

REPORT No. 33/12
PETITION 12.202
INADMISSIBILITY
UNION OF REGULAR PROFESSORS OF THE
UNIVERSIDAD NACIONAL JOSÉ FAUSTINO SÁNCHEZ CARRIÓN
PERU
March 20, 2012

I. SUMMARY

1. On November 13, 1998, the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the IACHR,” or “the Inter-American Commission”) received a petition submitted by the Union of Regular Instructors of the Universidad Nacional Faustino Sánchez Carrión (hereinafter also “the petitioners”) on behalf of employees affiliated with the said union (hereinafter “the alleged victims”), claiming infringement by the Republic of Peru (hereinafter “Peru,” “the Peruvian State,” or “the State”) of human rights protected under the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”). The petitioner asserted that in August 1998 the Universidad Nacional José Faustino Sánchez Carrión dismissed the alleged victims in violation of the procedures established in the relevant legislation. The petitioner indicated that the decision was based on a faculty evaluation process consisting of dismissing employees who failed to obtain a minimum score. It stated that after obtaining favorable decision of an *amparo* suit and being reinstated, the alleged victims were again subjected to evaluation. It reported that on April 10, 1999 the said university dismissed the alleged victims again, on the grounds that the number of regular professors exceeded the cadre of staff maximum. It added that after the end of the Alberto Fujimori administration and the transition to democracy, the Congress of the Republic passed Law No. 27437 of March 17, 2001, invalidating the faculty dismissals ordered in the context of university restructuring. Lastly, the petitioner reported that, although the alleged victims were reinstated in early 2001, the State had not paid them lost wages and social benefits for the period during which they did not work at the university.

2. In its initial communications, the State contended that the alleged victims were dismissed in accordance with the norms in effect at the time. It claimed that the courts rejected the legal actions filed by the alleged victims and that the majority had not even contested their dismissal by the Universidad Nacional José Faustino Sánchez Carrión in court. It argued that the petition should therefore be declared inadmissible for failure to satisfy the requirement of prior exhaustion of domestic remedies established in Article 46(1)(a) of the Convention. In more recent submissions, Peru argued that, since the petition had been inactive for more than 11 years, the IACHR should archive it in accordance with the provisions of Article 48(1)(b) of the Convention.

3. After analyzing the positions of the parties, the Commission concluded that it is competent to consider the petition. However, it held the said petition inadmissible for failure to satisfy the requirement of prior exhaustion of domestic remedies established in Article 46(1)(a) of the Convention, because the alleged victims had not filed legal proceedings for the payment of lost wages and benefits. The Commission decided to inform the parties of this Inadmissibility Report, to publish it, and to include it in its Annual Report to the General Assembly of the OAS.

II. SUBMISSIONS TO THE COMMISSION

4. On November 13, 1998, the IACHR received the petition, which was registered under number 12.202. On August 5, 1999, the petitioner submitted additional information. On August 27, 1999, these documents were forwarded to the State, which was given a deadline of 90 days to submit a reply, in accordance with the IACHR Rules of Procedure then in effect.

5. The State submitted its reply in the form of notes received on November 24 and 30, 1999. The petitioner submitted observations on August 3, 2000. On May 2, 2011, the IACHR asked the petitioner to provide an update and warned that, in the absence of a reply, it could archive the petition under Article 48(1)(b) of the Convention. Subsequent to this date, the State submitted observations on May 26, 2011, and the petitioner sent observations on September 1, 2011.

6. On December 5, 2011, the IACHR requested an update from the petitioner, which submitted a communication on January 20, 2012. The State submitted an additional written statement on December 13, 2011.

III. POSITIONS OF THE PARTIES

A. The Petitioner

7. The petitioner stated that Law No. 26855 of September 5, 1997 provided for the restructuring of the Universidad Nacional José Faustino Sánchez Carrión (hereinafter also "UNJFSC") in accordance with regulations contained in Laws Nos. 26457 and 26614. It indicated that, in application of those laws, the Restructuring Committee of the aforesaid university approved Decision 416-98-UH, regulating the evaluation and retention of faculty. It claimed that this decision contravened both the Statute of the university and Law No. 23733 (the Universities Act) by making the excess number of regular instructors a cause for dismissal, despite the fact that Law No. 26457 established a failing evaluation score as the sole cause for dismissal. The petitioner also asserted that by giving public officials the authority to dismiss civil servants on the basis of personnel evaluations, Legislative Decree No. 26093 violated the right to security of employment guaranteed under Legislative Decree No. 276 (*Ley de Bases de la Carrera Administrativa y de Remuneraciones del Sector Público*).

8. The petitioner indicated that, by means of Rector's Decision 576-98-UH of August 13, 1998, the chairman of the UNJFSC Restructuring Committee, Leoncio Ruiz Ríos, dismissed 256 regular professors, *i.e.*, faculty members without master's or doctoral degrees. It indicated that the justification given for their dismissal had been an alleged excess number of teaching faculty. It asserted that the alleged victims and their families faced serious financial shortcomings as a result of their dismissal and the consequent absence of income.

9. According to the petitioner, the alleged victims filed *amparo* suits against Rector's Decision 576-98-UH, which were adjudicated favorably. However, the petitioner reported that a month after they had been reinstated, Leoncio Ruiz Ríos called for new evaluations and, by means of Rector's Decision 241-99-UH of April 10, 1999, had ordered the alleged victims dismissed a second time, once again by reason of excess faculty members. It claimed that the new dismissals had the same defects as the first evaluation process, in that norms expressly contradicting the Statute of the university and the Universities Act had been applied. It asserted that the evaluations were based solely on a review of the instructors' personnel files, and thus not on an examination of merits, and that the alleged victims were not able to be present at their evaluations or challenge their outcomes in administrative proceedings, all of which was in violation of the university charter.

10. The petitioner reported that the alleged victims' re-dismissal under Rector's Decision 241-9-UH was contested by means of applications for *amparo*, which were decided unfavorably. The petitioner did not submit detailed information about these applications or the related court decisions.

11. In a communication received by the IACHR on September 1, 2011, the petitioner indicated that Law No. 27437, published in the *El Peruano* official gazette on March 17, 2001, ordered “the reinstatement of the members of teaching faculty who were separated or dismissed as a result of the evaluations carried out under the administration of the Restructuring Committee.” According to information submitted by the petitioner, on March 29, 2001 the UNJFSC Transitional Governing Committee issued Rector’s Decision 384-2001-CTG-UH, providing, *inter alia*, for the reinstatement of the alleged victims with full rights.

12. The information received indicates that the alleged victims requested UNJFSC to pay wages and social benefits lost during the dismissal period. It indicates that on September 28, 2001 the said university issued Rector’s Decision 500-2001-UH, deciding as follows:

Article 1. To authorize such administrative action as necessary to obtain the budget allocation to pay lost compensation and other benefits to the university professors and clerical employees who were dismissed by the Restructuring Committee and have been reinstated under Rector’s Decisions 384-2001-CTG-UH and 385-CTG, pursuant to Law No. 27437.

Article 2. To task the Office of Planning and Budget and the Office of Finance of the University with taking appropriate steps to ensure that the Ministry of Economy and Finance allocates, approves and pays the compensation and other benefits due the university professors and clerical employees.

13. According to the petitioner, on September 12, 2002 the UNJFSC University Assembly issued Decision 006-2002-AU, confirming said Rector’s Decision 500-2001-UH.

14. The petitioner stated that although the alleged victims had been reinstated in early 2001, the Peruvian State had paid neither earnings lost during the dismissal period, nor compensation for damages suffered. It added that other employees dismissed under the Alberto Fujimori administration and reinstated under subsequent administrations had received the wages and social benefits owed to them, so that there would be an arbitrary different treatment to the detriment of the alleged victims in the present case. Accordingly, it asked the IACHR to recommend that the Peruvian State should pay the alleged victims the earnings lost during the hiatus in their duties as UNJFSC instructors.

15. On December 5, 2011, the IACHR asked the petitioner for an update on any legal actions filed in connection with the claim for lost wages and benefits for the period during which the alleged victims were on hiatus from the university. The petitioner submitted a copy of decisions issued by the Constitutional Court in *amparo* proceedings initiated by four alleged victims. The information submitted indicates that the purpose of the *amparo* applications was to invalidate Rector’s Decision 241-99-UH of April 10, 1999, ordering a second dismissal of the alleged victims. The petitioner also submitted a list of the names of 26 alleged victims, case numbers of the *amparo* proceedings, and Lima civil courts in which they had been filed. According to this information, these applications were filed in 1999 and were for the same purpose as the four other *amparo* applications mentioned above, *i.e.*, reinstatement of the applicants’ positions.

16. Lastly, although the petitioner indicated that the *amparo* applications filed by the 26 alleged victims in the course of 1999 were for invalidation of Rector’s Decision 241-99-UH, it did not report the initiation of any legal proceedings after Law No. 27437 was passed on March 17, 2001.

B. The State

17. The State indicated that, in accordance with the laws regulating the restructuring of UNJFSC, on November 19, 1997 the executive branch issued Supreme Decision 596-97-PCM appointing a Restructuring Committee to “assume the functions of governance, guidance, management, and administration of the university, chaired by Dr. Leoncio Ruiz Ríos.” It indicated that once faculty evaluations were complete, the Restructuring Committee had issued Rector’s Decision 576-98-UH of August 13, 1998, providing for the non-retention and dismissal of faculty members “who did not receive satisfactory scores or failed to appear for the evaluation.”

18. Peru stated that, in compliance with the decisions handed down in the *amparo* proceedings initiated by the alleged victims, on February 24, 1999 the Restructuring Committee had issued Rector's Decision 131-99-UH, invalidating the evaluations and providing for the initiation of a new faculty evaluation and selection process based on new regulations. It reported that following completion of the new evaluations, various faculty, including the alleged victims, were dismissed under Rector's Decision 241-99-UH of March 31, 1999, "either because they did not hold a master's or doctoral degree or because they had not achieved the minimum required score."

19. In communications received by the IACHR on November 24 and 30, 1999, the State indicated that the alleged victims had filed a total of nine proceedings for *amparo* against Rector's Decision 241-99-UH. It reported that the cases had been dismissed by the Civil Section of the Lima High Court and were awaiting a final decision by the Constitutional Court. It stressed that the petition had been signed by 79 professors, but that 23 had not filed *amparo* proceedings. It argued, therefore, that the petition should be declared inadmissible for failure to exhaust domestic remedies.

20. The State argued that since the petitioner had not taken any legal action on the claim for more than 11 years, the IACHR should order its archival under Article 48(1)(b) of the Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

21. The petitioner is empowered by Article 44 of the Convention to submit petitions to the Commission. The alleged victims are individuals, whose rights the Peruvian State is bound to respect and ensure under the Convention. For its part, Peru ratified the American Convention on July 28, 1978. Accordingly, the Commission is competent *ratione personae* to consider the petition.

22. The Commission is competent *ratione loci and ratione materiae* inasmuch as the petition contains allegations of violations of rights protected by the American Convention that took place within the territory of a State party to that treaty.

23. Lastly, the Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected by the American Convention was already in force for the State at the time of the events alleged in the petition.

B. Exhaustion of domestic remedies

24. Article 46(1)(a) of the American Convention provides that, in order for a petition presented to the Inter-American Commission under Article 44 of the Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. This requirement was established to allow national authorities the opportunity to consider alleged violations of protected rights and, if applicable, resolve such matters before they might be heard by an international body.

25. The present petition involves alleged violations of the American Convention arising from a reported non-payment of wages and social benefits lost by the alleged victims between April 1999 and March 2001. On December 5, 2011, the IACHR requested the petitioner to provide an update on

the outcome of any legal proceedings initiated by the alleged victims in connection with the reported non-payment of wages and social benefits during the hiatus in their duties as professors of the Universidad Nacional Faustino Sánchez Carrión. If no legal proceedings have been initiated, please explain the reasons.

26. In a communication received on January 20, 2012, the petitioner provided a copy of the actions taken in four *amparo* proceedings and reported that a total of 26 alleged victims had filed suits to invalidate Rector's Decision 241-99-UH of April 10, 1999, providing for the dismissal of the alleged victims from their positions as instructors of the Universidad Nacional José Faustino Sánchez Carrión. According to the petitioner, the various proceedings for *amparo* initiated in 1999 had requested that the alleged victims should be reinstated and should be paid lost wages and benefits.

27. Although the petitioner indicated that the *amparo* suits filed by the alleged victims sought payment of lost wages and benefits, the available information indicates that these suits are related to the inapplicability of the rector's decision ordering the alleged victims' dismissal. The IACHR notes that the Constitutional Court declared these applications inadmissible on the grounds that the dismissals ordered by the Universidad Nacional José Faustino Sánchez Carrión in April 1999 were in compliance with the norms in effect and that no infringement of the applicants' constitutional rights has been demonstrated.

28. The information provided by the parties indicates that the alleged victims were reinstated in accordance with Law No. 27437 of March 17, 2001, which invalidated the dismissals of professors affected by university restructuring laws and decrees adopted under the Alberto Fujimori administration. This information also indicates that after the alleged victims were reinstated, they submitted administrative requests for the payment of wages and social benefits lost during the two years in which their dismissal remained effective. In response to this request, on September 28, 2001 the aforementioned university issued Rector's Decision 500-2001-UH, authorizing administrative steps to obtain a budget allocation for the payment of the wages and benefits due. The petitioner did not submit information on any legal proceedings initiated to compel compliance with Rector's Decision 500-2001-UH, nor did it report the existence of any other type of proceeding after Law No. 27437 was passed on March 17, 2001.

29. In view of the aforesaid, the IACHR deems that the *amparo* proceedings initiated by 26 alleged victims in the course of 1999 were based on a legal situation that was subsequently modified by Law No. 27437. In the absence of assertions or information indicating that legal actions have been filed to obtain payment of wages and social benefits due, the Commission holds that the claim remaining for its consideration fails to satisfy the requirement established in Article 46(1)(a) of the American Convention.

30. The Commission abstains, since the matter is rendered moot, from examining the other admissibility requirements provided in the Convention.¹

V. CONCLUSIONS

31. On the basis of the foregoing findings of fact and of law, the Commission deems the petition inadmissible for failure to satisfy the requirement established in Article 46(1)(a) of the American Convention, and, therefore:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES

1. To declare the present petition inadmissible by virtue of noncompliance with the prior requirement under Article 46(1)(a) of the American Convention.
2. To notify the State and the petitioners of this decision.

¹ IACHR, Report No. 14/10, Petition 3576-02, Inadmissibility, Workers Dismissed from *Lanificio del Perú S.A.*, Peru, March 16, 2010, par. 35; Report No. 135/09, Petition 291-05, Inadmissibility, Jaime Salinas Sedó, Peru, November 12, 2009, par. 37; and Report No. 42/09, Petition 443-03, Inadmissibility, David José Ríos Martínez, Peru, March 27, 2009, par. 38.

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 20th day of March 2012. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González; Second Vice-President, Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz and Rose-Marie Belle Antoine, Commission Members.