

I. CASE

Lagos del Campo v. Peru, Case No. 12.795, Judgment of August 31, 2017.

II. JURISDICTION

Inter-American Court of Human Rights

III. THEMATIC FOCUS

- Justiciability of ESCR
- State's obligation to protect the right to work
- Progressive rights
- Misuse of state resources

IV. NATURE & CONTEXT OF THE CASE

1. Procedural History

Lagos del Campo filed his initial claim in the state Labor Court in Lima, claiming that his dismissal was motivated by his union advocacy and therefore violated his right to freedom of expression, was an illegal interference with union and labor activity, and directly violated his right to work. The Labor Court ruled in his favor, holding that his dismissal was illegal, but the second instance court reversed the decision, holding that freedom of expression does not include the ability to denigrate the honor and dignity of an employer. After many years of attempting to appeal the decision, Lagos del Campo was represented before the Inter-American Commission for Human Rights (IACHR) by the Pro Human Rights Association (APRODEH). The IACHR submitted the case to the Inter-American Court of Human Rights.

2. Parties

Alfredo Lagos del Campo (represented before the court by Pro Human Rights Association (APRODEH)) v. State of Peru

3. Date

August 31, 2017

V. SUMMARY OF THE CASE

1. Background and summary of the facts

In 1989, Lagos del Campo was discharged from the Ceper-Perelli company, where he had worked as an electrician for over 13 years. Lagos del Campo conducted a magazine interview in the capacity president-elect of the union (General Assembly of the Industrial Community) in which he criticized the company for exerting pressure and threatening workers in an effort to

influence union elections. Lagos del Campo was fired shortly after the interview in response to his statements. After the second instance Labor Court upheld Lagos del Campo's dismissal, the former unionist was not reinstated in his job and was ineligible to receive compensation or benefits; and lost the possibility of accessing a pension for retirement. This case is the first time the IACHR issued a condemnation for violation of article 26 of the American Convention (p. 4 #8) for denying the plaintiff the right to work and for infringing upon his rights to labor stability and association. The court found a violation of Lagos del Campo's ESCR suggesting that by denying Lagos del Campo an adequate judicial forum to defend his labor rights, the state failed to use maximum available resources to protect the right to work and associated rights.

2. Core issue(s)

Whether the State violated Lagos del Campo's rights to freedom of expression and association under Articles 8.2 (right to a fair trial), 13.2 (freedom of thought and expression), 16 (freedom of association), and 26 (progressive development of economic, social and cultural rights realization) of the American Convention on Human Rights, in relation to Article 1.1 (obligation to respect rights) by supporting his dismissal by a third party employer through domestic judicial processes.

3. What was the decision? Holding & Outline of the Courts Decision

The court found violations of the aforementioned rights, as well as Lagos del Campo's right to a fair trial and judicial protection. The court held that the State's obligation to respect to the right to work includes the provision of effective legal mechanisms through which worker claims of unjustified firings in the private sector could be brought and remedied through reinstatement and other measures. The Peruvian state failed to adopt appropriate measures to protect against violations of the right to work attributable to third parties. Because the Peruvian court supported the improper dismissal in its judicial system, the state implicitly endorsed a restriction on the right to freedom of thought and expression. The court further held that the improper dismissal of Lagos del Campo prevented him from continuing to represent the workers, therefore the state violated not only Lagos del Campo's right of association, but also that of the workers who would have been beneficiaries of his representation. (p. 92) The IAHRC ordered compensatory damages including lost salary, retirement pension and social benefits, as well as additional damages for emotional distress and PTSD.

4. Key Points

- According to Article 26, the commitment to progressive development refers to rights, not to mere objectives. Therefore, it is first necessary to establish that textually protected rights are at issue. (p. 5 #20)
- Art. 34.g of the OAS Charter obligates states to dedicate "maximum efforts" towards the full realization aspiration rights in accordance with economic development and peace, including dedicating maximum efforts towards guaranteeing just salaries, opportunities of

employment, and labor conditions acceptable to all. (p. 109) In failing to provide avenues for relief for his unjustified dismissal, the Peruvian state did not meet this maximum efforts obligation.

- The Peruvian Constitution recognizes both the right to work and the right to job security. As the second instance court of Peru failed to evaluate Mr. Lagos del Campo's claims with respect to either, and no other court would hear them, the State violated Mr. Lagos del Campo's right to a fair trial and judicial protection. (p. 41 #130).

5. What was the court's reasoning in reaching its decisions?

A. The state is obligated to protect the right to work and the right to freedom of association.

- Articles 45.b and c194, 46195 and 34.g196 of the Organization of American States (OAS) Charter establish that states must protect the right to work with fair wages and conditions of employment. The OAS Charter also protects the right to free association for the defense and promotion of their interests. (p. 7, #143).
- The UN Committee on ESCR declared in General Comment No. 18 that the right to work the right to work implies the right not to be unjustly deprived of employment, and that state parties violate this right when they refrain from adopting adequate measures to protect persons within their jurisdiction against violations of the right to work by third parties, including the failure to protect workers against unfair dismissal. (p. 49 #146).
- International Labor Organization (ILO) Recommendation No. 143 advises special protection for workers' representatives against any act that may harm them, including dismissal due to their status as representatives of workers, provided that said representatives act in accordance with the laws, collective agreements or other common agreements in force. (p. 40 #126)

B. The State endorsed a restriction on the right to freedom of thought and expression by affirming Lagos del Campo's unjustified dismissal through its judicial system.

- The court recognizes that dismissal is the most severe sanction in the workplace. Therefore it is essential that dismissal be duly justified and not infringe on freedom of expression (p. 40 # 125)
- The IACHR criticized the decision of the second instance domestic court, indicating that in affirming Lagos del Campo's dismissal, Peru's Second Labor Court failed to consider several fundamental elements in its analysis: i) Mr. Lagos del Campo was an elected representative of the workers and was acting in accordance with their mandate; ii) his statements pertained to his position and were made within the context of an electoral debate and therefore had a public and collective interest; iii) his statements called for greater protection for exercising labor rights; iv) his statements would have met the

threshold for protection in the context of labor and elections, and v) the employer failed to show an imperative need to protect its rights to reputation and honor in the particular case. The ruling does not explicitly indicate that the rights at stake and / or their consequences have been properly evaluated in the analysis of the necessity requirement.(p. 41 #130).

6. What evidence did the court use to substantiate its decision on issues related to resources?

The court considered rights guaranteed by international instruments as well as the Peruvian state constitution, and analyzing the extent to which the domestic judicial processes afforded to Lagos del Campo protected these rights. Evidence informing the decision included decisions by both Peruvian labor courts, records of the incident prompting the dismissal, and witness statements. While the decision does not explicitly reference the state's use of resources, by holding that the state failed to protect against violations of ESCR by third parties, the court implicitly acknowledged that Peru in fact possessed the resources to protect his rights through its judicial system, yet failed to do so. By declaring the judicial processes afforded to Lagos del Campo to be inadequate, the Court implies that a state fails its obligation to dedicate MAR to the realization of ESCR when its existing institutions do not function properly.

7. Relevant national/international norms in which the decision was based.

- Organization of American States Charter Articles 45.b and c194, 46195 and 34.g196
- American Convention on Human Rights
- International Labor Organization recommendation #143
- UN Committee on ESCR General Comment No. 18

8. Cited Case Law

- Segundo Tribunal de Trabajo de Lima. Sentencia 08-0891 de 8 de agosto de 1991
- Caso Castillo Petruzzi y otros Vs. Perú, supra, párr. 207 y Caso Lopez Lone y otros Vs. Honduras, supra, párr. 214
- “La Última Tentación de Cristo” (Olmedo Bustos y otros) Vs. Chile, supra, párr. 69
- López Lone y otros Vs. Honduras, supra, párr. 168. 163 Cfr. TEDH,
- Caso Fuentes Bobo Vs. España, Sentencia de 29 de febrero de 2000, supra, párr. 42 y TEDH.
- Caso Palomo Sánchez y otros vs. España [GS], supra, párr. 63. 164 Cfr. TEDH.
- Caso Heinisch vs. Alemania. No. 28274/08. Sentencia de 21 de julio de 2011. Párr. 91 y TEDH.
- Caso Palomo Sánchez vs. España [GS], supra, párrs. 75 y 76; y Declaración pericial de Damián Loreti (transcripción audiencia pgs. 43 a 44).