

Lagos del Campo v. Peru

ABSTRACT¹

This case is about the wrongful termination of a worker and trade union representative from a company. It is notable because it is one of the few cases where the Court has discussed labor and trade union rights. It was also the first time the Court found a violation of Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the American Convention.

I. FACTS

A. Chronology of Events

September 1, 1970: The State passes the Industries Act (Ley General de Industrias) to create industrial communities in which employees hold interests in their companies' assets.²

1977: The State amends the Industries Act with the Industrial Community Law (Ley de la Comunidad Industrial), Decree Law 21789.³ The law mandates any industrial corporation to contribute annually fifteen percent of its net pre-tax income to fund the Industrial Community, up to fifty percent of a company's capital stock.⁴ Additionally, the Decree Law gives employees of the Industrial Community the power to appoint representatives to the corporation's Board of Directors.⁵

The General Assembly, which is composed of the members of the Industrial Community, and the Community Council (the executive body) are entrusted with the leadership and the administration of the

1. Pamela Huynh, Author; Raymond Chavez, Editor; Kimberly Barreto, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. *Lagos del Campo v. Peru*, Report on Merits, Report No. 27/15, Inter-Am. Comm'n H.R., Case No. 10.792, ¶ 42 (July 21, 2015). *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 340, ¶ 37, n.28. (Aug. 31, 2017).

3. *Lagos del Campo v. Peru*, Report on Merits, ¶ 43. *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 38, n.29.

4. *Lagos del Campo v. Peru*, Report on Merits, ¶ 44.

5. *Id.*

community.⁶ In particular, the Community Council is manages the community's assets.⁷ The General Assembly annually appoints an Electoral Committee, which is responsible for holding elections for the Community Council and the Board of Directors' employee positions.⁸

July 12, 1976: Mr. Alfredo Lagos del Campo begins working at the maintenance department of Ceper-Pirelli S.A. ("Ceper Pirelli") as an operator electrician.⁹

1982-1986: Mr. Lagos del Campo holds various leadership positions within Ceper-Pirelli's union, such as secretary general and secretary of defense.¹⁰

1988-1989: Mr. Lagos del Campo becomes president of the Electoral Committee of Ceper-Pirelli's Industrial Community.¹¹

April 26, 1989: Mr. Lagos del Campo submits a complaint to the Participation Office of the Ministry of Industry ("Participation Office") concerning irregularities of the April 28 elections for members of the Industrial Community Board and employee representatives of the company's Board of Directors.¹² He claims that three members of the Electoral Committee called the elections knowing that the employees would not be represented.¹³ He claims that these Electoral Committee members are inappropriately representing the company's interest and are attempting to create an Industrial Community Board and Board of Directors favorable for the company.¹⁴

April 28, 1989: After the elections are held, a group of employees send a letter to the Participation Office challenging the elections.¹⁵

June 1989: Magazine La Razón publishes an interview with Mr. Lagos del Campo entitled "Employers' Association and Company Unions Want

6. *Id.* ¶ 45.

7. *Id.*

8. *Id.* ¶ 46.

9. *Id.* ¶ 47.

10. Lagos del Campo v. Peru, Report on Merits, ¶ 47.

11. *Id.* ¶ 48.

12. *Id.* ¶ 49.

13. Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 51.

14. Lagos del Campo v. Peru, Report on Merits, ¶ 51.

15. Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 49.

to Liquidate C1” (Patronal y Amarillos pretenden Liquidar Cl).¹⁶ In the interview, Mr. Lagos del Campo states Ceper-Pirelli’s Board of Directors has and is blackmailing and coercing employees, and forcing laborers to either vote in the elections or face termination.¹⁷ He explains that the employees consist of unionized salaried workers and non-unionized laborers.¹⁸

June 9, 1989: The Participation Office declares the employees’ challenge of the elections to be well-founded and orders new elections because less than seventy-five percent of the Industrial Community’s members participated in the April 28 elections.¹⁹

June 22, 1989: Mr. Lagos del Campo calls for a meeting to be held on June 27, 1989 to discuss the new elections.²⁰

June 26, 1989: The general manager of Ceper-Pirelli sends Mr. Lagos del Campo a notarized letter accusing Mr. Lagos del Campo of neglecting his work.²¹ Ceper-Pirelli claims Mr. Lagos del Campo’s interview with *La Razón* was grossly false.²² It punishes Mr. Lagos del Campo by banning him from the workplace, which in turn prevents him from attending the June 27 meeting he had called to discuss new elections.²³

June 30, 1989: Mr. Lagos del Campo sends a letter to the General Manager denying the charges.²⁴ He specifically states: (1) he has not breached his work obligations because he always performs all his assigned tasks; (2) he did not engage in serious misconduct towards his employers because he did not intentionally act offensively; (3) per Ceper-Pirelli’s work regulations, the company should only impose light sanctions because he did not have a history of disciplinary sanctions; (4) he did not told the interviewing journalist that “that there was an ‘illicit and dishonest’ understanding” with the director of the Participation Office; (5) his statements had been distorted; (6) the company’s charges against him interfered with his rights in the Industrial Community and

16. *Lagos del Campo v. Peru*, Report on Merits, ¶ 50.

17. *Id.*

18. *Id.*

19. *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 49.

20. *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 49.

21. *Id.* ¶ 52.

22. *Id.* ¶ 53.

23. *Id.*

24. *Id.* ¶ 54.

violated his rights “to freedom of expression and dissemination of thought.”²⁵

July 1, 1989: Ceper-Pirelli fires Mr. Lagos del Campo because he failed to refute the charges of the notarized letter.²⁶ The company notes Mr. Lagos del Campo’s allegations of blackmail and coercion constitute a serious infraction and evidence of serious misconduct.²⁷

Because of his termination, Mr. Lagos del Campo is unable to access his social security benefits that are linked to his employment.²⁸ Moreover, his termination coupled with the poor economy and his age (fifty years old) prevent Mr. Lagos del Campo from supporting his wife and fourteen children; as such, he “lives in extreme poverty.”²⁹

July 26, 1989: Mr. Lagos del Campos files a lawsuit against Ceper-Pirelli for wrongful and improper termination in the Fifteenth Labor Court of Lima (“the Fifteenth Labor Court”).³⁰ In Case No. 4737-89, Mr. Lagos denies insulting Ceper-Pirelli or using the words “blackmail” and “coercion.”³¹ Nevertheless, he made the statements as president of the company’s Industrial Community’s Electoral Committee to highlight the irregularities and potential corruption of the elections.³² As such, he claims his termination was improper and “a serious violation of his constitutionally guaranteed right to freedom of opinion, expression, and dissemination of opinion, thus constituting an interference in labor union and employee-owner activities.”³³

March 5, 1991: The Fifteenth Labor Court issues Judgement 25-91 ruling that the termination was unlawful and wrongful because Ceper-Pirelli failed to verify whether Mr. Lagos del Campo did in fact make the defamatory statements in the news article, which were the grounds for his termination.³⁴ Moreover, it noted that no individual member of Ceper-Pirelli was harmed because the news article did not refer to company members specifically.³⁵

25. *Id.*

26. Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 55.

27. *Id.*

28. Lagos del Campo v. Peru, Report on Merits, ¶ 67.

29. *Id.* ¶¶ 66-67.

30. *Id.* ¶¶ 56-57.

31. *Id.*

32. *Id.*

33. *Id.* ¶ 56.

34. Lagos del Campo v. Peru, Report on Merits, ¶ 57.

35. *Id.*

June 25, 1991: Ceper-Pirelli files appeal No. 839-91 with the Second Labor Court of Lima (“Second Labor Court”) contesting the Fifteenth Labor Court’s judgment.³⁶

August 1, 1991: Mr. Lagos del Campo files his response contesting the appeal.³⁷

August 8, 1991: The Second Labor Court reverses the lower court’s decision because it finds that the dismissal is lawful and warranted.³⁸ It holds that Mr. Lagos del Campo is liable for “serious insubordination or a serious verbal infraction against the employer.”³⁹ Although the State’s Constitution guarantees freedom of expression, it does not allow individuals to insult an employer’s senior staff’s personal honor and dignity.⁴⁰

August 9, 1991: Mr. Lagos del Campo’s appeal brief is submitted to the Second Labor Court.⁴¹

August 26, 1991: Mr. Lagos del Campo files a motion for review and reconsideration with the Second Labor Court.⁴²

August 27, 1991: The Second Labor Court denies Mr. Lagos del Campo’s motion for review and reconsideration.⁴³

September 2, 1991: Mr. Lagos del Campo files a motion to vacate with the Second Labor Court, arguing the Court failed to consider his respondent’s brief and ignored the facts of his case and his fundamental rights.⁴⁴

September 3, 1991: The Second Labor Court dismisses Mr. Lagos del Campo’s motion to vacate, citing his failure to meet a prerequisite.⁴⁵

36. *Id.* ¶ 58.

37. *Id.*

38. *Id.*

39. *Id.*

40. Lagos del Campo v. Peru, Report on Merits, ¶ 58.

41. Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 179.

42. Lagos del Campo v. Peru, Report on Merits, ¶ 59.

43. *Id.*

44. *Id.*

45. *Id.*

October 21, 1991: Mr. Lagos del Campo files an *amparo* petition against the Second Labor Court's decision with the Civil Chamber of the Superior Court of Lima, claiming his constitutional rights to "employment security, due process, and equality before the law" were violated.⁴⁶

August 3, 1992: The Fifth Civil Chamber of the Lima Superior Court ("Fifth Civil Chamber") rules Mr. Lagos del Campo's *amparo* action inadmissible because it does not describe a violation of his right to due process.⁴⁷

August 26, 1992: Mr. Lagos del Campo files a motion to vacate the Fifth Civil Chamber's judgment.⁴⁸

February 12, 1993: The Public Ministry files a brief in response to Mr. Lagos del Campo's motion to vacate in which it recommends following *res judicata* by upholding the lower court's judgment because it was a final judgment that closed the case.⁴⁹

March 15, 1993: The Constitutional and Social Chamber of the Supreme Court affirms the Fifth Civil Chamber's judgment and adopts the Public Ministry's recommendation.⁵⁰

March 30, 1993: Mr. Lagos del Campo sends the Chief Justice of the Constitutional and Social Chamber of the Supreme Court an official letter to request a review of the March 15, 1993 judgment.⁵¹

April 28 and May 4, 1993: Mr. Lagos del Campo files motions for reconsideration to request the Full Chamber of the Supreme Court to hear his case.⁵² Ultimately, these motions are not heard.⁵³

July 26, 1996 and January 13, 1997: Mr. Lagos del Campo requests the Fifth Civil Chamber to reopen and refer his *amparo* action to the Constitutional Court.⁵⁴

46. *Id.* ¶ 60.

47. *Id.* ¶ 61.

48. Lagos del Campo v. Peru, Report on Merits, ¶ 61.

49. *Id.*

50. *Id.*

51. *Id.* ¶ 62.

52. *Id.*

53. *Id.*

54. Lagos del Campo v. Peru, Report on Merits, ¶ 63.

June 24, 1997: The Third Specialized Civil Chamber of the Lima Superior Court (“Third Specialized Civil Chamber”) denies Mr. Lagos del Campo’s request because he “should have filed a petition for cassation within 15 days of having received notice of the denial of his *amparo* petition.”⁵⁵

July 18, 1997: Mr. Lagos del Campo files a motion for appeal from the June 24, 1997 order claiming he had to file appeals with the Constitutional and Social Chamber of the Supreme Court because the government had shut down the Constitutional Court.⁵⁶ He further notes that those appeals still have not been adjudicated.⁵⁷

July 25, 1997: Mr. Lagos del Campo’s motion is denied because there is no legal provision that permits the appeal of the Third Specialized Civil Chamber’s order.⁵⁸

August 19, 1997: Mr. Lagos del Campo files a petition for review of his denied appeal and requests the Constitutional Court’s intervention.⁵⁹

October 2, 1997: Mr. Lagos del Campos submits to the Chief Justice of the Constitutional Court a petition for the review of his denied appeal in which he requests the review and examination of his *amparo* action.⁶⁰

November 27, 1997: The Constitutional and Social Chamber of the Supreme Court dismisses Mr. Lagos del Campo’s petition because he should have filed a motion to vacate, not a motion for appeal.⁶¹

February 25, 1998: Mr. Lagos del Campos requests a correction and explanation of the November 27, 1997 order.⁶²

B. Other Relevant Facts

In 1986, the State passed Law 24514, which regulates the right to job stability and the procedure for dismissing workers.⁶³ Termination is

55. *Id.*

56. *Id.* ¶ 64.

57. *Id.*

58. *Id.*

59. *Id.* ¶ 65.

60. *Lagos del Campo v. Peru*, Report on Merits, ¶ 65.

61. *Id.*

62. *Id.*

63. *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 55.

justified when the employee commits serious faults, such as unjustified non-compliance with work obligations and serious misconduct against the employer.⁶⁴ For an employer to terminate an employee for a serious fault, the employer is required to inform the employee, in writing, of the facts and the commencement of the investigation.⁶⁵ The employee has six days to contest the accusation.⁶⁶ If the employee fails to respond, the employer can send a letter of dismissal.⁶⁷ If the employee believes the termination was unjust, he or she has the right to file a lawsuit in which the employer has the burden of proving the dismissal was justified.⁶⁸ If the employer is unable to meet its burden, the employee can opt for reinstatement or termination of the employment with special compensation.⁶⁹

Between 1988 and 1989, the State experiences an economic crisis that worsened labor conditions, causing mass replacements of unionized workers with temporary workers and systematic reduction of wages.⁷⁰

In April of 1992, Security Forces' troops occupy the Palace of Justice and block entry.⁷¹ Numerous decree laws are enacted to remove judges, justices, magistrates, attorney generals, and prosecutors at various level.⁷² Decree Law 25433 is enacted to amend the remedies of *amparo* and *habeas corpus*, which affects citizens' abilities to avail themselves to said remedies.⁷³

II. PROCEDURAL HISTORY

A. *Before the Commission*

August 5, 1998: Mr. Lagos del Campo files a petition with the Inter-American Commission on Human Rights because the State failed to protect his right to freedom of expression regarding his opinions on a union election dispute as a labor union leader.⁷⁴

64. *Id.* ¶ 56.

65. *Id.* ¶ 57.

66. *Id.*

67. *Id.*

68. *Id.*

69. Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 57.

70. Lagos del Campo v. Peru, Report on Merits, ¶ 12.

71. *Id.* ¶ 61 n.22.

72. *Id.*

73. *Id.*

74. *Id.* ¶ 1.

November 1, 2010: The Commission issues its Report on Admissibility in which it determines that the petition is admissible.⁷⁵ The State claims the petition was inadmissible because: (1) although Mr. Lagos del Campo received an unfavorable decision, his due process rights were not necessarily violated; (2) his appeals were denied as the authorities did not have jurisdiction, and; (3) his claim that the court violated his rights to a defense and effective protection when it made a rushed decision was vague and improbable.⁷⁶

The Commission rebuts the State's arguments and explains in its Admissibility Report that: (1) if Mr. Lagos del Campo's allegations are true, his rights to due process and a fair trial would have been violated; and (2) based on the principle *iura novit curia*, it is appropriate for the Commission to study the case's merits to determine whether the State infringed Mr. Lagos del Campo's right to freedom of expression.⁷⁷

July 21, 2015: The Commission adopts its Report on the Merits where it finds the State responsible for violations of Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 13 (Freedom of Thought and Expression) of the American Convention in connection with Articles 1(1) (Obligation of Non-Discrimination), 2 (Obligation to Give Domestic Legal Effect to Rights), and 16(1) (Freedom of Association for Any Purpose) thereto, to the detriment of Mr. Lagos del Campo.⁷⁸

The Commission recommends the State: (1) provide Mr. Lagos del Campo comprehensive reparations, including both pecuniary and non-pecuniary damages, (2) adopt measures to prevent similar violations from occurring and protect the freedom of expression for workers' representatives, including union leaders, and (3) adopt measures to ensure domestic courts consistently apply and interpret the principles of international human rights laws regarding freedom of expression in labor contexts.⁷⁹

75. See *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 2.

76. See *Lagos del Campo v. Peru*, Admissibility Report, Report No. 152/10, Inter-Am. Comm'n H.R., Pet. No. 459-97, ¶¶ 19-21 (Nov. 1, 2010).

77. See *id.* ¶¶ 37-38.

78. *Lagos del Campo v. Peru*, Report on Merits, ¶ 5.

79. *Id.* ¶ 131.

B. Before the Court

November 28, 2015: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁸⁰

1. Violations Alleged by Commission⁸¹

To the detriment of Mr. Lagos del Campo:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 13 (Freedom of Thought and Expression)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination)

Article 2 (Obligation to Give Domestic Legal Effect to Rights)

Article 16(1) (Freedom of Association for Any Purpose) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁸²

Same Violations Alleged by Commission.

June 27, 2016: The State submits its preliminary objections, claiming six procedural issues: (1) the Commission committed procedural errors; (2) Mr. Lagos del Campo failed to exhaust domestic remedies; (3) the Commission erroneously alleged violation of Article 16(1) (Freedom of Association for Any Purpose) of the American Convention since the facts do not indicate a violation of such; (4) the Court lacks competence; (5) other facts, such as the April 5, 1992 coup, should not be considered in the determination of this controversy; and (6) the Commission inappropriately included additional alleged victims beyond Mr. Lagos del Campo in rendering its report.⁸³

July 14, 2016: The Court grants the representatives access to the Victim's Legal Assistance Fund.⁸⁴

80. *Id.* p. 3.

81. Lagos del Campo v. Peru, Report on Merits, ¶ 5.

82. *Id.* ¶ 2. The Association for Human Rights (Asociación Pro Derechos Humanos; "APRODEH") served as representatives of Mr. Lagos del Campo.

83. *Id.* ¶¶ 7, 15.

84. *Id.* ¶ 9.

III. MERITS

A. *Composition of the Court*

Robert F. Caldas, President
Eduardo Ferrer Mac-Gregor Poisot, Vice-President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge
Elizabeth Odio Benito, Judge
Eugenio Raúl Zaffaroni, Judge
Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

August 31, 2017: The Court issues its Judgment on Preliminary Objections, Merits, Reparations and Costs.⁸⁵

The Court found unanimously,

To reject all six of the State's preliminary objections,⁸⁶ because:

The State failed to timely file its first two objections during the admissibility phase of the Commission.⁸⁷ Additionally, Peru was on notice of the facts that constituted a violation of Article 16(1) (Freedom of Association for Any Purpose) of the American Convention since the commencement of the case before the Commission.⁸⁸ The fourth preliminary objection concerned the merits of the case, thus the judgment addressed the objection within the merits section.⁸⁹ It was proper for the Court to consider facts of the appeal and the coup, contrary to the State's fifth preliminary objection, because the Commission considered them during its decision-making process.⁹⁰ The last preliminary objection had already been resolved by the parties' positions.⁹¹

85. See generally Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs.

86. *Id.* "Resolution Points," ¶¶ 1-3.

87. *Id.* ¶ 18.

88. *Id.* ¶ 23.

89. *Id.* ¶ 18.

90. *Id.* ¶ 25.

91. Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 18.

The Court found unanimously that State had violated:

Articles 8(2) (Right to Be Presumed Innocent) and 13(2) (Prohibition of A Priori Censorship), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Lagos del Campo,⁹² because:

The lack of legal justification for Mr. Lagos del Campo's termination impeded his right to due process.⁹³ His termination, which was the maximum sanction, was disproportionate to the alleged defamation published in the magazine.⁹⁴ In making its erroneous decision, the Second Labor Court failed to take into consideration the following fundamental considerations: (1) that Mr. Lagos del Campo enjoyed special protection as a workers' representative; (2) he was participating as a workers' representative in an electoral debate that had a public and collective interest; (3) his declarations were protected as a workers' representative; and (4) there was not an urgent need to protect the reputation and honor of any individual or entity.⁹⁵

Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. Lagos del Campo,⁹⁶ because:

In rendering its decision on appeal, the Second Labor Court failed to take into consideration Mr. Lagos del Campo's appeal brief.⁹⁷ The Civil Chamber of the Superior Court of Lima breached its duty to fully consider parties' arguments for judicial appeals concerning constitutional rights when it dismissed Mr. Lagos del Campo's amparo action based on an administrative issue.⁹⁸ The Constitutional and Social Chamber of the Supreme Court contradicted itself when it claimed that res judicata prevented it from ruling on the appeal since res judicata, if properly applied, would have prevented the rendering of any decision after the Second Labor Court's.⁹⁹ The Third Specialized Civil Chamber's

92. *Id.* "Resolution Points," ¶ 4.

93. *Id.* ¶¶ 131-32.

94. *Id.* ¶¶ 124, 125.

95. *Id.* ¶¶ 126, 130.

96. *Id.* "Resolution Points," ¶ 7.

97. *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 182.

98. *Id.* ¶¶ 183-84.

99. *Id.* ¶ 185.

*requirement that Mr. Lagos del Campo file an appeal of his amparo action within fifteen days of its denial was moot because, at the time, the appellate court failed to exist given the dismissal of its justices during the April 1992 coup d'état.*¹⁰⁰

The Court found by five votes to two that the State had violated:

Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) in relation to Articles 1(1) (Obligation of Non-Discrimination), 8 (Right to a Fair Trial), 13 (Freedom of Thought and Expression), and 16 (Freedom of Association) of the Convention, to the detriment of Mr. Lagos del Campo,¹⁰¹ because:

Mr. Lagos del Campo's arbitrary termination prevented him from accessing his retirement pension.¹⁰² Moreover, he was unable to find another job given his age at the time of termination.¹⁰³ The State's failure to adopt adequate measures to protect the right to work negatively affected Mr. Lagos del Campo's professional, personal, and familial lives.¹⁰⁴

Articles 16 (Freedom of Association) and 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) in relation to Articles 1(1) (Obligation of Non-Discrimination), 8 (Right to a Fair Trial), and 13 (Freedom of Thought and Expression) of the Convention, to the detriment of Mr. Lagos del Campo,¹⁰⁵ because:

Because of his unjustified termination, Mr. Lagos del Campo was prevented from representing his fellow workers in the Electoral Committee and the meeting he had called to address the electoral issues.¹⁰⁶ In fact, he could not even participate in Ceper Pirelli's industrial community since he was no longer an employee.¹⁰⁷ Mr. Lagos del Campo's termination not only interfered with his own right to freedom of association but also his fellow employees' rights to freedom of association – their rights to representation were infringed on since

100. *Id.* ¶¶ 186-87.

101. *Id.* “Resolution Points,” ¶ 5.

102. *Id.* ¶ 152.

103. Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶¶ 151-52.

104. *Id.* “Resolution Points,” ¶ 5.

105. *Id.* “Resolution Points,” ¶ 6.

106. *Id.* ¶ 161.

107. *Id.*

their president of the Electoral Committee was terminated.¹⁰⁸ Additionally, this termination had the potential of intimidating other Industrial Community members from exercising their rights.¹⁰⁹

The Court found unanimously that the State did not violate:

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, with regards to subsection (h) of Article 5 of Law 24514 and Article 25 of Legislative Decree No. 728,¹¹⁰ because:

The State was not obligated to specify in Law 24514 the particular types of speech that required special protection because the relevant authorities had discretion to apply the law.¹¹¹ Nevertheless, the authorities still had an obligation to constitutionally apply Law 24514.¹¹² The Court declined to analyze Article 25 of Legislative Decree No. 728, which replaced Article 5 of Law 24514, because it was not in effect at the time of the termination and the subsequent appeals, and the Court does not apply “national standards in the abstract.”¹¹³

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Roberto F. Caldas

In a separate opinion, Judge Caldas agreed with the conclusion of the Court but disagreed with its unnecessary application of the principle *iura novit curia* (“the court knows the law”).¹¹⁴ He noted this principle should only apply when the petitioner fails to allege particular rights violated.¹¹⁵ Judge Caldas explained *iura novit curia* did not need to be applied to determine an Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) violation because Mr. Lagos del Campo specifically alleged violation of his labor rights, in particular, his right to job stability.¹¹⁶

108. *Id.* ¶ 162.

109. Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, ¶ 162.

110. *Id.* “Resolution Points,” ¶ 8.

111. *Id.* ¶ 121.

112. *Id.* ¶ 122.

113. *Id.* ¶ 165.

114. Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Concurring Vote of Judge Roberto F. Caldas, Inter-Am. Ct. H.R. (ser. C) No. 340, ¶ 9 (Aug. 31, 2017).

115. *Id.* ¶ 14.

116. *Id.* ¶¶ 12, 14.

2. Concurring Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot

In a separate opinion, Judge Ferrer Mac-Gregor Poisot elaborated on the importance of the protection of freedom of association because this was the first time the Court addressed this issue within the labor context, since it had only previously recognized this right within the union context.¹¹⁷ In addition, he emphasized the promotion of workers' interests given the importance of the direct justiciability of the economic, social, cultural and environmental rights.¹¹⁸ Judge Ferrer Mac-Gregor Poisot explained that the analysis in determining a labor stability violation of Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the American Convention could have been applied to a labor association's right to protect and promote its workers' interests.¹¹⁹ Moreover, he lamented the Court's decision not to expand upon the violation of labor association's right to protect and promote its workers' interests because of the risk that this right would be conflated with the general right of association.¹²⁰ Nevertheless, Judge Ferrer Mac-Gregor Poisot highlighted the significance of this judgment as it was the first time the Court found a violation of Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the American Convention.¹²¹

3. Dissenting Opinion of Judge Humberto Antonio Sierra Porto

In a separate opinion, Judge Sierra Porto opined on the Court's error in utilizing Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the American Convention to recognize the justiciability of the economic, social, cultural and environmental rights.¹²² According to Judge Sierra Porto, the article does not delineate a list of rights; it merely allows the Court to monitor compliance with the obligation of progressive development and the duty of non-regression for the rights implied in the Charter of the Organization of American States.¹²³ Thus, Judge Sierra Porto believes the Court improperly

117. *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Concurring Vote of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. (ser. C) No. 340, ¶ 5 (Aug. 31, 2017).

118. *Id.* ¶ 6.

119. *Id.* ¶ 17.

120. *Id.* ¶ 46.

121. *Id.* ¶ 47.

122. *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Vote of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 340, ¶ 4 (Aug. 31, 2017).

123. *Id.* ¶¶ 8-9.

expanded the American Convention through its ruling.¹²⁴ Moreover, the Court denied the existence of the Protocol of San Salvador when it failed to refer to it in its judgment, despite the fact that it grants the Commission and the Court jurisdiction to hear trade union rights cases relating to economic, social, cultural and environmental rights.¹²⁵ In addition, the Court was preempted from applying the *pro persona* principle since it deviates from the norm in only using one method of interpretation, rather than multiple ones.¹²⁶

4. Dissenting Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi disagreed with the Court's finding of a violation of Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the American Convention.¹²⁷ Judge Vio Grossi believes that Article 26 (Duty to Progressively Develop Economic, Social, and Cultural Rights) of the American Convention only describes obligations, not rights.¹²⁸ In order to recognize and apply economic, social, and cultural rights, states must act (such as with the adoption of treaties such as the Protocol of San Salvador), not the Court.¹²⁹

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Judgment as a Form of Reparation

The Court noted that the Judgment itself is a form of reparation.¹³⁰

124. *Id.* ¶¶ 14.

125. *Id.* ¶¶ 15-17, 20.

126. *Id.* ¶¶ 23-25.

127. *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Vote of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 340, ¶¶ 18-19 (Aug. 31, 2017).

128. *Id.* ¶ 18.

129. *Id.* ¶¶ 18-19.

130. *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, "Resolution Points," ¶ 9.

2. Publication of Judgment

The Court ordered the State to publish the official summary of the Judgment in both the State's official gazette and a nationally-circulated newspaper within six months of the issuance of the Judgment.¹³¹ Additionally, the Court required the State to post the entire Judgment for at least a year on an official website.¹³² The State must immediately notify the Court once it makes each publication.¹³³

3. Compliance Report

The Court ordered the State to submit a report stating the measures the State adopted to comply with the Judgment within one year of the issuance of the Judgment.¹³⁴

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded Mr. Lagos del Campo \$28,000 in lost wages.¹³⁵ Additionally, the Court awarded him \$30,000 in lost pensions and social benefits.¹³⁶

2. Non-Pecuniary Damages

The Court awarded Mr. Lagos del Campo \$20,000 in non-pecuniary damages.¹³⁷

3. Costs and Expenses

The Court awarded Mr. Lagos del Campo \$20,000 in legal fees.¹³⁸ Moreover, the Court ordered the State to pay, within ninety days of the

131. *Id.* ¶ 200.

132. *Id.*

133. *Id.* ¶ 201.

134. *Id.* "Resolution Points," ¶ 13.

135. *Id.* ¶ 215.

136. *Lagos del Campo v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, ¶ 216.

137. *Id.* ¶ 222.

138. *Id.* ¶ 227.

Judgment, the Legal Assistance Fund for Victims of the Court \$1,336.81 for expenses incurred.¹³⁹

4. Total Compensation (including Costs and Expenses ordered):

\$ 99,336.81

C. Deadlines

The State must reimburse the Legal Assistance Fund for Victims of the Court within ninety days of the Judgment.¹⁴⁰ Within six months of the issuance of the Judgment, the State must publish the official summary of the Judgment.¹⁴¹ The State has one year to submit a compliance report to the Court.¹⁴² Furthermore, the State must pay the pecuniary damages, non-pecuniary damages, costs, and expenses within one year of the issuance of the Judgment.¹⁴³

V. INTERPRETATION AND REVISION OF JUDGMENT

February 12, 2018: The State requested an interpretation of the judgment regarding the Court's inclusion of job security as a right.¹⁴⁴

*A. Composition of the Court*¹⁴⁵

Eduardo Ferrer Mac-Gregor Poisot, President
 Eduardo Vio Grossi, Vice-President
 Elizabeth Odio Benito, Judge
 Eugenio Raúl Zaffaroni, Judge
 Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary

139. *Id.* ¶ 229.

140. *Id.*

141. *Id.* ¶ 200.

142. Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, "Resolution Points," ¶ 13.

143. *Id.* ¶ 230.

144. Lagos del Campo v. Peru, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 366 ¶ 2 (Nov. 21, 2018).

145. The Interpretation of the Judgment does not indicate why two judges and the deputy secretary were not present for this case.

B. Merits

November 21, 2018: The Court unanimously decided to:

Disregard the request for interpretation as inadmissible¹⁴⁶, because:

The State wrongfully filed an application for interpretation, which should only be used for clarification on the meaning or scope of a judgment, because it argued against the Court's inclusion of the right to job security.¹⁴⁷ The Court dismissed the State's application not only because it was inappropriate, but also because the Judgment resolved the State's outstanding questions.¹⁴⁸

VI. COMPLIANCE AND FOLLOW-UP

May 30, 2018: The Court found that the State partially complied with the Court's order for reimbursing the Legal Assistance Fund for Victims of the Court.¹⁴⁹ Although the State made the reimbursement, it failed to do so in a timely manner, and thus should have included interest with the payment.¹⁵⁰ The State did not include interest accrued for the late payment; as such, the Court ordered it be paid.¹⁵¹

September 26, 2018: The Court found that the State complied with its obligation to publish and disseminate the Judgment.¹⁵²

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

146 *Id.*, “The Court Decides,” ¶ 2.

147 *Id.* ¶ 19.

148 *Id.* ¶ 25.

149. *See* Cases of Pollo Rivera et al. and Lagos del Campo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Court H.R. “Considering That,” ¶ 3 (May 30, 2018).

150. *Id.*

151. *Id.*

152. Cases of Pollo Rivera et al. and Lagos del Campo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Court H.R. ¶ 8 (Sept. 26, 2018).

2. Decisions on Merits, Reparations and Costs

[Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 340 \(Aug. 31, 2017\).](#)

[Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Concurring Vote of Judge Roberto F. Caldas, Inter-Am. Ct. H.R. \(ser. C\) No. 340 \(Aug. 31, 2017\).](#)

[Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Concurring Vote of Judge Eduardo Ferrer Mac-Gregor Poisot, Inter-Am. Ct. H.R. \(ser. C\) No. 340 \(Aug. 31, 2017\).](#)

[Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Vote of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. \(ser. C\) No. 340 \(Aug. 31, 2017\).](#)

[Lagos del Campo v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Partially Dissenting Vote of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\) No. 340 \(Aug. 31, 2017\).](#)

3. Provisional Measures

[Lagos del Campo v. Peru, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. \(ser. E\) \(July 14, 2016\).](#)

[Lagos del Campo v. Peru, Provisional Measures, Order of the President, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 21, 2016\).](#)

4. Compliance Monitoring

[Cases of Pollo Rivera et al. and Lagos del Campo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Court H.R. \(May 30, 2018\).](#)

[Cases of Pollo Rivera et al. and Lagos del Campo v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Court H.R. \(Sept. 26, 2018\)](#)

5. Review and Interpretation of Judgment

[Lagos del Campo v. Peru, Interpretation of the Judgment of Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 366 \(Nov. 21, 2018\).](#)

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Lagos del Campo v. Peru, Admissibility Report, Report No. 152/10, Inter-Am. Comm'n H.R., Pet. No. 459-97 \(Nov. 1, 2010\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Lagos del Campo v. Peru, Report on Merits, Report No. 27/15, Inter-Am. Comm'n H.R., Case No. 10.792 \(July 21, 2015\).](#)

5. Application to the Court

[Lagos del Campo v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 10.792 \(Nov. 28, 2015\).](#)

VIII. BIBLIOGRAPHY

[Alan Riding, *Peru Fights to Overcome Its Past*, N.Y. Times, May 14, 1989, at 6006040.](#)