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Session: Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause: Juan Jose Lopez v. Argentina
Doc. Type: Decision
Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dr. Juan Méndez, an Argentine national, did not participate in the discussion of this case in accordance with Article 19(2)(a) of the Commission's Regulations.
Dated: 2 October 2000
Citation: Jose Lopez v. Argentina, Case 11.395, Inter-Am. C.H.R., Report No. 56/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000).
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I. SUMMARY

1. On September 29, 1994, Juan José López and the Córdoba Press Trade Union Group [Círculo Sindical de la Prensa de Córdoba] (hereinafter "the petitioners") submitted a petition to the Inter-American Commission on Human Rights (hereinafter "the Commission") denouncing violation by the Republic of Argentina (hereinafter "Argentina" or "the State") of the right of Juan José López, mentioned above, (hereinafter "the alleged victim") to freedom of thought and expression enshrined in Article 13 of the American Convention on Human Rights (hereinafter "the Convention").

2. The alleged victim established a professional relationship with LRA 7- Radio Nacional de Córdoba (hereinafter "Radio Nacional,") in January 1986, which continued without interruption until July 1990. The parties describe this relationship differently from a legal standpoint. The alleged victim was elected to the position of alternate member of the Córdoba Press Trade Union Group (hereinafter "CISPREN") and, while performing duties in that capacity, was denied work by Radio Nacional. No reason was given for this action. Consequently, the petitioners took legal action with a view to his reinstatement.

3. Federal Court No. 2 of Córdoba ruled that the request should be granted and ordered the reinstatement of the alleged victim in his position. In May 1993, Division "A" of the Federal Court of Appeals of the Fourth Judicial District overturned the first instance decision, which had been appealed. The Supreme Court rejected the appeal for special remedy filed by the petitioners, without reviewing the merits of the case.

4. Without prejudging the merits, the Commission concludes that this case is admissible with respect to the alleged violation of the right to freedom of thought and expression enshrined in Article 13 of the Convention. Furthermore, the possibility is being left open to interpret and apply the provisions of the Convention related to judicial guarantees and protection (Articles 8(1) and 25), freedom of association (Article 16), and equality before the law (Article 24), when the merits of the case are being analyzed.

II. PROCESSING BY THE COMMISSION

5. The Commission received the petition on September 29, 1994, and acknowledged receipt thereof on October 24. It was forwarded to the State with a 90-day period being provided for a response.

6. On November 28, 1994, the Commission received additional information from the petitioners, and acknowledged receipt thereof on December 5, 1994.

7. On January 3, 1995, the State requested an extension of the deadline for providing a response. On January 12, 1995, the Commission acknowledged receipt of this request and extended the deadline to February 28.

8. On March 2, 1995, the State requested another extension, and on March 13, the Commission granted it an additional 45 days.

9. The State responded to the petition on May 22, 1995, and the Commission acknowledged receipt of this response and forwarded it to the petitioners on May 31.

10. The Commission received additional information from the petitioners on August 14, 1995, and acknowledged receipt thereof. This information was forwarded to the State on August 17.

11. On November 29, 1995, the State provided the Commission with additional information. Acknowledgment of receipt was provided the next day.

12. On March 25, 1998, the Commission received correspondence from the petitioners expressing their interest in the continuation of processing of the case. The Commission acknowledged receipt of this correspondence on April 14, 1998.

III. POSITIONS OF THE PARTIES

13. Based on the correspondence from the parties to the Commission, there is no dispute between them regarding the description of most of the facts related to this case. Consequently, the crux of the case lies in the conflicting accounts of the description and substance of the professional relationship between the alleged victim and Radio Nacional.

a. Position of the petitioners

The facts

14. The alleged victim established an ongoing relationship with LRA 7 - Radio Nacional de Córdoba (hereinafter Radio Nacional) in January 1986, which continued without interruption until July 1990. Within the context of that relationship, he participated in a variety of journalism programs, which involved the preparation of notes, reports, commentaries, and narrations, among others. The petitioners maintain that "[the legal relationship between the alleged victim and Radio Nacional] "faded" (sic) on September 1, 1986, with the "liquidation" (sic) of his respective payments, based on an initial "contract" for journalistic work, the first in a series, copies of which were never provided to the party appearing [the alleged victim]."

15. The alleged victim was a member of the Córdoba Press Trade Union Group and "[was elected] alternate member of its governing board, to serve from December 16, 1988 to December 15, 1990. The defendant, [Radio Nacional] was informed of this appointment by secret ballot on December 15, 1988."

16. They claim that:

From July 2, 1990 [that is, while the alleged victim was still serving as the union representative for journalists in Córdoba, the claimant, Mr. López [the alleged victim] was relieved of his duties. No reason was given for this action. Radio Nacional apparently decided to reduce the number of journalism and musical programs produced [locally] [...], and to rely directly on the federal capital for them. From that time, most of the programs started to be transmitted from Buenos Aires (18 of the 24 hours).

17. The alleged victim viewed the situation that had arisen with his professional relationship as "injurious from an individual standpoint and prejudicial to trade union freedom," and, for this reason, took several steps aimed at reversing it, which included asking the radio station "within a period of two days, to provide clarification with regard to my employment status, to reinstate me in my position, and to cease such conduct, failing which I will take legal action aimed at my reinstatement, which did not rule out the possibility of adopting the position, later on, that you bear sole responsibility for my dismissal." CISPREN also sent a letter to Radio Nacional reminding it that the alleged victim was, at that time, holding a position within the trade union and repeating the information that he had already transmitted to it. These letters were rejected by the local Director of Radio Nacional. The intervention of lawmakers, political and trade union leaders, officials, and others was also sought, but failed to produce positive results.

18. In light of those unsuccessful efforts, the alleged victim sent another letter to Radio Nacional, dated August 3, 1990, noting the "persistence (sic) refusal of [Radio Nacional] to reinstate me as a professional journalist [despite the fact that I hold an executive position in the local association of journalists] [...] [for this reason] I reserve the right to consider myself indirectly fired, and as a result, entitled to compensation [...]" and that he would avail himself of the federal court system with the aim of being reinstated in his position. CISPREN sent Radio Nacional another letter to the same effect.

19. Since this correspondence failed to produce results, the petitioners instituted proceedings for infringement of trade union rights and freedoms pursuant to Law 23,551 on Professional Associations, seeking application of the guarantee of trade union stability, based on Article 14bis of the Constitution of Argentina and Article 52 of the aforementioned law. The objective of the proceedings instituted was the reinstatement of the alleged victim, given his status as a trade union representative of CISPREN and the restoration of trade union freedom. On February 21, 1992, Federal Court No. 2 of Cordoba handed down a decision regarding the proceedings for reinstatement instituted by the petitioners, granting the request and ordering "the immediate cessation of anti-trade union conduct and the reinstatement [of Mr. López] in his position at least twenty days after this decision becomes enforceable."

20. A ruling with respect to the appeal filed by Radio Nacional was handed down by Division "A" of the Federal Court of Appeals of the Fourth Judicial District. This court overturned the first instance decision, since it assessed the evidence differently and held a different view regarding the legal nature of the professional relationship between the alleged victim and Radio Nacional. The decision of the first instance court held that an employment relationship existed with a professional journalist, whereas, in its ruling on the appeal, the Federal Court maintained that the relationship involved a contract to provide work and did not meet the requirements for considering him a professional journalist.

21. The petitioners filed an appeal with the Supreme Court for special remedy against the decision handed down by the Federal Court. In their appeal, they maintained that "the second instance ruling [...] was limited to disproving the labor relationship of the plaintiff, without analyzing the main injury outlined in the complaint: the loss of employment of a member of the governing board, whose position on the board had been communicated to the defendant a year and a half prior to his separation, and was never challenged." [FN1] On February 22, 1994, the Supreme Court rejected the appeal for special remedy filed by the petitioners without reviewing the merits of the case or providing an exhaustive explanation of the basis for its decision.

[FN1] Bold and capital letters that appear in the original have been omitted.

The points of law

22. The petitioners maintain that the link that existed between the alleged victim and his employer was a dependent employment relationship and that the alleged victim "worked as a professional journalist within a state context, that is, LRA 7 Radio Nacional Córdoba, for a long period."

23. They stress the fact that an employment relationship did exist, which involved the regular performance of work related to professional journalism. They add, with respect to the enforcement of Law 12,908:

The requirements related to entry in the register and the granting of a journalism membership card by the National Executive, as well as registration in the retirement system in order to work

as and be considered a journalist are at odds with freedom of expression and of the press enshrined in the laws and Constitution of Argentina and in Article 13 of the American Convention on Human Rights, which cover freedom of thought and expression.

b. Position of the State

24. It supports the argument advanced by Radio Nacional that the relationship with the alleged victim was one involving a contract to provide work.

25. With regard to the professional status resulting from this relationship, it maintains that he "was not registered in the retirement and pension system for journalists, nor was he considered to have such status."

26. It maintains that the severing of ties between the alleged victim and Radio Nacional, the failure to recognize his status as a professional journalist, and the enforcement of Law 12,908 with regard to the alleged victim do not in any way constitute a violation of Article 13 of the Convention on freedom of expression.

27. It argues that the alleged victim failed to meet the requirements set forth in law 12,908 approving decree 7618/44, which in turn adopts the Statute applicable to the Professional Journalist. The contents of this provision that are relevant to this case will be discussed in detail later on.

28. In support of its position, it expresses its agreement with the arguments advanced in the ruling of May 7, 1993 by Division "A" of the Federal Court of Appeals of Córdoba, which overturned the decision of the court of first instance in favor of the alleged victim.

29. It therefore rejects the arguments of the petitioners and maintains that the nature of the professional relationship with Radio Nacional, which began in 1986 and continued without interruption until July 2, 1990, was not an employment relationship involving the performance of functions related to professional journalism by the alleged victim.

IV. ANALYSIS

A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

30. The Commission is competent to review the case. The acts denounced by the petitioners allegedly affect rights of natural persons as a result of actions taken by Argentina, which occurred within its territory after the date of deposit of its instrument of ratification.[2]

[2] Argentina deposited the instrument of ratification of the Convention at the General Secretariat of the Organization of American States on September 5, 1984.

B. Other admissibility requirements of the petition

a. Exhaustion of domestic remedies

31. The petitioners have exhausted domestic remedies, as evidenced by the decision handed down by the Supreme Court with respect to the appeal for special remedy on February 22, 1994, as reported by the State in its correspondence of May 22, 1995.

b. Period for lodging the petition

32. Notification of the aforementioned decision of the Supreme Court was provided on March 16, 1994, and this date was used to compute the time period set forth in Article 46(1)(b) of the Convention and Article 38 of the Regulations of the Commission. The Commission received the petition on September 29, 1994, but it was sent from Córdoba, Argentina, prior to that date. The petitioners have expressly asked the Commission "to consider the petition to have been filed within the time frame and in the manner required" and the State has not raised any objection to this. Consequently, taking into consideration the distance, the Commission declares that the requirement set forth in Articles 46(b) of the Convention and 38 of the Regulations of the Commission have been met.

c. Duplication of proceedings and res judicata

33. There is no evidence to suggest that other proceedings in the international sphere are pending with regard to the matter covered in the petition or that it represents, from a substantive standpoint, a reproduction of another appeal already examined by the Commission or other pertinent supranational entity. Consequently, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

d. Characterization of the alleged facts

34. In the view of the Commission, confirmation of the veracity of the facts alleged by the petitioner could lead to a finding of violation of rights protected under the Convention. Consequently, without prejudice to points related to the merits of the case, the Commission holds the view that the requirements set forth in Articles 47(b) and (c) of the Convention have been met.

35. In its decision on the merits, the Commission will also make a determination as to whether it would be appropriate to interpret and apply the provisions of the Convention pertaining to judicial guarantees and protection (Articles 8(1) and 25), freedom of association (Article 16), and equality before the law (Article 24).

V. CONCLUSIONS

36. The Commission concludes that it is competent to hear this case and that it is admissible, pursuant to Articles 46 and 47 of the Convention.

37. Based on the arguments of fact and of law outlined above, and, without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. Declare this case admissible with regard to the alleged violation of the right to freedom of thought and expression enshrined in Article 13 of the Convention and to allow for the possibility of interpretation and application of the provisions of the Convention with respect to judicial guarantees and protection (Articles 8(1) and 25), freedom of association (Article 16), and equality before the law (Article 24), when the merits of the case are being analyzed.
2. Notify the parties of this decision.
3. Continue analysis of the merits of the case; and,
4. Publish this decision in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington D.C., on this the 2nd day of October, 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.