

REPORT No. 73/11
CASE 11.395
JUAN JOSÉ LÓPEZ
MERITS
ARGENTINA
July 20, 2011

I. SUMMARY

1. On September 21, 1994, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a complaint lodged by Mr. Juan José López, his legal representative Mauricio César Arese, and Miguel Ángel Rojo, in his capacity as the legal representative of the Córdoba Press Trade Union Group (*Círculo Sindical de la Prensa de Córdoba*; CISPREN) (hereinafter “the petitioners”), which was registered as No. 11.395.

2. In their complaint, the petitioners claimed that the Argentine Republic (hereinafter “Argentina,” “the Argentine State” or “the State”) had incurred in international responsibility by rejecting his demands for reinstatement as a journalist with LRA-7, *Radio Nacional de Córdoba* (hereinafter “Radio Nacional”), after he was dismissed, allegedly for no stated reason. They grounded their petition on the fact that the courts had found that Mr. López’s failure to register in the National Professional Journalists’ Register (*Matrícula Nacional de Periodistas*), to obtain a journalist’s ID card, and to enroll in the National Journalists’ Retirement and Pension System (*Caja Nacional de Jubilaciones y Pensiones de Periodistas*) prevented him from working as a journalist and being considered as such, pursuant to the terms of the Professional Journalists’ Statute set out in Law No. 12.908 (*Estatuto del Periodista Profesional*), which constituted a violation of his right of free expression. In addition, they claimed that Mr. López’s dismissal violated his right to job stability, as recognized by the Trade Union Law No. 23.551 (*Ley de Asociaciones Sindicales*), in that when it took place he held the position of alternate board member of the CISPREN trade union. The parties are in dispute regarding the nature of the employment relationship.

3. The petitioners alleged that the facts set out constituted violations of Articles 13 and 16 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) with respect to Mr. Juan José López.

4. In turn, the State held that the facts put forward by the petitioners did not tend to establish a violation of the rights protected by the Convention. In this regard, it claimed that the Professional Journalists’ Statute grants a series of job protection mechanisms for individuals who meet the three requirements established therein, namely: inclusion in the National Professional Journalists’ Register, enrollment with the National Journalists’ Retirement and Pension System, and obtaining a professional ID card. It further contended that this did not mean that the freedom of expression of those not covered by the provisions of the law was in any way restricted. In addition, Argentina claimed that Mr. López had access to all available judicial venues, which, acting with full respect for his rights and in consideration of the evidence presented, established that Mr. López was not protected by the Statute in question and that, consequently, he was not entitled to reinstatement. Regarding other articles referred at the Admissibility Report of the IACHR, the petitioners never presented arguments during the process, and, with respect to Article 13, there were no allegations concerning the violation of the right of freedom of expression at the domestic level, where there were only allegations related to the Trade Union Law.

5. In Admissibility Report No. 56/00, adopted on October 2, 2000, the Commission concluded that the petition was admissible under the terms of Articles 46 and 47 of the Convention, and that it would continue with its analysis of the alleged violation of the right to freedom of thought and expression as enshrined in Article 13 of the Convention. In addition, during the analysis of the merits, it would allow the possibility of interpreting and applying the Convention provisions related to a fair trial and judicial protection (Articles 8.1 and 25), freedom of association (Article 16), and equal protection (Article 24).

6. In light of the considerations of fact and law set out in this report, the Inter-American Commission, at its 142nd regular session, concluded that the State of Argentina did not violate Articles 8.1, 13, 16, 24, or 25 of the American Convention with respect to Mr. Juan José López.

II. PROCESSING BY THE COMMISSION FOLLOWING REPORT ON ADMISSIBILITY No. 56/00

7. On October 2, 2000, the IACHR adopted Report No. 56/00, ruling Petition 11.395 admissible with respect to Juan José López. That decision was communicated to the parties by means of a note dated October 20, 2000, beginning the period of two months for the petitioners to submit their comments on the merits of the case. On that same occasion, the IACHR made itself available to the petitioners with a view to reaching a friendly settlement in the matter, pursuant to Article 48.1.f of the American Convention.

8. The State submitted a communication on November 16, 2000. The petitioners accepted the proposed commencement of friendly settlement proceedings in a submission dated December 13, 2000. The State reiterated its communication on January 19, 2001. On April 17, 2001, the IACHR made itself available to the State with a view to reaching a friendly settlement of the matter, pursuant to Article 48.1.f of the American Convention.

9. The petitioners again noted their wish to begin friendly settlement proceedings on April 24, 2001. On May 17, 2001, the State reported that it was unable to find grounds for commencing friendly settlement proceedings, and it reiterated that communication on July 10, 2001. The petitioners submitted comments on the merits of the case on October 11, 2001, and on April 22, 2010. The State requested an extension of the deadline for submitting its comments on July 6, 2010, a request that was granted, and it presented observations on the merits on May 31, 2011. The communications referred to in the previous paragraphs were duly conveyed to the respective parties.

III. POSITIONS OF THE PARTIES

A. Petitioners

10. The petitioners contend that Juan José López began working as an employee of *Radio Nacional* in January 1986 as a professional journalist, as described in Article 2 of Law No. 12.908. They add that his situation was legalized on September 1, 1986, when they began to pay him the different amounts owed under an initial contract for journalistic work; this was the first in a series of contracts, of which copies were never given to Mr. López. His work included involvement in various news programs and producing stories, reports, commentaries, and narrations, at varying times of day at different moments in the employment relationship.

11. They add that Mr. López's incorporation into the staff of *Radio Nacional* was on account of a structural change in the station's programming, which entailed a high level of independence from the federal capital and as a result of which local management hired a large number of journalists for different programs.

12. The petitioners contend that Mr. López's irregular employment situation did not affect his stability, in that Article 25 of the aforesaid Law No. 12.908 stipulates that all journalists may be subject to a 30-day probationary period, following which they are to be definitely considered members of the permanent staff. They add that Article 38 of the same law ensures professional journalists job stability.

13. Furthermore, they contend that Mr. López's job stability was strengthened by his election as a member of the board of the Córdoba Press Trade Union Group (CISPREN), to serve from December 14, 1988, to December 15, 1990, a fact of which the corresponding authorities were duly notified.

14. The petitioners claim that, in spite of that situation, Mr. López was fired without any reason being given on July 2, 1990.

15. The petitioners state that after his firing, both Mr. López and CISPREN pursued a series of administrative formalities that included the sending of a certified telegram on July 2 informing the radio station that the termination of the professional journalist's work was in violation of Law No. 23.551 and urging it to rectify Mr. López's employment situation and reinstate him within the following two days or judicial remedies would be sought. One day later, on July 3, the trade union sent another similar letter. Both communications were rejected by the director of *Radio Nacional*. The petitioners report that numerous steps were taken to rectify the situation, none of which yielded positive results, and so both Mr. López and CISPREN again wrote to the station, informing it that they would seek satisfaction through the courts.

16. Given *Radio Nacional's* refusal to reinstate Mr. López, the petitioners report that reinstatement proceedings and a suit for *amparo* relief for trade-union freedoms were instituted before the Second Federal Court of the city of Córdoba, in accordance with Law No. 23.551. That court ruled on February 21, 1992, ordering *Radio Nacional* to reinstate Mr. López within a period of 20 days and to pay him the earnings lost from July 1990 up to the date of the judgment. On May 7, 1993, the Federal Chamber of the city of Córdoba upheld an appeal lodged by *Radio Nacional* and overturned the first-instance judgment. On June 2, 1993, Mr. López filed a special remedy with the Supreme Court of Justice of the Nation, which was dismissed.

17. They claim that the judgment handed down by the Federal Chamber of the city of Córdoba, and upheld in the dismissal of the special remedy, is in violation of Article 13 of the American Convention. The judgment found enrollment in the National Journalists' Retirement and Pension System, obtaining a professional ID card, and inclusion on the National Professional Journalists' Register to be obligatory requirements for working as and being considered a journalist and, consequently, for the provisions of Law No. 12.908 to apply. This, according to the petitioners, would mean that a journalist's work could be prevented by a refusal to enter his name on the register, particularly since such registrations were the responsibility of the employer in this case, a state-owned radio station.

18. In the case at hand, the petitioners claim that Mr. Juan José López worked as a professional journalist for a long period of time in a state-owned media outlet without the corresponding entries and enrollments being made, whereby he was kept outside the purview of the labor laws.

19. According to the petitioners, Argentine justice and legal doctrine have repeatedly held over two decades that professional ID cards and entries in the relevant professional register are merely identity documents, and they are not authorizing documents or formalities.

20. They contend that the judgment found that employment as a professional journalist and the status thereof was to be denied a worker who had not secured professional registration, the corresponding ID card, and enrollment in the National Journalists' Retirement and Pension System. In addition, such a worker would not be entitled to the rights established in Article 13 of Law No. 12.908, namely: free transit on the streets when the exercise of this right is impeded by states of emergency; access to all sources of information of public interest; or access to railroad stations, airports, sea- and river-ports, and any office of the State at the national, provincial, or municipal levels.

21. They further contend that the requirement of enrollment with the National Journalists' Retirement and Pension System is also obsolete, in that the special system for journalists disappeared with the enactment of Law No. 18.037, repealing Law No. 12.581 of 1939 whereby the journalists' National Journalists' Retirement and Pension System had been created.

22. Regarding his trade-union situation, the petitioner claims to have met all the requirements of Law No. 23.551: thus, he was elected in accordance with the terms of the CISPREN's statutes and due notice of that regular election was given to the corresponding authorities; consequently, he could not be removed from his position as a journalist with the radio station without a violation of his right of freedom of association, protected by Article 16 of the American Convention.

23. In summary, the petitioners claim that Mr. López's dismissal and the subsequent judicial decisions dismissing his suit for reinstatement were in violation of his freedom of expression and his freedom of association.

B. State

24. In turn, the State contends that Law No. 12.908, enacting the Professional Journalists' Statute, establishes a series of requirements that do not *per se* violate the right of free expression. In this regard, it notes that the Inter-American Court, in Advisory Opinion No. 5, said that the organization of professions, in general, was not *per se* contrary to the Convention, but rather that it was a method for professional associations to perform regulatory and control functions to ensure good faith and ethical behavior. In other words, the Professional Statute does not violate freedom of expression, since it merely regulates the activities of those professionals who work to seek out, receive, and impart information and ideas. The rules – that is, the requirements of inclusion on the National Professional Journalists' Register and the subsequent issuing of credentials in the form of the professional ID card – are duly regulated and can therefore only be denied in the cases explicitly listed in the law, which severely curtails the margin for discretion in their granting. This does not imply a limitation of the Inter-American Court's demands that the media be potentially open to all without discrimination and "that there not be individuals or groups who are *a priori* excluded from access to such media."

25. Law No. 12.908 merely describes the people to whom the regime it regulates is to apply; in no way does it exclude the possibility of exercising the right to freedom of thought and expression, and so cannot be considered to be in breach of Article 13 of the Convention.

26. The State adds that what the petitioners are questioning is the nature of Mr. Juan José López's employment: they maintain he held employee status as a professional journalist, while the courts found that he was under a contract to provide work and, consequently, Law No. 12.908 did not apply to him.

27. The State contends that it was established at trial that Mr. Juan José López was hired by radio station LRA-7, *Radio Nacional de Córdoba*, under a "provision of work" arrangement from October 1986 to July 1990. Given the nature of his contracting, his registration as a journalist was not required. However, Mr. López claimed at trial before the domestic courts that he had a employment contract that was protected by the guarantee of job stability contained in Law No. 12.908 and the guarantee of trade-union stability in his capacity as an alternate member of the board of the Córdoba Press Trade Union Group. However, the courts found that those guarantees were not applicable to Mr. López, since he was hired by *Radio Nacional* under a provision-of-work contract. The State further contends that no claims regarding violations of the right of free expression were ever made before the domestic courts.

28. Moreover, the State claims that the failure to extend Mr. López's contract was due to the programming of *Radio Nacional*, which began to carry transmissions from Buenos Aires for 18 hours out of 24, which clearly indicates that his alleged status as a journalist or his position within the trade union were not at issue. Consequently, there was no violation of Article 16 of the Convention. Neither are there grounds to establish a violation of Mr. López's right to equality before the law, since there was no discrimination whatsoever against him. Argentina maintains that his situation was resolved by the domestic courts in proceedings that fully respected due process and due judicial guarantees, and so there was no impairment of his right of access to justice, to due process, or to effective judicial protection.

29. In conclusion, the State asserts that "one notes no arguments that state the grounds for alleging a violation of Article 13 of the Convention in the instant petition," and that "as the instant petition includes no arguments that state the grounds for alleging violation of Articles 8(1), 16, 24, and 25 of the Convention, one must conclude that it does not appear clearly and undisputedly that those articles have in effect been violated."

IV. ESTABLISHED FACTS

30. Mr. Juan José López joined Radio LRA-7, *Radio Nacional de Córdoba*, in January 1986.¹ Each month, up until July 2, 1990, he signed contracts with duration of one month.² In the petitioners' view, a professional journalist was hired: in other words, a relationship of employment was established, with ties of subordination and dependence, with obligations varying over time, including involvement in various news programs and the production of stories, reports, commentaries, and narrations of the same kind, at varying times of day at different moments in the employment relationship.³ For the State, a contract for the provision of work was involved, whereby Mr. López was under a monthly obligation to serve as the presenter of the program *El último tren*, which was broadcast on Saturdays and was not informative in nature. In the State's opinion, this relationship did not involve subordination to a superior and was not subject to a timetable or to supervision of any kind. This was because the organizational structure of the Secretariat of Communications (Decree No. 1640/83) did not include journalists among the positions assigned to the affiliates of *Radio Nacional*, as a result of which contracts for specific time-limited periods were used.⁴

31. Mr. López was elected an alternate member of the board of the Córdoba Press Trade Union Group and he assumed that position on December 15, 1988. That fact was communicated to *Radio Nacional* the same day. He was later reelected and appointed the third full board member on December 7, 1990, to serve for a period of two years.⁵

32. On July 2, 1990, the relationship between *Radio Nacional* and Mr. López was terminated. According to him, he was dismissed without any explanation being given.⁶

33. Mr. López and the CISPREN sent communications to *Radio Nacional* requesting that Mr. Juan José López be reinstated in his work as a professional journalist, on the grounds of his status as a professional journalist protected by the guarantee of job stability. Those communications were formally rejected by the radio station. On August 3, 1990, Mr. López and Mauricio César Arese, representing the Córdoba Press Trade Union Group, initiated reinstatement proceedings and a filing for *amparo* relief for trade union freedoms with second federal judge of the province of Córdoba.⁷

34. On February 21, 1992, the Second Federal Court handed down its ruling in the case of *López Juan José et al. v. LRA-7, Radio Nacional Córdoba*, admitting the petition for reinstatement and ordering "the immediate cessation of anti-trade union conduct and the reinstatement [of Mr. López] within the [following] twenty days, plus the earnings lost from July 1990 until he is effectively reinstated."⁸ The

¹ Petitioners' submission of December 27, 1999; enclosure: Reinstatement proceedings and filing for *amparo* relief for trade union freedoms, lodged by Mr. Juan José López and Mauricio César Arese, representing the Córdoba Press Trade Union Group, with the second federal judge of the province of Córdoba.

² Petitioners' submission of December 27, 1999; enclosure: Reinstatement proceedings and filing for *amparo* relief for trade union freedoms, lodged by Mr. Juan José López and Mauricio César Arese, representing the Córdoba Press Trade Union Group, with the second federal judge of the province of Córdoba and brief in response to the suit from LRA-7, Radio Nacional de Córdoba, to the same court.

³ Petitioners' submission of December 27, 1999; enclosure: Reinstatement proceedings and filing for *amparo* relief for trade union freedoms, lodged by Mr. Juan José López and Mauricio César Arese, representing the Córdoba Press Trade Union Group, with the second federal judge of the province of Córdoba.

⁴ Petitioners' submission of December 27, 1999; enclosure: Response brief submitted to the Second Federal Court of the province of Córdoba.

⁵ Petitioners' submission of December 27, 1999; enclosure: Resolution No. 33/92, dated February 21, 1992, issued by the Second Federal Court of the province of Córdoba.

⁶ Petitioners' submission of December 27, 1999; enclosure: Reinstatement proceedings and filing for *amparo* relief for trade union freedoms, lodged by Mr. Juan José López and Mauricio César Arese, representing the Córdoba Press Trade Union Group, with the second federal judge of the province of Córdoba.

⁷ Petitioners' submission of April 22, 2010; enclosure: Reinstatement proceedings and filing for *amparo* relief for trade union freedoms, lodged by Mr. Juan José López and Mauricio César Arese, representing the Córdoba Press Trade Union Group, with the second federal judge of the province of Córdoba.

⁸ Petitioners' submission of April 22, 2010; enclosure: Notification deed No. 808 from the Second Federal Court in proceedings No. 11-1-90, *López Juan José et al. v. LRA-7, Radio Nacional Córdoba*, dated March 26, 1992.

grounds for that ruling were that the court found the existence of an employment relationship between Mr. López, as a professional journalist, and *Radio Nacional*, and consequently that the terms of Law No. 12.908 regulating the Professional Journalists' Statute,⁹ were applicable.¹⁰ In second place, it found that the provisions of Law No. 23.551 were applicable,¹¹ as regards the job stability of a person who is a union leader, which Mr. López was at the time the labor relation was severed. Consequently, the court found that *Radio Nacional's* actions constituted a violation of that guarantee of stability.¹²

35. An appeal against that judgment was made by the public prosecutor.¹³ On May 7, 1993, the Federal Appeals Chamber of the Fourth District issued a judgment overturning the first-instance decision.¹⁴ The grounds for this judgment were that after analyzing the evidence, the appeals court found that Mr. López was not bound to *Radio Nacional* by means of an employment contract but by a contract for the provision of work¹⁵ and that he was paid for artistic endeavors, not for work as a reporter. In addition, it found that in order to work as a professional journalist and be considered as such, Law No. 12.908 demanded inclusion on the National Professional Journalists' Register, the issuing of a professional journalist's ID card, and enrollment in the National Journalists' Pensions and Retirements System.¹⁶

36. On June 2, 1993, Mr. López lodged a special remedy with the Supreme Court, claiming that the Appeals Chamber's judgment had violated his right to free expression and to organize.¹⁷ That filing was dismissed by the Supreme Court of Justice of the Nation on February 22, 1994, with notice served by means of a deed issued on March 16 of that year.¹⁸

V. ANALYSIS OF LAW

37. Bearing in mind that the parties' contentions and the documentary evidence are centered on finalized judicial proceedings dealing with an issue that is primarily the competence of the domestic judicial authorities, the Commission would like to note that the purpose of this report is not to rule on whether there was or was not a relationship of employment between Mr. Juan José López and LRA-7, *Radio Nacional de Córdoba*, and on the consequent applicability or otherwise of Law No. 12.908, regulating the Professional Journalists' Statute, or the Trade Union Law, No. 23.551. The Commission notes that the courts examined the evidence before them and found, on the basis thereof, that the relationship between the two parties was a provision-of-work contract, and that they consequently ruled that Law No. 12.908 and Law No. 23.551 did not apply to Mr. López. In their claims, the petitioners have not disputed their access to judicial protection or to the guarantees of due process. Consequently, the analysis will focus on the claims made to the Commission by both parties regarding alleged violations of Mr. López's human rights on the basis of that factual premise.

⁹ Law 12.908 establishes the Professional Journalists' Statute. It was adopted in December 18, 1946.

¹⁰ Petitioners' submission of April 22, 2010; enclosure: Resolution of the Second Federal Court in proceedings No. 11-1-90, *López Juan José et al. v. LRA-7, Radio Nacional Córdoba*, dated February 21, 1992.

¹¹ Law 23.551, the Trade Union Law, was enacted on March 23, 1988, and came into force on April 14, 1988.

¹² Petitioners' submission of April 22, 2010; enclosure: Resolution of the Second Federal Court in proceedings No. 11-1-90, *López Juan José et al. v. LRA-7, Radio Nacional Córdoba*, dated February 21, 1992.

¹³ Petitioners' submission of September 29, 1994; enclosure: Judgment No. 78 of the Federal Appeals Chamber of the Fourth Judicial District of Córdoba, in *López Juan José et al. v. LRA-7, Radio Nacional Córdoba, Summary*, dated May 7, 1993.

¹⁴ Petitioners' submission of September 29, 1994; enclosure: Judgment No. 78 of the Federal Appeals Chamber of the Fourth Judicial District of Córdoba, in *López Juan José et al. v. LRA-7, Radio Nacional Córdoba, Summary*, dated May 7, 1993.

¹⁵ The "contract for the provision of work" in general terms means a contract for a specified time and that is to carry out a specific and particular job.

¹⁶ Petitioners' submission of September 29, 1994; enclosure: Judgment No. 78 of the Federal Appeals Chamber of the Fourth Judicial District of Córdoba, in *López Juan José et al. v. LRA-7, Radio Nacional Córdoba, Summary*, dated May 7, 1993.

¹⁷ Petitioners' submission of September 29, 1994; enclosure: Special remedy lodged with the Supreme Court of Justice on June 2, 1993.

¹⁸ State's submission of May 22, 1995.

A. Right to freedom of thought and expression (Article 13 of the American Convention)

38. Article 13 of the American Convention stipulates:

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.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

39. The petitioners contend that the judgment of the Appeals Chamber dismissing Mr. Juan José López's suit for reinstatement with *Radio Nacional*, and its subsequent ratification by the Supreme Court of Justice of the Nation in dismissing the special remedy that he filed, constituted a violation of his right of free expression. They maintain that the grounds given for the judgment require obligatory registration in the National Professional Journalists' Register, the issuance of a professional journalist's ID card, and enrollment in the National Journalists' Retirement and Pension System in order to work as a journalist and be considered as such, which, they claim, is contrary to the terms of Article 13 of the American Convention, in that exercise of freedom of expression could be hindered by a refusal to grant that registration, particularly when it falls to the employer to do so.

40. The State, in turn, holds that the petitioner was affiliated with *Radio Nacional* through a series of contracts for the provision of work; that his activities at the station were artistic, and not informative; and that the nonrenewal of the provision-of-work contract did not entail a violation of his right of free expression. It adds that demanding certain requirements for the benefits of labor regulations to apply does not constitute a restriction on the right of freedom of expression. It also argues that the alleged violation of that right was not raised before the domestic courts.

41. Law No. 12,908 to which the petitioner makes reference establishes at Article 2 that "professional journalists are considered, for the purpose of this law, those persons who perform, on a regular basis, for monetary remuneration, the tasks particular to them in daily or periodical publications and news agencies..."¹⁹ Whoever meets these and other conditions²⁰ should be accredited as a

¹⁹ Law 12,908, Article 2.

“professional journalist,” which enables one to gain access to a series of labor guarantees and to cover the news in certain places that are restricted to the general public occasionally or permanently.²¹

42. The law establishes that “registration in the national registry of journalists ... shall be granted without any restriction whatsoever to those persons included in Article 2,” and “the professional credential cannot be denied ... as a consequence of the opinions expressed by the journalist.”²² The sole exception provided for registration in the registry and issuance of the credential applies to those who have “suffered a judicial conviction that has not been declared suspended, and so long as the effects thereof endure.”²³

43. The IACHR has noted repeatedly that freedom of expression is a basic guarantee of the human being, both because it is based on a broad concept of autonomy and dignity of persons, and because it is an instrument for the exercise of all other fundamental rights.²⁴ According to the case law, the right to freedom of expression vests universally, and cannot be restricted to a given profession or group of persons, or to the sphere of freedom of the press.²⁵ In this regard, the Inter-American Court has determined that “a law licensing journalists, which does not allow those who are not members of the *colegio* to practice journalism and limits access to the *colegio* to university graduates who have specialized in certain fields, is not compatible with the Convention.”²⁶ In other words, a law that establishes belonging to a given professional association or being a graduate of a given university program of study as requirements for being able to practice journalism would be incompatible with the right to freedom of expression.

44. In the instant case, Juan José López filed an action for reinstatement claiming a series of job benefits which in his view he was entitled to given that he met the requirements mentioned in Article 2 of Law No. 12,908. The court of appeals considered that he did not meet those requirements of the law given that he did not have a stable employment contract, and was not registered in the respective registry, among other considerations.²⁷ This determination was ratified by the Supreme Court on dismissing the special appeal.

45. To reach its conclusion, the court of appeals analyzed several factors, some aimed at determining whether he met the requirements of Article 2 of Law No. 12,908, as well as other formal factors established in that legislation. In this regard, the court made the following factual findings: (1) that the moving party stated he was the host of a radio program without specifying whether the program was journalistic in nature; (2) that he was not entered in the national registry of journalists; (3) that he did not have a professional credential; (4) that he worked with successive contracts; (5) that his remuneration was for “artist’s payments” (“*retribuciones artísticas*”); (6) that according to his own testimony he was not a “stable agent” (“*agente estable*”); (7) that he appeared on air once a week; (8) that he did not have a schedule or sign an attendance book; and (9) that he was not affiliated with the National Journalists’

²⁰ Article 18 of Law 12,908 establishes that “professional journalists” are “those who have worked in the profession continuously for 24 months, are at least 20 years of age, and are affiliates of the National Journalists’ Pension Fund.”

²¹ See Law 12,908, Article 13.

²² Law 12,908, Articles 4, 5.

²³ Law 12,908, Article 6.

²⁴ IACHR. Annual Report of the Inter-American Commission on Human Rights 2009. Report of the Office of the Special Rapporteur on Freedom of Expression, pp. 235 ff. OEA/Ser.L/V/II. Doc.51. December 30, 2009.

²⁵ I/A Court H.R., *Case of Tristán Donoso v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of January 27, 2009. Series C No. 193, para. 114.

²⁶ I/A Court H.R., *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts. 13 and 29 of the American Convention on Human Rights). Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 5, para. 81.

²⁷ Petitioners’ brief of September 29, 1994. Annex. Judgment No. 78 of the Federal Chamber of Appeals of the Fourth Judicial District of Córdoba, in the matter of “López Juan José and one other v. LRA 7 Radio Nacional Córdoba. Sumarísimo,” of May 7, 1993, folios 380-381.

Pension Fund (Caja Nacional de Jubilaciones y Pensiones de Periodistas).²⁸ Based on these findings, the court determined that Juan José López did not meet the requirements established by Law No. 12,908 for gaining access to the job benefits he sought.

46. As can be gleaned, the court of appeals strictly interpreted the formal requirements established by Law No. 12,908 (including the requirement of entry in the National Registry) as a condition for gaining access to the job benefits set forth in the law. Nonetheless, failure to meet these formal requirements was not the essential argument for denying the petitioner the right to the stability he claimed, as the judge took into account, in particular, the requirements set forth in Article 2 of the above-mentioned law, in particular, the alleged non-existence of a stable work contract.

47. The Commission notes that even though said law is, in general, a labor statute, its Article 13 establishes that certain actions intimately linked to the journalist's job of seeking information are limited to those who have a professional credential to accredit their activity.²⁹ In addition, it sets forth at least one exception to the right to accreditation for those who have "been subject to a judicial conviction that has not been declared suspended and so long as its effects endure."³⁰ In view of what was indicated above, these provisions could eventually have the potential to impair freedom of expression. As shown in the established facts, the petitioner alleged for the first time the violation of his right to freedom of expression in his brief filing a special appeal with the Supreme Court. On that occasion, Mr. López argued, *inter alia*, that Article 13 of Law No. 12,908 restricts press activity by requiring a professional credential to, among other things, have "free transit in public when exceptional circumstances impede the exercise of this right" and "access to any source of information of public interest."³¹ Nonetheless, in the instant case it could not be shown that the application of the law in this specific case had an effect on the right to freedom of expression of Juan José López.

48. In effect, despite the objections made to the text of said statute, Mr. López did not allege – either in the domestic proceeding or in the proceeding before the IACHR – that his own freedom to seek, receive, or disseminate information and ideas had been restricted by the application of Article 13 of the statute or any other provision thereof. In effect, there is no evidence that indicates that his right to freedom of expression was restricted based on Article 13 of Law No. 12,908.

49. Accordingly, the Commission concludes that in the instant case the alleged violation of the right to freedom of thought and expression, to the detriment of Mr. Juan José López, did not occur.

B. Right to a fair trial and judicial protection, to freedom of association, and to equality before the law (Articles 8.1 and 25, 16.1, and 24 of the American Convention)

50. In Admissibility Report No. 56/00, adopted in connection with this case, the Commission allowed for the possibility of interpreting and applying the provisions contained in Articles 8.1, 25, 16.1 and 24 of the Convention.

51. In this regard, the petitioners contend that dismissing Mr. López, at the time a member of the CISPREN's board by means of an election of which due notice was given, was a violation of his right

²⁸ Petitioners' brief of September 29, 1994. Annex. Judgment No. 78 of the Federal Chamber of Appeals of the Fourth Judicial District of Córdoba, in the matter of "López Juan José and one other v. LRA 7 Radio Nacional Córdoba. Sumarísimo," of May 7, 1993, folios 380-38.

²⁹ Law 12,908 establishes at its Article 13 that "the professional credential is compulsory and shall be required by the authorities and offices of the State for the purposes of exercising the following rights ... (a) to free transit in public when exceptional events impede the exercise of this right; (b) to free access to all sources of information of public interest, to free access to the stations, railways, airports, maritime and river ports, and any office of the State whether at the national, provincial, or municipal level." See Law 12,908, Article 13.

³⁰ Law 12,908, Article 6.

³¹ Petitioners' brief of September 29, 1994. Annex. Special Appeal to the Supreme Court of Justice, filed June 2, 1993. See also Law 12,908, Article 13.

of free association. They offer no arguments regarding the alleged violation of the rights to judicial protection, to a fair trial, or to equality before the law.

52. In turn, the State contended that no allegations regarding those provisions were made by the petitioner. That notwithstanding, Argentina adds that it believes the petitioner had access to every judicial venue through simple, suitable, and effective remedies and so consequently there was no violation of the rights enshrined in Articles 8 and 25.

53. In addition, the State holds that there was no restriction of Mr. López's trade-union activity. It further maintains that there was no violation of his right to equal treatment before the law.

54. In light of this, and according to the available information, the IACHR shall analyze only the alleged violations of freedom of association, and it shall refrain from studying the possible breaches of Articles 8 and 25 of the American Convention.

55. Article 16 of the American Convention provides that "everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes."

56. The Commission notes that this right has two dimensions: an individual dimension, and a social dimension.³² Regarding the individual dimension, the Inter-American Court has established that "those who are protected by the Convention [...] have the right and freedom to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right."³³ Regarding the collective dimension, the Court has ruled that in exercising the right enshrined in Article 16, people "enjoy the right and freedom to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose."³⁴ The Inter-American Court has also established that the positive obligations for preventing and investigating breaches of this right must be enforced "even in the sphere of relations between individuals, if necessary."³⁵

57. In the case at hand, the IACHR notes that the petitioners' main contention questions Mr. López dismissal from his job and that, had he been under an employment contract, he would have been protected by the guarantee of trade-union immunity, recognized by Argentina in Law No. 23.551. On this point, as already noted above, the IACHR has recognized the rulings of the Argentine law courts that found that the relationship between Mr. López and LRA-7, *Radio Nacional de Córdoba*, was a contract for the provision of work and not an employment contract.

58. In this context, the IACHR sees no claims or evidence in the case file that would allow it to rule that any restriction was placed on the free exercise of his right to free association. Consequently, the Commission concludes that it has been unable to establish the alleged violation of Juan Jose Lopez's right to freely associate. In addition, the Commission notes that Mr. Juan Jose López has not submitted information in order to balance the existence of any kind of discrimination against him for being Deputy Member of the CISPREN. In this regard, the IACHR has established that Mr. López took office, as Member of the CISPREN, in December 15, 1988, and was reelected in December 7, 1990 for two more years as Principal Member. This means that, at the time of the termination of his contract with *Radio Nacional*, he had held his position as Deputy Member of the CISPREN for one year and a half.

³² IACHR, Application to the I/A Court H. R., Case 12.605, *Joe Luis Castillo González v. the Bolivarian Republic of Venezuela*, para. 145.

³³ I/A Court H. R., *Case of Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, para. 69.

³⁴ I/A Court H. R., *Case of Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, para. 69.

³⁵ I/A Court H. R., *Case of Kawas Fernández v. Honduras*, Merits, Reparations, and Costs, Judgment of April 3, 2009, Series C No. 196, para. 144. See also: I/A Court H. R., *Case of Huilca Tecse v. Peru*, Merits, Reparations, and Costs, Judgment of March 3, 2005, Series C No. 121, para. 76; and I/A Court H. R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, Preliminary Objection, Merits, Reparations, and Costs, Judgment of July 10, 2007, Series C No. 167, para. 141.

VI. CONCLUSIONS

59. In light of the considerations of fact and law set out in this report, the Inter-American Commission, at its 142nd regular session, concluded that the State of Argentina did not violate Articles 8.1, 13, 16, 24, or 25 of the American Convention with respect to Mr. Juan José López. The Commission decides to publish this report and include it in its Annual Report to the General Assembly.

Done and signed in the city of Washington, D.C., on the 20th day of July, 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.