

TRANSLATION BY JUDGES FOR JUDGES

**INTER-AMERICAN COURT OF HUMAN RIGHTS
THE CASE OF LÓPEZ LONE AND OTHERS VS. HONDURAS
JUDGMENT OF OCTOBER 5, 2015**

(Preliminary Exception, Merits, Reparations and Costs)
OFFICIAL SUMMARY PUBLISHED BY THE INTER-AMERICAN COURT

On October 5th, 2015, the Inter-American Court of Human Rights (henceforth “the Inter-American Court”, “the Court” or “this Tribunal”) pronounced a Judgment in which it declared, unanimously, that the State of Honduras was responsible for the violation of the freedom of expression, right of assembly, political rights, right of Association, judicial guarantees, judicial protection, the right to remain in function in equitable circumstances and the principle of legality, in the framework of the disciplinary proceedings carried out against the judges Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado, as well as against the magistrate Tirza del Carmen Flores Lanza. As a consequence of these proceedings, the four judges were dismissed and three of them ousted from the Judiciary. These disciplinary proceedings were initiated because of the conduct of the victims in defence of Democracy and the State of Honduras, in the context of the coup d’état that took place in Honduras in June 2009.

I. Preliminary Exception

The State lodged a preliminary exception, for the supposed failure to exhaust two internal recourses: the contentious administrative recourse and the recourse of *amparo*. With respect to the first recourse, the Court rejected the allegations of the State, due to the fact that Honduras referred to said recourse for the first time before this Tribunal, so that it was not lodged at the right time in the procedure. On the other hand, with respect to the recourse of *amparo*, the Court pointed out that article 31 of the Internal Regulations of the Council for the Judicial Career prohibited lodging complaints against the resolutions of the Council for the Judicial Career. In spite of the fact that the State alleged that this norm had been silently derogated by the Constitution, the Court concluded that in view of the uncertainty generated by the existence of said norm, it could not be asked of the supposed victims to exhaust the recourse of *amparo*. Moreover, the Court stressed that the State had not demonstrated the availability of said recourse in the proceedings before the Commission. Consequently, the Court rejected the preliminary exception.

II. Facts

a. Context

Between the end of March and May, 2009 the then President of the Republic of Honduras, José Manuel Zelaya Rosales, approved several executive decrees proposing to hold, initially, a popular consultation and, later, a national opinion poll, about the possibility of installing a fourth ballot in the elections to be held in November, 2009, in order to decide about summoning a national constituent assembly that could approve of a new political constitution. On May 27th, 2009 a *Juzgado de Letras* for Administrative Proceedings ordered the popular consultation to be suspended, and also any other administrative act with the same objective. Nevertheless, President Zelaya decided to proceed with the national opinion poll. On June 25th, the Supreme Electoral Court declared the poll illegal and ordered the material to be confiscated. However, President Zelaya, accompanied by his followers, withdrew the material and ordered the National Police to guard it. The following day, the *Juzgado de Letras* also ordered the material to be confiscated, considering that the poll disregarded its decision of May 27th, 2009.

On June 28th, 2009 members of the Army deprived President Zelaya Rosales of his liberty, took him to an airbase and transported him to Costa Rica. Later, it became known that his capture had been requested by the General Prosecutor at the Supreme Court of Justice, for supposed crimes against the forming of

a government, treason of the homeland, abuse of authority and usurpation of functions, to the detriment of the public administration and the State of Honduras. That same June 28th, the National Congress held a session and a “supposed letter of renunciation [of President] Zelaya” was read out, and therefore it appointed the President of the Congress as Constitutional President of the Republic. The Supreme Court of Justice of Honduras qualified these facts as a constitutional succession.

On the contrary, these facts were “strongly condemned” and qualified as a “coup d’état against President José Manuel Zelaya Rosales” by the National Assembly and the Permanent Council of the Organization of American States (OEA), as well as by the General Assembly of the Organization of the United Nations. As a result of the above, on July 4th, 2009 the General Assembly of the OEA, using for the first time article 21 of the Democratic Inter-American Charter, decided to “suspend the State of Honduras from the exercise of its right to participate in the Organization of American States”. After several negotiations, the Tegucigalpa/San José Agreement to achieve national reconciliation was signed on October 30th, 2009. Through said Agreement, among other things, a Commission of Truth and Reconciliation was created, to “bring to light the facts occurred before and after June 28th, 2009 in Honduras”; it was agreed to form a government of unity and national reconciliation; it was approved that the National Congress would decide about the reinstatement of President Zelaya, and support was expressed for holding presidential elections. On November 29th, 2009 elections were held, as a result of which Porfirio Lobo was elected, who took power on January 27th, 2010. Later, on May 22nd, 2011 the “Agreement for National Reconciliation and the Consolidation of the Democratic System of the Republic of Honduras” was signed, whereupon the General Assembly of the OEA decided to lift the suspension of the right of Honduras to participate in the OEA on June 1st, 2011.

After the coup d’état, the victims in the present case, the judges Adán Guillermo López Lone, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado and the magistrate Tirza del Carmen Flores Lanza, carried out several actions in favour of democracy and the Rule of Law. Because of these actions, disciplinary proceedings were started against them. Moreover, all the victims were members of the Association of Judges for Democracy (AJD), which also demonstrated against the coup d’état and in favour of the restitution of the Rule of Law.

At the time of the facts, the Honduran legislation provided two disciplinary proceedings applicable to judges: (1) established by the Constitution, according to which the Supreme Court had to appoint and remove the magistrates, on proposal of the Council for the Judicial Career, and (2) established in the Law on the Judicial Career and its Regulations, according to which the Direction of the Administration of Personnel was the one who took the decision about removing a judge or a magistrate, which could be appealed against before the Council for the Judicial Career. Nevertheless, in the proceedings against the victims in this case, even if it was the Supreme Court that decided to remove them, as established in the Constitution, it did so on proposal of the Direction of the Administration of Personnel, while the Council for the Judicial Career, that should have acted as consulting body of the Supreme Court in these decisions, according to the Constitution, acted as a body for contestation.

b. The disciplinary proceedings against the victims

Adán Guillermo López Lone was *Juez de Sentencia* in the *Tribunal de Sentencia* in San Pedro Sula until June 30th, 2010, when his dismissal took effect. On July 5th, 2009 Mr López Lone took part in a demonstration expecting the return of President Zelaya. As a result of a human stampede, Mr López Lone suffered a fracture of his left leg. The presence of Mr López Lone in this demonstration as well as the injury suffered was reported in the media. As a result of the above, an investigation was started against Mr López Lone. On April 20th, 2010 the Direction of the Administration of Personnel recommended the Supreme Court to dismiss Mr López Lone. On July 16th, 2010 the Supreme Court gave out an agreement through which it dismissed Mr López Lone from his position for failing to fulfil or to gravely or persistently violate some of his duties, for incompatibilities and for conduct established in the Law on the Judicial Career, considering that he had taken part in a political demonstration. After this decision, Mr López Lone presented a claim to be reinstated before the Council for the Judicial Career. On August 24th, 2011 the Council declared Mr López Lone’s claim to be unfounded and

considered it sufficiently proven that his participation in the demonstration constituted an incompatibility with exercising his duties as a Judge.

Tirza del Carmen Flores Lanza was a magistrate of the Sectional Court of Appeal of San Pedro Sula until July 1st, 2010 when her dismissal took effect. On June 30th, 2009 Mrs Flores Lanza presented a penal complaint before the General Prosecution against members of the Joint Chiefs of Staff of the Armed Forces and other persons who had taken part in the coup d'état. On the same date, Mrs Flores Lanza brought an action of *amparo* in favour of President Zelaya and against the Head of the Joint Chiefs of Staff of the Armed Forces. In the course of said proceedings, Mrs Flores Lanza presented a motion of annulment. As a result of the above, an investigation against Mrs Flores Lanza was started. On April 20th, 2010 the Direction of the Administration of Personnel recommended the Supreme Court to dismiss Mrs Flores Lanza. On June 4th, the Supreme Court gave out an agreement through which it dismissed Mrs Flores Lanza from her function for failing to fulfil or to gravely or persistently violate some of her duties, incompatibilities and conduct established in the Law on the Judicial Career, for several reasons, including acting as a procurator by requesting an annulment within the proceedings for *amparo*, as well as presenting a complaint before the Prosecution. In view of this decision, Mrs Flores Lanza presented a claim for her reinstatement before the Council for the Judicial Career. On August 24th, 2011 the Council declared the claim presented by Mrs Flores Lanza to be unfounded and considered it sufficiently proven that Mrs Flores Lanza was absent from her duties and violated her obligation not to act as an advocate.

Luis Alonso Chévez de la Rocha was a Special Judge against Domestic Violence at the *Tribunal de Sentencia* of San Pedro Sula until September 23rd, 2010, when his dismissal took effect. On August 12th, 2009 Mr Chévez de la Rocha was watching a march against the coup d'état and was detained on calling into question the actions of the police regarding this demonstration. That same day he was released due to a *habeas corpus* claim presented on his behalf. As a result of the above, an investigation was started against Mr Chévez de la Rocha. To this investigation were added the declarations of three judicial officials, who signalled that Mr Chévez de la Rocha had failed to show them due respect and had incited them to protest against the coup d'état. On April 20th, 2010 the Supreme Court gave out an agreement through which it dismissed Mr Chévez de la Rocha for failing to fulfil or to gravely violate some of his duties and committing acts against the dignity in the administration of justice, having been detained during a demonstration and having provoked altercations with other judicial staff members. In view of this decision, Mr Chévez de la Rocha presented a claim to be reinstated in his function as a Judge before the Council for the Judicial Career. On August 24th, 2011 the Council declared the claim presented by Mr Chévez de la Rocha to be founded, but rejected his petition to be reinstated in his position, due to the fact that: i) it was held to be proven that Mr Chévez "is ashamed of belonging to the Judiciary and if he works in it, it is out of necessity, and that in view of such demonstrations of disagreement, it is not convenient for either of the parties that the labour relation be maintained" and 2) it considered that "there existed no possibility to reinstall him" because his substitute had already been appointed. As a result, the Council decided to indemnify Mr Chévez de la Rocha.

Ramón Enrique Barrios Maldonado was a Judge in the *Sala Primera* of the *Tribunal de Sentencia* of the Judicial Section of San Pedro Sula since June 2nd, 2003. On August 28th, the *Diario Tiempo* (Daily Times) published a press release in which Mr Barrios Maldonado appears as its author and it is stated that what had occurred had been a coup d'état. At the end of the article, Mr Barrios Maldonado is identified as "*Juez de Sentencia* and professor for Constitutional Law" and it is signalled that the article is the summary of a talk that he had given at the university. According to the declaration of Mr Barrios Maldonado, the article was written by the Dean of the Faculty of Journalism. The same day the article was published, the Inspector of Tribunals added said article to an investigation that was already open against various judicial officials. On April 20th, 2010 the Direction for the Administration of Personnel recommended to the Supreme Court to dismiss Mr Barrios Maldonado. On June 16th, 2010 the Supreme Court gave out an agreement through which it dismissed Mr Barrios Maldonado for failing to fulfil or gravely violate his duties and committing acts against the dignity in the administration of justice, having participated in a conference in which he criticised the behaviour of the Supreme Court of Justice during the facts occurred before and after June 28th, 2009. The agreement signals that "it will take effect from

the date on which the substitute will take up his charge”, however, it never came into effect. In view of this decision, Mr Barrios Maldonado presented a claim to be reinstated in his position as a judge before the Council for the Judicial Career. On August 24th, 2011 the Council decided to leave the dismissal of Mr Barrios Maldonado decided by the Supreme Court of Justice without force and effect, and to maintain him in the position of *Juez de Sentencia*.

III. Merits

In a preliminary way, the Court emphasized that representative democracy is one of the pillars of the entire system of which the American Convention on Human Rights (henceforth “Convention” or “American Convention”) forms a part, and constitutes a principle, reaffirmed by the American States in the Charter of the OEA, the fundamental instrument of the inter-American system. The Court determined that the events that occurred in Honduras from June 28th, 2009 on constituted an international illegal fact. During this situation of international illegitimacy of the *de facto* government, disciplinary proceedings were initiated against the victims, for behaviour that fundamentally constituted actions against the coup d’état and in favour of the Rule of Law and democracy. This Tribunal considered that these actions did not only correspond with the exercise of a right, but also with the fulfilment of the duty to defend democracy.

a. **Political Rights, Freedom of Expression, Right of Assembly and Freedom of Association, in relation with the obligation to respect and guarantee the rights and the duty of adopting provisions of internal law**

The Court recognised the existing relation between political rights, the freedom of expression, the right of assembly and the freedom of association, and that these rights, taken together, make the democratic process possible. In situations of broken institutions, after a coup d’état, the relation between these rights becomes even more manifest. Moreover, it signalled that the demonstrations and expressions in favour of democracy need to have the greatest possible protection and, depending on the circumstances, can be related to all or some of the rights mentioned. This Tribunal also considered that the right to defend democracy constitutes a specific manifestation of the right to participate in public affairs and in its turn contains the joint exercise of other rights like the freedom of expression and the freedom of assembly.

The Court emphasized that the American Convention guarantees the political rights, the freedom of expression, the right of assembly and the freedom of association to all people, independently from any other consideration, so that there is no place for considering it <to be related to> or limiting it to a certain profession or group of persons. Nevertheless, it pointed out that these rights are not absolute and may be subject to restrictions that are compatible with the Convention.

With respect to the persons who exercise judicial functions, it held that due to their functions in the administration of justice, in normal conditions under the Rule of Law, judges may be subject to specific restrictions and in ways that would not affect other persons, including other civil servants. In this respect it pointed out that it is in accordance with the American Convention to restrict certain conduct in judges, with the objective to protect independence and impartiality in the exercise of justice, However, it warned that the power of States to regulate or restrict these rights was not discretionary and that it had to be interpreted in a restricted way, in such a form that it could not withhold judges from taking part in any discussion of a political nature.

In this sense, it made it clear that situations can exist in which a judge, who is as a citizen part of society, may consider that he or she has a moral duty to express him- or herself. Indeed, the Court signalled that in moments of grave democratic crisis, like the one that took place in this case, the norms that normally restrict the right of judges to participate in politics with respect to actions in defence of the democratic order do not apply. It would be contrary to the very independence of the powers within the state, and also to the international obligations of the State derived from its participation in the OEA, if judges could not pronounce themselves against a coup d’état. Even more so, the Court considered that the mere fact of initiating disciplinary proceedings against the judges and the magistrate because of their actions

against the coup d'état and in favour of the Rule of Law, could have an intimidating effect and therefore constitute an undue restriction of their rights.

With respect to the victims in this case, the Court specifically considered that: i) the disciplinary proceedings followed against Mr López Lone, because of his participation in a demonstration against the coup d'état and his later dismissal, and against Mr Chévez de la Rocha because of his supposed participation (and subsequent detention) in a demonstration against the coup d'état and because of the comments made to colleagues in the Judiciary, as well as the refusal to reinstate him in his function as a judge, constituted a violation of his liberty of expression, right of assembly and political rights, laid down in articles 13.1, 15 and 23 of the Convention, in relation with article 1.1 of the same; ii) the disciplinary proceedings against Mrs Flores Lanza, for exercising an action of *amparo*, for lodging a complaint and for the comments about the actions of other jurisdictional organs, as well as her later dismissal, and the initiation of disciplinary proceedings against Mr Barrios Maldonado, because of a newspaper article which commented on his opinion about the coup d'état, constituted a violation of their freedom of expression and political rights, laid down in articles 13.1 and 23 of the Convention, in relation with article 1.1 of the same, to their detriment.

Moreover, the Court signalled that the dismissal of Mr López Lone, of Mr Chévez de la Rocha and of Mrs Flores Lanza affected their possibility to belong to the AJD and thus constituted another undue restriction, this time of their right to freedom of association. As a consequence, the Court concluded that the State violated article 16 of the Convention, in relation with article 1.1 of the same, to the detriment of these three victims. In the case of Mr Barrios Maldonado, the Court considered that, since his dismissal did not take effect, there was no restriction of his freedom of association.

b. Judicial Guarantees, Judicial Protection and Political Rights, in relation with the obligation to respect and guarantee the rights and the duty of adopting provisions of internal law

Judges, unlike other civil servants, enjoy specific guarantees due to the necessary independence of the Judiciary, which the Court has understood as "essential for the exercise of the judicial function". In this respect, the Court signalled that i) respect for the judicial guarantees implies respecting the judicial independence; ii) the dimensions of judicial independence translate to the subjective right of the judge that the separation from his position stems exclusively from the permitted reasons, whether through proceedings that fulfil the judicial guarantees or because the term or period of his mandate has come to an end, and iii) when the continuance of the judges in their positions is arbitrarily affected, this violates the right to judicial independence laid down in article 8.1 of the American Convention, together with the right of access to and continuance in general conditions of equality in a public position, established in article 23.1.c of the American Convention.

Moreover, the Court indicated that the guarantee of stability and immovability of judges, apart from guaranteeing that a judge may only be released from his or her position through proceedings with due guarantees or because the period of his or her mandate has come to an end (*supra* ii), implies that: (i) judges may only be dismissed because of grave breaches of discipline or incompetence, and (ii) all disciplinary proceedings of judges must be resolved in accordance with the established norms of judicial behaviour in just proceedings that guarantee objectivity and impartiality according to the Constitution or the law.

The Court pointed out that the arbitrary destitution of judges, especially full-time judges without previous disciplinary faults, because of their actions against the coup d'état and against the action of the Supreme Court in relation with the same, as happened in the present case, constitutes an attack against judicial independence and affects the democratic order.

Taking into account the standards previously signalled, the Court concluded that: (i) the disciplinary proceedings to which the victims were subjected had not been legally established; (ii) the Council for the Judicial Career was not competent and did not have the necessary independence to resolve recourses against the agreements of dismissal of the Supreme Court of Justice; (iii) the form in which

the Council for the Judicial Career was made up in order to decide about the recourses presented by the victims did not adequately guarantee its impartiality, and (iv) the Supreme Court of Justice did not offer objective guarantees of impartiality to pronounce itself on the supposed disciplinary faults of the victims, to the extent that these were all related with actions concerning the coup d'état. In view of all these considerations, this Tribunal concluded that the State violated article 8.1 of the Convention, in relation with articles 1.1 and 2 of the same instrument, to the detriment of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado. Moreover, the Court determined that the dismissal of the victims, by means of proceedings that were not legally established and did not respect the guarantees of competence, independence and impartiality, unduly affected the right to remain in function in conditions of equality of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza and Luis Alonso Chévez de la Rocha, in violation of article 23.1.c of the American Convention.

With respect to the right of judicial protection, the Court mentioned that it was not clear whether the recourse of *amparo* was available in the face of the decisions of the Council for the Judicial Career, in virtue of article 31 of the Internal Regulations of the Council for the Judicial Career which made it impossible to present recourses, either ordinary or extraordinary, against the same. Without prejudice to this, the Court noted that, should it have been available in view of the constitutional norms alleged by the State, the context in which the facts in the case took place and the characteristics of the proceedings that should have been followed made it evident that it would not have been effective. Therefore, the Court considered that the State violated article 25.1 of the Convention, in relation with article 1.1 of the same, to the detriment of Adán Guillermo López Lone, Ramón Enrique Barrios Maldonado, Luis Alonso Chévez de la Rocha and Tirza del Carmen Flores Lanza.

c. Principle of Legality

The Court examined the principle of legality with respect to (i) the sanctions imposed on the victims and (ii) the sanctionable conducts in the disciplinary norms in Honduras.

With respect to the first aspect, the Court considered that, taking into account that dismissal or removal from a post is the most restrictive and severe measure that can be adopted in matters of discipline, the possibility of its application has to be foreseeable, either because the punishable conduct is expressly and clearly established in the law in a precise, specific and previous way, or because the law delegates its establishment to the judge or to an *infra*-legal norm, under objective criteria that limit the reach of the discretion. Moreover, the possibility of dismissal must be subject to the principle of maximum gravity. The Court concluded that the disciplinary norms applicable to the cases of the victims allowed excessive discretion to the judge in establishing the sanction of dismissal.

With respect to the second aspect, the definition of the punishable conduct, the Court pointed out that the victims were punished through a multitude of norms, without it being possible to clearly determine the normative reasons or the illicit conduct for which they were dismissed, due to the failing of an adequate motivation. In view of the large number of norms invoked by the internal organs that intervened in the disciplinary proceedings of the victims, the Court considered that it was not its task to select those that corresponded best with the actions of the victims, in order to determine whether or not the requisites of precision and clarity that the principle of legality requires for norms of a punitive character had been met. Therefore, it held that it was not possible to realize a detailed analysis with respect to the requisite of material legality of the supposedly broken norms. Without prejudice to the above, the Court noted that the Supreme Court of Justice and the Council for the Judicial Career had recourse to disciplinary grounds that used undetermined concepts such as the “dignity of the administration of justice” or the “decorum of the position”. In this respect, it indicated that the juridical order did not provide the bases or objective criteria that would permit to delimit the reach of the disciplinary categories, and that neither did the work of the judge allow to establish the bases that would limit the eventual arbitrariness in its application.

In virtue of all the previous considerations, the Court concluded that the State violated the principle of legality, laid down in article 9 of the Convention, in relation with the articles 1.1 and 2 of the Convention, to the detriment of Adán Guillermo López Lone, Tirza del Carmen Flores Lanza, Luis Alonso Chévez de la Rocha and Ramón Enrique Barrios Maldonado.

d. Right to personal liberty of Judge Chévez de la Rocha

The Court considered that, taking into account the duration of the detention and the effectiveness of the *habeas corpus* presented, it was unnecessary to pronounce itself about the alleged failure to investigate the detention of Mr Chévez de la Rocha.

e. Other Alleged Violations

In virtue of the conclusions signalled in the previous chapters, the Court did not consider it appropriate to examine, separately and autonomously, the allegations of the representatives concerning the personal integrity, the right to honour and dignity as a consequence of the breaking up of the life-plans of the victims, as well as the right to defend human rights, as an autonomous and independent right.

V. Reparations

The Court established that its Judgment as such constitutes a form of reparation. Moreover, it ordered the State: i) to reinstate Adán Guillermo López Lone, Tirza del Carmen Flores Lanza and Luis Chévez de la Rocha in positions similar to those that they exercised at the time of the facts, with the same remuneration, social benefits and rank comparable to those to which they would be entitled had they been reinstated at the time. In case the reinstatement should not be possible, the State will have to pay them the quantity established in the Judgment; ii) to publish the Judgment and its official summary, and (iii) to pay the sums signalled in the Judgment by way of compensation for material and immaterial damage, and the refund of costs and expenses.

The Inter-American Court for Human Rights will supervise the complete execution of the Judgment, in exercise of its authority and in execution of its duties in conformity with the American Convention on Human Rights, and will declare the case closed once the State will have exactly carried out the dispositions of the Judgment.

The complete text of the Judgment may be consulted under the following link:
<http://www.corteidh.or.cr/casos.cfm>