

OEA/Ser.L/V/II.155
Doc. 6
21 de julio de 2015
Original: Spanish

REPORT No. 27/15
CASE 12.795
REPORT ON THE MERITS

ALFREDO LAGOS DEL CAMPO
PERU

Approved by the Commission on July 21, 2015 at its
155 Extraordinary Period of Sessions

Cite as: IACHR, Report No. 27/15, Case 12795. Merits. Alfredo Lagos del Campo. Peru. July 21,
2015.

REPORT No. 27/15
CASE 12.795
MERITS
ALFREDO LAGOS DEL CAMPO
PERU

TABLE OF CONTENTS

I.	SUMMARY	1
II.	PROCESSING SUBSEQUENT TO THE REPORTS ON ADMISSIBILITY.....	1
III.	POSITIONS OF THE PARTIES	2
	A. Position of the petitioners.....	2
	B. Position of the State	5
V.	ESTABLISHED FACTS	7
	a. The Industrial Communities in Peru.....	7
	b. Mr. Lagos del Campo as union leader and his resulting dismissal	8
	c. Legal framework applicable to dismissals	10
	d. Legal actions pursued.....	11
	e. The situation of Alfredo Lagos del Campo after his dismissal	13
V.	ANALYSIS	14
	A. Articles 13 (Freedom of Thought and Expression) and 8 (Right to a Fair Trial), in relation to Articles 1.1 and 2 of the American Convention.....	14
V.	CONCLUSIONS.....	25
VI.	RECOMMENDATIONS.....	25

REPORT No. 27/15
CASE 12.795
MERITS
ALFREDO LAGOS DEL CAMPO
PERU
July 21, 2015

I. SUMMARY

1. On August 5, 1998, the Inter-American Commission on Human Rights (hereinafter, "Inter-American Commission," "Commission," or "IACHR") received a petition from Mr. Alfredo Lagos del Campo (hereinafter, "the alleged victim") alleging the international responsibility of the Republic of Peru (hereinafter, "Peru" or "the State") for failing to protect his right—as a labor union leader—to express opinions in the context of a union election dispute. Subsequently, the Association for Human Rights [*Asociación Pro Derechos Humanos*], APRODEH (hereinafter "the petitioners"), became the representative of the alleged victim in this case.

2. The petitioners maintain that on June 26, 1989, Mr. Lagos del Campo was dismissed from an industrial manufacturing company, based on statements he made lawfully when he was president of the electoral committee of a labor union. They assert that the alleged victim's dismissal was an act that sought to discourage all of the company's employees from exercising their rights vis-à-vis the employers in the context of internal elections. The petitioners indicate that the processing of the lawsuit for "classification of dismissal" and the petition for a constitutional remedy [*recurso de amparo*] filed by the alleged victim was plagued by violations of due process. Accordingly, they allege that the Peruvian State violated Mr. Lagos del Campo's right to a fair trial and right to freedom of expression, enshrined in Articles 8.1 and 13 of the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention"), in relation to Articles 1.1 and 2 thereto.

3. According to the State, the main issue raised in this case was resolved in the judgment of the court of second instance, which found that the offending statements that the worker made to the media were a "serious infraction," provided for by law as a ground for dismissal. It argued that the fact that the court failed to rule in the alleged victim's favor, and that his appeals or prayers for relief were ruled inadmissible, does not mean that his rights were violated. Therefore, the State asked the IACHR to exonerate it of all international responsibility in relation to these events.

4. In Report No. 152/10 of November 1, 2010, the Commission concluded that the petition was admissible with respect to Articles 8 (right to a fair trial), and 13 (freedom of expression) of the American Convention, in connection with Articles 1.1 and 2 thereto, to the detriment of Alfredo Lagos del Campo.¹ The IACHR found that the petition was inadmissible in relation to the alleged violation of Articles 24 (right to equal protection) and 25 (right to judicial protection).

5. Based on the examination of the arguments and the evidence presented, the Commission concludes that the State of Peru is responsible for the violation of the rights to a fair trial and to freedom of expression pursuant to Articles 8.1 and 13 of the American Convention in connection with Articles 1.1, 2 and 16.1 thereto, to the detriment of Alfredo Lagos del Campo.

II. PROCESSING SUBSEQUENT TO THE REPORTS ON ADMISSIBILITY

6. The Commission forwarded Report No. 152/10 of November 1, 2010 to the petitioners and the State in communications of November 12, 2010, and set a three-month deadline for the petitioners to

¹ IACHR, Report No. 152/10, Petition 459-97, Admissibility, Alfredo Lagos del Campo, Peru, November 1, 2010, para. 42(1) & (2).

make additional observations on the merits. The Commission also made itself available to the parties in order to reach a friendly settlement in the case, in accordance with Article 48.1.f of the American Convention.

7. On March 24, 2011, the petitioners submitted their additional observations on the merits to the IACHR. On April 7, 2011, the IACHR forwarded those observations to the State and granted it three months to present its respective observations on the merits of the case. On July 5, 2011, the State requested a one-month extension of the deadline to submit its report, which was granted and set for July 30, 2011. The State's reply was received on August 2, 2011.

8. In a communication dated August 31, 2011, the IACHR forwarded the State's brief to the petitioners and gave them one month to present the observations they deemed pertinent. On September 30, 2011, the petitioners submitted their observations to the State's reply, which were forwarded to the State on February 6, 2012. On April 13, 2012, the IACHR received an additional report from the State, submitted in response to the additional observations of the petitioners. That communication was duly forwarded to the petitioners on July 20, 2012.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

9. The petitioners stated that Mr. Lagos del Campo had been working since July 12, 1976 as an operator electrician in the maintenance department of a transnational manufacturing company in Peru. They stated that Mr. Lagos del Campo held a number of officer positions within the Workers Union, including secretary of defense for two terms (1983-1984 and 1985-1986), and secretary general (1983-1984). He was also president of the Electoral Committee of the company's "Industrial Community" for two terms: 1984-1985, and 1988-1989.

10. The petitioners explained that the "Industrial Community" is a form of business organization created in Peru through Decree Law No. 18350, the "Industries Act" of July 27, 1976. According to the information provided by the petitioners, the Industrial Community is a private legal entity formed and represented by the employees of an industrial manufacturing company, which allowed for profit-sharing, as well as the co-management and co-ownership of the business. The workers hold elections to choose their representatives to the bodies in charge of the leadership and management of the community—in other words, the General Assembly of Joint Owners or the Industrial Community Board.

11. According to the petitioners, the operation of the industrial communities gave rise to disputes within companies, and "it was not unusual for employers to use tactics to block the community's access to the company's capital stock." The petitioners stated that "the management of the community, expressed in the election of the workers' representatives to the Industrial Community Board, became a source of increased conflict among the workers, as well as between employees and company management."

12. The petitioners stated that Peru experienced an economic crisis in 1988 and 1989, which led to a worsening of labor conditions characterized by "mass layoffs and dismissals of unionized workers, their replacement by temporary workers, and the systematic reduction of real wages." On this issue, the Truth and Reconciliation Commission (TRC) considered that "The role of the State as the arbiter of labor dispute was deplorable. An inefficient bureaucracy and a propensity for corruption, the absence of clear rules, cumbersome laws, and other problems not only hindered negotiations but also made it so that the actions of the State became an aggravating factor in the dispute."

13. The petitioners asserted that incidents took place during 1989 relating to the election of members of the company's Industrial Community Board of Directors. On April 26, 1989, as president of the electoral committee, Mr. Lagos del Campo addressed a communication to the Participation Office of the Ministry of Industry, complaining of irregularities on the part of other members of the Electoral Committee, who represented the employers. In his complaint, the alleged victim stated that those members of the Electoral Committee announced elections for April 28, 1989, without the participation of the workers'

representatives, and with the objective of favoring candidates backed by the company's bosses. The petitioners additionally stated that, in light of those irregularities, a group of employee-owners challenged the election results. According to the petitioners, the Participation Office of the Ministry of Industry issued a decision on June 9, 1989, declaring that the challenge was justified. On June 22, 1989, after the elections were declared null and void, the Electoral Committee, presided over by Alfredo Lagos del Campo, reportedly "gave notice of a meeting scheduled for June 27, 1989, for purposes of coordinating the new election pursuant to the decision of the Participation Office of the Ministry of Industry."

14. The petitioners explained that, in this context, Mr. Lagos del Campo made statements to the magazine "La Razón," in which he informed "the public and the competent authorities of irregularities in the election of members to the Industrial Community Board and of employee representatives to the company's Board of Directors." Based on his statements, Mr. Lagos del Campo was fired from his job in June, 1989 for "serious verbal misconduct against the employer."

15. The petitioners stated that prior to his dismissal Mr. Lagos del Campo "began a long legal battle before the domestic courts." They asserted that he filed a lawsuit for classification of dismissal before the Labor Judge, which at the first instance found that the dismissal was unwarranted. This decision was reversed on appeal by the court of second instance. According to the petition, Mr. Lagos del Campo filed a petition for a constitutional remedy [*acción de amparo*] against the appeal judgment of the labor court, which was also dismissed. They maintained that the alleged victim has filed numerous pleadings and petitions before various authorities, expressing his dissatisfaction with these decisions. They stated that Mr. Lagos del Campo's demand for his rights "was a reason for [his] stigmatization."

16. The petitioners stated that during the domestic proceedings Alfredo Lagos del Campo "has denied using some of the expressions that appeared in the text of the interview, which were attributed to the article's author, and maintains that position to this day." The alleged victim has acknowledged "that he made statements publicly denouncing the situation and the irregularities that arose during the Industrial Community election." They stated that the controversy before the respective courts was whether, in the interview, Alfredo Lagos del Campo used the expressions that the company considered offensive or whether, on the contrary, the author of the article was responsible for them. They explained that, "The case ended with the court's decision that it had been proven that Alfredo Lagos del Campo used those expressions."

17. The petitioners asserted that, "Without prejudice to what has been deemed proven in the domestic courts, the published statements for which the [alleged] victim was fired are protected by Article 13 of the American Convention; that is, his dismissal was the result of the lawful exercise of his right to freedom of expression." They assert that the domestic proceedings failed to consider all of the arguments made by the alleged victim and that the respective judgments were groundless. Accordingly, the petitioners alleged that the Peruvian State violated the rights to a fair trial and to freedom of expression enshrined in Articles 8 and 13 of the Convention, in relation to Articles 1.1 and 2 thereto.

18. As for the alleged violation of the right to freedom of expression, the petitioners asserted that Article 5(h), of Law 24514, applied as the basis for the alleged victim's dismissal, established a restriction on freedom of expression that must be examined in light of Article 13 of the American Convention. In their opinion, the Peruvian courts had the duty to assess and determine whether the Alfredo Lagos del Campo's dismissal, as a subsequent imposition of liability for the exercise of his rights, was consistent with the conditions allowed under Article 13.2 of the Convention.

19. The petitioners asserted that Article 5(h) of Law 24514, which allows for workers to be fired for "verbal misconduct against the employer, its representatives, senior staff, or coworkers," is characterized by its breadth, as it was impossible for workers in Peru to know, to a reasonable degree, the circumstances under which this provision could be applied. They further argued that the provision "makes no mention of expressions made in the context of disputes between employers and employees [...] or in other similar situations where labor or union leaders make statements or express themselves in the context of asserting their labor rights or interests." In this respect, the petitioners asserted that the article is "a glaring omission with respect to the weighing of the public interest" of statements made in the context of labor disputes.

According to the information provided by the petitioners, although Law 24514 was repealed, the current law is “equally broad” and likewise fails to provide for expressions of public interest. Accordingly, the petitioners argue that the restriction does not meet the requirement of legality, and therefore is a violation of Article 13 of the Convention, in relation to Articles 1.1 and 2 thereto.

20. The petitioners acknowledged that “the protection of the honor and dignity of individuals, and even of legal entities, can be a legitimate aim justifying the limitation of the right to freedom of expression, insofar as it intends to protect the reputation of others, as established by Article 13.2 of the American Convention.” They observed that, without prejudice to the above, those rights must be weighed by the judge against the right to information and to robust debate about the rights of workers in a democratic society.

21. The petitioners stated that the restrictive measure failed to meet the requirements of necessity and proportionality. In their opinion, the labor disputes arising in the company’s Industrial Community, as well as the statements made by Mr. Lagos del Campo in connection with that issue, were of clear public interest. On this point, they noted that Alfredo Lagos del Campo gave the statements in question to the magazine “la Razón” in his capacity as President of the Electoral Committee of the Industrial Community, a position in which he represented employee members of the Industrial Community, and in a context of heightened labor tensions. The elections referred to in his statements affected the 220 individuals who worked at the company and were, in turn, members of the Industrial Community. The petitioners further asserted that the statements were important because they informed Peruvian society of the irregularities within the workers’ industrial communities.

22. The petitioners asserted that the State failed to demonstrate that Mr. Lagos del Campo’s dismissal was truly necessary to accomplish the aim pursued, in view of the public interest of the speech in question. They argued that the State failed to show that dismissal was the measure least harmful to Mr. Lagos del Campo’s right to freedom of expression. Furthermore, the petitioners stated that Mr. Lagos del Campo did not harm the honor of his employers or coworkers, as the statements were directed not against a specific person but rather against the company as the employer. According to the petitioners, labor leaders in these situations have always made use of their freedom of expression with bombastic language aimed at the public in defense of the rights of their constituents, without it being considered a “serious infraction” that can lead to dismissal.

23. In relation to the violation of the right to a fair trial enshrined in Article 8 of the Convention, the petitioners alleged, first, the existence of defects in the stated reasoning of the court orders issued. They explained that the right to have the grounds for a decision clearly stated, recognized in the Constitution of Peru, has been interpreted by the Constitutional Court consistently in its case law, in which it has held—as has the Inter-American Court—that “every decision that fails to adequately, sufficiently, and coherently state the grounds for it, shall be an arbitrary decision, and therefore unconstitutional.” The petitioners asserted that, according to the Constitutional Court, there are three possible scenarios for a failure to state the grounds for a decision: (a) absence of the statement of grounds or a clear statement of grounds, when the minimum reasons supporting the decision are not provided, or they do not address the arguments of the parties to the case, or because the court attempts to merely comply with this requirement procedurally, relying on boilerplate language with no factual or legal support; (b) insufficient statement of the grounds, which would only be relevant from a constitutional perspective if the absence of arguments or the “insufficiency” of stated grounds is clear in light of the case being tried, and (c) absence of a suitable statement of grounds, which is indispensable in the case of decisions denying a claim, or when fundamental rights are affected as a result of the court’s decision, in which case the statement of the grounds for the judgment operates as a dual requirement, referring to both the right to the explanation of the reasons for the decision and the right that is being restricted by the judge or the court.

24. In view of the above, the petitioners argued that the Second Labor Court, which on appeal found that the dismissal was justified in order to protect “the reputation of the honor and dignity of the company’s senior staff,” did not meet the requirement to state “sufficient and qualified” grounds for its decision, as established in Article 8.1 of the Convention, which is required due to the severity of the penalty

imposed against Mr. Lagos del Campo. According to the petitioners, the judge limited him or herself to confirming the existence of an alleged offense against the honor of the company, without examining the alleged violation of the alleged victim's right to freedom of expression or justifying the necessity and proportionality of the dismissal as a measure restricting this right.

25. Second, the petitioners alleged the violation of Mr. Lagos del Campo's "right to be heard by a judge or a court" in relation to the adversarial principle. The petitioners alleged the violation of this trial right because "in handling the classification of dismissal case, the Second Labor Court failed to appropriately process the pleading dated August 2, 1991, contesting the arguments of the respondent, which was not processed by that court until August 9, 1989, the day after the judgment was issued." Third, the petitioners claimed the violation of the alleged victim's "right to challenge court decisions." On this point, they explained that Mr. Lagos del Campo did not have an opportunity to challenge the dismissal of his petition for a constitutional remedy [*amparo*] by the Fifth Civil Chamber, given that the Constitutional Court was shut down by Alberto Fujimori's "self-coup" in 1992 and the subsequent removal of the Court's justices.

26. Finally, the petitioners argued that the penalty of dismissal adversely affected Mr. Lagos del Campo because he was the sole breadwinner in his family, and had 6 children in school when he was fired. They additionally stated that he has incurred expenses for his defense in both the domestic and international cases, and that he has been stigmatized. Furthermore, they noted that his dismissal has affected his prospects for obtaining a retirement pension and health insurance, and to assist his wife, who is in poor health.

B. Position of the State

27. According to the State, the main issue raised in this case was resolved in the judgment of the court of second instance, which found that "The offending statements that [the worker] made to the media [demonstrated his] responsibility [...] for the charges attributed to him by the company." In reaching this conclusion, the court of second instance based its analysis on the concept of "serious infraction" provided for in Article 5(b) of Law 24514, which lists as a ground for dismissal, "committing violence, serious insubordination, or serious verbal misconduct against the employer, its representatives, senior staff, or coworkers, either in the workplace, or off the workplace premises when the acts stem directly from the employment relationship." The State asserted that the fact that the court failed to rule in the alleged victim's favor, and that his appeals or prayers for relief were ruled inadmissible, does not mean that his rights were violated.

28. The State maintained that in this case "there was no limitation to the freedom of expression of Alfredo Lagos del Campo that resulted in his dismissal. This matter concerns the commission of serious infractions defined in the laws in force at the time." According to the State, the alleged victim "was fired for good cause, in compliance with the provisions of Law 24514." Under that law, the employment relationship can only be terminated for good cause, including the worker's conduct and ability. It asserted that, in this case, "the law was applied; that is, employee Alfredo Lagos del Campo's conduct amounted to a serious infraction, which resulted in his dismissal."

29. On this point, the State asserted that although the law was repealed on March 27, 1997—by legislative decree 728—it was never challenged before the Constitutional Court of that time, and therefore is presumed to be lawful and constitutional.

30. The State additionally maintained that freedom of expression does not include the right to insult an employer or coworkers. It stated that in this case, Alfredo Lagos del Campo "offended not only his employers at the CEPER-PIRELLI company but also his coworkers." According to the State, the alleged victim reportedly accused the company's directors of "blackmailing and coercing the employee-owners," and said that those employee-owners "live under the threat of blackmail by management." In that respect, the State recalled that the Second Labor Court concluded that "The Constitution of Peru guarantees freedom of expression, but not to insult the personal honor and dignity of the employer company's senior staff, as has occurred in the instant case." The State reiterated that, "This matter does not concern a limitation to the right of expression; it concerns the commission of a serious infraction that goes beyond expression."

31. Additionally, the State asserted that the interview was not backed by the workers Mr. Lagos del Campo supposedly represented, which proves its illegitimacy. The State also underscored that Mr. Lagos del Campo had a history of committing infractions in the workplace, “since he had been suspended by the company once before.” This was reportedly confirmed by the Second Labor Court of Lima, which established that Mr. Lagos del Campo was a repeat offender.

32. The State further indicated that Mr. Lagos del Campo contradicted himself in his defense, because although he admitted having made statements to the magazine “La Razón,” he denied having insulted any member of the company, as the statements published were not his exact words. The State argued that in light of this situation the alleged victim should have exercised his right of correction.

33. The State asserted that Article 11 of the Convention protects the right to one’s honor and dignity and that the correction provided in Article 14 of the Convention is a suitable mechanism for the protection of those rights. According to the State, when a person is publicly insulted by means of inaccurate information, the affected person has the right to demand that the information be corrected. Thus, it indicated that “Correction is one way to assert liability for the abusive exercise of communication rights in detriment of the honor of others.” In the opinion of the State, the alleged victim should have “at least brought the appropriate administrative or legal proceedings against the magazine ‘La Razón.’” Alfredo Lagos del Campo’s omission to request the correction of the statements attributed to him in the interview with “La Razón” must therefore be understood as an admission of the authorship of its content.

34. As for the alleged violation of the right to a fair trial, the State maintained that the entire case brought for Mr. Lagos del Campo’s dismissal proceeded normally, although its outcome was unfavorable to the interests of the alleged victim. The State reiterated that the existence of an unfavorable judgment is not *per se* an irregularity; nor does it imply bias on the part of the court, as it does not necessarily mean that the court has ignored the arguments and evidence of the losing party. The State indicated that Mr. Lagos del Campo was able to file appeals without any kind of obstacles. Furthermore, it argued that both the company and Mr. Lagos del Campo had the same procedural rights to present evidence, witnesses, and arguments, as well as the same deadlines and mechanisms for doing so.

35. The State argued, first, that the decisions to dismiss Mr. Lagos del Campo’s appeals were reasoned decisions. It explained that, “The right to a statement of the grounds of court decisions does not guarantee that such statement must be of a specific length. Accordingly, its constitutional content is respected, provided that there is a statement of the legal reasoning, which goes beyond the mere mention of the provisions applicable to the case to include the explanation and justification of why the case falls or does not fall within the scope of those provisions, as well as consistency between what is sought and what is decided, [...] and that by itself expresses sufficient justification for the decision made, even if it is brief or concise, or the grounds are stated by referring to the laws that support the decision without quoting them verbatim.” It maintained that, “The decision of the court of second instance that reversed the trial court’s favorable decision contained a proper statement of the grounds, indicating that it found a serious infraction, statutorily defined in Article 5(h) of Law 24514.” According to the Peruvian State, that Court noted in its decision that “Alfredo Lagos del Campo’s statements to the magazine ‘La Razón’ were an insult not only to the honor of the company’s directors but also to his coworkers.” The State noted that this was in addition to “Alfredo Lagos del Campo’s repeated acts of insubordination at work, as he had been suspended by the company on a prior occasion, as stated in the judgment of the Second Labor Court.”

36. The State additionally maintained that Mr. Lagos del Campo’s right to be heard by the courts was guaranteed. It asserted that Mr. Lagos del Campo filed a petition for a constitutional remedy [*amparo*] asking the court to set aside the August 8, 1991 judgment that found his claim to be baseless. He argued that the Second Labor Court had failed to process a pleading that he filed until the day after it had issued its decision against him. The State indicated that the Chamber ruled the *amparo* petition inadmissible because “An *amparo* case cannot challenge or render invalid court decisions issued in a regular proceeding.” The State explained that “*Amparo* petitions against court decisions require, as an essential procedural prerequisite, proof of a clear offense that seriously jeopardizes the protected content of a constitutional right.” The State

was of the opinion that, in this case, no offense was proven that would jeopardize the content of a constitutional right or violate due process.

37. As for the alleged violation of the right to challenge court decisions before the Constitutional Court in light of the fact that its members had been removed, the State said that the break in the Court's activities pursuant to Decree Law 25418 of 1992 did not affect the processing of cases for the protection of rights. The State noted that the legal system provided the mechanisms for appealing the denial of the *amparo* petition, specifically the extraordinary appeal before the Supreme Court. In addition, the State cited Law 26435 of 1995 and transition provision No. 5 thereof, which allows the Constitutional Court to hear denials of *amparo* through a petition for cassation. The State further indicated that Article 1 of Law No. 26835 established a deadline of 60 business days from the date of the law's publication for the interested party to notify the Constitutional Court of its interest in having the *amparo* case adjudicated. The State emphasized that there were procedural mechanisms that Mr. Lagos del Campo could have used, and that they were available until the new Constitutional Court was seated in June, 1996.

38. Finally, the State alleged that Mr. Lagos del Campo's previous claim seeking to have his *amparo* case reopened and heard by the Constitutional Court in 1996 was ruled inadmissible by the Third Specialized Civil Chamber of the Lima Superior Court, since Mr. Lagos del Campo failed to timely appeal before the appropriate court. The *amparo* case had been shelved in 1993, and his request was filed on January 14, 1997.

39. In sum, the State reiterates that the fact that the appeals were not adjudicated in the alleged victim's favor does not mean that his rights were violated, "since it is the pursuit of justice that must take priority, not the favoring of one of the parties."

V. ESTABLISHED FACTS

40. Pursuant to Article 43.1 of its Rules of Procedure (hereinafter, the "Rules of Procedure of the IACHR"), the Commission examined the arguments and weighed the evidence provided by the parties. In so doing, it took account of information that is public knowledge,² including laws, decrees, and other legal provisions in force at the time of the events at issue in this case.

41. The Commission notes that the State has maintained that it is not responsible for the violations alleged by the petitioners. The parties submitted consistent information regarding Mr. Lagos del Campo's dismissal, and the court proceedings he initiated—none of which is in dispute. Therefore, the Commission will address below the facts that have been established in this case, as well as the international responsibility of the Peruvian State.

a. The Industrial Communities in Peru

42. The Industrial Communities were created in Peru in 1970 by the Industries Act, with the aim of giving employees an interest in the assets of companies.³ Later, in 1977, the Industrial Community Law (Decree Law 21789) was enacted to amend the objectives, formation, and operation of the Industrial Community.⁴

43. According to Decree Law 21789, "The Industrial Community of an industrial corporation in the reformed private sector is made up of all of its permanent employees, who have an interest in its

² Article 43.1 of the Rules of Procedure of the IACHR establishes that: The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.

³ President of the Republic of Peru. Decree Law 18384. Industries Act [*Ley General de Industrias*]. September 1, 1970. Article 3.a. Available at: <http://docs.peru.justia.com/federales/decretos-leyes/18384-sep-1-1970.pdf>

⁴ *Annex 1*. President of the Republic of Peru. Decree Law 21789. Industrial Community Law [*Ley de la Comunidad Industrial*]. February 1, 1977. Available at: <http://www4.congreso.gob.pe/ntley/imagenes/Leyes/21789.pdf>

property, management, and profits” (Art. 1). It is established as a private legal entity whose objectives are: (a) to contribute to the establishment of constructive forms of interrelation within the industrial corporation; (b) to strengthen the industrial corporation through the joint action of its members in management and in the productive process, and their sharing in the ownership of the corporation’s assets; (c) to establish an appropriate and rational distribution of benefits among the investors and employees of an industrial corporation; and (d) to promote ongoing training and encourage creativity among the company’s workers (Art. 3).

44. The objective of regulating the Industrial Communities was to have employees share in the assets and management of the corporation. In this respect, the law provides that the industrial corporation will deduct 15% annually from its net pre-tax income to establish its employees’ assets and contribute funds to the Industrial Community until it reaches an amount equal to 50% of the company’s capital stock (Arts. 38 & 39). As for employee participation of the management of the company, the law established that the employees in the Industrial Community will take part in the company’s management by appointing representatives to the company’s Board of Directors (Art. 61 *et seq.*).

45. According to the Decree Law, the leadership and administration of the Industrial Community is the responsibility of a General Assembly, composed of all the members of the Community, and an executive body called the “Community Council” (Arts. 19 & 29). The Community Council is responsible for managing the Industrial Community’s assets, in particular by drafting an annual budget, balance sheets, reports, and the annual report of the Industrial Community, drafting plans for the development of the Community, and devising the annual investment plan for the share of assets that belongs to the Community (Art. 30).

46. According to the law, the members of the Industrial Community are entitled to elect the members of the Community Council, as well as the employee representatives on the company’s Board of Directors (Art. 16). For these purposes, the General Assembly will appoint an Electoral Committee every year, which will be responsible for holding elections for the members of the Community Council and the representatives to the company’s Board of Directors, for each term (Art. 23).

b. Mr. Lagos del Campo as union leader and his resulting dismissal

47. On July 12, 1976, Alfredo Lagos del Campo began working as an operator electrician in the maintenance department of the company Ceper-Pirelli S.A.⁵ The records in the case file show that Mr. Lagos del Campo held various leadership positions within the company’s employee union, including secretary of defense for two terms (1982-1983 and 1985-1986), and as secretary general (1983-1984).⁶

48. As a permanent employee of the company, and in accordance with Decree Law 21789, Alfredo Lagos del Campo was also part of the company’s Industrial Community, where he held positions representing shop floor workers. During the 1988-1989 term, he held the position of President of the Electoral Committee of the Industrial Community,⁷ the entity responsible for holding the elections for Community Council members and the representatives before the company’s Board of Directors for this term (*supra* para. 48).

49. On April 26, 1989, in his capacity as President of the Electoral Committee of the Industrial Community, Alfredo Lagos del Campo complained to the Participation Office of the Ministry of Industry regarding irregularities in the calling of elections for members of the Industrial Community Board and for the employee representatives to the company’s Board of Directors, to be held on April 28. After the elections, a group of

⁵ *Annex 2*. CEPER-PIRELLI. Pay stub for Alfredo Lagos del Campo. Week of June 26 to July 2, 1989. Attachments to the petitioners’ communication of July 23, 1998; *Annex 8*. Fifteenth Judge of the Labor Court of Lima. Judgment 25-91 issued on March 5, 1991. Attachments to the petitioners’ communication of July 23, 1998.

⁶ *Annex 3*. Note entitled “List of Officers with their respective positions. 1982 – 1983 term.” Undated; Union of Employees of CEPER. Note addressed to the Chief of the Union Registration Division. June 1983; Union of Employees of CEPER. Note addressed to the Chief of the Union Registration Division. June 1985. Attachments to the petitioners’ communication of March 16, 2011.

⁷ *Annex 4*. Ministry of Industry. Participation Office. Official Letter No. 1526 ICTI/OGP-38. Registration of the Electoral Committee. August 9, 1988. Attachments to the petitioners’ communication of July 23, 1998.

employee-owners submitted a document to the Participation Office challenging those elections. In and order dated June 9, 1989, the Participation Office of the Ministry of Industry declared that the challenge to the elections was well-founded.⁸

50. Under these circumstances, Mr. Lagos del Campo gave an interview to a journalist from the magazine “La Razón.”⁹ The interview, published in June, 1989, was entitled “*Patronal y Amarillos pretenden Liquidar CI*” [*Employers’ Association and Company Unions Want to Liquidate CI*], and it stated that “ Alfredo Lagos del Campo, the president of the electoral committee of the company’s Industrial Community and full delegate to the CONACI [National Confederation of Industrial communities], complained publicly and to the competent authorities of maneuvers by the employers’ association to liquidate the company, using the hesitation of some workers to hold fraudulent elections outside the Electoral Committee and without the majority participation of the employee-owners.”

51. The following statements were attributed to the worker:

Mr. Lagos, did you agree with the call for elections?

I did not, because the company’s Board of Directors has used, and continues to use, blackmail and coercion against the employee-owners, pressuring a particular group of workers to take part in the elections under threat of dismissal.

Do you consider the elections to be legal?

No, they are not legal. [...] In my capacity as president of the Electoral Committee, it was my responsibility to call [the elections]. Nevertheless, management convened three members [of the Committee], and in the industrial relations office—just imagine—in the office of the employers’ association, they called elections for the community, making a mockery of all the legal provisions, and using a group of employee-owners subservient to their interests. With those people they put together a list that was the only one submitted for the elections.

Why did the employee-owners not submit another list?

For one simple reason: the law on Industrial Community elections established that every list must be made up of employee-owners including both salaried workers and laborers. I would like to clarify something very important. The laborers have a union; this provides them with protection and relative independence. The salaried workers do not have a union (they used to have one, but it was dissolved by the employers’ association, and that is the fault of the employees themselves, for not knowing how to defend their rights). These employees are at the mercy of the employers’ association, and they are under constant threat of blackmail by management. That is why they are afraid to be on a list made up of laborers, who do not enjoy the sympathy of the owners. I think this was the fundamental reason why another list was not submitted.

In light of these abuses by the employers’ association, what measures have you taken as president of the electoral committee?

First, I have complained of the irregularities that have been encouraged and used by the employers’ association. I submitted this complaint in Official Letter No. 005824 to the Participation Office of the Ministry of Industry and Commerce.

What has been the response of the Ministry?

Here I must denounce that the Ministry’s bureaucracy responded vaguely, without making any determination, which shows that there is an understanding between the Participation Office that it (sic) managed by Alicia Liñan Núñez and the employers’ association.

What measures do you plan to take?

⁸ Annex 7. Lawsuit filed by Mr. Alfredo Lagos del Campo for wrongful dismissal before the Labor Court of Lima. July 26, 1989. Attachments to the petitioners’ communication of July 23, 1998.

⁹ Annex 5. La Razón. June 1989. CEPER. *Patronal y Amarillos pretenden liquidar CI*, p. 10. Attachments to the petitioners’ communication of July 23, 1998.

I will keep fighting against fraud and telling the public, the government, and other competent authorities about Ceper-Pirelli's intention to liquidate the Industrial Community[,] especially now that the company is making big profits, and part of those profits belong to the workers through the Industrial Community.

I call on all the employees of Ceper-Pirelli to close ranks against fraud, and to demand the rights and obligations to which we are entitled by law. I ask for the solidarity of all the employee-owner organizations and labor unions in the country in expressing their rejection of the attempts to liquidate the Industrial Communities.

52. In a note dated July 1, 1989,¹⁰ the company informed Mr. Lagos del Campo of its decision to terminate his employment, on the grounds of a "serious infraction defined in subsections (a) and (h) of Article 5 of Law 24514, which include the unexcused failure to meet work obligations, serious insubordination, and serious verbal misconduct against employees, their representatives, and coworkers," based on statements he made in the above-transcribed interview. Specifically, the company maintained that the alleged victim committed a serious infraction when he accused the company's directors of using *blackmail* and *coercion*, of having an *understanding* with the heads of the Participation Office of the Ministry of Industry, Tourism, and Commerce, of intending to *liquidate* the Industrial Community, and attempting to *influence* the elections of the Industrial Community by pressuring a specific group of workers.

c. Legal framework applicable to dismissals

53. At the time of the events, Law 24514 of 1986 regulated the right to employment security and the procedure for terminating workers.¹¹ The law states that serious infractions committed by workers are just cause for dismissal (Art. 3) and establishes the following serious infractions (Art. 5):

- a) The unexcused failure to meet work obligations, repeated resistance to work-related orders of superiors, and violations of the Internal Work and Industrial Safety Rules, duly approved by the administrative labor authority, which in all cases are considered serious;
[...]
- h) The commission of acts of violence, serious insubordination, or serious verbal misconduct against the employer, its representatives, senior staff, or coworkers, either in the workplace, or off the workplace premises when the acts stem directly from the employment relationship.

54. When the worker commits a serious infraction, the employer must inform him or her in writing of those acts and of the opening of an investigation (Art. 6). Similarly, the law orders the employer to guarantee the worker's defense, and to examine the facts within a period of 6 days. Later, if the worker fails to disprove the acts of which he or she is accused, the employer must inform him or her in a notarially recorded letter of the reason for the dismissal and the date of termination, and notify the administrative labor authority of this decision (Art. 7).

55. Finally, the law stipulates that the worker may go before the labor courts if he or she considers the dismissal to be wrongful (Art.8). In such cases, the judge may order the suspension of the dismissal, and the worker may request a temporary assignment from the employer while the case is pending (Art.9). It bears noting that the worker has 30 days from the notice of dismissal to bring a case before the labor judge (Art.10) and that the judge must adjudicate the claim within 4 months. The law expressly provides that the employer bears the burden of proof with respect to the dismissal (Art. 11). If the case is

¹⁰ Annex 6. CEPER-PIRELLI. Notarially recorded letter dated July 1, 1989, with a "received" stamp of July 3, 1989 from the Office of Notary Public Javier Aspauza Gamarra. Attachments to the petitioners' communication of July 23, 1998.

¹¹ Annex 9. Congress of the Republic of Peru. Law 24514. Law on Employment Security. June 4, 1986. Article 4.a. Available at: <http://www4.congreso.gob.pe/ntley/imagenes/Leyes/24514.pdf>

adjudicated in the worker's favor, he or she may decide to be reinstated or to terminate the contract, which would lead to the payment of obligations pertaining to special compensation (Art. 12).

d. Legal actions pursued

Lawsuit for "classification of dismissal"

56. In a July 26, 1989 filing,¹² Alfredo Lagos del Campo brought suit against CEPER-PIRELLI, seeking to have his dismissal classified as "wrongful and improper." The alleged victim denied having insulted the company or having used the words "blackmail" and "coercion." He emphasized that, in any case, the statements that led to his dismissal were made in his capacity as President of the Electoral Committee of the company's Industrial Community, and referred to internal problems within the community, specifically to irregularities that arose in the election of the Council members. In that respect, he argued that the penalty imposed against him, in addition to being improper, was "a serious violation of his constitutionally guaranteed right to freedom of opinion, expression, and dissemination of opinion, thus constituting a serious interference in labor union and employee-owner activities." On this last point, Mr. Lagos del Campo stated that "Any worker, and in particular those who hold positions as employee-owners or union officers, as in [his] case, have not only the right but also the need to be informed and speak out about workplace situations and activities." He added that his dismissal was the culmination of "a chain of acts" of harassment against him, because he had repeatedly held positions representing the union and employee-owners.

57. The matter was filed under Case No. 4737-89 before the Fifteenth Labor Court of Lima. In Judgment 25-91 of March 5, 1991, the judge ruled that the dismissal was "unlawful and wrongful."¹³ The Court held that in order for an employer to proceed with a dismissal, the law stipulates that the serious infraction attributed to an employee must be duly proven. It found that the dismissal in this case was based on an article published in a magazine, without it being reliably confirmed by the representatives of the respondent company that the "defamatory words" could in fact be attributed to the worker. In addition, the Court held that the statements contained in the article did not refer to individual persons, and therefore no members of the company had been directly wronged.

58. The company filed an appeal on June 25, 1991 before the Second Labor Court of Lima, under case file No. 839-91.¹⁴ On August 1, Alfredo Lagos del Campo filed a pleading contesting the appeal.¹⁵ In a judgment handed down on August 8, 1991, the Court reversed the lower court's decision, classifying the dismissal as "lawful and warranted."¹⁶ The Court found that the statements made by the alleged victim constituted "serious insubordination or a serious verbal infraction against the employer," and that "the Constitution of Peru guarantees freedom of expression, but not to insult the personal honor and dignity of the employer company's senior staff."¹⁷

59. Mr. Lagos del Campo filed a motion for review and reconsideration on August 26, 1991, which was denied on August 27, 1991.¹⁸ On September 2, 1991, he filed a motion to vacate.¹⁹ In that motion,

¹² *Annex 7.* Lawsuit filed by Mr. Alfredo Lagos del Campo for wrongful dismissal before the Labor Court of Lima. July 26, 1989. Attachments to the petitioners' communication of July 23, 1998.

¹³ *Annex 8.* Fifteenth Judge of the Labor Court of Lima. Judgment 25-91 of March 5, 1991. Attachments to the petitioners' communication of July 23, 1998.

¹⁴ *Annex 10.* Appellate brief submitted by Mr. Alfredo Lagos del Campo to the Second Labor Court of Lima. June 25, 1991. Case File No. 839-91. Attachments to the petitioners' communication of July 23, 1998.

¹⁵ *Annex 11.* Responsive pleading to the motion for appeal submitted by Alfredo Lagos del Campo to the Second Labor Court of Lima. August 1, 1991, Case File No. 839-91. Attachments to the petitioners' communication of July 23, 1998.

¹⁶ *Annex 12.* Second Labor Court of Lima. Judgment 08-0891 of August 8, 1991. Attachments to the petitioners' communication of July 23, 1998.

¹⁷ *Annex 12.* Second Labor Court of Lima. Judgment 08-0891 of August 8, 1991. Attachments to the petitioners' communication of July 23, 1998.

¹⁸ *Annex 13.* Motion for review and reconsideration filed by Mr. Alfredo Lagos del Campo with the Second Labor Court of Lima. Case File No. 839-91. August 26, 1991, and Order issued by the Second Labor Court of Lima. Case File No. 839-91. August 21, 1991. Attachments to the petitioners' communication of July 23, 1998.

Alfredo Lagos del Campo argued that the Second Labor Court of Lima had not “adhered to the facts,” and “disregarded” his fundamental rights. He also alleged that there were irregularities during the processing of the motion for appeal, in particular, the failure to consider a brief he filed days prior to the judgment. The motion to vacate was dismissed on September 3, 1991²⁰ for failing to state one of the requisite grounds.

60. On October 21, 1991, the alleged victim filed a petition for a constitutional remedy [*acción de amparo*] against the decision on the motion for appeal.²¹ In his action, Mr. Lagos del Campo alleged violations of his rights to employment security, due process, and equality before the law, maintaining that the Second Labor Court of Lima handed down its decision on August 8, 1991, without processing or considering the brief he had filed to refute the company’s arguments.

61. While the appeal was pending, the government of Peru declared a “reorganization” of the Judiciary, which had serious consequences on the exercise of human rights in that country.²² Within the framework of these reforms, on August 3, 1992, the Fifth Civil Chamber of the Lima Superior Court ruled the *amparo* petition inadmissible.²³ The Court stated that, “The plaintiff’s petition does not describe any violation of his right to due process.” On August 26, 1992, the alleged victim filed a motion to vacate this judgment.²⁴ The Constitutional and Social Chamber of the Supreme Court registered the appeal under case file No. 1811-92, and in an order dated March 15, 1993,²⁵ affirmed the inadmissibility of the *amparo* petition. The Chamber adopted the opinion of the Public Ministry, contained in its February 12, 1993 brief, recommending that the lower court judgment be upheld on the grounds that it “was a final judgment, and reviewing it would revive a closed case, thereby violating *res judicata* with regard to labor matters.”²⁶

62. On March 30, 1993, Mr. Lagos del Campo sent an official letter to the Chief Justice of the Constitutional and Social Chamber of the Supreme Court requesting the review of the March 15, 1993 judgment. On April 28 and May 4, 1993, Mr. Lagos del Campo filed a motion for reconsideration asking for his case to be heard by the Full Chamber of the Supreme Court.²⁷ Those petitions were not heard.

[... continuation]

¹⁹ *Annex 14*. Motion to vacate filed by Mr. Alfredo Lagos del Campo with the Second Labor Court of Lima. Case File No. 839-91. September 2, 1991; Order issued by the Second Labor Court of Lima. Case File No. 839-91. September 3, 1991. Attachments to the petitioners’ communication of July 23, 1998.

²⁰ *Annex 14*. Brief filed by Mr. Alfredo Lagos del Campo with the Second Labor Court of Lima. Case File No. 839-91. September 2, 1991; Order issued by the Second Labor Court of Lima. Case File No. 839-91. September 3, 1991. Attachments to the petitioners’ communication of July 23, 1998.

²¹ *Annex 15*. Petition for a constitutional remedy [*amparo*] filed by Mr. Alfredo Lagos del Campo with the Civil Chamber of the Superior Court of Lima. Case File No. 2615-91. October 21, 1991. Attachments to the petitioners’ communication of July 23, 1998.

²² In its *Report on the Situation of Human Rights in Peru, 1993*, the IACHR documented that on April 5, 1992, “Troops of the Security Forces, supported by tanks, occupied the Palace of Justice and the premises of the other institutions, and barred entry thereto. On April 6, the President of the Republic announced the removal of judges and justices: on April 9, Decree Law 25423 removed 13 justices from the Supreme Court; Decree Law 25422 removed the eight members from the Tribunal of Constitutional Guarantees, and Decree Law 25424 removed members of the National and District Judiciary Councils. As for the Office of the Attorney General, its incumbent announced his resignation on April 7; that same day he was removed as Attorney General of the Nation and as Chairman of the National Judiciary Council. Dr. Néida Colán was later appointed Attorney General of the Nation. On April 8, through Decree Laws 25419 and 25420, the Comptroller General of the Republic was removed and the Judicial Office and the Office of the Government Attorney were suspended for ten working days, leaving only examining judges and lower-ranking prosecutors in place. By Decree Law 25445, of April 23, 1992, 130 individuals were removed, among them magistrates on the superior courts, chief prosecutors, judges in the court districts, provincial prosecutors and minors’ court judges in the districts of Lima and Callao.” The IACHR additionally observed that, “One measure that affects all citizens’ ability to avail themselves of the remedies provided under the law is Decree Law 25433, which the Government enacted to amend the procedure and effects of the remedies of *amparo* and *habeas corpus*.” IACHR. Report on the Situation of Human Rights in Peru. OEA/Ser.L/V/II.83. Doc. 31. March 12, 1993. Paras. 58 *et seq.*

²³ *Annex 16*. Fifth Civil Chamber of the Superior Court of Lima. Decision of August 3, 1992. Case File No. 2615-9. Attachments to the petitioners’ communication of July 23, 1998.

²⁴ *Annex 17*. Motion to vacate filed by Mr. Alfredo Lagos del Campo with the Fifth Civil Chamber of the Superior Court of Lima. Case File No. 2615-91. August 26, 1992. Attachments to the petitioners’ communication of July 23, 1998.

²⁵ *Annex 18*. Order of the Supreme Court of Peru. Case File No. 1811-92. March 15, 1993. Attachments to the petitioners’ communication of July 23, 1998.

²⁶ *Annex 19*. Opinion of the Public Ministry submitted to the Constitutional and Social Chamber of the Supreme Court. Case File No. 1811-92. February 12, 1993. Attachments to the petitioners’ communication of July 23, 1998.

²⁷ *Annex 20*. Brief filed with the Constitutional and Social Chamber of the Supreme Court. Case File No. 1811-92. April 28, 1993. Attachments to the petitioners’ communication of July 23, 1998.

Appeal before the Constitutional Court

63. On July 26, 1996, in view of the resumed operation of the Constitutional Court of Peru, Mr. Lagos del Campo filed a pleading before Fifth Civil Chamber of the Superior Court requesting that his *amparo* action be reopened and referred to the Constitutional Court.²⁸ On January 13, 1997, the alleged victim again made the same request.²⁹ In a ruling dated June 24, 1997, the Third Specialized Civil Chamber of the Lima Superior Court found the request inadmissible, on the grounds that Mr. Lagos del Campo should have filed a petition for cassation within 15 days of having received notice of the denial of his *amparo* petition.³⁰

64. Dissatisfied, Mr. Lagos del Campo filed a motion for appeal on July 18, 1997,³¹ stating that the Constitutional Court was “shut down by the government of pacification and national reconstruction,” and that he therefore filed appeals before the Constitutional and Social Chamber of the Supreme Court, which were never adjudicated. On July 25, 1997, the motion was ruled inadmissible on the grounds that there was no provision of law that allowed for the appeal of the June 24, 1997 order.³²

65. On August 19, 1997, the alleged victim filed a petition for the review of a denied appeal, once again requesting the intervention of the Constitutional Court.³³ Shortly thereafter, on October 2, 1997, Mr. Lagos del Campo submitted a petition for the review of a denied appeal to the Chief Justice of the Constitutional Court, asking to have the *amparo* action examined and reviewed.³⁴ In an order dated November 27, 1997, the Constitutional and Social Chamber of the Supreme Court adjudicated petition No. 447-97, ruling it inadmissible on the grounds that, by law, judgments issued by the Superior Court at the Second Instance must be challenged by means of a motion to vacate, rather than a motion for appeal.³⁵ Mr. Lagos del Campo requested the correction and explanation of that order on February 25, 1998.³⁶

e. The situation of Alfredo Lagos del Campo after his dismissal

66. Mr. Lagos del Campo was born on February 21, 1939.³⁷ He and his wife, Teresa Gonzales Cornejo, had 14 children: Maritza Elena, Luis Alfredo, Ana María, Daniel Marcelino, Rosario Isabel, Lucía Angélica, Willy, Lourdes María, Soledad, Marco Antonio, Gabriela Teresa, Maribel, Patricia, and Julio César, all of whom share the surnames Lagos González. When he was terminated from his employment, Mr. Lagos del Campo was 50 years old and had 6 school-age children.

67. According to the information provided by the petitioners—which was undisputed by the State—after his dismissal Mr. Lagos del Campo was unable to access all of the social security benefits that were tied to his employment. The economic hardships of the times, his age, and the circumstances of his

²⁸ *Annex 21*. Request filed with the Fifth Civil Chamber of the Superior Court of Lima. Case File No. 2615-91. July 26, 1996. Attachments to the petitioners’ communication of July 23, 1998. In support of his request, Mr. Alfredo Lagos invoked Article 202(2) of the Constitution, which provides that “It is incumbent upon the Constitutional Court: 2. To review, at the last and final instance, denials of writs of *habeas corpus*, *amparo*, *habeas data*, and compliance actions.”

²⁹ *Annex 22*. Request filed with the Fifth Civil Chamber of the Superior Court of Lima. Case File No. 2615-91. January 13, 1997. Attachments to the petitioners’ communication of July 23, 1998.

³⁰ *Annex 23*. Third Specialized Civil Chamber of the Superior Court of Lima. Case File No. 2625-91. Decision of June 24, 1997. Attachments to the petitioners’ communication of July 23, 1998.

³¹ *Annex 24*. Motion for appeal filed by Mr. Alfredo Lagos del Campo a la Third Specialized Civil Chamber of the Superior Court of Lima. A.A.2615-91. July 18, 1997. Attachments to the petitioners’ communication of July 23, 1998.

³² *Annex 25*. Third Specialized Civil Chamber of the Superior Court of Lima. Case File No. 839-97. Decision of July 25, 1997. Attachments to the petitioners’ communication of July 23, 1998.

³³ *Annex 26*. Petition for the review of a denied appeal filed with the Third Specialized Civil Chamber of the Superior Court of Lima. Case File No. 839-97. A.A. 2615-91. August 19, 1997. Attachments to the petitioners’ communication of July 23, 1998.

³⁴ *Annex 27*. Petition filed with the Constitutional Court. Case File No. 839-97. A.A. 2615-91. August 19, 1997. Attachments to the petitioners’ communication of July 23, 1998.

³⁵ *Annex 28*. Constitutional and Social Chamber of the Supreme Court. Petition. 447-97. Judgment of November 27, 1997. Attachments to the petitioners’ communication of July 23, 1998.

³⁶ *Annex 29*. Petition for the review of a denied appeal filed with the Constitutional and Social Chamber of the Supreme Court. Case File No. 839-97. A.A. 2615-91. February 25, 1998. Attachments to the petitioners’ communication of July 23, 1998.

³⁷ *Annex 30*. National Registry of Identification and Vital Records. National ID Card of Alfredo Lagos del Campo. Attachment to Alfredo Lagos del Campo’s communication of December 23, 2004.

dismissal prevented him from obtaining stable employment and making adequate wages to support his family. He now lives in extreme poverty.³⁸

V. ANALYSIS

Articles 13 (Freedom of Thought and Expression) and 8 (Right to a Fair Trial), in relation to Articles 1.1 and 2 of the American Convention

68. Article 13 of the Convention establishes that,

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.
2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:
 - a) respect for the rights or reputations of others; or
 - b) the protection of national security, public order, or public health or morals.

69. Article 8.1 of the American Convention states that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

70. As stated in the established facts, Mr. Alfredo Lagos del Campo was dismissed from his job as an operator electrician at an industrial manufacturing company in Peru. His dismissal was the consequence of statements he reportedly gave to a magazine when he was President of the Electoral Committee of an association comprised by the company's employees (Industrial Community).

71. In view of the facts and arguments presented, the IACHR must establish whether Mr. Lagos del Campo's dismissal was a violation of his right to freedom of expression as a union leader. In other words, the Commission will determine whether the exercise of the alleged victim's right to freedom of expression was curtailed, and if so, whether the limitation meets the requirements established in Article 13.2 of the American Convention. In this context, the IACHR will examine whether there was a violation of the alleged victim's right to a fair trial.

72. In answering this legal question, the Commission will first address the scope and protection of the right to freedom of expression of labor union members and leaders, and will refer to its doctrine on the permissible limits to the right to freedom of expression. Second, it will discuss the positive obligations of the State to protect the right to freedom of expression from interference by non-State actors. Based on these considerations, it will examine the specific case.

i) The right to freedom of expression and the speech of labor union leaders

³⁸ *Annex 31*. Certificate of Poverty issued by the Blessed Sacrament Parish of the Archdiocese of Lima, September 10, 2003. Attachment to the petitioners' submission of May 28, 2004; Letter requesting social assistance, sent by Mr. Alfredo Lagos del Campo to the Ministry of Women and Social Development on April 21, 2005. Attachment to Alfredo Lagos del Campo's communication of June 2, 2005.

73. The right to freedom of thought and expression, according to the protection granted by Article 13 of the American Convention, includes both the right to express one's own thoughts and the right to seek, receive, and disseminate information and ideas of all kinds.³⁹ This right is vitally important for the personal development of every individual, for the exercise of his or her autonomy and other fundamental rights, and finally, for the consolidation of a democratic society.⁴⁰

74. The Inter-American Commission and Court have held that freedom of expression has two dimensions: an individual dimension and a social dimension. The individual dimension of freedom of expression consists of the right of every person to express his or her own thoughts, ideas, and information, and is not limited to the theoretical acknowledgement of the right to speak or write; rather, it includes inseparably, the right to use any appropriate means to disseminate thoughts and enable them to reach the greatest number of people.⁴¹ The second dimension of the right to freedom of expression—the collective or social dimension—consists of society's right to seek and receive any information, to know other people's thoughts, ideas, and information, and to be well informed.⁴² In this respect, the Court has established that freedom of expression is a means for the exchange of ideas and information among individuals; it includes their right to communicate their opinions to others, but it also involves all people's right to freely know about opinions, accounts, and news of all kinds.⁴³

75. The right to freedom of expression is also a mainstay of democratic society, due to its essential structural relationship to democracy.⁴⁴ The very purpose of Article 13 of the American Convention is to strengthen the workings of pluralist and deliberative democratic systems through the protection and encouragement of the free flow of information, ideas, and expressions of all kinds.⁴⁵ In this respect, the Court has held that "Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion."⁴⁶ Democratic oversight through public opinion

³⁹ IACHR, Report No. 82/10, Case 12.524, Merits, Jorge Fontevecchia and Hector d'Amico, Argentina, July 13, 2010, para. 86. Available in Spanish at: <http://www.cidh.oas.org/demandas/12.524Esp.pdf>.

⁴⁰ IACHR, Report No. 82/10, Case 12.524, Merits, Jorge Fontevecchia and Hector d'Amico, Argentina, July 13, 2010, para. 85.

⁴¹ Cfr. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 31, available at: http://www.corteidh.or.cr/docs/opiniones/seriea_05_ing.pdf.

⁴² I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, para. 53; I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006. Series C No. 151, para. 75; I/A Court H.R., *Case of López Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 163; IACHR. Arguments before the Inter-American Court in the Case of Herrera Ulloa v. Costa Rica. Transcribed in: I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 101.1 a); *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 108; I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 146; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 77; *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 64; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 30; IACHR. 1994 Annual Report. Chapter V: Report on the Compatibility of "Desacato" Laws with the American Convention on Human Rights. Title III. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. Report No. 130/99. Case No. 11.740. Víctor Manuel Oropeza. Mexico. November 19, 1999, para. 51; IACHR. Report No. 11/96, Case No. 11.230. Francisco Martorell. Chile. May 3, 1996, para. 53.

⁴³ Cfr. I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 110. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_107_ing.pdf; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, para. 79. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_111_ing.pdf; I/A Court H.R., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Merits, Reparations and Costs. Judgment of February 5, 2001. Series C No. 73, para. 66. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_73_ing.pdf.

⁴⁴ Cfr. I/A Court H.R., *Case of Claude Reyes et al. v. Chile*. Judgment of September 19, 2006. Series C No. 151, para. 85; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 116; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 86; I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70.

⁴⁵ IACHR. Arguments before the Inter-American Court in the Case of Ivcher Bronstein v. Peru. Transcribed in: I/A Court H.R., *Case of Ivcher Bronstein v. Peru*. Judgment of February 6, 2001. Series C No. 74, para. 143. d); IACHR. Arguments before the Inter-American Court in the Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile. Transcribed in: Corte I.D.H., *Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile*. Judgment of February 5, 2001. Series C No. 73, para. 61. b).

⁴⁶ Cfr. I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 70.

fosters the transparency of government activities and promotes the responsibility of government employees in the management of public affairs.⁴⁷

76. The IACHR has affirmed that within the sphere of the American Convention, freedom of expression is the right of *all persons*, under equal conditions and without discrimination. According to the Court's case law, the entitlement to the right to freedom of expression enshrined in the Convention cannot be restricted to a specific profession or group of people, nor to the sphere of press freedom.⁴⁸

77. This expansive perspective on entitlement to the right to freedom of thought and expression adopted by the American Convention includes, of course, workers. As a fundamental human right, freedom of expression governs all types of legal relationships, including labor relations. Workers do not set aside their fundamental rights upon assuming their positions; rather, they enjoy—just like everyone else—a broad right to freedom of expression.

78. Indeed, when exercised in the workplace, freedom of expression protects the workers' right to express their thoughts, opinions, information, or personal ideas, as well as to level criticism and to complain about the working conditions at a company and the protection of their rights in general. This includes the guarantee of doing so without being subject to punishment in retaliation, the most drastic of which is wrongful dismissal.

79. This is especially relevant when the right to freedom of expression is tied to the right of association enshrined in Article 16 of the American Convention, and the right of workers to organize trade unions in accordance with Article 8 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador." The protection of the freedom of workers to express themselves in a way that allows them to disclose information and promote their interests and demands in a concerted manner is one of the objectives of the right of association in this sphere. To this point, the Inter-American Court has held that, "Labor-related freedom of association is not exhausted by the theoretical recognition of the right to form trade unions, but also corresponds, inseparably, to the right to use any appropriate means to exercise this freedom. [...] Hence the importance of adapting to the Convention the legal regime applicable to trade unions and the State's actions, or those that occur with it tolerance, that could render this right inoperative in practice."⁴⁹

80. The Court affirmed in Advisory Opinion OC-5 that the right to freedom of expression is also a *conditio sine qua non* for the development of [...] trade unions."⁵⁰

81. In view of the above, the IACHR finds that members and officers of labor unions must enjoy broad freedom of expression in relation to their activities and demands, which includes the freedom to criticize the economic and social policies of the government. If the members and leaders of trade unions are denied the opportunity to express themselves freely, to disseminate information in defense of their interests, and communicate it to their employers and the company's employees, as well as to the government and the general public, they are deprived of one of the most important lawful means of action and pressure. The dual dimension of the right to freedom of expression lays the groundwork for the right of organized workers and labor leaders to express themselves and convey opinions and information, as well as the right of workers and society in general to receive the information that they put out.

82. The Committee on Freedom of Association of the Governing Body of the ILO has recognized that "The full exercise of trade union rights calls for a free flow of information, opinions and ideas, and to this end workers, employers and their organizations should enjoy freedom of opinion and expression at their

⁴⁷ I/A Court H.R., *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008 Series C No. 177, para. 87.

⁴⁸ I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 114. See also, IACHR, Report No. 103/13, Case 12.816, Honduras, Adán Guillermo López Lone et al. March 17, 2014, para. 201.

⁴⁹ I/A Court H.R., *Case of Huilca Tecse v. Peru*. Judgment of March 3, 2005. Series C No. 121.

⁵⁰ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5.

meetings, in their publications and in the course of other trade union activities.”⁵¹ In this regard, it has affirmed that “The right to express opinions through the press or otherwise is an essential aspect of trade union rights,” and that this right “should in no way differ from the right to express opinions in exclusively occupational or trade union journals.”⁵² The Committee underscored that “The right of workers’ and employers’ organizations to express their views in the press or through other media is one of the essential elements of freedom of association; consequently the authorities should refrain from unduly impeding its lawful exercise.”⁵³

83. The European Court of Human Rights has also acknowledged in its case law that the right to freedom of expression protects the right of union members to express their demands to their employers, for purposes of improving their working conditions.⁵⁴ According to the Court, the freedom of expression of labor unions and their leaders is an essential means of action, without which they would lose their effectiveness and their *raison d’être*. Accordingly, the national authorities are obligated to ensure that the imposition of disproportionate sanctions do not have a chilling effect on the right of union representatives to express and defend workers’ interests.⁵⁵

84. As explained below, the right to freedom of expression may be subject to specific limitations in the context of labor-related matters. It is not an absolute right, and as such may be restricted to protect other relevant legal interests in accordance with Article 13.2 of the American Convention.

85. The case law of the Inter-American Commission and Court has consistently held that the establishment of limitations to the right to freedom of thought and expression must be exceptional in nature, and in order to be admissible must be subject to three basic conditions set forth in Article 13.2 of the Convention: (a) the limitation must be clearly and precisely defined in a substantive and procedural law; (b) it must pursue objectives authorized by the American Convention; and (c) it must be necessary in a democratic society for the attainment of the aims pursued, suitable for accomplishing the intended objective, and strictly proportional to the aims pursued.

86. According to Article 13.2 of the American Convention, all limitations on freedom of expression must be established by law. The Inter-American Court has repeatedly explained that it must be a law that establishes, in advance, and in the clearest and most precise terms possible, the grounds for the subsequent imposition of liability to which the exercise of freedom of expression may be subject.⁵⁶ The Court has therefore held that vague or ambiguous legal provisions granting very broad discretion to the authorities are incompatible with the American Convention, because they can be used as the basis for arbitrary acts that amount to prior censorship or that impose disproportionate liabilities for the use of speech protected by the Convention.⁵⁷

⁵¹ ILO. Freedom of Association. Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth (Revised) Edition (2006). Para. 154.

⁵² ILO. Freedom of Association. Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth (Revised) Edition (2006). Paras. 155 - 158.

⁵³ ILO. Freedom of Association. Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO. Fifth (Revised) Edition (2006). Para. 159.

⁵⁴ ECHR, Case of Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria (Application No. 15153/89). Judgment of 19 December 1994; European Court of Human Rights. Case of Palomo Sánchez and Others v. Spain (Applications Nos. 28955/06, 28957/06, 28959/06 and 28964/06). Judgment of September 12, 2012.

⁵⁵ ECHR, Case of Palomo Sánchez and Others v. Spain (Applications Nos. 28955/06, 28957/06, 28959/06 and 28964/06). Judgment of September 12, 2012, para. 56.

⁵⁶ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*. Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paras. 39-40; I/A Court H.R., *Case of Palomares Iribarne v. Chile*. Judgment of November 22, 2005. Series C No. 135, para. 79; I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 120; I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objection, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 117; IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of “Desacato” Laws with the American Convention on Human Rights. Title IV. OEA/Ser. L/V/II.88. doc. 9 rev. February 17, 1995; IACHR. Report No. 11/96. Case No. 11.230. Francisco Martorell. Chile. May 3, 1996, para. 55; CIDH. Arguments before the Inter-American Court in the Case of Ricardo Canese v. Paraguay. Transcribed in: I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Judgment of August 31, 2004. Series C No. 111, para. 72. a).

⁵⁷ See IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression 2009, OEA/Ser.L/V/II.Doc. 51, December 30, 2009, Chapter III, para. 71.

87. The fact that a measure restricting freedom of expression is established clearly and specifically in a law is not enough for it to be considered lawful. Under the terms of Article 13.2 of the Convention, it must be determined whether the aim pursued by the restriction is lawful and justified under the American Convention. As previously mentioned, Article 13.2 of the Convention establishes that the exercise of the right to freedom of expression is subject only to the subsequent imposition of liability to the extent necessary to ensure “respect for the rights or reputations of others,” or “the protection of national security, public order, or public health or morals.” Along these lines, the Commission notes that in an employment relationship, restrictions of certain expressions that may be detrimental to a harmonious workplace, the reputation and good name of employers and employees, or the hierarchical order within the company may result legitimate.

88. Nevertheless, it would be erroneous to maintain that it is sufficient for the restriction to freedom of expression to have a legitimate aim in order for it to be consistent with the Convention. Article 13.2 of the Convention requires that the restriction be suitable, necessary, and strictly proportional to accomplish that legitimate aim. The examination of the suitability of a restriction to the right to freedom of expression focuses on determining whether the measure effectively allows for the attainment of the legitimate aim pursued. In other words, it is necessary to evaluate whether the limitations appropriately contribute to the attainment of aims compatible with the American Convention, or whether they are able to contribute to the realization of those objectives. The need for the measure is determined by evaluating whether the restrictions are essential for the achievement of the legitimate aim, or whether there are other, less harmful measures. Finally, and provided that they are necessary and suitable, the restrictions must be strictly proportionate to the legitimate aim pursued, and narrowly tailored to the attainment of that objective, interfering as little as possible with the lawful exercise of that freedom. Assessing the strict proportionality of the limitation measure requires determining whether the sacrifice of freedom of expression that it entails is exaggerated or disproportionate to the advantages obtained through its use.

89. In labor-related matters, the strict proportionality of restrictions to freedom of expression must be judged on the basis of their effects on the right of labor organizations and their leaders to seek the protection of their constituents’ rights. The right to freedom of expression in these cases is intrinsically linked to the objective of freedom to organize trade unions. The Commission finds that, in order to be considered proportional, penalties against a worker for exercising freedom of expression in this context cannot have a chilling effect on the rights of labor or trade union leaders to defend and advocate for the rights and interests of the people they represent.

90. This balancing test must also take account of the fact that in a democratic society there is a slim margin for any restriction on political speech or speech concerning matters of public interest. In a democratic and pluralist system, expressions, information, and opinions regarding matters of public interest, the State, and government institutions, enjoy greater protection under the American Convention. This means that the State must more rigorously abstain from limiting these forms of expression, and that, because of their public nature, the entities and employees of the State, as well as those who aspire to hold public office, must have a higher threshold of tolerance for criticism.⁵⁸

ii) Positive obligations of the State to safeguard the right to freedom of expression from interference by non-State actors

91. In accordance with the inter-American case law and doctrine, the American Convention requires that the States Parties not only respect the rights enshrined therein but also guarantee that the persons under their jurisdiction are able to exercise those rights. The IACHR has therefore affirmed that, “The continuum of human rights obligations is not only negative in nature; it also requires positive action from States.”⁵⁹

⁵⁸ I/A Court H.R., *Case of Herrera Ulloa v. Costa Rica*. Judgment of July 2, 2004. Series C No. 107, para. 127.

⁵⁹ IACHR. Report No. 80/11, Case 12.626, Merits, Jessica Lenahan (Gonzales) et al. United States. July 21, 2011. Para. 117.

92. The Commission and the Court have not only required that States abstain from committing human rights violations. They have also required States to take affirmative measures to guarantee that the individuals under their jurisdiction are able to exercise and enjoy the rights contained in the American Convention. This State duty extends to the prevention of, and response to, acts committed by private individuals.⁶⁰

93. On this point, the Inter-American Court has held that:

This obligation implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.⁶¹

94. The European Court has held that the States have the positive obligation to establish courts with jurisdiction over labor matters in order to hear and decide cases of alleged violations against workers.⁶² Specifically, the Court has held that, “This is also the case for freedom of expression, of which the genuine and effective exercise does not depend merely on the State’s duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals.” The European Court has found that in matters concerning the dismissal of workers by a private company, “The responsibility of the authorities would nevertheless be engaged if the facts complained of stemmed from a failure on their part to secure to the applicants the enjoyment of the right enshrined in Article 10 of the Convention [freedom of expression].”⁶³

95. Similarly, the IACHR recognizes that freedom of expression governs at all times and in all types of legal relationships, including private ones, and that the State therefore has the positive obligation to protect the exercise of this right, even from attacks from private individuals.

96. Under these circumstances, the national courts play a fundamental role as guarantors of the right to freedom of expression. A complaint before the courts alleging the violation of freedom of expression by private individuals requires the courts to resolve the dispute bearing in mind the relevant human rights obligations assumed by the State. Accordingly, the courts of each State are obligated to exercise “conventionality control,” which means that at all times their judgments must be consistent with the human rights standards of the American Convention.

97. The Inter-American Court has explained that it “is aware that domestic judges and courts are bound to respect the rule of law, and therefore, they are bound to apply the provisions in force within the legal system. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention. This forces them to see that all the effects of the provisions embodied in the Convention are not adversely affected by the enforcement of laws which are contrary to its purpose and that have not had any legal effects since their inception. In other words, the Judiciary must exercise a sort of ‘conventionality control’ between the domestic legal provisions which are applied to specific cases and the American Convention on Human Rights.”⁶⁴

⁶⁰ See, for example, Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, CCPR/C/21/Rev.1/Add. 13, May 26, 2004; I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C No. 4.

⁶¹ I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, Series C No. 4, para. 166.

⁶² ECHR, *Schütch v. Germany*. Application No. 1620/03. Judgment. 23 December 2010, para. 59.

⁶³ ECHR, *Schütch v. Germany*. Application No. 1620/03. Judgment. 23 December 2010, para. 59.

⁶⁴ I/A Court H.R., *Case of Almonacid Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 124. *Cfr. Case of Cabrera García and Montiel-Flores v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010, para. 225.

98. Similarly, the United Nations Committee on Economic, Social, and Cultural Rights stated in its General Comment No. 9⁶⁵ that, “Within the limits of the appropriate exercise of their functions of judicial review, courts should take account of [International] Covenant [on Economic, Social, and Cultural Rights] rights where this is necessary to ensure that the State’s conduct is consistent with its obligations under the Covenant. Neglect by the courts of this responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations.”

iii) Analysis of the specific case

99. The established facts in this case reflect that Mr. Lagos del Campo’s dismissal was ordered by a private company, following the dissemination in the press of statements he made in his capacity as the representative of a workers’ organization (Industrial Community) established to ensure effective employee participation in the assets and management of the company, pursuant to the law in force at the time (Industrial Community Law - Decree Law 21789, *supra* paras. 42-46).

100. During the 1988-1989 term, Alfredo Lagos del Campo served as the president of the Electoral Committee of the Industrial Community of the Ceper-Pirelli Company, an entity responsible for holding elections to select the members of the Industrial Community Board and the representatives to the company’s Board of Directors for that term (*supra* para. 48).

101. The decision to terminate Mr. Lagos del Campo from his employment was subsequently affirmed by the national courts of Peru.

102. The IACHR finds that the dismissal was an act of interference by a non-State actor in Alfredo Lagos del Campo’s exercise of the right to freedom of thought and expression as a labor representative. In these kinds of cases, the Commission must examine whether the State—particularly through its judicial authorities—complied with its duty to guarantee the alleged victim’s right to freedom of expression in the context of labor relations, bearing in mind the scope of this right recognized in the American Convention. Accordingly, the work of the Commission consists of determining whether the penalty of dismissal imposed against Mr. Lagos del Campo was legitimate under the above-described terms of the American Convention (*supra* para. 73-98).

103. The Commission reiterates that when analyzing a possible violation of the right to freedom of expression of representatives of workers and union leaders, it should pay special attention to freedom of expression’s close relationship to freedom of association in the workplace. In this regard, in application of the principle of *iura novit curia*, the Commission considers it necessary to evaluate the compliance with the requirements of Article 13 of the American Convention, interpreting this provision in light of the right of association enshrined in Article 16.1 of the treaty⁶⁶. The Commission observes that although its admissibility report did not analyze a possible violation of Article 16.1 of the Convention, and this right was not subsequently alleged by the petitioners, it is undeniable that the facts in dispute that may support the existence of such violation arise from the information and evidence provided by the parties during the proceedings before the Commission for which the State had the opportunity to offer their comments.

The restriction is provided for by law

104. The first step to assess whether the restriction placed on freedom of expression examined herein is permissible in the light of the Convention requires examining if this restriction is provided for by law, both formally and substantially. As the Inter-American Commission and Court have indicated, the

⁶⁵ United Nations. Committee on Economic, Social, and Cultural Rights. Application of the International Covenant on Economic, Social, and Cultural Rights, General Comment 9. The domestic application of the Covenant (Nineteenth session, 1998), U.N. Doc. E/C.12/1998/24 (1998), para. 14.

⁶⁶ According to Article 16.1 of the American Convention, “Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes”.

obligation that the provision be provided for by law is aimed at ensuring that the restrictions are not arbitrarily left to the discretion of public authorities.⁶⁷

105. The IACHR notes that in order to justify the dismissal, the employer invoked Article 5(h) of Legislative decree 24514 on Job Security, enacted by the Congress of the Republic on June 5, 1986, and according to which, “*The following constitute serious infractions: (h) [...] serious verbal misconduct against the employer, its representatives, senior staff, or coworkers.*” In these types of cases, it is not necessary for the definition of the infraction to meet the levels of specificity required in criminal matters. Nevertheless, when the issue concerns an infraction that carries an onerous penalty, the provision must be clear in terms of its content and scope, as this is the only way to ensure that individuals will be able to conduct themselves in keeping with the law. This does not mean that the infractions have to be defined with absolute precision, but the penalty does have to be foreseeable, and the provisions must not be susceptible to arbitrary interpretations by the employer.

106. In addition, in matters concerning limitations to freedom of expression in a labor context, the terms of the regulation must be especially careful to prevent fear and self-censorship among workers’ representatives.

107. In this case, the IACHR finds that the terms of the law on which Mr. Lagos del Campo’s dismissal was based are vague and imprecise, particularly because they do not define the scope of application for purposes of protecting speech about matters of public interest or the speech of workers’ representatives acting in their capacity as such. The Commission finds that this, in addition to affecting foreseeability with respect to the prohibited conduct, in practice renders the defense of workers’ rights illusory. Similarly, given that this violation has occurred as a result of the application of a law that does not meet the requirements of legality, Peru also breached Article 2 of the American Convention, which requires States to adopt legislative or other measures that are necessary to give effect to the rights and freedoms recognized in the treaty.

108. Having said this, the Commission must nonetheless examine whether the restriction or limitation in this case served some legitimate State imperative and whether it was strictly necessary to achieve that purpose, to provide a systematic and thorough discussion of the possible violations of the right to freedom of expression that the case sub judice may involve.

Legitimate purpose

109. The second matter that must be reviewed when examining whether a restriction on the freedom of expression is compatible with Article 13.2 of the Convention refers to identifying the objective being sought by the restrictive measure. Indeed, the restriction shall only be legitimate if it seeks to achieve one of the objectives enshrined in Article 13.2 of the Convention.

110. The Commission notes that the provision seeks to protect a harmonious workplace and the hierarchical order within a company, therefore protecting the honor and reputation of others who work at the company, whether they are employers or even other employees. As stated previously, this purpose is compatible with the text of the American Convention, which recognizes the subsequent imposition of liability for the exercise of freedom of expression in order to protect the right of individuals to their honor and reputation.

Necessity of the restriction in a democratic society

111. According to the criteria examined above (*supra* paras. 73-98), when conducting the third part of this test, the question that the Commission must answer is whether the penalty that was imposed

⁶⁷ Cfr. *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, paragraph 40, and *Case of Claude-Reyes et al. v. Chile*. Merits, Reparations and Costs. Judgment of September 19, 2006. Series C No. 151, paragraph 89. *Case of Kimel v. Argentina*. Merits, Reparations and Costs. Judgment of May 2, 2008, Series C, No. 177, paragraph 63.

against the alleged victim was suitable, necessary, and strictly proportionate to ensure the attainment of the objective.

112. As for the suitability of the measure, the Commission considers that, in some particular circumstances, dismissal could be an appropriate means of penalizing reprehensible worker's conduct, and allows for the protection of a harmonious workplace and its hierarchical order.

113. Nevertheless, as noted earlier, Mr. Lagos del Campo's statements were made in his capacity as a representative of the workers of the Industrial Community before the organization's Electoral Committee. In that respect, the alleged victim's statements should be understood as part of his work as a representative of a group of workers,⁶⁸ which—as previously explained—enjoy greater protection under the American Convention.

114. Indeed, is clear from a comprehensive reading of the interview published in the magazine "La Razón" that the purpose of the alleged victim's statements was to expose and call attention to acts of improper interference by the employers in the workers' organizations at the manufacturing company and in the internal elections of the Industrial Community.

115. His statements were made after, on April 26, 1989, in his capacity as President of the Electoral Committee of the Industrial Community, he complained to the Participation Office of the Ministry of Industry of irregularities in the calling of elections for the members of the Industrial Community Board and the employee representatives to the company's Board of Directors, scheduled to be held on April 28. As reflected in the established facts, on June 9, 1989, the Participation Office of the Ministry of Industry found that the challenge to the election was well-founded.

116. The elections had the ability to affect the exercise of the workers' rights, because according to Decree Law 21789, the objectives of the Industrial Community included strengthening the industrial corporation through employee participation in its management and productive process, and in the ownership of company assets (Art. 3).

117. The IACHR finds that the special protection of the speech of workers' representatives is especially important during the internal election processes of these kinds of organizations. Broad and uninhibited democratic speech is certainly necessary to comply with the fundamental principle that workers must have the right to choose their representatives freely.⁶⁹ The international law and scholarship on this issue has recognized that the right of workers to elect representatives is "an indispensable condition for them to be able to act effectively with full independence and effectively promote the interests of their members." In the opinion of the Inter-American Commission, the free expression of opinions and dissemination of information during this process is an essential tool for shaping the opinion and will of organized workers, and it allows for greater transparency and oversight in the election process.

118. The importance of the right to freedom of expression in electoral contexts has been recognized by the Inter-American Court of Human Rights in its judgment in the case of *Ricardo Canese v. Paraguay*. In that judgment, the Court held that freedom of expression is "the cornerstone for [...] debate during the electoral process" and recognized that in those contexts "opinions and criticisms are issued in a more open, intense and dynamic way, according to the principles of democratic pluralism."⁷⁰

⁶⁸ Regarding this point, the State's argument that the petitioner did not have the support of other workers to do the interview is irrelevant. Demanding this "support" prior to any statement would be like trying to have the workers' union come to an agreement every time one of their representatives is going to speak. Furthermore, this is impossible in practice, and would end up suppressing the spirit of the labor organization.

⁶⁹ ILO. Convention concerning Freedom of Association and Protection of the Right to Organise, 1948 (No. 87). Article 3 provides that: "1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes."

⁷⁰ I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111. Para. 88

119. It is important to emphasize that speech during electoral contests allows for vehement and biting criticism that may not be well-received by its targets, or even by the general public. Ideas that are received favorably or seen as inoffensive or indifferent are not the only ones that enjoy protection. Such are the requirements of a plural, tolerant, and open society, without which true democracy does not exist.⁷¹

120. It bears noting in this respect that freedom of expression protects not only the content of information and ideas but also the manner or tone in which they are expressed.⁷² Although any person who takes part in a public debate should abstain from exceeding certain boundaries, he or she may use a certain degree of exaggeration and even provocation.⁷³

121. Based on the foregoing considerations, the IACHR is of the opinion that the penalty imposed in this case has not been proven to be related to the need to protect the stated objectives. His speech must be understood as part of a broader debate on the protection of workers' organization within national industries and the implications for the rights of the most vulnerable workers. Indeed, the information and opinions disseminated were of clear public interest, inasmuch as they revealed the breach of the company's legal duties and publicly exposed the company's intention to dissolve the Industrial Community. Although some of Mr. Lagos del Campo's statements could potentially affect the company's reputation, it is clear that they were not baseless, and that they were made by the victim in his capacity as president of the Electoral Committee of the workers' organization and within the framework of verifying and reporting irregularities in the calling of elections for their representatives. That is, the expressions of Mr. Lagos del Campo constitute permissible criticism in the context of labor elections and cannot be considered unfounded or devoid of a reasonable basis.

122. Also, Mr. Lagos del Campo's statements could have been investigated, corrected, or explained by the company. The company was fully capable of clarifying the information contained in his statement through multiple channels. To this extent, it is clear that there were other measures less harmful than dismissal that the company could have used to defend the honor of those who felt that they were adversely affected. It should be recalled that in the workplace the protection of legitimate aims, such as a harmonious workplace or the reputation of individuals, can not lead to the imposition of a duty of absolute loyalty to employers or the the worker's subjection – especially to leaders of workers – to the interests of the employer.

123. In addition, the dismissal cannot be considered a strictly proportional measure. Indeed, in this case, the most severe punishment provided for by law was applied even though no serious harm was ever proven at trial. The dismissal of Mr. Lagos del Campo and the consequences of his later unemployment had a noticeable effect on his right to freedom of expression as leader of workers. The severity of the restriction in the case is accentuated because not only the interests of Mr. Lagos del Campo were affected, but also the right of thall workers to access information on matters concerning them.

124. The Peruvian judicial authorities were advised of these facts by the alleged victim, who requested the right to judicial protection in view of the violation of his right to freedom of expression as an employee representative. Indeed, in his complaint before national courts, Mr. Lagos del Campo argued that

⁷¹ See, ECHR. *Case of Lingens v. Austria*, Judgment of 8 July 1986, Application 9815/82, para. 41; *Case of Observer and Guardian v. United Kingdom*, Judgment of 26 November 1991, Application 13585/88, para. 59; *Case of Thorgeir Thorgerirson v. Iceland*, Judgment of 25 June 1992, Application 13778/88, para. 63.

⁷² I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111. Para. 78; ECHR, *Case of De Haes and Gijssels v. Belgium*, Judgment of 24 November 1997, Application 19983/92, para. 48; *Case of Feldek v. Slovakia*, Judgment of 12 July 2001, Application 29032/95, para. 72.

⁷³ The Inter-American Court ruled on this issue in the *Case of Ivcher Bronstein*. Merits, Reparations and Costs, para. 152, and has consistently reiterated this opinion in its case law; see: *Case of Herrera Ulloa*, paras. 113 & 126; *Case of Kimel*, para. 88; *Case of Rios, et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 194, para. 105; *Case of Perozo, et al. v. Venezuela*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C No. 195, para. 116. A similar trend is seen in earlier cases of the European Court of Human Rights: *Case of De Haes and Gijssels v. Belgium*, Judgment of 24 November 1997, Application 19983/92, para. 46; *Case of Bladet Tromsø and Stensaas v. Norway*, Judgment of 20 May 1999, Application 21980/93, para. 59; *Case of Otegi Mondragon v. Spain*, Judgment of 15 March 2011, Application 2034/07, paras. 54 & 56.

his dismissal when he served as chairman of the Electoral Committee of the company's Industrial Community "constituted a serious violation of his right to freedom of opinion, expression and dissemination of thought, established by Article 4, section 2 of the Constitution, as well as a serious interference with his activities as an organized worker". He also argued that "all workers, particularly those who hold union or community office, as in his case, have not only the right but the need to be informed and disseminate information on their activities and the situation of their workplace". The Commission notes that Mr. Lagos del Campo argued before the labor courts that his dismissal was part of an "internal plan to systematically obstruct and restrict the exercise of communal and trade union rights and is the culmination of a chain of actions of harassment that the [company] has been carried out against him, on the ground that he held positions of union and worker representation and [his] ongoing activities defending the rights of workers of CEPER SA, rejecting and denouncing violations of labor, as well as anti-union and anti workers acts by the company". In the rulings there is no analysis of these allegations.

125. The judges, in exercise of its jurisdictional duties, were called upon to examine the necessity of the restriction in a democratic society and to weigh Mr. Lagos del Campo's right to freedom of expression against the right to honor and reputation of the company's directors⁷⁴. Nevertheless, the judges expressed the opinion, without further explanation, that "The Constitution of Peru guarantees freedom of expression, but not to insult the personal honor and dignity of the employer company's senior staff."

126. In particular, the Commission observes that the authorities did not take into account that the complainant was a worker's representative and that his speech was of clear public interest. They also failed to appreciate that the severity of a dismissal has clear prejudicial effects on the right of workers' organizations and their leaders to advocate for the rights and interests of the people they represent, and has a chilling effect on other labor leaders who may fear losing their jobs. In these cases, an arbitrary dismissal not only severely restricts freedom of expression of an individual, but also produces a chilling effect on the right of a particular group of workers to associate freely to defend their interests without fear or fear of reprisals.

127. The above is related to the duty of the courts to state the grounds for their decisions. On this point, the IACHR recalls that, according to the Inter-American case law, "The obligation to provide [the reasoning for a decision] is a guarantee associated with the proper administration of justice, which protects the right of citizens to be tried for the reasons that the law provides, and grants credibility to the legal decisions within the framework of a democratic society." In this respect, the Inter-American Court has held that the legal reasoning of a judgment "should [make known the] facts, reasons and regulations [that were the basis for the authority's decision, in order to] rule out any [indications] of arbitrariness."⁷⁵ In addition, it must demonstrate that the courts have properly examined the "specific reasons and grounds regarding the seriousness and magnitude of the fault allegedly committed [...] and the proportionality of the sanction imposed."⁷⁶

128. In this case, the domestic courts clearly failed to provide reasons for their decisions and to properly and independently assess the evidence. In practical terms, the court decision that upheld the dismissal was equivalent to a mere rubber-stamp approval of the measure taken by the employer. The Peruvian courts failed to safeguard the minimum requirements of stating the reasons for their decisions, which affected Mr. Lagos del Campo's enjoyment of his rights.

129. For all of the foregoing reasons, the Inter-American Commission concludes that the Peruvian State is responsible for failing to protect Mr. Alfredo Lagos del Campo's right to freedom of expression, contained in Article 13 of the American Convention, in relation to Articles 1.1, 2 and 16.1 thereto.

⁷⁴ I/A Court H.R., *Case of Kimel V. Argentina*. Merits, Reparations, and Costs. Judgment of May 2, 2008 Serie C No. 177, para. 63.

⁷⁵ I/A Court H.R., *Case of López Mendoza v. Venezuela*. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233, para. 141.

⁷⁶ I/A Court H.R., *Case of López Mendoza v. Venezuela*. Merits, Reparations, and Costs. Judgment of September 1, 2011. Series C No. 233, para. 149.

Additionally, it violated the duty to adequately state the grounds for its decisions, in keeping with Article 8.1 of the American Convention.

V. CONCLUSIONS

130. Based on the foregoing considerations of fact and law, the Commission concludes that the State of Peru is responsible for the violation of the rights to a fair trial and freedom of expression, in accordance with Articles 8.1 and 13 of the American Convention in connection with Articles 1.1, 2 and 16.1 thereto, to the detriment of Alfredo Lagos del Campo.

VI. RECOMMENDATIONS

131. Based on the above conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF PERU:

1. Provide comprehensive reparation to Alfredo Lagos del Campo for the violations stated herein. This reparation must include both the pecuniary and non-pecuniary aspects.

2. Adopt measures of non-repetition to guarantee that workers' representatives and labor union leaders can enjoy their right to freedom of expression in accordance with the standards established in this report.

3. Adopt measures to ensure that the application and interpretation of laws by the domestic courts are consistent with the principles established by international human rights law with respect to freedom of expression in labor-related contexts, reiterated in this case.