

REPORT No. 118/11
PETITION 182-03
INADMISSIBILITY
RENÉ JOSÉ SÁNCHEZ RIVERA
PERU
July 22, 2011

I. SUMMARY

1. On March 7, 2003, the Inter-American Commission on Human Rights (hereinafter the "Commission," "IACHR," or "Inter-American Commission") received a petition filed by Mr. René José Sánchez Rivera on his own name (hereinafter also the "petitioner" or "alleged victim"), alleging responsibility on the part of the Republic of Peru (hereinafter "Peru," "the Peruvian State," or "the State") for violating rights protected in the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). The petitioner asserted that in July 1999 he was terminated as a senior professor at the Néstor Cáceres Velásquez Andean University, through a selection process not in compliance with the applicable legislation, the Statute and Teacher Evaluation Rules of Procedure of that private university. He maintained that when he sought reinstatement through an appeal for constitutional protection (*amparo* suit) the Peruvian judicial authorities declared his claim unfounded, using arbitrary standards and an erroneous interpretation of the evidence presented by the parties.

2. The State maintained that the decisions regarding the *amparo* suit filed by the alleged victim were issued by competent judicial authorities in accordance with their competence. It stated that the facts related by the petitioner do not characterize a violation of rights established in the American Convention and asked the IACHR to declare the complaint inadmissible in accordance with Article 47(b) thereof.

3. After analyzing the positions of the parties, the Commission concluded that it is competent to hear the complaint but that it is inadmissible in light of the requirement established in Article 47(b) of the American Convention, in that the petition does not present facts that tend to characterize a violation of rights guaranteed in that instrument. The Commission decided to inform the parties of this Inadmissibility Report, to order its publication, and include it in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BY THE COMMISSION

4. On March 7, 2003 the IACHR received a note from the Inter-American Court of Human Rights attaching a complaint filed by Mr. René José Sánchez Rivera pursuant to Article 44 of the Convention. The complaint was recorded by the IACHR under the number P 182-03. The petitioner submitted additional information to the Commission in communications received on June 2, July 10, and December 18, 2003; March 15, May 19, and December 1, 2004; and April 21 and September 25, 2008. On April 13, 2009 the relevant portions of this documentation were forwarded to the State, which was granted a period of two months to submit a response, in accordance with the IACHR Rules of Procedure.

5. The State submitted its response on July 16, 2009 and sent additional communications on December 23, 2009 and September 23 and December 1, 2010. The petitioner in turn sent additional communications on April 20, August 19, September 1, and December 24, 2009; March 9, April 14 and 15, August 3, and September 21, 2010; and February 8, May 23, June 23 and July 19, 2011.

III. POSITIONS OF THE PARTIES

A. The petitioner

6. The petitioner stated that on October 2, 1984 he began to work as an assistant professor in the School of Accounting and Administration of the Néstor Cáceres Velásquez Andean University (UANCV) and rose to the position of senior professor on June 27, 1992. According to the information submitted, the UANCV is a private institution of higher education.

7. The petitioner alleged that as a result of a teacher evaluation, confirmation, promotion, or separation process conducted by an Ad Hoc Evaluating Committee, he was removed from this position by resolution No. 132-99-CU-R-UANCV of July 5, 1999. He stated that although the aforementioned Evaluating Committee said he had not achieved the minimum grade for confirmation under the category of senior professor, the real motive for his termination was an alleged feud with the Chancellor and other directors of the School of Accounting and Administration at the UANCV, because he had reported them for alleged administrative irregularities.

8. The petitioner maintained that the Evaluating Committee that ordered his dismissal was presided over by the Academic Vice-Chancellor of the UANCV, who allegedly was not authorized to exercise that function. He also stated that he was notified to appear for the evaluation process on Monday, June 28 at 8:00 a.m., a holiday, so he did not have a reasonable period of time to gather his documentation.

9. Mr. Sánchez Rivera stated that on September 17, 1999 he filed an *amparo* suit against the Chancellor of the UANCV, seeking nullification of resolution No. 132-99CU-R-UANCV and reinstatement as senior professor. That action claimed the violation of constitutional rights to employment and job security as well as the right to due process, due to the alleged failure to comply with Article 46 of the University Law (Law 23733),¹ the Statute and the Teacher Evaluation Rules of Procedure of the UANCV.

10. The petitioner maintained that after the matter was heard by the First Mixed Court of San Román-Juliaca and by the Civil Chamber of San Román-Juliaca of the Superior Court of Justice of Puno, the Constitutional Court issued a final judgment on July 11, 2002 declaring the *amparo* suit unfounded. According to the information submitted, Mr. Sánchez Rivera was informed of that decision on December 18, 2002.

11. The petitioner stated that the Civil Chamber of San Román-Juliaca of the Superior Court of Justice of Puno and the Constitutional Court based their decisions on a fraudulent document submitted by the respondent, consisting of an official letter from the Chancellor of the School of Accounting and Administration of the UANCV declining to participate on the Evaluating Committee. He maintained that said document did not adhere to the formalities used by the document processing office of the UANCV. He indicated that when submitting a report for the hearing of the case before the Constitutional Court he stated that the referenced document "was not offered or admitted by the Court in the preliminary phase, and the respondent has recently submitted it to the Decentralized Mixed Chamber of the Province of San Roman, violating Art. 189 of the Civil Procedure Code."

12. According to the information submitted, in 2000 Mr. Sánchez Rivera filed a criminal complaint against the Chancellor of the UANCV, German Rivera Olivera, and the Dean of the School of

¹ That provision establishes as follows:

Admission to a teaching career as a regular professor is based on public merit-based competition and proof of teacher training, in accordance with the guidelines established in this regard by the Statute of each University. Teacher promotion, confirmation, or separation from teaching are based on personal evaluation and an appointment and hearing for the professor. The respective School and Department participate in these procedures and it is the responsibility of the former to formulate proposals as applicable for submission to the University Council for its ruling.

Accounting and Administration, Juan Luque Mamani, for an offense against the public trust. That information indicates that, at the request of the prosecutor in charge of the case, the criminal action was declared lapsed in 2006 by the Criminal Chamber of San Roman Juliaca. Although the petitioner maintained that the judges and prosecutors who intervened in the criminal complaint acted unlawfully in order to ensure the criminal action to be archived under statute of limitations, he did not submit specific information on the dates and the grounds for the decisions adopted in the context of the criminal proceeding.

13. The petitioner attached the copy of disciplinary complaints filed on April 5, 2006 with the Judicial Oversight Office of the Judicial Branch and on July 19 of the same year with the District Judicial Oversight Office, reporting the alleged irregularities in the aforementioned criminal proceeding. Mr. René Sánchez did not indicate the results of said complaints.

14. The petitioner indicated that during the processing of the *amparo* suit, his petition for recusal of a member of the Civil Chamber of the Superior Court of Justice of Puno, who was a professor at the School of Law at the UANCV, was denied. He added that various professors in that School are retired or active judges, including the prosecutor who sought a ruling on the lapse of the criminal complaint for offense against the public trust and judges who acted in this proceeding. According to the petitioner, these facts demonstrate partiality on the part of the Judicial Branch in favor of the UANCV.

15. Finally, the petitioner argued that the State is responsible for violating the rights enshrined in Articles 8 and 25 of the Convention.

B. The State

16. The State indicated that the Ad Hoc Evaluating Committee that ruled on the disqualification of Mr. Sánchez Rivera had been appointed by a lawfully issued resolution of the UANCV University Council, in accordance with the provisions of its Statute and Rules of Procedure. It gave an account similar to the one provided by the petitioner regarding the decisions of Peruvian courts on the *amparo* suit filed on September 17, 1999.

17. The State argued that the decision that declared the *amparo* suit unfounded was issued by a competent court and in accordance with the faculties assigned by law. It indicated that “the fact that the petitioner [...] has obtained a ruling that did not support his claim does not mean the automatic violation of his rights as recognized in the Convention.” It added that it is not the role of the IACHR to replace the assessment of domestic judicial authorities that heard the *amparo* suit filed by Mr. René José Sánchez.

18. The State indicated that in Peru the tenure of an employee as a university professor is governed by both labor law and special laws. It asserted that the University Law (Law 23733) makes a professor’s continuation in his position contingent upon approval in an evaluation process. It stated that as Mr. Sánchez Rivera obtained a grade insufficient for confirmation as a senior professor, he was dismissed from the UANCV, and this did not produce any sort of international responsibility on the part of the State.

19. Regarding the alleged partial action of judges and prosecutors with employment ties to the UANCV, the State indicated that “as stipulated in current domestic legislation, the work of a judge is not incompatible with employment as a university professor (...)”

20. Finally, the State alleged that the facts related in the petition do not tend to characterize violations of rights protected in the Convention and asked the IACHR to declare it inadmissible in accordance with Article 47(b) of the referenced instrument.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

21. The petitioner is authorized by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates as alleged victim an individual with respect to whom the Peruvian State agreed to respect and guarantee the rights enshrined in the Convention. For its part, Peru ratified the American Convention on July 28, 1978. Consequently, the Commission is competent *ratione personae* to examine the complaint.

22. The Commission is competent *ratione materiae* and *ratione loci*, in that the petition alleges violations of rights protected in the American Convention that would have occurred within the territory of a State Party to that convention.

23. Finally, the Commission is competent *ratione temporis* since the obligation to respect and guarantee the rights protected in the American Convention was already in effect for the State on the date when the events alleged in the petition would have occurred.

B. Exhaustion of domestic remedies

24. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission to be admissible in accordance with Article 44 of the Convention, the domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow domestic authorities to learn of the alleged violation of a protected right and, if appropriate, to have an opportunity to remedy it before the matter is heard by an international body.

25. This petition refers, on one hand, to alleged violations of the American Convention due to a supposedly arbitrary decision made by judicial authorities who heard an *amparo* suit filed by Mr. René José Sánchez on September 17, 1999. As alleged by the parties, that suit was decided in the final instance through a ruling of the Constitutional Court issued on July 11, 2002.

26. On the other hand, the petition argues alleged irregularities on the part of the judicial authorities who heard a complaint for an offense against the public trust filed by Mr. Sánchez Rivera in the year 2000. According to the information submitted, that complaint was declared to have lapsed and was definitively archived in 2006.

27. Based on the foregoing, the IACHR concludes that the petition meets the requirement provided in Article 46(1)(a) of the Convention.

C. Deadline for submission

28. Article 46(1)(b) of the Convention establishes that in order for a petition to be declared admissible it must have been submitted within a period of six months after the date on which the interested party was notified of the final decision that exhausted the domestic jurisdiction.

29. With respect to the facts indicated in paragraph 25 above, the domestic remedies were exhausted through the ruling of the Constitutional Court on July 11, 2002. The information appearing in the file indicates that the alleged victim was notified of that ruling on December 18, 2002. As this petition was received on March 19, 2003, it satisfies the requirement established in Article 46(1)(b) of the Convention.

30. With respect to the petitioner's claims summarized in paragraph 26 above, the criminal complaint filed by Mr. Sánchez Rivera was decided in the final instance in the year 2006, i.e., after the submission of this complaint. In that sense, the requirement established in Article 46(1)(b) of the Convention is intrinsically linked to the exhaustion of domestic remedies, and thus has been met.

D. Duplication of proceedings and *res judicata*

31. Article 46(1)(c) of the Convention provides that the admission of a petition is contingent upon the matter's not being "pending in another international proceeding for settlement" and Article 47(d) of the Convention stipulates that the Commission shall not admit a petition that is substantially the same as one previously studied by the Commission or another international organization. In the instant case, the parties have not argued the existence of either of these circumstances nor are they deduced from the file.

E. Characterization of the facts

32. Article 47(b) of the Convention establishes that the Commission will declare a petition inadmissible when it does not present facts tending to characterize a violation of rights guaranteed in the Convention.

33. The petition alleges that Mr. René José Sánchez Rivera was removed from his position as senior professor at the UANCV in a manner that failed to adhere to the procedures established in Law 23733, the Statute, and the Rules of Procedure of that private university. Specifically, the petition indicates that in accordance with the Statue and Teacher Evaluation Rules of Procedure at UANCV his evaluation was the responsibility of a committee made up of senior professors and the dean of the School of Accounting and Administration. It is alleged that when nullification of his dismissal was sought through an *amparo* suit, the judicial authorities upheld the alleged irregularities committed by an Ad Hoc Evaluating Committee unlawfully set up at the UANCV. In addition, the petition indicates that the decisions adopted in the second instance by the Civil Chamber of San Román-Juliaca and in the special appeal by the Constitutional Court were based on a fraudulent document provided by the respondent and irregularly admitted in the *amparo* process.

34. The information submitted by the parties indicates that when declaring the *amparo* suit filed by the alleged victim unfounded, the Constitutional Court stated as follows:

1. The file indicated that the Evaluation Rules of Procedure for the Confirmation, Promotion or Separation of Professors, approved by Resolution No. 118-99-CU-R-UANCV and dated June 25, 1999, allows the central ad hoc committee to perform the evaluation of professors instead of an ad hoc commission if the respective school does not have enough senior professors qualified to form the committee.

As indicated in Resolution No. 122-99-CU-R-UANCV dated June 25, 1999, the various ad hoc committees of the schools of the respondent university, among them the committee authorized to evaluate the petitioner, declined to perform the evaluation, so that the ad hoc committee appointed by the University Council was charged with carrying out the process.

Thus, since an administrative resolution issued by a competent body is involved, the disputed action is not invalid.

2. In addition, as noted in the file, the petitioner obtained 49.5 points in the evaluation process, a disqualifying grade for confirmation as a senior professor since, in accordance with the provisions of the Second and Third Additional Provisions of the Evaluation Rules mentioned above, it was necessary to obtain a minimum grade of fifty-five (55) points, thus demonstrating that no constitutional right has been violated.²

35. Within the framework of the petitions system established in Article 44 of the American Convention, the IACHR is competent to analyze the compatibility of laws, policies, or practices with the rights of an individual under that international instrument. However, this petition maintains that the referenced ruling by the Constitutional Court incorrectly assessed the evidence submitted by the parties

² Initial petition received by the IACHR on March 7, 2003, annex, decision of the Constitutional Court of July 11, 2002, file No. 0499-2000-AA/TC, grounds 1 and 2.

and interpreted erroneously the scope of the relevant legislation, namely the University Law (Law 23733), the Statute and Teacher Evaluation Rules of Procedure of the UANCV and the Peruvian Civil Procedure Code. Regarding those arguments, the IACHR reaffirms that it has no jurisdiction to replace domestic judicial authorities in interpreting the scope of applicable national procedural and substantive law.³ The IACHR has asserted that it cannot act as an appeals court to examine alleged errors of law and fact that may have been committed by domestic courts within the limits of their competence.⁴

36. With respect to the allegations that panel members who acted in the *amparo* suit do not satisfy the guarantee of impartiality because they are professors at the UANCV, the information submitted indicates that Mr. René José Sánchez was able to file recusal petitions, which were decided by the competent authorities, and that there are no specific indications of a potential violation of his judicial guarantees. Similarly, Mr. René José Sánchez Rivera did not submit specific information regarding the alleged irregularities committed in the criminal process for the offense against the public trust filed in the year 2000. Given the absence of specific allegations to support a possible violation of the right to be heard by a competent, independent, and impartial court, the IACHR deems that the arguments made by the petitioner are generic in nature and do not tend to characterize a violation of the right protected in Article 8(1) of the American Convention.

V. CONCLUSIONS

37. Based on the factual and legal arguments presented above, the Commission concludes that the petitioner's allegations do not tend to characterize a violation of rights protected in the American Convention, and thus the complaint does not satisfy the requirement indicated in Article 47(b) of that instrument. As a result,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible because it fails to comply with the provisions of Article 47(b) of the American Convention.
2. To notify the State and the petitioners of this decision.
3. To publish this decision and include it in its Annual Report to be submitted to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 22nd day of July 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González, and María Silvia Guillén, Commission Members.

³ IACHR, Report No. 79/10, Petition 12.119, Inadmissibility, Association of Petroleum Retirees of Peru – Metropolitan Area of Lima and Callao, Peru, July 12, 2010, paras. 41 and 42; Report No. 27/07, Petition 12.217, Inadmissibility, José Antonio Aguilar Angeletti, Peru, March 9, 2007, paras. 41 and 43 and Report No. 39/05, Petition 792-01, Inadmissibility, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre, Peru, March 9, 2005, paras. 52 and 54.

⁴ IACHR, Report No. 45/04, Petition 369-01, Inadmissibility, Luis Guillermo Bedoya de Vivanco, Peru, October 13, 2004, para. 41; Report No. 16/03, Petition 346-01, Inadmissibility, Edison Rodrigo Toledo Echeverría, Ecuador, February 20, 2003, para. 38; Report No. 122/01, Petition 15-00, Inadmissibility, Wilma Rosa Posadas, Argentina, October 10, 2001, para. 10 and Report No. 39/96, Case 11.673, Inadmissibility, Santiago Marzioni, Argentina, October 15, 1996, para. 71.