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REPORT No. 59/23
PETITION 878-11
REPORT ON ADMISSIBILITY

RONY JAVIER RODRÍGUEZ FLORES AND OTHERS
HONDURAS

Approved electronically by the Commission on May 12, 2023.

Cite as: IACHR, Report No. 59/23, Petition 878-11. Admissibility. Rony Javier Rodríguez Flores and others. Honduras. May 12, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Rony Javier Rodríguez Flores
Alleged victim:	Rony Javier Rodríguez Flores, Elsa María Banegas Andrade, Francis René Quiroz Herrera, Marco Antonio Cruz Durón, Norma Iveth López Oseguera, Odalis Regina Calderón, Sonia Carolina Aguilar, Yeni Liseth Cárdenas Medina, and Yessica Aurora Aguilar Gámez
Respondent State:	Honduras
Rights invoked:	Articles 8 (fair trial), 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights ¹ , in relation to article 1.1 (obligation to respect rights)

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	June 24, 2011
Additional information received at the stage of initial review:	November 21, 2016
Notification of the petition to the State:	September 4, 2018
State's first response:	September 20, 2019
Additional observations from the petitioner:	August 18, 2020, and march 2, 2023
Additional observations from the State:	February 9, 2021

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of the instrument of ratification on September 8, 1977)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 8 (fair trial), 24 (equal protection), 25 (judicial protection) and 26 (economic, social, and cultural rights) of the American Convention in relation to article 1.1 (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

¹ Hereinafter "The American Convention" or "the Convention".

² The observations submitted by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

Allegations of the petitioner party

1. The nine alleged victims were teachers from the Ministry of Education and were assigned to work in the Armed Forces, at the Luis Landa night institute. They denounce that they were arbitrarily dismissed; and that the State violated their rights to access to justice, judicial guarantees, equality before the law and judicial protection, after declaring itself incompetent to understand on their claims for unjustified dismissal, both in the contentious-administrative and labor spheres.

2. The petitioner narrates that as part of the Inter-institutional Cooperation Agreement for Mutual Aid between the Ministry of Education and the Ministry of Defense, the alleged victims, who were employees of the Ministry of Education, began working as teachers at the Luis Landa Night Institute ascribed to the Armed Forces (hereinafter "FFAA") at the General Danilo Carvajal Molina Military Fort –neither in the petitioner's communications nor in those of the State, nor in the attached court decisions, does it specify since when they worked in the Armed Forces-. Thus, in the year 2000, faced with the fact that the alleged victims were receiving a salary lower than that established in the Teachers' Statute, they were able to be included in the fort's payroll as "soldiers", and thus receive something extra.

3. After six years with said arrangement, on March 8, 2006, the commander of the aforementioned military fort suddenly notified the director of the Night Institute that the nine alleged victims were being discharged and that they would be removed from the troop personnel payroll. The petitioner denounces that in said notification no cause was specified for terminating the employment relationship, resulting in an unjustified dismissal; they assert that the only explanation they were given – they do not indicate whether it was verbal or written– was that: "*we were not combatant soldiers to be on the payroll as soldiers.*"

4. In this regard, the alleged victims contend that, pursuant to the National Congress Decree 287-2005 of November 26, 2005, applicable, among others, to enlisted personnel and non-commissioned officers of the Armed Forces, the government ordered the creation of an Individual Account for Labor Reserve as a protection mechanism to ensure a benefit in case of termination of their employment relationship. In article 4 of this decree, it states that:

In the event that the personnel referred to in Article 1 finalizes their labor or service relationship due to unjustified dismissal, the amount of the corresponding social benefits will be covered by the constituted reserve and, in the event that this does not cover the amount of the benefits, the supplement will be paid by the corresponding Secretary of State.

In this sense, the alleged victims, although they were not part of the armed forces, do consider that having been included in the payroll of the General Danilo Carvajal Military Fort as "soldiers", and considering that they were unjustifiably dismissed, they should have been paid their labor benefits from the fund created by said decree.

5. Beyond this specific allegation, the alleged victims demanded their alleged unjustified dismissal and the payment of the respective labor benefits in the contentious-administrative and labor jurisdictions, according to the following information:

a) Administrative jurisdiction

6. On March 22, 2006, the petitioner filed a claim for annulment against the administrative act that caused the dismissal before the Court of First Instance for Administrative Litigation based in Tegucigalpa (Central District municipality). The court denied the claim on April 24, 2006 and reasoned that the annulment related to "*an act of command and military organization*"; and that it was not proper for the administrative litigation jurisdiction to resolve issues between the powers of the State, defense of the national territory, command and military organization.

7. The petitioners filed an appeal before the Court of Appeals for Administrative Litigation of the department of Francisco Morazán, arguing that they were claiming compensation for the payment of benefits and therefore the administrative litigation forum would have jurisdiction to decide.³ The court handed down a judgment on August 16, 2006 and confirmed the previous ruling, considering that the petitioner's claim is "*the annulment of the notification of discharge from the combat unit, which necessarily implies entertaining a matter that arose regarding the command and military organization*"; a matter that, it concluded, does not fall in the administrative litigation jurisdiction.

b) Labor jurisdiction

8. On June 30, 2006, the petitioner filed a labor lawsuit before the Labor Court of the Department of Francisco Morazán, demanding payment of benefits, severance, and accrued wages. On January 7, 2009, during the continuation of the initial proceeding hearing, the representatives of the Armed Forces filed an objection of lack of jurisdiction *ratione materiae*. However, on February 16, 2009, the Court of First Instance issued an interlocutory judgment rejecting the dilatory objection of incompetence of the court, considering that it was not proven that the alleged victims were appointed and dismissed by means of an "*Agreement*", as established by law and that, therefore, entertaining their labor claims was regulated by the legal regime applicable to workers in general, that is, that it falls under the labor jurisdiction.

9. The court grounded its decision in the Labor Code which, in its article 2, section 2, establishes:

The provisions contained in this Code are non derogable and are binding on all companies, farms or establishments, as well as natural persons. The following are excepted: 2. National, departmental and municipal public employees. A public employee is understood to be one whose position has been created by the Constitution, the law, executive decree or municipal agreement. The relations between the State, the Department and the Municipality and their servants, will be governed by Civil Service laws that are passed.

10. However, the representatives of the armed forces filed an appeal before the Francisco Morazán Labor Appeals Court alleging the exception of material incompetence, because according to the Honduran Constitution, the armed forces are subject to their own constitutive laws;⁴ and that, despite the fact that the alleged victims performed duties as professors at the Luis Landa Institute, they occupied a position as soldiers. Thus, on May 15, 2009, the court declared its lack of *ratione materiae* jurisdiction and revoked the first instance interlocutory judgment, concluding that the alleged victims served as soldiers who had the duties of professors, and therefore it was not appropriate to examine their claims.

Action for the protection of constitutional rights

11. On June 17, 2009, the petitioner filed an action for the protection of constitutional rights before the Constitutional Chamber of the Supreme Court of Justice arguing denial of access to justice, since no court declared itself competent to entertain the claims of the alleged victims. The petitioner even mentioned that he had previously resorted to the administrative litigation jurisdiction where he was told that it was not a matter concerning such jurisdiction. However, on December 7, 2010 –in a decision notified on January 6, 2011⁵– the Constitutional Chamber decided to deny the appeal, considering that there was no violation of due process, of the right to defense, of access to the courts of justice, or the right to effective judicial protection. Likewise, it indicated that the alleged victims' membership in the armed forces had been proven, and that they

³ The arguments before the Court of Appeals indicated here were taken from the simple copy of the judgment of August 16, 2006, sent by the petitioner.

⁴ Constitution of the Republic of Honduras, article 274, first paragraph: "*The Armed Forces shall be subject to the provisions of its Constitutive Law and to other laws and regulations concerning its functioning. They shall cooperate with the secretaries of the State and other institutions, at their requests, in the tasks of literacy, education, agriculture, environmental protection, road works, communication, health and agrarian reform*".

⁵ The petitioner points out that the notification was conducted by a notice affixed at the notifications board of the Constitutional Chamber of the Supreme Court of Justice.

had not exhausted the appeal for reversal as the most immediate expeditious remedy to obtain rectification of the decision being challenged.

12. Finally, the petitioner filed an appeal for reversal before the Constitutional Chamber of the Supreme Court of Justice, which on January 11, 2011, rejected it after considering that the resolution of the action for the protection of constitutional rights was in accordance with the law. –This information is not in the briefs of the petitioner but was found in a copy of the judgment that was attached to his communication to the IACHR dated March 2, 2023–.

13. The petitioner points out that it also had recourse to the Secretary of Labor and Social Security on May 5, 2006, seeking conciliation, but that the representatives of the Armed Forces did not show up, so this attempt was unsuccessful. –Despite the fact that the Inter-American Commission requested additional information from the petitioner regarding this conciliation process, no response was received in this regard–.

Allegations of the State

14. The State, for its part, clarifies that the alleged victims were employees of the Ministry of Education and that they were integrated into the Armed Forces through “*the payroll of troop personnel*”, who are paid under the figure of “*haber*” (“credit”), which does not constitute a salary as such, but a monetary compensation, food, and clothing. The State explains that the Inter-Institutional Cooperation Agreement for Mutual Aid between the Ministry of Education and the Ministry of Defense provides in its fourth clause, paragraph 2, that the appointment of teaching staff is an obligation of the Ministry of Education through the Departmental Offices of Education and not of the Secretary of State in the Office of National Defense.

15. Therefore, the State argues that their inclusion as troop personnel was a salary compensation “*in good faith by the Armed Forces*”, but not an employment relationship. The State indicates that according to the Personnel Law for members of the Armed Forces, “*salary is the remuneration assigned to officers, non-commissioned officers, technical and auxiliary personnel of the Armed Forces according to their degree of employment or position, while credit is the monetary remuneration, food, clothing and others that are received mainly by cadet gentlemen and ladies, technical students and the troops that provide their military service*”.

16. Honduras further argues that the petition should be inadmissible because the facts alleged do not constitute violations of the rights of the alleged victims, nor have they been prevented from accessing justice. It points that the authorities guaranteed access to the proceedings, and that they were resolved in a timely manner by competent, independent, and impartial courts.

17. Finally, the State alleges failure to comply with the six-month term to submit the petition to the IACHR, because the ruling of the Constitutional Chamber of the Supreme Court of Justice was issued on December 7, 2010, and the petition was submitted to the Commission on June 24, 2011.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

18. In the present case, the Commission notes that the object of the petition consists of a claim related to the dismissal and the lack of employment benefits for the alleged victims, who are allegedly nine professors originally assigned to the Secretary of Education, who were assigned to carry out their duties to the Luis Landa Institute at the General Danilo Carvajal Molina Military Fort, and that at a certain moment and without prior notice, were dismissed by virtue of an order issued by the commander of that military base.

19. In relation to this, the Inter-American Commission observes that the petitioners exhausted various remedies in the administrative litigation, labor, and constitutional jurisdictions. In the administrative litigation jurisdiction, they obtained an unfavorable decision, because the judgment of the Administrative Court of First Instance of April 24, 2006, noted that the annulment requested by the petitioner dealt with an act of command and military organization, and did not formed part of its jurisdiction. This was confirmed by a judgment of second instance of August 16, 2006, issued by the Court of Appeals for Administrative Litigation.

In the labor jurisdiction, the petitioners initially received a favorable decision through the interlocutory judgment of February 16, 2009, of the Court of First Instances, which considered the competence of the labor jurisdiction; however, on May 15, 2009, the Francisco Morazán Labor Appeals Court declared that it had no jurisdiction on the matter, considering that the alleged victims worked as soldiers. Then, on December 7, 2010, the Constitutional Chamber of the Supreme Court of Justice issued a decision unfavorable to the claims of the alleged victims in the action for the protection of constitutional rights, also considering that they belonged to the armed forces. Finally, they filed an appeal for reversal before the Constitutional Chamber of the Supreme Court of Justice, which on January 11, 2011, decided to reject it.

20. The State has not disputed the exhaustion of domestic remedies; but it affirms that the petition is time-barred because it was presented after the period of six months since the decision of the action for the protection of constitutional rights. However, the IACHR observes that the State is not considering the judgment of the appeal for reversal of January 11, 2011, issued by the Constitutional Chamber of the Supreme Court of Justice, which would be the last remedy in the domestic jurisdiction, before the presentation of the petition before the IACHR on June 24, 2011.

21. Therefore, the Commission concludes that this petition meets the requirements of exhaustion of domestic remedies and timeliness established in Articles 46.1.a) and 46.1.b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

22. As already mentioned, the object of the petition refers to the lack of employment benefits for the alleged victims who, being professors of the Ministry of Education, provided their services in the Armed Forces through an inter-institutional agreement. These were suddenly dismissed by decision of an army officer. They also allege that they did not have effective judicial protection, because although they litigated their claims in two jurisdictions (administrative litigation and labor), in both the result was that their claims were not entertained as it was considered an exclusive matter of the jurisdiction of the Armed Forces. For this reason, the petitioner argues that they were not afforded proper judicial control of the dismissal or of their claim for labor payments. For its part, the State affirms that the authorities guaranteed access to the national proceedings and that they were resolved in a timely manner by competent and impartial courts, for which reason it does not consider the facts constitute violations of the rights of the alleged victims.

23. Based on the analysis of the information provided by both parties –which must be clarified, it is quite limited, especially that of the State–, the Commission observes that the alleged victims were, in effect, teachers initially attached to the Ministry of Education; that for a certain time they provided their services in a teaching institute within a military base; that they were dismissed by a unilateral act of an army officer; that after their dismissal they were not paid any of their employment benefits; and that the payment of said benefits was never properly analyzed in substance by the courts. In this sense, the IACHR recalls that for the judicial protection mechanisms to be effective, the body to which the claimant turns must, after a proceeding involving evidence and discussion of the allegation, decide whether the claim is valid or unfounded.⁶

24. In this regard, it should also be noted that the Inter-American Court has established that the right to work is a recognized and protected right through Article 26 of the Convention; and that job stability does not consist of an unrestricted permanence in the job, but of respecting this right, among other measures, granting due guarantees of protection to the worker so that, in the event of dismissal, it is done under justified causes, which implies that the employer proves the sufficient reasons to impose said sanction with the due guarantees, and against which the worker can appeal before the internal authorities, who must verify that the imputed causes are not arbitrary or contrary to law.⁷

25. Regarding the State's arguments concerning the lack of characterization, the Commission reiterates that, for the purposes of admissibility, it must decide whether the facts alleged tend to establish a

⁶ IACHR, Report N° 100/01 (Merits), Case N° 11.381, Milton García Fajardo at al v. Nicaragua, October 11, 2001, paras. 85 - 87.

⁷ I/A Court H.R., Case of Nissen Pessolani v. Paraguay. Merits, Reparations and Costs. Judgment of November 21, 2022. Series C No. 477, para. 101 and 102.

violation of rights, as stipulated in Article 47.b of the American Convention, or if the petition is “manifestly groundless” or “obviously out of order”, pursuant to subparagraph (c) of said article. The evaluation criteria for these requirements differs from that used to rule on the merits of a petition. Likewise, within the framework of its mandate, it is competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention. That is to say that, in accordance with the aforementioned conventional norms, in accordance with article 34 of its Rules of Procedure, the admissibility analysis focuses on the verification of such requirements, which refer to the existence of elements. Therefore, it is clarified that the criterion for assessing the above is different from that required to rule on the merits of a petition.

26. In light of these considerations and after the examining the legal and factual elements presented by the parties the Commission considers that the allegations of the petitioner are not manifestly groundless and require a study of the merits, as the alleged facts, if established as true, could constitute violations of articles 8 (fair trial), 24 (equal protection), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention, in relation to its article 1.1. (obligation to respect rights), to the detriment of the nine alleged victims in the terms of this report.

VIII. DECISION

1. To find the instant petition admissible in relation to articles 8, 24, 25 and 25 of the American Convention, in connection to its article 1.1; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 12th day of the month of May 2023.
(Signed:) Margarett May Macaulay, President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón and Carlos Bernal Pulido, Commissioners.