is a difference of opinion as to the whether the reparation ordered by the Court in its judgment on the merits includes "reparation for material damages."

² Cf. "The Last Temptation of Christ" Case (*Olmedo Bustos et al.*). Judgment of February 5, 2001. Series C No. 73, para. 41; *Baena Ricardo et al. Case*. Judgment of February 2, 2001. Series C No. 72, para. 50; *Castillo Páez Case, Preliminary Objections*. Judgment of January 30, 1996. Series C No. 24, para. 34; *Paniagua Morales et al. Case, Preliminary Objections*. Judgment of January 25, 1996. Series C No. 23, paragraphs 38, 40-42, and *Cayara Case, Preliminary Objections*. Judgment of February 3, 1993. Series C No. 14, paragraphs 42 and 63.

³ *Blake Case. Interpretation of the Judgment on Reparations* (Art. 67 of the American Convention on Human Rights). Judgment of October 1, 1999. Series C No. 57, para. 20; and *El Amparo Case. Request for Interpretation of the Judgment of September 14, 1996*. Order of the Court of April 16, 1997. Series C No. 46, *Consideranda* 1.

⁴ Cf. *Barrios Altos Case. Interpretation of the judgment on the merits* (Art. 67 of the American Convention on Human Rights). Judgment of September 3, 2001. Series C No. 83, para.11.

13. Given the foregoing, the Court observes that the request for interpretation complies with the terms of Article 67 of the Convention and Article 58 of the Rules of Procedure and thus declares it admissible. Accordingly, the Court will proceed to interpret those aspects of its judgment on whose meaning and scope there is disagreement.

V

SCOPE OF THE REPARATIONS

Arguments of the Commission and of Mr. Ivcher

14. The Commission made reference to the Peruvian State's interpretation to the effect that the reparation ordered by this Court for Mr. Ivcher would not include compensation that would constitute *restitutio in integrum* for the damages caused by the violation of which he was victim.

15. For his part, Mr. Ivcher stated that in the judgment on the merits, the Court established the reparations owed to the victim in the form of moral damages and court costs and expenses, and did not fix a figure for compensation of material damages (*supra* 5).

The State's arguments

16. In its brief of July 2, 2001, Peru argued that the judgment on the merits was clear in the sense that it did not contain any mandate ordering or requiring payment of compensation for material damages. In the operative part of the judgment, the only payments ordered were moral damages and reimbursement of court costs and expenses.

The Stated added the following:

While the judgment (paragraph 178) rightly stipulates that the reparation of the damage caused by the violation of an international obligation requires full restitution (*restitutio in integrum*), the content and scope of such restitution cannot be left open-ended or imprecise. The judgment must spell out precisely what indemnity is to be paid as compensation for the damages caused. It is clear from the operative part of the judgment that payment of moral damages and reimbursement of court costs and expenses are the only pecuniary reparations considered.

[...]

Consequently, it must be clearly established that the Government of Peru acknowledges and condemns the serious abuses that Mr. Baruch Ivcher suffered under the previous authoritarian regime. It is endeavoring to contribute to the full reinstatement and redress of his rights. However, it is of the opinion that a claim seeking compensation for material damages, in addition to those already ordered by the Court in the form of moral damages and reimbursement of court costs and expenses, is not contemplated in either the preamble or operative part of the Court's judgment, and hence can hardly be ordered by way of an interpretation, especially inasmuch as [...] the text of the judgment contains observations from which one can infer that such a claim had already been examined and discarded by the Court.

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The Court's observations

17. Given the arguments made by the parties, the Court is to clarify whether, under the terms of its February 6, 2001 judgment, the reparations owed by the State include material damages resulting from the violation of Mr. Ivcher's rights.

18. Article 63(1) of the American Convention reads as follows:

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

19. The Court has previously held that

[the] request or petition for interpretation of a judgment may not be used as a means of challenging it, but must be made for the sole purpose of working out the meaning of the decision when one of the parties maintains that the text of its operative paragraphs or its *consideranda* is unclear or imprecise, provided those *consideranda* affect that operative paragraph. Hence, a request for interpretation may not be used to seek amendment or nullification of the judgment in question.⁵

20. In the pertinent operative paragraphs of the judgment whose interpretation is sought, the Court

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

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

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

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

21. Thus, the judgment on the merits is very clear on the various reparations that the Peruvian State owes:

- a) In the case of moral damages and court costs and expenses, the judgment orders specific amounts, quantified in United States dollars or the equivalent in Peruvian currency;

⁵ *Suárez Rosero Case. Interpretation of the Judgment on Reparations.* (Art. 67 of the American Convention on Human Rights). Judgment of May 29, 1999. Series C No. 51, para. 20; *Loayza Tamayo Case. Request for Interpretation of the Judgment of September 1, 1997.* Order of the Court of March 8, 1999. Series C No. 47, para. 16, consistent with the *Neira Alegría et al. Case.* Order of the Court of July 3, 1992. Annual Report 1992, p.79, para. 23.

- b) As for identification and punishment of those responsible, the judgment orders that the State is to investigate the facts that violated Mr. Ivcher's rights, in order to identify and punish those responsible for those violations;
- c) As restitution to restore, insofar as possible, the situation as it was before the violations were committed, the judgment orders that the State shall facilitate the conditions to enable Mr. Ivcher to take the necessary measures to recover the use and enjoyment of his rights as majority shareholder in the *Compañía Latinoamericana de Radiodifusión, S.A.*, as he had been up until August 1, 1997, under the terms of domestic law, and
- d) The judgment further orders that domestic law should be applied for recovery of the earnings that Mr. Ivcher was denied as a consequence of the violation of his rights as a shareholder in and officer of that firm, including any dividends he is owed as a company shareholder.

In its judgment, the Court specifies that to comply with the clauses of the judgment that in this paragraph are listed as c) and d), the respective petitions must be filed with the competent national authorities. It is the national authorities who must decide the matter in accordance with the applicable Peruvian laws.

The Court has thus clearly set out all the reparations applicable to the instant case and has stipulated where measures must be taken directly with the Peruvian State so that it, in accordance with its own laws, will settle Mr. Ivcher's claims seeking material damages. The State has a clear-cut obligation to fulfill: to receive, act upon and settle those claims in accordance with the law.

VI

22. Now, therefore,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to Article 67 of the Convention and Article 58 of the Rules of Procedure,

DECIDES:

unanimously,

1. That the requests filed by the Inter-American Commission on Human Rights and Mr. Baruch Ivcher Bronstein seeking interpretation of the Judgment of February 6, 2001 in the Ivcher Bronstein Case are admissible.
2. That to determine any compensation owed for the material damages caused to Mr. Ivcher, the pertinent provisions of Peruvian law are to be followed, and the necessary claims are to be filed with the national authorities competent to settle those claims.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, September 4, 2001.

Antônio A. Cançado Trindade
President

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli
Ramírez

Sergio García-

Carlos Vicente de Roux-Rengifo

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary