

López Mendoza v. Venezuela

ABSTRACT¹

This case is about the prosecution of Mr. Leopoldo López Mendoza, a rising star in the State's political scene, opposing the government. He was prosecuted by the State Office of the Comptroller General for alleged irregularities in the transfer of funds, both while he was an executive in the State's main oil company and while he was major of the municipality of Chacao. The Comptroller General barred him from holding office from 2008 until 2014. Eventually, the Court found violation of Mr. López Mendoza's right to elect and be elected, the right to recourse before a competent tribunal, and the right to hearing within a reasonable time.

I. FACTS

A. Chronology of Events

June 24, 1998: Mr. Leopoldo López Mendoza works as an analyst for the Office of the Chief Economist of Venezuela Petroleum S.A. (*Petróleos de Venezuela S.A.*, “PDVSA”).² His mother, Mrs. Antonieta Mendoza de López, works for the same company as Manager of Public Affairs.³ Mr. López Mendoza simultaneously works as the founder of Justice First (*Primero Justicia*), a group in opposition to the government.⁴

PDVSA partners with the Inter-American Foundation (“IAF”) to

1. Rachel Yeung, Author; Theodore Nguyen, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. López Mendoza v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am.Ct. H.R. (ser. C) No. 233, ¶¶ 30, 40 (Sept. 1, 2011).

3. *Id.* ¶ 42.

4. *Id.* ¶ 40; see Roberto Lovato, The Making of Leopoldo Lopez, VENEZUELANALYSIS.COM (July 27, 2015), www.venezuelanalysis.com/analysis/11452. Justice First is an organization that aims to further equality of all people by upholding its basic values: freedom, progress, equality, solidarity, justice, and participation. “Values for Future,” PRIMERO JUSTICIA (last visited Apr. 7, 2016), <http://www.primerojusticia.org.ve/>.

help disadvantaged groups.⁵ The two entities enter into a Memorandum of Understanding under which the two entities donate first approximately \$106,583,850.93,⁶ and, later, approximately \$42,502,550.15.⁷ It is alleged that Mrs. Mendoza de López authorized the donations to First Justice.⁸

May 2000: The Comptroller General of the Republic (“Comptroller General”) opens an investigation into the PDVSA and IAF agreement after reviewing a report from PDVSA’s Corporate Internal Audit Department that scrutinized the circumstances of the donation (hereinafter, “The Donation Case”).⁹

August 4, 2000: By popular vote, Mr. López Mendoza is elected mayor of the municipality of Chacao, as a member of the opposition party.¹⁰

July 11, 2002: Other government officials join the Comptroller General in the investigation into The Donation Case.¹¹ The officials conclude that they cannot find an approval for the December 1998 donation, any documents indicating how the donation would be spent, or a donation request to PDVSA by First Justice.¹²

October 25, 2002: As mayor of Chacao, one of Mr. López Mendoza’s responsibilities is to transfer ten percent of his municipality’s revenue to the district.¹³ On the other hand, if the municipality requires additional funds, the Municipal Council may approve and allocate additional funds to the areas of the municipality that need it.¹⁴ Mr. López Mendoza declares a deficit in the budget and obtains approval from the Municipal

5. López Mendoza v. Venezuela, Merits, Reparations, and Costs, ¶ 41.

6. The original amount of 60,060,000 Bolivares was converted into US dollars using an exchange rate of 1 bolivar to 1.774 U.S. dollars on December 23, 1998. See <http://fxtop.com/en/currency-converter-past.php>.

7. The original amount of 25,000,000 Bolivares was converted into US dollars using an exchange rate of 1 bolivar to 1.7 U.S. dollars on September 11, 1998. See <http://fxtop.com/en/currency-converter-past.php>; López Mendoza v. Venezuela, Merits, Reparations, and Costs, ¶ 41.

8. López Mendoza v. Venezuela, Merits, Reparations, and Costs, ¶ 43.

9. *Id.* ¶¶ 44–45.

10. *Id.* ¶ 30; see Lovato, *supra* note 4.

11. *Id.* ¶ 46.

12. *Id.* The original amount of 60,060,000 Bolivares was converted into US dollars using the exchange rate the Court provided in ¶ 239, of 5,000 Bolivares for \$1,162.79.

13. *Id.* ¶ 65.

14. *Id.*

Council for more funds.¹⁵

December 6, 2002: The Office of Municipal Oversight requests from the Chacao Comptroller a report regarding Mr. López Mendoza's budget as mayor (hereinafter, "the Budget Discrepancy").¹⁶

September 8, 2003: An order is issued to begin an investigation into The Donation Case, case file no. 22/001/2003.¹⁷

September 9, 2003: The Office of Municipal Oversight issues a report, finding that Mr. López Mendoza's mayoral office should have transferred \$3,482,307¹⁸ to the district for the required ten percent of revenue.¹⁹

September 12, 2003: Mr. López Mendoza is given notice of the investigation into The Donation Case and is told that he would be informed of the results.²⁰

October 31, 2003: Mr. López Mendoza files a brief for The Donation Case, arguing that the Comptroller General did not give him valid notice of the charges against him and that the investigation was unwarranted because there was no conflict of interest since he did not gain any benefit from the donation.²¹

December 23, 2003: The Office of Municipal Oversight opens an investigation, case no. 07-02-PI-2003-020, into the people responsible for The Budget Discrepancy, including Mr. López Mendoza.²²

November 2003 until July 2004: The Donation Case investigation is

15. *Id.* ¶ 66.

16. *Id.* ¶ 67.

17. *Id.* ¶ 47.

18. The original amount of 5,571,686,030 bolivares was converted into U.S. dollars using an exchange rate of 1 bolivar to 0.0006 U.S. dollars. See <http://fxtop.com/en/currency-converter-past.php>.

19. López Mendoza v. Venezuela, Merits, Reparations, and Costs, ¶ 68. The original amount was 25,000,000 Bolivares, but was converted into US dollars using the exchange rate the Court provided in ¶ 239, of 5,000 Bolivares for \$1,162.79.

20. *Id.* ¶ 48.

21. *Id.* ¶ 49.

22. *Id.* ¶ 69.

completed.²³ A report is issued, finding that the donations were made without a contractual agreement dictating how the funds would be used and that Mrs. Mendoza de López facilitated the donations and related documents.²⁴

February 18, 2004: The Office of Municipal Oversight gives Mr. López Mendoza notice regarding the investigation on The Budget Discrepancy.²⁵ The notice informs Mr. López Mendoza that if he wants to present a defense, he must file all arguments and evidence within ten business days.²⁶

March 4, 2004: Mr. López Mendoza's attorney files a brief with regard to The Budget Discrepancy investigation.²⁷

April 26, 2004: A report on The Budget Discrepancy is issued.²⁸ The investigation finds that Mr. López Mendoza's mayoral office annulled the transfer of over \$13,045 to the district.²⁹

July 12, 2004: The Office of the Determination of Responsibility of the General Office of Special Procedures of the Comptroller General ("Office of Determination of Responsibility") initiates an administrative proceeding with regard to Mr. López Mendoza's responsibility for The Budget Discrepancy.³⁰

July 15, 2004: An administrative proceeding is initiated on The Donation Case against Mr. López Mendoza based on the Comptroller General's findings.³¹

July 16, 2004: Mr. López Mendoza and Mrs. Mendoza de López receive notice of the administrative proceeding regarding The Donation

23. *Id.* ¶ 50.

24. *Id.*

25. *Id.* ¶ 70.

26. *Id.*

27. *Id.*

28. *Id.* ¶ 71.

29. *Id.* The original amount of 25,000,000 Bolivares was converted into US dollars using an exchange rate of 1 bolivar to 0.00052 U.S. dollars. See <http://fxtop.com/en/currency-converter-past.php>.

30. López Mendoza v. Venezuela, Merits, Reparations, and Costs, ¶ 71.

31. *Id.* ¶ 51.

Case.³² The notice informs them that they are charged with “alleged irregular activity”.³³ Furthermore, Mr. López Mendoza and Mrs. Mendoza de López are informed that they may present evidence and legal arguments and schedule a legal hearing.³⁴

August 10, 2004: Mr. López Mendoza’s representatives file a writ of *amparo* to protect Mr. López Mendoza’s constitutional rights regarding The Budget Discrepancy.³⁵ The writ of *amparo* requests that the Court protect Mr. López Mendoza’s right to a defense and presents to the Court his account of The Budget Discrepancy.³⁶

August 25, 2004: Mr. López Mendoza files evidence to support his defense in The Donation Case.³⁷ With regard to The Budget Discrepancy case, the Seventh Superior Court in Administrative Disputes of Caracas declares the writ of *amparo* inadmissible, ruling that the investigation was incomplete, not final, and thus unchallengeable.³⁸

October 29, 2004: A decision is rendered on The Donation Case administrative proceeding, finding Mr. López Mendoza and Mrs. Mendoza de López responsible for misconduct arising from the PDVSA donations.³⁹ The two are fined \$647.50 each.⁴⁰

October 31, 2004: Mr. López Mendoza is reelected as mayor of Chacao.⁴¹

November 2, 2004: The Office of Determination of Responsibility issues a final order on The Budget Discrepancy case, finding that part of a mayor’s duties is to competently maintain a budget and that Mr. López Mendoza’s involvement in The Budget Discrepancy subjects him to

32. *Id.* ¶ 52.

33. *Id.*

34. *Id.*

35. *Id.* ¶ 73. A writ of *amparo* is akin to an application for habeas corpus. See <http://www.nyulawglobal.org/globalex/Amparo.html>.

36. López Mendoza v. Venezuela, Merits, Reparations, and Costs, ¶ 73.

37. *Id.* ¶ 52.

38. *Id.* ¶ 74.

39. *Id.* ¶¶ 54–55.

40. *Id.* ¶ 55. The original amount of 1,243,200 bolivares was converted into US dollars using the official exchange rate of the Central Bank Reserve of Venezuela (Banco Central de Reserva de Venezuela) at the time. *Id.*

41. *Id.* ¶ 30.

administrative responsibility.⁴² Consequently, Mr. López Mendoza is fined \$4,239.58.⁴³

November 22, 2004: Mr. López Mendoza files a motion to reconsider in The Donation Case, arguing that the accusation and administrative proceeding were conducted poorly.⁴⁴ Additionally, he files a motion to reconsider in The Budget Discrepancy case, arguing that his right to a defense, among others, were violated during the administrative proceeding.⁴⁵

March 28, 2005: The administrative body dismisses the motion to reconsider The Donation Case, finding that the investigation and proceedings were conducted pursuant to the law and resulted in a just judgment.⁴⁶

Furthermore, The Office of Determination dismisses the motion to reconsider The Budget Discrepancy case, holding that the proceeding complied with the law and the judgment was valid.⁴⁷

August 4, 2005: Mr. López Mendoza appeals the annulment of the administrative decision on The Budget Discrepancy case and files a precautionary measure to protect his constitutional rights and to suspend the effects of the decision.⁴⁸ He argues that his right to a defense was violated because no specific allegations were made against him.⁴⁹

August 24, 2005: The Comptroller General issues a final judgment on the administrative proceeding of The Donation Case, finding Mr. López Mendoza responsible for the misconduct.⁵⁰ The Comptroller General additionally sanctions Mr. López Mendoza, disqualifying him from holding public office for three years.⁵¹

42. *Id.* ¶¶ 76–77.

43. *Id.* ¶ 78. The original amount of 8,140,000 bolivares was converted into US dollars using the official exchange rate of the Central Bank Reserve of Venezuela (Banco Central de Reserva de Venezuela) at the time of the fine. *Id.*

44. *Id.* ¶ 56.

45. *Id.* ¶ 79.

46. *Id.* ¶ 57.

47. *Id.* ¶ 80.

48. *Id.* ¶ 84.

49. *Id.*

50. *Id.* ¶ 58.

51. *Id.*

September 22, 2005: Mr. López Mendoza files a motion to reconsider his status following the final judgment on The Donation Case.⁵² The motion alleges that the judgment is baseless in both fact and law and that the three-year disqualification was excessive.⁵³

September 26, 2005: The Comptroller General sanctions Mr. López Mendoza for his involvement in The Budget Discrepancy, disqualifying him from public office for six years.⁵⁴

November 15, 2005: Mr. López Mendoza files a motion to reconsider his suspension resulting from The Budget Discrepancy decision, arguing that there was no justification for the sever punishment.⁵⁵

October 4, 2005: Mr. López Mendoza appeals the Comptroller General's judgment regarding The Donation Case.⁵⁶ He argues that the judicial process is flawed because he never received a clear notice of investigation, there was no set appeals process, and evidence relevant to his investigation was left out.⁵⁷

January 9, 2006: The Comptroller General's office dismisses Mr. López Mendoza's motion to reconsider his sanctions in The Donation Case.⁵⁸ The dismissal notes that the sanctions were warranted due to the political status of the people named in the investigation.⁵⁹

Additionally, the Comptroller General dismisses Mr. López Mendoza's motion to reconsider his sanctions in The Budget Discrepancy case.⁶⁰

June 21, 2006: Mr. López Mendoza files an appeal of the Budget Discrepancy case decision before the Constitutional Chamber of the Supreme Tribunal of Justice.⁶¹ He additionally files a request for precautionary measures to protect his constitutional rights, arguing that the

52. *Id.* ¶ 59.

53. *Id.*

54. *Id.* ¶ 81.

55. *Id.* ¶ 82.

56. *Id.* ¶ 61.

57. *Id.*

58. *Id.* ¶ 60.

59. *Id.*

60. *Id.* ¶ 83.

61. *Id.* ¶ 89.

Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight is unconstitutional for violating Mr. López Mendoza's political rights, right to defense, and the principles of criminal codification and proportionality.⁶²

August 5, 2008: After hearing evidence and legal arguments, the Tribunal rules against Mr. López Mendoza's August 4, 2005 appeal of The Budget Discrepancy administrative decision.⁶³

August 6, 2008: Mr. López Mendoza's 2006 appeal of the unconstitutionality of the Organic Law of the Comptroller General of the Republic is denied.⁶⁴

July 21, 2008: The National Electoral Council approves a new law regulating who may be eligible to run in popular elections.⁶⁵ The law does not allow those who have been disqualified by any law to participate in the elections.⁶⁶ The National Electoral Council keeps a list of those that have been disqualified from elections; Mr. López Mendoza is among them.⁶⁷

November 2008: Mr. López Mendoza's term as mayor concludes.⁶⁸ He plans on running for mayor of the State of Caracas.⁶⁹ However, Mr. López Mendoza is deemed ineligible to enter the race due to the two investigations conducted by the Comptroller General.⁷⁰ Nevertheless, he is still an active member in politics.⁷¹

March 31, 2009: The Political-Administrative Chamber of the Supreme Tribunal of Justice dismisses Mr. López Mendoza's October 2005 appeal of the Donation Case.⁷²

62. *Id.* ¶¶ 33, 89.

63. *Id.* ¶ 87.

64. *Id.* ¶ 90.

65. *Id.* ¶ 91.

66. *Id.*

67. *Id.* ¶¶ 92–93.

68. *Id.* ¶ 30.

69. *Id.*

70. *Id.*

71. *Id.* ¶ 94.

72. *Id.* ¶ 63.

B. Other Relevant Facts

In 1999, the Constitution of the Bolivarian Republic of Venezuela creates the Citizens' Power (Poder Ciudadano), or Citizen's Branch, of the government.⁷³ The Citizens' Power is made up of many administrative agencies, including the Comptroller General.⁷⁴ The primary purpose of this branch is to prevent, investigate, and punish acts of administrative corruption.⁷⁵

In 2001, the Comptroller General adopts the Organic Law of the Comptroller General of the Republic and the National System of Fiscal Oversight (hereinafter Organic Law), which includes provisions that punish public officials for administrative corruption.⁷⁶ It specifies which public officials and persons the law applies to and also enables the government to impose sanctions that can disqualify a candidate from holding office.⁷⁷

The Organic Law works in phases.⁷⁸ First, the fiscal oversight phase reports findings on whether or not specific acts constitute administrative corruption.⁷⁹ Next, the investigative phase provides legal notice the person being investigated, and facts are gathered to determine whether there is cause for an administrative proceeding.⁸⁰ If there are enough facts to proceed, an administrative proceeding is launched to determine if the target of the investigation should be found responsible of wrongdoing.⁸¹

II. PROCEDURAL HISTORY

A. Before the Commission

March 4, 2008: Mr. López Mendoza files a petition with the Inter-American Commission on Human Rights.⁸²

73. *Id.* ¶ 31.

74. *Id.*

75. *Id.*

76. *Id.* ¶ 33.

77. *Id.*

78. *Id.* ¶ 36.

79. *Id.* ¶¶ 36–37.

80. *Id.*

81. *Id.* ¶¶ 37–39.

82. López Mendoza v. Venezuela, Admissibility Report, Report No. 67/08, Inter-Am. Comm'n H.R., Case No. 12.668, ¶ 1 (July 25, 2008).

July 25, 2008: The Commission issues Admissibility Report No. 67/08.⁸³

August 8, 2009: The Commission issues Merits Report No. 92/09, finding the State violated Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal), Article 23 (Right to Participate in Government), and Article 25 (Right to Judicial Protection).⁸⁴ The Commission recommends the State reinstate Mr. López Mendoza's right to participate in government, rectify its laws so as to not disqualify individuals from running in elections in administrative sanctions, and strengthen its due process guarantees.⁸⁵

B. Before the Court

December 14, 2009: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁸⁶

1. Violations Alleged by Commission⁸⁷

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

Article 23 (Right to Participate in Government)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁸⁸

Same Violations Alleged by the Commission, plus:

Article 24 (Right to Equal Protection) of the American Convention.

83. *Id.*

84. *López Mendoza v. Venezuela*, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.668, ¶ 15 (Dec. 14, 2009).

85. *Id.* ¶ 16.

86. *López Mendoza v. Venezuela*, Merits, Reparations, and Costs, ¶ 1.

87. *Id.* ¶ 3.

88. *Id.* ¶ 190. Mr. Enrique Sánchez Falcón, and Mr. José Antonio Maes Aponte served as representatives of Mr. López Mendoza. *Id.* ¶ 4.

June 4, 2010: The State files its brief with a preliminary objection that certain judges on the Court are biased.⁸⁹

September 3, 2010: The President of the Court dismisses the State's argument of bias on the grounds that it is not a proper preliminary objection.⁹⁰

December 20, 2010: The Venezuelan Association of Constitutional Law (*Asociación Venezolana de Derecho Constitucional*) submits an *amicus curiae* brief to the Court.⁹¹

February 25, 2011: Human Rights Foundation submits an *amicus curiae* brief to the Court.⁹²

March 1, 2011: Mr. Jorge Castañeda Gutman and Mr. Hugo Mario Wortman Jofre submit *amicus curiae* briefs to the Court.⁹³

March 16, 2011: The Carter Center submits an *amicus curiae* brief to the Court.⁹⁴

III. MERITS

A. *Composition of the Court*⁹⁵

Diego García-Sayán, President
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge

89. *Id.* ¶ 6.

90. *Id.* n.3.

91. *Id.* ¶ 10, n.8.

92. Brief for the Human Rights Foundation as Amici Curiae Supporting Petitioner, *López Mendoza v. Venezuela*, Merits, Reparations, and Costs, Judgment, Inter-Am.Ct. H.R. (ser. C) No. 233 (Sept. 1, 2011), http://humanrightsfoundation.org/uploads/Amicus_CuriaeLL_English.pdf.

93. *López Mendoza v. Venezuela*, Merits, Reparations, and Costs, ¶ 10, n.9–10.

94. *Id.* ¶ 10, n.11.

95. *Id.* ¶ 1. Judge Leonardo Franco did not participate in the deliberation and signing of the Judgment due to reasons of *force majeure*. *Id.* n.*. Likewise, Deputy Secretary Emilia Segares Rodríguez was not present for the deliberations due to reasons of *force majeure*. *Id.* n.**.

Pablo Saavedra Alessandri, Secretary

B. Decision on the Merits

September 1, 2011: The Court issues its Judgment on Merits, Reparations, and Costs.⁹⁶

The Court found unanimously that Venezuela had violated:

Article 23(1)(b) (Right to Elect and Be Elected), and Article 23(2) (Exceptions to Right to Participate in Government) in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mr. López Mendoza,⁹⁷ because:

Article 23(1) (Right to Elect and Be Elected) guarantees a citizen's right to participate in public affairs, whether it be through direct involvement, a representative, voting, service to one's country, or, as in this case, entering a political election as a candidate.⁹⁸ The only exception, established under Article 23(2) (Exceptions to Right to Participate in Government), to a citizen's right to participate in public affairs is if a competent court finds that citizen guilty of a crime.⁹⁹

In this case, Mr. López Mendoza was acquitted in a competent court but was still deprived of his right to participate in public affairs.¹⁰⁰ Because the sanctions do not qualify under the sole exception, the ramifications of the sanctions unjustifiably deprived Mr. López Mendoza of his right to be elected.¹⁰¹ Thus, the Court found that the State violated Article 23(1)(b) (Right to Elect and Be Elected) and Article 23(2) (Exceptions to Right to Participate in Government).¹⁰²

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mr.

96. López Mendoza v. Venezuela, Merits, Reparations, and Costs.

97. *Id.* "Declares" ¶ 1.

98. *Id.* ¶ 106.

99. *Id.* ¶ 107.

100. *Id.* ¶¶ 107–108.

101. *Id.*

102. *Id.* ¶ 109.

López Mendoza,¹⁰³ because:

*Mr. López Mendoza was not notified of the reasons why additional sanctions were imposed against him, nor was he able to present a defense.*¹⁰⁴

*Inherent in Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) is the right to know the charges against oneself.*¹⁰⁵ *The Organic Law allows the Comptroller to impose additional sanctions upon an individual once a judgment is rendered.*¹⁰⁶ *In adding extra sanctions against Mr. López Mendoza, the Comptroller failed to notify Mr. López Mendoza of the reasons why such sanctions were appropriate.*¹⁰⁷ *When Mr. López Mendoza inquired into the reasons on his appeal, the Comptroller merely referred back to the previous judgment indicating that Mr. López Mendoza was found guilty.*¹⁰⁸

*The State's failure to inform Mr. López Mendoza of the causes of the additional sanctions made it impossible for him to mount a defense against those sanctions.*¹⁰⁹

*For the forgoing reasons, the Court determined that the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) to the detriment of Mr. López Mendoza, with respect to the additional sanctions.*¹¹⁰

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation to Respect Rights), Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), Article 23(1)(b) (Right to Elect and Be Elected), and Article 23(2) (Exceptions to Right to Participate in Government) of the Convention, to the detriment of Mr. López Mendoza,¹¹¹ because:

103. *Id.* "Declares" ¶ 2.

104. *Id.* ¶ 148.

105. *Id.* ¶¶ 141–42.

106. *Id.* ¶¶ 138–39.

107. *Id.* ¶ 145.

108. *Id.* ¶¶ 145–46.

109. *Id.* ¶ 148.

110. *Id.* ¶ 149.

111. *Id.* "Declares" ¶ 3.

The Court found that Article 25(1) (Right to Recourse Before a Competent Court) is not satisfied by a mere Constitutional or legal decree.¹¹² Rather, the avenue to obtain recourse must actually be effective in producing a remedy.¹¹³ The Court found that the judicial appeals process for Mr. López Mendoza's case was ineffective and failed to protect his right to be elected because the appeals decisions did not include the necessary procedural safeguards.¹¹⁴ His ineffective appeals failed to ensure his right to know the cause of his sanctions and failed to protect his right to be elected, especially since Mr. López Mendoza did not satisfy the guilt exception under Article 23(2) (Exceptions to Right to Participate in Government).¹¹⁵ The Court determined that these were arbitrary infringements on his right to participate in government.¹¹⁶ Thus, Mr. López Mendoza's ineffective appeals violated his rights under Article 25(1) (Right of Recourse Before a Competent Court)¹¹⁷

Article 2 (Obligation to Give Domestic Legal Effect to Rights), in relation to Article 1(1) (Obligation to Respect Rights), Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), Article 23(1)(b) (Right to Elect and Be Elected), and Article 23(2) (Exceptions to Right to Participate in Government) of the Convention, to the detriment of Mr. López Mendoza,¹¹⁸ because:

Article 2 (Obligation to Give Domestic Legal Effect to Rights) requires the State to ensure that the rights and freedoms protected by the Convention are incorporated into State law.¹¹⁹ Article 8(1) Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) ensures the right to a hearing before a competent tribunal in light of criminal accusations.¹²⁰ Article 23(1) (Right to Elect and Be Elected) guarantees a citizen's right to participate in public affairs, whether it be through direct involvement, a representative, voting, service to one's country or, as in this case, entering a political election as a candi-

112. *Id.* ¶ 184.

113. *Id.*

114. *Id.* ¶ 185.

115. *See id.* ¶¶ 107, 149.

116. *Id.*

117. *Id.* ¶ 185.

118. *Id.* "Declares" ¶ 4.

119. *Id.* ¶ 95, n.205.

120. *Id.* ¶ 95, n.202.

date.¹²¹ *The only exception, established under Article 23(2) (Exceptions to Right to Participate in Government), to a citizen's right to participate in public affairs is if a competent court finds that citizen guilty of a crime.*¹²²

*The Court found that the Organic Law did not comply with some of the rights guaranteed by the Articles of the American Convention.*¹²³ *Specifically, the law revoked an individual's right to be elected without a valid exception, which the Court found was a violation of Article 23(1)(b) (Right to Elect and Be Elected), and Article 23(2)(Exceptions to Right to Participate in Government.)*¹²⁴ *Further, the additional sanctions were arbitrary and did not provide Mr. López Mendoza with a fair proceeding since he did not know why the additional sanctions were warranted, which is a violation of Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).*¹²⁵ *The Court found that the State cannot simply provide an opportunity for citizens to exercise these rights but must actually protect them.*¹²⁶

*For all the above reasons, the Court found that the Organic Law, and therefore the State, violated Article 2 (Obligation to Give Domestic Legal Effect to Rights).*¹²⁷

The Court found unanimously that Venezuela had not violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mr. López Mendoza,¹²⁸ because:

*The right to a defense begins the moment an individual is suspected of committing a crime and ends when the individual's proceedings close.*¹²⁹ *The Court found that Mr. López Mendoza understood the facts from the*

121. *Id.* ¶ 106.

122. *Id.* ¶ 107.

123. *Id.* ¶ 206.

124. *Id.* ¶¶ 106–107.

125. *Id.* ¶¶ 148, 199.

126. *Id.* ¶ 108.

127. *Id.* ¶ 206.

128. *Id.* “Declares” ¶¶ 5–7.

129. *Id.* ¶ 117.

investigation and was given sufficient notice at the start of the proceedings, had counsel to represent him, and was able to present testimonial and documentary evidence on his behalf.¹³⁰ Additionally, the Court found that Mr. López Mendoza was actively participating in the proceedings against him.¹³¹ While the State might not have allowed some of Mr. López Mendoza's witnesses to testify, the Court found that the State did not act unreasonably in doing so.¹³² Moreover, the Court found that the State was not unreasonable in preventing Mr. López Mendoza from challenging every procedural action in the proceedings; doing so did not stop Mr. López Mendoza from appealing subsequent actions or the proceedings as a whole.¹³³

The Court also noted that Mr. López Mendoza actively questioned the charges against him and demanded clarity on the irregularities with each investigation.¹³⁴ Due to his own conduct, the Court found that Mr. López Mendoza was aware of the charges against him.¹³⁵

Additionally, the Court found that Mr. López Mendoza had fifteen days to provide evidence towards his defense.¹³⁶ While the Court would not rule on whether fifteen days automatically constitutes an appropriate time frame to mount a defense, in this case, there was no evidence to show that it was insufficient.¹³⁷

Moreover, the Court found that the length of Mr. López Mendoza's two appeals, both around three years, was reasonable.¹³⁸ In reaching this conclusion, the Court considered the complexity of the appeals process, the relevant procedural conduct, the judicial authorities' conduct, and the effects of the legal proceeding.¹³⁹

The most convincing factor the Court considered was the complexity of the appeal given the constitutional challenge.¹⁴⁰ The Court found that

130. *Id.* ¶¶ 118–19.

131. *Id.*

132. *Id.* ¶ 122.

133. *Id.* ¶ 120.

134. *Id.* ¶ 119.

135. *Id.*

136. *Id.* ¶ 121.

137. *Id.*

138. *Id.* ¶¶ 167, 169.

139. *Id.* ¶¶ 163–68.

140. *Id.* ¶¶ 163–64.

*the State diligently considered the matter, and the time spent was not unreasonable.*¹⁴¹

*The Court considered the same four factors in determining whether or not the constitutional challenge was handled in a reasonable time.*¹⁴² *The Court applied the same logic and reasoning, and came to the same conclusion: that the complexity of the matter outweighed all other factors.*¹⁴³ *Thus, the time spent was not unreasonable.*¹⁴⁴

*With regard to the Organic Law proceedings generally, the Court found that there is a presumption of innocence inherent in the way the proceedings are held.*¹⁴⁵ *According to the Court, the first phase of the proceedings calls for an administrative body to gather facts, through assessments, inspections, and audits, to determine if there was any merit to the allegations of wrongdoing.*¹⁴⁶ *Only after the facts point to a valid allegation does the proceeding move forward.*¹⁴⁷ *Since the proceedings do not move forward unless facts show otherwise, the Court determined that there was a presumption of innocence in the administration of Mr. López Mendoza proceedings.*¹⁴⁸

*As such, the Court found no evidence to indicate that the State violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) with respect to Mr. López Mendoza's proceedings that resulted in legal responsibilities and fines.*¹⁴⁹

Article 24 (Right to Equal Protection) in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mr. López Mendoza,¹⁵⁰ because:

*Mr. López Mendoza was one individual on a list of 118 people disqualified by the State to participate in government.*¹⁵¹ *The Court stated that,*

141. *Id.* ¶¶ 167, 169.

142. *Id.* ¶¶ 174–79.

143. *Id.*

144. *Id.* ¶ 180.

145. *Id.* ¶ 126.

146. *Id.* ¶ 129.

147. *Id.*

148. *Id.*

149. *Id.* ¶ 132.

150. *Id.* “Declares” ¶ 8.

151. *Id.* ¶¶ 193–94.

aside from Mr. López Mendoza, it was not in a position to decide which of the individuals listed truly deserved disqualification because each individual's respective administrative and judicial proceedings were unique.¹⁵² Additionally, Mr. López Mendoza failed to plead sufficient facts to show that individuals in the same circumstances as him were given their right to participate in government, which would have been necessary to successfully plead this violation.¹⁵³

Therefore, the Court found the State did not violate Article 24 (Right to Equal Protection).¹⁵⁴

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Diego García-Sayán

In a separate opinion, Judge García-Sayán argued that the Court's finding that Article 23(2) (Exceptions to Right to Participate in Government) only has one exception for a criminal conviction could lead to improper interpretations in the future.¹⁵⁵ Judge García Sayán noted that other human rights conventions do not limit the exceptions to a criminal conviction.¹⁵⁶ Rather, the exceptions should be read to include decisions and sanctions imposed by a judicial authority.¹⁵⁷

Further, Judge García-Sayán argued that a limitation on an individual's right to suffrage is a serious infringement and such deprivation is not proportional to the illegal act in this case.¹⁵⁸ This type of deprivation should only be utilized to the extent necessary to protect serious attacks on other fundamental rights.¹⁵⁹

2. Concurring Opinion of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi took issue with the way

152. *Id.*

153. *Id.*

154. *Id.* ¶ 195.

155. López Mendoza v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Diego García-Sayán, Inter-Am. Ct. H.R. (ser. C) No. 233, ¶¶ 3–6 (Sept. 1, 2011).

156. *Id.* ¶ 10.

157. *Id.* ¶ 17.

158. *Id.* ¶¶ 19, 24.

159. *Id.* ¶ 27.

Article 23(2) (Exceptions to Right to Participate in Government) was interpreted.¹⁶⁰ Judge Vio Grossi argued that the Court failed to note some of the legislative history and intent behind the Articles.¹⁶¹

IV. REPARATIONS

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

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

1. Set Aside the Sanctions

The State must set aside the disqualifying sanctions and ensure that those sanctions do not interfere with Mr. López Mendoza's right to participate in government, if he wishes to enter a political race as a candidate.¹⁶²

2. Publish the Judgment

The State must publish within six months an official summary of the Judgment in the Official Gazette, in another nationally circulated newspaper, and on the State's official website, made available for a year.¹⁶³

3. Guarantee Non-Repetition

The State must change the Organic Law to ensure that the law and its administration do not violate the Convention.¹⁶⁴ Specifically, the State must incorporate a statute of limitations for additional sanctions and include regulations governing additional sanctions.¹⁶⁵

160. López Mendoza v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 233, ¶ 5 (Sept. 1, 2011).

161. *Id.* ¶¶ 1–5.

162. López Mendoza v. Venezuela, Merits, Reparations, and Costs, ¶¶ 217–18.

163. *Id.* ¶ 222.

164. *Id.* ¶ 225.

165. *Id.* ¶¶ 223–24.

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

[None]

3. Costs and Expenses

The Court awarded \$12,000 for Mr. López Mendoza's incurred cost and expenses.¹⁶⁶ Mr. López Mendoza will deliver the appropriate amount to his representatives.¹⁶⁷

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

\$ 12,000

C. Deadlines

Since the Judgment serves as Mr. López Mendoza's restitution, the State must not impede his efforts to participate in government after the issuance of the Judgment.¹⁶⁸

The State must, as satisfaction of the guarantee of non-repetition, change the Organic Law within a reasonable time.¹⁶⁹

The State must publish the official summary of the Judgment in the Official Gazette, in another nationally circulating newspaper, and on the State's official website, within six months of the Judgment.¹⁷⁰

The State must reimburse Mr. López Mendoza for costs and expenses within one year of the Judgment.¹⁷¹

166. *Id.* ¶ 243.

167. *Id.*

168. *Id.* "And Decides" ¶¶ 1–2.

169. *Id.* "And Decides" ¶ 5.

170. *Id.* ¶ 222.

171. *Id.* ¶ 244.

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 20, 2015: The Court found that the State, in bad faith, failed to comply with any of the measures the Court ordered.¹⁷² The State failed to comply with its obligations to publish the judgment, to allow Mr. López Mendoza to run for office, to adopt the requisite Organic Law, and to make the ordered payments.¹⁷³ Consequently, the Court will continue to monitor the State with regard to this case and reiterates that the State must comply with the Court's order.¹⁷⁴

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[López Mendoza v. Venezuela, Merits, Reparations, and Costs, Judgment, Inter-Am.Ct. H.R. \(ser. C\) No. 233 \(Sept. 1, 2011\).](#)

[López Mendoza v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Diego García-Sayán, Inter-Am. Ct. H.R. \(ser. C\) No. 233 \(Sept. 1, 2011\).](#)

[López Mendoza v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\) No. 233 \(Sept. 1, 2011\).](#)

172. López Mendoza v. Venezuela, Monitoring Compliance with Judgment Order of the Court, Inter-Am. Ct. H.R. "Declares That" ¶¶ 1–2 (Nov. 20, 2015) (Available only in Spanish).

173. *Id.* ¶ 2.

174. *Id.* "And Resolves" ¶¶ 3–5.

3. Provisional Measures

[None]

4. Compliance Monitoring

[López Mendoza v. Venezuela, Monitoring Compliance with Judgment Order of the Court, Inter-Am. Ct. H.R. \(Nov. 20, 2015\) \(Available only in Spanish\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[López Mendoza v. Venezuela, Admissibility Report, Report No. 67/08, Inter-Am. Comm'n H.R., Case No. 12.668 \(July 25, 2008\).](#)

3. Provisional Measures

[None]

4. Report on Merits

López Mendoza v. Venezuela, Report on Merits, Report No. No. 92/09, Inter-Am. Comm'n H.R., Case No. 12.668 (Aug. 8, 2009).

5. Application to the Court

[López Mendoza v. Venezuela, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.668 \(Dec. 14, 2009\).](#)

VIII. BIBLIOGRAPHY

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Roberto Lovato, *The Making of Leopoldo Lopez*, VENEZUELANALYSIS.COM (July 27, 2015), www.venezuelanalysis.com/analysis/11452.

Rafael Romo, *The Face of Venezuela's Opposition*, CNN (Feb. 22, 2014), <http://www.cnn.com/2014/02/21/world/americas/profile-leopoldo-lopez>.