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## The Fundamental Rights of University Professors of Private Universities in Employment Contracts Subject to Modality, in the Interpretation of the Constitutional Court

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### Abstract

*This research examines the conflict between the decisions of the Constitutional Court of Peru and the labor rights of professors hired in private institutions, within the context of the autonomy of universities. The hypothesis is posited that the Court, by prioritizing university standards over the prevailing labor regime, has curtailed the right to work and job security of these educators. The present study employs a qualitative and interpretative approach, drawing upon a comprehensive review of twelve constitutional rulings issued between 2003 and 2013. The Political Constitution, University Laws No. 23733 and No. 30220, as well as Legislative Decree No. 728, are analyzed, in addition to principles such as the supremacy of reality and the safeguard against unjustified dismissals. The results demonstrate a jurisprudence that disregards the distortion of fixed-term contracts, even in circumstances of continuous employment. In the majority of cases, the Court dismissed the applications for amparo submitted by educators, deeming public competition as the sole legitimate avenue for attaining stability. This study finds that the trend in jurisprudence has undermined the protection of fundamental rights under the pretext of university autonomy. It is recommended that a re-evaluation of this position be undertaken, with the objective of achieving a harmonious equilibrium between the interests of academic institutions and those of labor rights.*

**Keywords:** Constitutional Court, University Autonomy, Job Stability, Contract Teachers, Right to Work, Jurisprudence, Primacy of Reality.

### Introduction

In recent years, the study of fundamental rights in the context of labor relations has assumed a prominent role in the legal field, particularly in circumstances where the interests of organizations and individual interests are in conflict. A persistent challenge arises in the context of temporary university professor hiring, particularly in private universities shielded by the principle of academic autonomy. This predicament pertains to the effective safeguarding of fundamental rights and the stability of employment.

This paper is dedicated to a critical analysis of the Constitutional Court of Peru's resolutions concerning amparo lawsuits filed by professors of private universities. These professors contend that their temporary contracts have been distorted and that their right to job stability is threatened. This phenomenon is of particular relevance in the context of the right to work, which is considered a fundamental right of every person and should not be subject to arbitrary restrictions under institutional pretexts (Pantigozo, 2013, p. 2).

The regulatory framework governing this matter is rooted in the provisions enumerated within

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the Political Constitution of Peru. Article 23 of this document stipulates that labor, in its myriad forms, is of paramount concern to the State. It further asserts that "no individual may be terminated from their employment without a substantiated justification as outlined by law" (Democratic Constituent Congress, 1993). Moreover, the principle of primacy of reality is incorporated, as delineated in Article 9 of the Single Harmonized Text of Legislative Decree No. 728. This decree stipulates that in the event of a discrepancy between observations in practice and formal documentation, the former takes precedence.

Notwithstanding this precedent, the Constitutional Court has maintained a consistent interpretation, stipulating that a public competition process is requisite for the procurement of a stable position in university teaching, even in circumstances where there are continuous employment relationships and essential functions analogous to those of permanent teachers. This position has been the subject of both doctrinal and judicial criticism, as it "prevents hired teachers from fully exercising their right to job stability, despite the fact that the characteristics of an indefinite employment relationship are present" (Pantigozo, 2013, p. 5).

In particular, the present study analyzes twelve decisions of the Constitutional Court issued between 2003 and 2013. These decisions pertain to amparo lawsuits filed by university professors in private institutions. In eleven of these twelve cases, the Court rejected the applications, arguing that the principle of university autonomy allows for the establishment of internal hiring rules that do not necessarily have to be subject to the general labor regime. However, this position is open to question when one considers the principle of "university autonomy," which states that institutions of higher education are not obligated to consider fundamental rights or the labor realities of those who have provided teaching services continuously for several years (Pantigozo, 2013, p. 6).

The jurisprudence examined herein indicates a discernible tendency towards a regressive interpretation by the Constitutional Court, evidenced by its inclination to prioritize university regulations over the individual rights of educators. Additionally, the application of the principle of primacy of reality remains restricted, and there is a dearth of consideration for the principles of protection established by the Inter-American Court of Human Rights concerning labor in conditions that are dignified and stable. As Pantigozo (2013) notes, "constitutional interpretation cannot be divorced from the broader context of labor relations, and it is imperative to acknowledge the protections that the Constitution and international conventions provide for decent work" (p. 8).

This predicament is situated within a broader context of precariousness in the educational field, where the employment of temporary personnel without objective justification becomes a means to evade fundamental labor rights. The International Labour Organization (ILO) has identified this phenomenon, emphasizing that temporary contracts must be supported by objective justifications and not serve as a means to evade permanent labor responsibilities (ILO, 2012).

Within this framework, the primary objective of this article is to demonstrate that the jurisprudence followed by the Constitutional Court in these cases contravenes the fundamental principles of Peruvian labor law and constitutional labor law. The objective of this study is to demonstrate how the defense of university autonomy has been utilized as a legal foundation to exclude contract teachers from safeguards against arbitrary dismissals, despite the existence of numerous instances where labor relations have been established that are typically stable.

A re-evaluation of the Court's interpretation of Article 18 of the Constitution, which pertains to university autonomy, is also imperative. This re-evaluation should refine the Court's relationship with Article 22, which recognizes work as the foundation of social well-being and the means for personal fulfillment. The present link must allow for an inclusive and guarantee-based reading, which does not compromise fundamental rights for the benefit of institutional prerogatives.

The significance of this study lies in its capacity to shed light on a legal issue that has received scant attention from a fundamental rights perspective. It puts forth interpretative approaches that aspire to strike a balance between the legitimate interests of private universities and the inalienable rights of teaching workers. As Pantigozo (2013) concludes, "university labor law needs a new constitutional interpretation that recognizes the reality of teaching work and does not subject it to formalisms that perpetuate instability and lack of protection" (p. 10).

In summary, the present study is consistent with the line of critical legal research on the role of the Constitutional Court in establishing norms that protect fundamental rights, especially in situations where there is a confrontation between individual rights and institutional prerogatives. This study will examine the principles of jurisprudence, regulations, and doctrine to present a new perspective on constitutional interpretation. The objective of this examination is to ensure fair, equitable, and consistent treatment of professors hired in the private university sector.

### **Problem Statement**

The employment of temporary educators in private higher education institutions in Peru has given rise to significant legal controversy, particularly with regard to issues of job stability and the safeguarding of their fundamental rights. Despite the fact that a considerable number of these educators perform continuous, permanent, and essential tasks in the academic field, their contracts do not accurately reflect their employment status. Their access to stability is contingent upon their participation in public competitions. This reality has been validated on multiple occasions by the Constitutional Court, whose rulings have privileged the autonomy of universities over the principle of the predominance of reality and effective protection against unjustified dismissals. In this context, the following central question arises: The present study seeks to examine the influence of the jurisprudence of the Constitutional Court on the defense or limitation of the fundamental rights of educators hired in private universities under contractual modalities, within the context of university autonomy. From this overarching inquiry, the subsequent specific inquiries emerge:

1) How has the Constitutional Court interpreted the concept of university autonomy in the context of the labor rights of contracted educators? Which constitutional principles are implicated in the cases examined? The question has been raised as to whether there is a recurring pattern of interpretation in the Court's jurisprudence on this matter. To what extent does this jurisprudence impact the guarantee of the right to work and job stability?

The objective of the study is to determine and analyze the content of fundamental rights in labor contracts subject to the modality of professors at private universities, and whether these are protected by the Political Constitution. In this sense, the specific objectives are:

- Identify, define and conceptually develop the fundamental rights contained in labor contracts subject to modality, as well as their regulation and application within the

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- Describe and develop the causes for which the Constitutional Court fails to recognize (protect) fundamental rights in contracts subject to modality of professors at private universities.
- To identify the legal antinomies related to the labor regime of professors at private universities, in labor contracts subject to modality.

### Hypothesis

The general hypothesis is that the Constitutional Court ignores the fundamental rights of professors in private universities, by ignoring the fundamental rights of employment contracts subject to modality, within the labor regime of private activity. And the specific hypothesis are:

- In a Constitutional State of Law, the fundamental rights of university professors must be respected, in relation to the labor regime established for employment contracts subject to modality.
- The Constitutional Court, in the amparo rulings, does not determine what the employment regime of the university professor is within the contracts subject to modality, considering that such contracts are typical of the labor regime of the private activity.
- The Constitutional Court, with regard to the employment regime of professors at private universities, applies the University Act, and sets aside Legislative Decrees Nos. 728 and 882.

### Method

#### Type and Design of Research

##### Type of Research

This research is of a social and legal nature. It is understood that the orientation of the work is framed within basic and applied research. The aim of this orientation is to improve the knowledge and understanding of social phenomena and to solve social problems. In this case, the objective is to produce new knowledge in the labor legal discipline related to the fundamental rights of workers as university professors in private universities. A special labor regime is proposed that would guarantee the fulfillment of their fundamental rights. The research is also applied in nature, as it will facilitate the identification of deficiencies and gaps in the rules and procedures that govern the protection of fundamental rights of university professors. The objective of this identification process is to propose pertinent modifications to the legal norms that govern these rights.

#### Research Design

The research design is qualitative in nature and is subject to the circumstances of each particular environment or scenario. In the qualitative approach, "design" refers to the overarching methodology that will be employed in the research process. Álvarez-Gayou (2003) refers to this phenomenon as the interpretative framework. The design of the study, including the sample, data collection, and analysis, is derived from the problem statement and initial immersion and fieldwork. It is important to note that the design undergoes modifications during the course of

the study, even though it is a systematic approach to the phenomenon of interest. In accordance with the stipulated framework of the design, the following activities are to be conducted: initial and deep immersion in the environment, fieldwork, data collection, data analysis, and the generation of theories.

The value of a literature review in qualitative research lies in its ability to identify key concepts, recognize the pitfalls encountered by others, and foster a multifaceted understanding of the research approach. This multifaceted understanding facilitates a more nuanced interpretation of the data. According to Hernández, Fernández, and Baptista (2014),

The objective of qualitative research is to establish a research methodology that facilitates comprehension of the intricate realm of lived experience from the perspective of the individuals who inhabit it. Qualitative methodology, as indicated by its name, aims to describe the qualities of a phenomenon. It is essential to identify a concept that has the capacity to encompass a component of reality. The objective is not to assess or quantify the presence of a specific quality in a given event, but rather to identify as many qualities as possible. In the domain of qualitative research, the emphasis is placed on achieving in-depth understanding rather than on attaining absolute accuracy. The objective is to delve as profoundly as possible into the subject matter to gain a comprehensive grasp of its nuances.

#### Level

In regard to the level of research, the historical level will be employed, wherein the researcher will inquire about facts or phenomena that occurred in the past. The events will be reconstructed, and their development will be explained, with their meaning based on the context from which they have emerged. In certain research studies, information is systematically documented regarding events that transpired prior to the formulation of the study's design. This entails the meticulous and objective recording of events as they unfold, without the influence of external bias. Such research methodologies are often referred to as "retrospective investigations."

### **Research Methods**

In light of the proposed research design, it has been deemed expedient to employ an array of research methodologies. This approach is predicated on the hypothesis that the amalgamation of these methodologies will culminate in the formulation of an objective response to the research question. Within the ambit of general roots research methodologies, the historical method, the comparative method, and the dialectical method are employed. Conversely, within the purview of qualitative research methodologies, the scientific method, the inductive method, the deductive method, the analytical method, the synthetic method, the dogmatic method, the exegetical method, the interpretative method, the phenomenological method, and the hermeneutical method are utilized.

### **Unit of Analysis**

The focal point of this inquiry lies in the resolutions promulgated by the Constitutional Court in the course of amparo proceedings, which were subsequently pursued by contracted professors from private universities. These professors had petitioned the highest constitutional authority, seeking safeguards for their fundamental rights as contracted workers engaged in university instruction.

### ***Study population***

Judgments issued by the Constitutional Court in amparo proceedings filed by university professors from private universities

### ***Sample size***

The sample size is twelve judgments, issued by the Constitutional Court, in amparo proceedings filed by university professors from private universities.

### ***Sample selection***

The sample has been randomly selected, within the judgments issued by the Constitutional Court, only in amparo proceedings filed by university professors from private universities.

### ***Analysis and interpretation of information***

The techniques of documentary analysis and bibliography will be used and as instruments of content analysis the textual files, commentary, summary, as well as the critical files.

## **Results**

### ***Hypothesis testing***

***Analysis and interpretation of the problem posed. Jurisprudence of the Constitutional Court***  
*STC No. 00849-2013-PA/TC, of August 15, 2004, amparo proceeding filed by Luis Edgardo Paz Flores against the Antenor Orrego Private University, requesting that the unjustified dismissal to which he has been subjected be annulled.*

*Facts on which the amparo proceeding is based:*

1. University professor Luis Edgardo Paz Flores, filed an amparo proceeding against his employer Universidad Privada Antenor Orrego, requesting that the unjustified dismissal to which he has been subjected be annulled, and that his reinstatement as a professor and advisor of the Legal Clinic of the Faculty of Law and Political Science of the Universidad Privada Antenor Orrego be ordered. alleging that he has been the subject of an unjustified dismissal because his employment relationship was distorted in accordance with the provisions of paragraphs a) and d) of article 77 of Supreme Decree No. 003-97-TR. He indicated that he began working on January 2, 2005 under a part-time contract, until January 31, 2011, when the defendant decided not to renew his employment contract and dismissed him without cause, violating his right to work.
2. The plaintiff states that he has worked for the same employer for more than 06 years 01 month, as a university professor and advisor to the Legal Clinic of the Faculty, so that his contract subject to a part-time modality has been distorted.
3. For its part, the defendant Universidad Privada Antenor Orrego, proposes the exception of lack of competence by reason of the subject matter and answers the lawsuit stating that ordinary labor legislation is not applicable to university professors, who are governed by Law No. 23733, and that for that reason, the contracts signed by the plaintiff cannot be distorted and converted into contracts of indefinite duration. so he has not been the victim of arbitrary dismissal.

4. The Second Specialized Civil Court of Trujillo, on July 8, 2011, declared the objection of lack of jurisdiction inadmissible and, on January 13, 2012, declared the claim unfounded on the grounds that the employment contract of a contracted teacher, who is not a career teacher as is the case of the plaintiff, it cannot become an employment contract of an indeterminate nature, because this would imply the distortion of the University Law, and that the renewal of the contract constitutes a faculty and or an obligation of the defendant university, so the violation of the rights invoked has not been proven.

5. The reviewing Chamber confirmed the appealed on the same grounds.

*Analysis of the considerations of the Constitutional Court*

1. The Constitutional Court refers to Article 22 of the Political Constitution, which establishes that: "Work is a duty and a right. It is the basis of social well-being and a means of personal fulfilment"; it also supports Article 27, which states that "The law grants the worker adequate protection against arbitrary dismissal." It gives the following interpretation: "It should be noted that the constitutionally protected content of the right to work involves two aspects: that of access to a job, on the one hand, and, on the other, the right not to be dismissed except for just cause. In the first case, the right to work implies the adoption by the State of a policy aimed at giving the population access to a job, although it must be specified that the satisfaction of this aspect implies a progressive development and according to the economic possibilities of the State. The second aspect deals with the right to work, understood as the prohibition of being dismissed except for just cause."

The Constitutional Court refers to the constitutional right to work in its two aspects, both as a duty and a right, the duty of the State to promote and procure work and the right of the citizen to have it, in this sense work constitutes the basis of social welfare and serves to promote moral, psychological, social of the person and at the same time guarantees the subsistence of the worker and that of his family; with regard to the protection of arbitrary dismissal, although it is true that it is a legislative novelty included in the 1993 Constitution, it refers only to the case of arbitrary dismissal, which would correspond to compensation of one and a half remunerations per month for up to 12 years; a fact that in one way or another would guarantee a certain protection contracts an arbitrary dismissal.

2. Ground 3.3.3 put forward by the Constitutional Court deserves attention when it states: "In this regard, this Court, in SSTC No. 032512012PA/TC, 009862003PA/TC and 09872003PA/TC, has established the following: "in accordance with Articles 44 and 47 of University Law 23733, the University may or may not hire a professor, for a certain period, without necessarily having to renew his contract, despite having been previously hired (...)". Likewise, in repeated pronouncements, it has maintained that since it has not been proven that said hiring has occurred as a result of a public merit-based competition, as required by Articles 46 and 48 of Law 23733, such contracts conclude at the end of the contractually agreed period (Cf. STC No. 033292005PA/TC, STC No. 018892003PA)"

The Constitutional Court has been basing its resolutions on Articles 44 and 47 of University Law No. 23733, without being able to give a correct interpretation to the provisions of Articles 44 and 47 of the University Law, thus we have that Article 44 of the repealed University Law said: "Article 44. University professors are: Ordinary, Extraordinary and Contracted. The Ordinary Professors are of the following categories: Principal, Associate and Assistant.

The Extraordinary Professors are: Emeritus, Honorary, Researchers and Visitors.

Contract Professors are those who provide services for a fixed term and under the conditions established by the respective contract.

Heads of Practice, Teaching or Laboratory Assistants and other similar forms of collaboration to the work of professor, carry out a preliminary activity to the teaching career. The time in which the function of Head of Practice is exercised is computed, for the person who obtains the category of Assistant Professor, as time of teaching services."

That is to say, in said Law there were clearly established three classes or categories of university professors: The Ordinary, the Extraordinary, and the Contracted, each one had its own labor regime, the ordinary professors could be Principal, Associate and Assistant, the Extraordinary Emeritus Honorary, Researchers and Visitors, and the Contracted professors are those who provide services for a fixed term and under the conditions set by the respective contract; that is, making an analysis of this categorization, it is necessary to analyze this categorization that only ORDINARY professors were those who were within the university career as professors, and to access it had to be reached through a public competition for that purpose.

The Constitutional Court has not considered the provisions of Article 46 of said Law, which reads: "Article 46. Admission to the teaching career, as an ordinary professor, is made by public merit competition and proof of teaching capacity or by competition, and in accordance with the guidelines established in this regard by the Statute of each University. Promotion, ratification or dismissal from teaching is carried out by personal evaluation, with a summons and hearing of the professor.

The respective Faculty and Department participate in these processes, and it is up to the former to formulate the proposal of the case to the University Council for its resolution." That is to say, the Law itself indicates that only for admission to the teaching career as an ordinary professor is done by public competition, contrario sensu, to be an extraordinary or contracted professor it is not necessary to submit to a public competition, the law clearly indicates this, in fact Article 54 of the repealed University Law indicated that the professors of private Universities are governed by the provisions of the Statute of the respective University, which establishes the rules for their admission to teaching, their evaluation and their promotion, also indicates that the rules of Chapter V of the professors are also applicable to them, with the exception of Article 52 paragraphs e and g and Article 53 which refers to the homologation of salaries with the magistrates of the Judicial Branch and other benefits of public servants, for their entry into teaching, their evaluation and promotion, also pointing out with crystal clarity that: "The labor legislation of the private activity determines the rights and benefits of said professors".

That is to say, the Constitutional Court, with the justification made, does nothing more than prove its ignorance not only of the University Law but of the different categories held by university professors, all the more so, if such enforcement is protected by Articles 44 and 47 of the repealed University Law.

3. In ground 3.3.4. the Constitutional Court states: "This being the case, it is important to emphasize that it cannot be affirmed that the provision of services as a professor at the defendant University has been distorted in accordance with the provisions of paragraphs a) and d) of article 77 of Supreme Decree No. 00397TR, taking into account that such cases of distortion are not applicable to such types of work, because, in accordance with Article 48 of the University Law,

the right to adequate protection against arbitrary dismissal consists of the prior administrative disciplinary procedure for the termination of the employment relationship, a right that assists ordinary, principal, associate or auxiliary professors of universities, a condition that they acquire only through public merit-based competition, a fact that the plaintiff has not proven in the record, so that it follows from Articles 46 and 47 of Law No. 23733, that he does not have the right to enjoy job stability. In addition, according to its statute, the defendant university "is a legal person under private law (...) it is governed by the Political Constitution, the University Law (...)".

The Constitutional Court's reasoning is erroneous because if it is held that university professors of private universities are governed by the Labor Law of private activity in terms of their rights and benefits, then it must be considered that the contracts signed by them, whether part-time or full-time, are contracts subject to modality under the rule of Supreme Decree No. 003-97-TR, moreover, it bases its argument on Article 48 of the University Law, which has nothing to do with the protection of arbitrary dismissal, referring to administrative proceedings, a fact that is not indicated in said article, on the contrary, Article 48 of the repealed University Law, indicates that Ordinary Professors, after evaluation, will be promoted within the teaching career, we must point out that it only refers to ordinary teachers, it does not refer to extraordinary or contracted teachers, a fact that per se completely distorts the meaning of the enforcement and that by not protecting the protected right violates the rights of the teacher; it is clear that the Constitutional Court is unaware of the functioning of universities, especially private universities, which are governed by their own statutes and the labor legislation of private activity as far as professors are concerned, which is why, with the argument it makes, it does not protect the right of the professor to be reinstated to his or her workplace because, the plaintiff professor is not within the scope of the teaching career, that is, he is not an ordinary teacher, he is only a professor hired under the protection of Supreme Decree No. 003-97-TR, therefore, the Court should have applied the protective principle, enshrined in article 26, paragraph 3 of the Political Constitution of the state, which prescribes the interpretation favorable to the worker in an insurmountable case on the meaning of a rule.

4. The considerations indicated by the Constitutional Court, in points 3.3.5. and 3.3.6, of the executory subject matter of this analysis, it is necessary that the Court, erroneously applying the University Law, indicates that it is not appropriate to order that the plaintiff be reinstated as a professor of the university summoned, pointing out that Article 22 of the Constitution is not being violated and what is even worse, despite the fact that the plaintiff has presented judgments of first and second instance within which the ordinary judiciary once the denaturalization of the employment contracts has been declared, the Court ignores it, since it has to be said that the ideal way to discuss the denaturalization is the ordinary way, and it is precisely within this route that the denaturalization has been ventilated and has been protected, but as the Constitutional Court says, the sentences are not final and have no value whatsoever.

The distortion of the employment contract arises for the reasons set forth in Article 77 of Supreme Decree No. 003-97-TR, and the plaintiff requests that his right be protected by invoking paragraphs a and d of the aforementioned numeral, which reads: "Article 77. Employment contracts subject to modality shall be considered as having an indefinite duration: a) If the worker continues to work after the expiration date of the stipulated period, or after the agreed extensions, if these exceed the maximum allowed limit; and d) When the worker demonstrates the existence of simulation or fraud to the rules established in this law", this being the case, the plaintiff requested protection from arbitrary dismissal on the grounds that his contract subject to

a part-time modality is distorted, since he began working on January 2, 2005 and was dismissed on January 31, 2011, that is, after 06 years, in addition to the fact that said professor as he has pointed out was not only dedicated to university teaching with a contract subject to part-time modality, but also carries out extracurricular activities such as being an advisor to the Legal Clinic of the Faculty of Law and Political Science of the university.

*STC No. 02107-2013-PA/TC, of July 18, 2014, amparo proceeding filed by Gilda Rosalynn, against the Andean University of Cusco, requesting that the unjustified dismissal to which she has been subjected be annulled.*

*Facts on which the amparo proceeding is based:*

1. On June 11, 2012, Gilda Rosalynn Escalante Zegarra, university professor, filed an application for amparo against the Andean University of Cusco, requesting that the unjustified dismissal to which she has been subjected be annulled; and requests, that his reinstatement as a professor of the Faculty of Health Sciences Academic Department of Stomatology be ordered.
2. The plaintiff also states that she entered the university on November 15, 2006, and that she worked at that study center until April 2, 2012, when she was dismissed without stating cause and that she signed a part-time contract, but that, nevertheless, she there was distortion and simulation because in reality she had an employment contract of indefinite duration, since she performed work of a permanent nature and that she has been dismissed in retaliation for having formed the Union of Contracted Workers of the Andean University of Cusco, and that her rights to work and freedom of association have been violated.
3. For its part, the defendant University proposes the exception of prescription and answers the claim stating that the plaintiff has worked under a partial employment contract, with a daily working day of less than four hours, so she did not enjoy job stability; that it cannot be alleged that the employment relationship of the university professors hired has been distorted, and that the university is not obliged to renew their contracts.
4. On August 13, 2012, the Specialized Constitutional and Contentious Administrative Court of Cusco declared the exception to the statute of limitations unfounded and, on September 27, 2012, declared the lawsuit unfounded, on the grounds that the plaintiff had been hired for academic semesters to work as a part-time teacher, under the regime of Law No. 23733. Therefore, when the term of her last employment contract expired, her employment relationship was automatically terminated, so she has not been dismissed.
5. The reviewing Chamber upheld the appellee, considering that the plaintiff has not been dismissed, but that her university teaching contract has ended and that the defendant university is not obliged to hire her for a new semester.

*Analysis of the considerations of the Constitutional Court:*

1. As can be seen from the executory, the "Court observes that on page 3 there is the proof of employment, from which it can be deduced that the plaintiff provided services to the defendant university, as contracted teaching staff, through part-time employment contracts. In this regard, it should be recalled that, in SSTC 986-2003-PAJTC and 0987-2003-PA/TC it was established that "in accordance with articles 44 and 47 of University Law 23733, the University may or may not hire a professor, for a specific period, without necessarily having to renew his contract, despite having been previously hired (...)". Likewise, the Court has held that since it has not been proven that said hiring has occurred as a result of a public merit-based competition, such

contracts conclude at the end of the contractually agreed period (Cf. STC 3329-2005-PA/TC and STC No. 01889-2003-PA/TC)".

2. The argumentative foundation of the Constitutional Court on this point is similar to the previous one, which tells us that they follow the same trend in relation to the treatment of the fundamental rights of university professors, that is, it tries to give a justification based on previous executions where they have developed the form of hiring of university professors based on articles 44 and 47 of the repealed Law 23733, However, as we have seen, Article 44 of the aforementioned Law does nothing more than categorize professors into ordinary, extraordinary and contracted professors, to put it another way in said article, the only professors who are within the university career as professors are ordinary professors, with their three categories, principal professor, associate professor and assistant professor, in order to enter said labor regime, as an ordinary professor, it must necessarily be done through a public competition as provided for in Article 46 of the aforementioned Law, clarifying that the law is clear in referring to admission to the teaching career as an ordinary professor; extraordinary professors, who are categorized as emeritus professors, honorary professors, research professors and visiting professors, are not within the teaching career, they can be contracted professors, guests, interns or whatever denomination you want to give them, they are simply not within the teaching career; likewise, the contracted professors are those who provide services for a fixed term and under the conditions set by the respective contract, it is understood that the contract of the professors of the public universities are totally different from the contracts of the private universities, the law does not make any discrimination in this regard, much less the Court, however we will say that Article 56 of the extinct law indicated that the professors of the private universities are governed by the provisions of the Statute of the respective University, which establishes the rules for their entry into teaching, their evaluation and promotion, and also clearly indicates that the labor legislation of the private activity will determine the rights and benefits of said professors. The repealed University Law was too clear when it referred to the employment regime of professors in private universities, towards a differentiation that the Constitutional Court never had the capacity to realize the substantial difference that exists between a professor at a public university and a professor at a private university, as well as a professor within the teaching career and a professor simply hired who is not within that teaching career.

3. The third ground of the enforcement indicates that the Court considers that it cannot be affirmed that the provision of services as a professor at the defendant University has been distorted in the terms of paragraphs a) and d) of Article 77 of Supreme Decree No. 003-97-TR, since such cases of distortion are not applicable to this type of work. In fact, according to Article 48 of the University Law, the right to adequate protection against arbitrary dismissal consists of the prior administrative disciplinary procedure for the termination of the employment relationship; a right that assists ordinary, principal, associate or auxiliary professors of universities; a condition that it acquires only through a public merit-based competition, a fact that the plaintiff has not proven in the record; once again, the Constitutional Court ignores the fundamental rights of university professors by pointing out that the fact that a university professor works for more than five years under the modality of a contract subject to a part-time modality, cannot be distorted despite the fact that education is the main activity of the University. however, professors hired part-time are maintained, the University Law repealed in no section indicated about part-time hiring, however, having been hired for more than five years merits the distortion of the contract not only because of the time elapsed or having worked after the expiration date, but also because of the simulation of the contract or fraud in it by trying to hire

a professor as it says the defendant for less than four hours a day to do a job of more than four hours a day such as university teaching, since not only the academic hours must be considered but also the hours that the hired professor requires for the preparation of classes, precisely because of the nature of the work, a fact that has not been considered at all by the court, on the contrary, he points out that he cannot affirm that the provision of services as a defendant of the defendant university has been distorted, and we ask ourselves why the principle of primacy of reality was not applied, declaring the application for amparo unfounded, to the detriment of the contracted university professor, who despite not being within the scope of Article 46 of the University Law, by not pretending to be an ordinary professor, but simply a contract under the regime of private activity, where undoubtedly his fundamental rights must be recognized as a worker dedicated to university teaching and not try to evade the protection of rights by adducing facts that do not correspond.

*STC No. 02124-2013-PA/TC, of January 30, 2014, amparo proceeding filed by Luis Emilio Peralta Pérez, against the Andean University of Cusco, requesting that the unjustified dismissal be annulled for having violated the right to work and the right to freedom of association.*

*Facts on which the amparo proceeding is based:*

1. On June 11, 2012, the plaintiff filed an application for amparo against the Andean University of Cusco, requesting that he be reinstated as a professor at the Faculty of Law and Political Science, for having violated his constitutional rights, to work and to freedom of association. He states that he began working at that university on November 15, 2006 as a teacher hired under the regime of contracts subject to a part-time modality and that he held that position for 5 years, 3 months, and 14 days until February 29, 2012, when he was arbitrarily dismissed. He maintains that he has performed permanent work as a teacher and that he has been dismissed for his trade union activities because he participated in the formation of the union of contract teachers workers (SINDOCUAC).
2. The defendant University deduces the exception of extinguishing prescription and answers the claim pointing out that the appellant is not an ordinary professor and that he has signed part-time employment contracts in respect of which it has not been proven that he has exceeded the contracted working day. He also states that the severance of the employment relationship was due to the termination of his last contract and that the distortion is not applicable to the cases of contracted university professors.
3. The Constitutional and Contentious Administrative Court of Cusco, on August 14, 2012, declared the proposed exception unfounded and, on September 27, 2012, declared the lawsuit unfounded, considering that the termination of the employment relationship occurred due to the expiration of the last employment contract. The reviewing Chamber confirmed the appealed on similar grounds, thus leaving the university professor who worked for more than 5 years unprotected.
4. The delimitation of the petition is focused on ordering the reinstatement of the plaintiff as a university professor of the Faculty of Law and Political Sciences, for having been the victim of an unjustified dismissal, alleging that his constitutional rights to work and freedom of association have been violated.
5. The facts on which the lawsuit is based are contradictory among themselves and it is precisely the ignorance of the Constitutional Court about the labor regime of university professors that leads to error, since the plaintiff nowhere in his lawsuit indicates that he is an ordinary professor,

on the contrary the plaintiff indicates that he has worked for more than 5 years as a teacher hired under the regime of contracts subject to a time-based modality partial, and not as an ordinary professor as the defendant maintains, that is, if we were to differentiate the categories of university professors as indicated in Article 44 of the extinct University Law No. 23733 Extraordinary and Contracted Ordinary Professors, we would know what rights these professors have in their corresponding categories, all the more so since said professor worked in a private university that is governed by the labor regime of private activity and the contracts that have been signed are part-time modal contracts, and of course if it is demonstrating that the contract subject to the modality of denaturalization has been contracted uninterruptedly for more than five years, a fact that the Constitutional Court has not observed, ignoring the fundamental rights of the university professor.

*Analysis of the considerations of the Constitutional Court:*

1. The Constitutional Court, as in almost all the judgments issued, related to the unjustified dismissal of university professors from private universities, refers to articles 22 and 27 of the Political Constitution of the State, that is, it points out that work is a duty and a right and that it is the basis of social well-being and the means of fulfillment of the person. as well as indicating that the law grants the worker adequate protection against arbitrary dismissal, stating in point 6. of said judgment the following: "In the present case, the controversy lies in determining whether the plaintiff's relationship was developed in the capacity of ordinary professor of the university summoned, in which case it was only appropriate to be dismissed through the administrative disciplinary procedure regulated in Article 48 of Law No. 23733 and in accordance with the statute of the university". In other words, for the Constitutional Court it is only interested in determining whether the teacher has carried out his activity as an ordinary teacher, only in this way would the violation of the right be determined, contrary to the law, if he is only a contracted teacher he would not have the right, something totally unjustified, since the employment relationship has been presented by the plaintiff himself when he indicates that he has been hired under a contract subject to a part-time modality, a fact that merits that he is not an ordinary professor, therefore it would not be his responsibility to apply Article 48 of University Law No. 23733, moreover, it would not be appropriate to apply Article 48 either, since the evaluation to which he refers is for the promotion of ordinary professors, that is, so that they are promoted in category or ratified in the position, it has no other purpose, it is not a disciplinary measure, therefore it cannot be pointed out that it is an administrative disciplinary procedure, since Article 48 does not refer to any type of disciplinary procedure, so the Constitutional Court does not recognize the fundamental rights of university professors hired in private universities.

2. In ground 7, the Court takes cognizance of the resolutions and part-time employment contracts, as well as the salary report issued by the University, which indicates that the plaintiff has provided services as a university professor at the Faculty of Law and Political Science of the Andean University of Cusco uninterruptedly from November 20, 2006 to February 29, 2012, that is, more than 06 years, sufficient reason for any contract subject to modality to be distorted; Since the plaintiff's employment regime as a contract teacher had been completed with crystal clarity, his fundamental rights should have been applied and protected within the labor regime of the private activity, in accordance with the provisions of Article 54 of the aforementioned University Law, since it is a private university.

3. On the other hand, the Court bases its argument on Article 47 of University Law No. 23733, emphasizing the second paragraph where it was stated that the professors hired are hired for a

maximum period of three years. At the end of this period, they have the right to compete, for the purposes of their admission to the teaching career, as ordinary professors, and in the event that such competition is not held, the contract may be renewed only once and for the same maximum period, after evaluation by the professor, that is, if the Court alludes to the second paragraph of Article 47, then it should have declared the claim well-founded. therefore, the contract referred to in said article is a minimum of three years renewable for the same period after evaluation, in the case file

It has to be said that the plaintiff has presented several part-time employment contracts, it has not been a part-time contract under the regime of public activity and in the renewals of said contract there has been no type of evaluation, therefore, the interpretation most favorable to the worker would be applied.

4. Likewise, the Constitutional Court, in arguments 9, 10 and 11 of the judgment, states that: In the present case, it can be seen that the hiring of the plaintiff was carried out within the corresponding regulatory scope to keep a teacher as a contract. On the other hand, it should be noted that the status of contracted professor does not generate an obligation for the university to renew the employment contract for subsequent periods, but that this is subject to the needs of the institution, as stipulated in its Statutes, with respect to contracted professors. Consequently, in view of the fact that the plaintiff was a contract professor and that he has not won, in accordance with Article 46 of Law No. 23733 and the statutes of the defendant university, a public merit-based competition in which he has been appointed ordinary professor, it must be concluded that the plaintiff has not acquired job stability and, therefore, reinstatement at work is not appropriate. With regard to the plaintiff's arguments regarding the distortion of the hours worked and the alleged union discrimination, it is necessary to point out that there is no evidence in the record to prove this, and moreover, as has been pointed out, to the extent that the plaintiff has not achieved job stability, the termination of the employment relationship occurred with the expiration of his last current contract. In this regard, we must point out that if the hiring of the professor was carried out within the corresponding regulatory scope to keep a contracted professor does not indicate the Statute of the university, then there is an antinomy of norms and the law of higher hierarchy should have been applied, moreover, no statute or regulation should be above the law or the constitution. Therefore, if the statute of the University indicates that the hired professor does not generate any obligation for the university to renew the contract, then the contract subject to a maximum modality should have been concluded within five years not exceeding six years, moreover, the fundamental rights of a contracted professor who has not entered the teaching career cannot be ignored. because to enter the teaching career in an ordinary capacity there is only one contract and that contract is for an indefinite term, there is not, or cannot be hired temporarily or partially, a professor who has competed as provided for in Article 46 of the Law, it is a matter of interpretation of the university law itself, a fact that the Constitutional Court, due to ignorance of the different categories existing in university teaching, has not known how to apply, confuses the facts because the ordinary teacher has another category as we have pointed out, the same one that is divided into principal, associate and auxiliary professors and the labor regime of the extraordinary professor, be it emeritus, honorary, researcher or visitor has no employment relationship whatsoever with the contracted professor who is justly hired under the regime of the labor law of private activity, because it is a private university.

*904 The Fundamental Rights of University Professors of Private  
STC No. 03251-2012-PA/TC, of December 14, 2012, amparo proceeding filed by Carlos Alberto  
Albújar Ramos, against the Universidad Particular de Chiclayo, requesting that the unjustified  
dismissal be annulled due to violation of the right to work, protection against arbitrary dismissal  
and due process.*

*Facts on which the amparo proceeding is based:*

1. Carlos Alberto Albújar Ramos, filed an amparo lawsuit on January 12, 2011, against the Universidad Particular de Chiclayo, requesting that the unjustified dismissal to which he has been subjected be declared inapplicable and without legal effect, and that consequently his reinstatement as a contracted teacher of the Jaén branch be ordered and that the payment of the costs and expenses of the process be ordered. He states that he joined the University on April 1, 2006 and that he worked as a contract professor until November 2, 2010, when he was arbitrarily dismissed, accumulating a work record of more than 4 years, 8 months, and 1 day; it states that he was initially hired to provide professional services from 1 April 2006 to 31 April 2008; that he subsequently signed a fixed-term employment contract, from May 5, 2008 to January 29, 2009, being hired again under the modality of professional services, from March 2, 2009 to November 2, 2010, and finally worked without a contract, from June to September 2010. He maintains that his relationship is of an employment nature because the civil contracts have been distorted, because the typical elements of the employment contract were configured, as well as the distortion of his modal contracts in application of the provisions of Article 77, paragraph d), of Supreme Decree No. 00397TR. He alleges violation of his constitutional rights to work, to adequate protection against arbitrary dismissal, and to due process.
2. For its part, the defendant University answers the lawsuit proposing an exception of lack of competence by reason of the subject matter and answers the lawsuit arguing that in application of the provisions of SSTC Nos. 067552008PA/TC, 033292005PA/TC and 18892003PA/TC, Supreme Decree No. 00397TR is applicable to the work of teachers. as well as University Law No. 23733, so that, since it has not been proven in the record that said hiring is the result of a public merit-based competition, as required by Articles 46 and 48 of Law No. 23733, the relationship with the plaintiff ended at the end of the period contractually agreed orally.
3. The Second Specialized Civil Court of Chiclayo, by resolution dated September 7, 2011, resolved to consider the claim unanswered, and on November 22, 2011, declared the claim unfounded on the grounds that in accordance with the provisions of STC No. 9862003PA/TC, the allegations related to the distortion of contracts for teaching work are applicable to both Supreme Decree No. 00397TR and University Law No. 23733, being that the University may or may not hire a professor, for a specific period, without necessarily having to renew his contract, despite having been previously hired, so that upon notice that the plaintiff has provided services for the defendant as a contracted professor, and that the aforementioned contracting has not been the product of a public tender, said contracts have been concluded at the end of the term agreed between the parties, so that said contracts have not been distorted.
4. The reviewing chamber, revoking the appellee, declares the claim inadmissible, considering that it is not appropriate to grant urgent protection, since a minimum standard of number of weekly hours worked is not met that allows determining the existence of an employment relationship, therefore, in order not to affect the right of the plaintiff, it is in a position to resort to the equally satisfactory way to elucidate the claim.

*Analysis of the considerations of the Constitutional Court*

1. The Constitutional Court, as on previous occasions in relation to the same issue, bases its recitals on Articles 22 and 27 of the Political Constitution of the State, that is, work as a duty and right and adequate protection against arbitrary dismissal, referring to the rights violated, a fact that is only stated as a basis but not applied as a fundamental right of the worker who requests them in his capacity as a contracted university professor, first through contracts of a civil nature, leasing of services and later contracted through contracts subject to modality, or also called fixed-term contracts.

2. It points out that, with respect to the date of dismissal of the plaintiff, it should be specified that, from what was stated by the appellant himself in his statement of claim, from what was implicitly accepted by the defendant University in its statement of defence and from the verification record of arbitrary dismissal dated 20 December 2010, It is clear that the plaintiff had September 24, 2010 as his last day of work and was dismissed on November 2, 2010. From the report of verification of arbitrary dismissal, from the pay slips and the certificate of teaching services, dated October 12, 2009, issued by the director of the summoned University, it is accredited that the plaintiff worked as a "contracted teacher", by virtue of contracts for the rental of services (which has been alleged by the plaintiff and has not been contradicted by the summoned University) from April 3, 2006 until the November 2, 2010, which were not distorted due to the fact that each of these contractual ties was terminated when its expiration date was reached, so it is appropriate to analyze the last contract entered into by both parties, that is, the verbal employment contract that the parties maintained from June to September 2010, which has been alleged by the plaintiff in his statement of claim and affirmed by the University summoned in the statement of the answer to the claim.

3. The Constitutional Court, with its own arguments, recognizes that the fundamental rights of the worker have been violated, by pointing out that the record of arbitrary dismissal has been verified, in addition to the existence of a verbal contract that has not been objected to by the defendant; The fact that there are contracts for the leasing of services and fixed-term contracts, we are automatically facing a distortion of the employment contract, since private universities cannot hire professors under the modality of leasing services, since no employment relationship would be generated, and consequently the permanence of the professor in the established schedules would not be guaranteed. because one of the differences that exists between lease contracts and fixed-term employment contracts is precisely the work schedules, in this case the schedules of classes; this being the case, it must be sufficient for the Constitutional Court to protect the fundamental rights of the worker as a university professor, as a contracted teacher, as the University itself has recognized; as we have indicated above, the University Law is clear in indicating the regime and category of university professors, where only ordinary professors enter through public competition or merit-based competition, extraordinary professors do not enter through any competition, they are generally invited and those hired who are non-ordinary professors and who can be hired for the need of service, or other reasons, so such hiring is not the rule, it is an exception. Likewise, the verbal contract is expressly indicated in Article 4 of Supreme Decree No. 003-97-TR, which states that: in all personal provision of remunerated and subordinate services, the existence of an employment contract for an indefinite term is presumed. The individual employment contract may be freely entered into for an indefinite period or subject to modality. The first may be entered into orally or in writing and the second in the cases and with the requirements established by this Law. Part-time contracts can also be entered into in writing without any limitation, i.e. if we are dealing with a verbal contract we are dealing with

a contract of an indeterminate nature, therefore, the Constitutional Court should have upheld the claim.

4. Another contradictory argument on the part of the Constitutional Court is the fact that it relies on constitutional executory measures to indicate that the University may or may not hire a professor, for a certain period, without having to renew the contract in accordance with Articles 44 and 47 of the University Law, a fact that does not make sense. and that demonstrates the ignorance on the part of the Constitutional Court in relation to the hiring of professors, since if a teacher is hired, through a contract subject to modality under the rule of labor legislation of the private activity, it is understood that he is a teacher who does not belong to the category of ordinary university professor, therefore he will never be part of the university teaching career, he will only be a contracted teacher.

5. The fifth basis of the recitals in relation to the application of Article 77 of Supreme Decree No. 003-97-TR, the Court, despite recognizing that there are contracts for the provision of services, has not distorted the contracts because it cannot be applied in merit of Article 48 of the University Law, which in reality has absolutely nothing to do with it because it is a contract professor, not an ordinary teacher.

*STC No. 00986-2003-AA/TC, of July 8, 2003, amparo proceeding brought by Víctor Segundo Roca Vargas, against the Order and Management Commission of the National University of San Martín, chaired by Arturo Leonardo Ruiz Chapillequen and others, in order to restore it to the state of affairs until the moment when the violation of his constitutional rights occurs. to work and due process.*

*Facts on which the amparo proceeding is based:*

1. The present amparo proceeding was filed by Víctor Segundo Roca Vargas against the Order and Management Commission of the National University of San Martín, represented by Arturo Leonardo Ruiz Chapillequén, Gerardo Alcántara Salazar and Armando Marcelino Cano Echevarría. The applicant requested the restoration of the state of affairs prior to the alleged violation of his fundamental rights, that is, his reinstatement as a university professor.

2. The relevant facts that motivate the claim are the following:

a) Previous contractual relationship with the university: The plaintiff states that since 1998 he had been working as a professor at the National University of San Martín.

(b) Non-renewal of contracts without justification: By Resolution No. 815-2002-UNSM/CO of 4 September 2002, the university decided not to renew its employment contract, without explaining the reasons for this decision.

c) Hiring of a third party without competition: He alleges that, in his place, Mario Maynetto Razetto was hired without holding a public competition, which, according to the plaintiff, would violate the legality and transparency that should govern the hiring of teachers.

d) Legal basis invoked by the plaintiff: Roca Vargas based his claim on Article 47 of University Law No. 23733, which states that contracted teachers have the right to participate in a competition to enter the ordinary teaching career once their three-year contract has ended. He also invoked the right to work, due process and defense.

(e) Failure to respond by the respondent: According to Resolution No. 4 of 9 October 2002, the Order and Management Commission did not respond to the complaint within the legal time limit.

(f) Decision of the Court of First Instance: The Mixed Court of San Martín, in a decision of October 21, 2002, declared the application unfounded, arguing that the plaintiff had not worked uninterruptedly and therefore did not apply Article 1 of Law No. 24041. In addition, it considered that neither the right claimed nor the violating act had been proven.

g) Confirmation in second instance: The Mixed Chamber of the Superior Court of Justice of San Martín upheld the appealed decision, considering that there was no violation of constitutional rights and that Law No. 24041 was not applicable to the case.

*Analysis of the considerations of the Constitutional Court*

In reviewing the extraordinary appeal filed by the appellant, the Constitutional Court (TC) confirms the judgment of the second instance that declared the amparo action unfounded. The TC's analysis is based on the following key fundamentals:

1. Nature of university teaching contracts: The Court begins by recalling that, according to University Law No. 23733, especially in its articles 44 and 47, universities may hire teachers for a maximum period of three years, without there being an obligation to renew these contracts. This rule is applicable even if the teacher has already been hired, as is the case with the plaintiff. This reasoning emphasizes the temporary and discretionary nature of the contractual relationship under the fixed-term contract modality, which does not guarantee employment continuity beyond the stipulated period.

2. Non-existence of a violated constitutional right: The Constitutional Court emphasizes that for an amparo action to be admissible, the plaintiff must demonstrate the existence of a constitutional right that has been violated or threatened. In this case, the violation of those rights was not reliably proven.

- The right to work, in its constitutional dimension, does not guarantee indefinite permanence in a job subject to a temporary contract.

- With regard to due process, there was no evidence of any irregularity in the non-renewal, since there is no legal obligation to justify the non-renewal of fixed-term contracts if it is within the permitted legal framework.

3. Impossibility of applying Law No. 24041: The Court also addresses the invocation of Article 1 of Law No. 24041, which protects public sector workers who have worked continuously for more than one year. However, both in the judicial instance and in the decision of the Constitutional Court, it is concluded that the plaintiff did not work uninterruptedly, which disqualifies the application of this protective rule. The aforementioned article only generates rights in contexts of labor continuity and stability, which has not been proven by the plaintiff.

4. Discretion in public procurement: The Constitutional Court stresses that in the public administration, and particularly in universities, there is a reasonable margin of discretion to hire teaching staff, respecting the legal requirements. Failure to renew the contract, without further ado, does not amount to arbitrary dismissal or violation of the right to work.

Likewise, the fact that another person has been hired without competition may constitute an administrative or ethical offense, but not a constitutional violation per se, unless there is evidence of discrimination, persecution or manifest arbitrariness, which has not been proven in this case.

5. Conclusion of the Constitutional Court: For all these reasons, the Constitutional Court rules by confirming the judgment of second instance, declaring the amparo action filed by Víctor Roca Vargas unfounded. It also provides for the notification of the parties, the publication in accordance with the law and the return of the proceedings.

The decision was adopted by the Second Chamber of the TC, made up of Justices Bardelli Lartirigoyen, Rey Terry and Revoredo Marsano.

### **Final Thoughts**

This case highlights the importance of differentiating between a legal or administrative disagreement and a violation of constitutional rights. Not every unfair or incorrect act from the labor point of view qualifies as an infringement of fundamental rights.

In addition, the process shows the relevance of university professors knowing the regulatory framework that regulates their contractual ties, and that they understand that the right to work is not absolute or unlimited, especially when it comes to fixed-term contracts. It also highlights the need for universities to guarantee transparency in their hiring processes, even if they are not legally obliged to renew temporary contracts.

Finally, the Court's analysis reinforces the constitutional doctrine that holds that amparo does not replace the ordinary mechanisms for discussing rights of a legal or administrative nature, unless the violation of a constitutional right is clearly verified. This principle is essential to preserve the function of the amparo process as an exceptional, speedy and effective way to protect fundamental rights, but not to resolve common disputes of a contractual labor nature.

*STC No. 00987-2003-AA/TC, of June 26, 2003, amparo proceeding brought by Teresa Liany Rivas Maqui, against the Order and Management Commission of the National University of San Martín, with the purpose of ordering the renewal of her contract as a professor in the Faculty of Education and Humanities for violation of her constitutional rights.*

*Facts on which the amparo proceeding is based:*

1. The present amparo proceeding was filed by Teresa Liany Rivas Maqui, who requested the renewal of her contract as a professor at the Faculty of Education and Humanities of the National University of San Martín. The appellant had worked at that institution from 8 April 1999 until the end of the 2002-I academic semester, that is to say, for more than three consecutive years.
2. The legal conflict arises when, after the expiration of your contract, the university does not renew your employment relationship. Faced with this situation, Professor Rivas Maqui filed an amparo action, arguing that the refusal to renew her contract violates her constitutional rights, especially her right to work and job stability.
3. The defendant, the Order and Management Commission of the National University of San Martín, alleges in its defense that the contractual relationship was for a fixed term, so that, when said contract expired, the employment relationship was automatically terminated. In other words, they deny the existence of an obligation to renew.
4. In the first instance, the Mixed Court of Tarapoto, in a judgment of October 30, 2002, declared the application for amparo to be well-founded, considering that the plaintiff had worked for more than one consecutive year, so that Law No. 24041 was applicable, which protects workers hired irregularly and grants them a certain stability.

5. However, this decision was revoked in the second instance by the Second Mixed Chamber of the Superior Court of Justice of San Martín, which declared the lawsuit unfounded. The argument was that the employment relationship had ended with the expiration of the contract, and the university was not obliged to renew it.

6. Faced with this refusal, Teresa Liany Rivas Maqui filed an extraordinary appeal before the Constitutional Court, requesting that the renewal of her teaching contract be ordered on the grounds that her fundamental rights had been violated.

#### Analysis of the considerations of the Constitutional Court

*The Constitutional Court, in analysing the merits of the case, structures its reasoning on the basis of the following legal criteria:*

1. Nature of the contractual relationship of the contracted university professor: The Tribunal starts from the regulatory framework established in University Law No. 23733, specifically in its articles 44 and 47, which regulate the regime for hiring professors:

- Article 44 establishes that contracted teachers are those who provide services for a fixed term, in accordance with the conditions set out in the respective contract.
- Article 47 states that the contract of a contracted teacher is for a maximum of 3 years, and at the expiration of the contract, the teacher may compete to access the ordinary teaching career. If the tender is not called, the contract may be renewed only once for the same period, after evaluation.

This means that university legislation recognises the possibility of renewing the contract, but does not make it a legal obligation for the university. The use of the verb "may" implies a discretionary power, and not a normative imposition.

2. Analysis of the alleged constitutional right: The Court considers that the violation of any constitutional right has not been proven. In other words, the university's refusal to renew the professor's contract does not constitute a constitutional violation, since the employment relationship was legitimately constituted as a fixed-term contract, and the termination of the same was due to the fulfillment of its natural term.

This implies that the right to work is not violated, as long as the termination of the employment relationship was the result of a valid and legally protected contractual provision.

3. Inapplicability of Law No. 24041: One of the key points of the lawsuit is the invocation of Law No. 24041, which protects public servants hired for more than one uninterrupted year, establishing that they cannot be dismissed if there is no duly proven just cause. This regulation seeks to prevent the fraudulent use of temporary contracts to evade job stability.

4. However, the Constitutional Court does not accept the application of this law to the specific case, since the plaintiff belongs to the special regime of public university teachers, which is regulated by its own specific legislation (University Law), which contemplates a regime of hiring and access to the career different from that of other public servants.

In this context, the Court points out that there is no acquired right to contract renewal, nor is the principle of equality or job stability violated if the provisions of the law applicable to university teachers are complied with.

## 5. Conclusion of the Constitutional Court

Based on the foregoing, the Court concludes that there has been no violation of constitutional rights that justifies the intervention of the amparo. Accordingly, it decides:

"CONFIRM the judgment that revoked the appellee and declared the amparo action UNFOUNDED."

This decision reaffirms the autonomy of universities to decide, in accordance with the law, whether or not to renew the contracts of their contracted teachers, without this constituting per se a violation of fundamental rights.

### Critical reflection and final comment

The ruling of the Constitutional Court in case 00987-2003-AA/TC shows the tension that exists between job stability and the principle of legality in administrative contracts, especially in the university environment.

On the one hand, the appellant professor based her claim on a legitimate expectation of continuity, having worked for several consecutive years. From a material labor justice perspective, it may be understandable that he feels affected by the lack of renewal.

However, the Court adopts a strictly normative interpretation, in accordance with the principle of legality. Although this may seem cold in terms of social justice, it has a clear legal basis: fixed-term contracts expire automatically and do not generate rights to renewal unless expressly provided.

The decision is also relevant because it delimits the scope of application of Law 24041, specifying that it is not automatically applicable to all public contracts, especially in special regimes such as the university one, where there are their own mechanisms for access to the career (such as competitions for ordinary positions).

This judgment therefore marks an important jurisprudential precedent to delimit the use of amparo in cases of non-renewal of public contracts subject to special legislation, and underlines the need for university professors to participate in public competitions if they wish to access stability as ordinary professors.

In summary, the Constitutional Court rules in accordance with the law and establishes that:

- The contract expired within its legal term.
- The university had no legal obligation to renew it.
- No violation of constitutional rights was proven.
- Law 24041 is not applicable to the regime of contracted university professors.

This makes the application for amparo unfounded in legal terms, despite the personal and labor implications that it may have had for the plaintiff teacher.

***STC No. 06755-2008-AA/TC, of June 16, 2011, amparo proceeding filed by Andrés Juan Pantoja Marín, against the Universidad Peruana Los Andes, the Rector of the Universidad Nacional San Agustín de Arequipa, requesting that the unjustified dismissal to which he has been subjected be annulled, which violates his fundamental rights.***

*Facts on which the amparo proceeding is based:*

1. Mr. Andrés Juan Pantoja Marín filed an application for amparo against the Universidad Peruana Los Andes, requesting that the unjustified dismissal to which he claims to have been subjected on March 23, 2007 be annulled. He also requests that his reinstatement be ordered in the position of Coordinator of Academic Affairs and Full-Time Professor, or in another similar position, with the same rights and prerogatives.
2. The plaintiff alleged that, although he was hired as a teacher, in practice his administrative tasks predominated, which would show that his contract had been distorted under the terms of Article 77 subsection a) of Supreme Decree No. 003-97-TR (Single Harmonized Text of the Law on Labor Productivity and Competitiveness). He added that his last contract expired on February 27, 2007, but that he continued to work without a contract until March 22 of that year, which would constitute a distorted employment relationship.
3. The Universidad Peruana Los Andes denied the assertions, indicating that the plaintiff sought to change the regime from contracted teacher to ordinary teacher, which can only occur through public competition, as established by the University Law (Law No. 23733). The university maintained that the contract was valid, since it was in accordance with its statute and regulations, and that the fact of working more than 40 hours, of which a part was administrative, did not distort the contractual relationship.
4. The Sixth Civil Court of Huancayo, in the first instance, declared the lawsuit well-founded, considering that there was an unjustified dismissal. The Second Mixed Chamber of the Superior Court of Justice of Junín revoked the decision and declared the lawsuit inadmissible, pointing out that the case should be heard through labor proceedings, not constitutional.

*Analysis of the considerations of the Constitutional Court*

1. The Constitutional Court (TC), in resolving the case, addressed several substantive points related to the nature of the employment relationship, the application of the University Law and the limits of the amparo process in labor matters.
2. The plaintiff asks for reinstatement in his position as coordinator and full-time teacher, basing his request on the alleged distortion of the contract for having continued work without a formal relationship after its expiration.
3. The Constitutional Court reviewed the contracts entered into between the plaintiff and the university from 2000 to 2007. It was evidenced that:
  - There were multiple fixed-term contracts and successive renewals.
  - The last contract was extended until 27 February 2007.
  - Subsequently, the plaintiff worked without a contract between February 28 and March 22, 2007, performing teaching and administrative functions.
4. The Court applied the doctrine developed in STC 0206-2005-PA/TC on the admissibility of amparo proceedings in private labor disputes, pointing out that these are only appropriate in obvious cases of violation of fundamental rights, such as unjustified dismissals.

It also invoked the criterion of STC 986-2003-PA/TC and 987-2003-PA/TC, where it was

established that the hiring of university professors under the University Law (23733) does not generate automatic stability and that the contracts entered into under this norm expire with the fulfillment of the agreed term, unless a public competition that grants the status of ordinary professor is accredited.

5. The Constitutional Court distinguished between two types of activities carried out by the plaintiff:

- Teaching work: carried out between 28 February and 10 March 2007. The TC pointed out that these cannot be considered distorted by the absence of public competition, as required by the University Law.
- Administrative tasks: carried out between 11 and 22 March 2007. The Constitutional Court held that these were distorted, since they were not regulated by the University Law, but by common labor legislation (D.S. 003-97-TR), thus constituting an unjustified dismissal with respect to said functions.

6. The ruling was divided. By majority (Beaumont, Calle and Urviola), the Constitutional Court resolved:

- To declare the claim for violation of the right to work to be FOUNDED in part.
- Order the reinstatement of the plaintiff in an equivalent administrative position, not a teaching one.
- To declare the claim UNFOUNDED in relation to the distortion of the teaching relationship.

7. Singular votes: There were two singular opinions of Judge Álvarez Miranda who sustains

- That the reinstatement of the plaintiff should not be ordered either as a teacher or as an administrative staff.
- It argued that the administrative functions performed by the plaintiff were linked to his teaching function, so there was no distortion.
- In his opinion, the application should be declared unfounded in its entirety.

And of Judge Urviola Hani

- Adhered to the majority vote of Justices Beaumont and Calle, supporting the decision to declare the lawsuit partially founded.

## **Discussion**

1. Differentiated denaturalization: The Constitutional Court recognized that not all functions have the same regulation. Administrative functions are not protected by the University Law, which allows the application of D.S. 003-97-TR and, therefore, declaring an unjustified dismissal. On the other hand, teaching functions do require public competition to acquire stability.

2. Reasoning that guarantees but is limited: The Court acted in accordance with its previous jurisprudence, protecting the right to work in its most obvious dimension (when there is a clear distortion of functions), but without going against the principle of merit and competition in the teaching function.

3. Importance of the correct process: The ruling also reaffirms that, although some labor issues are resolved through the ordinary labor process, when there is an affectation of obvious fundamental rights, such as the right to work in contexts of contractual informality, the amparo is appropriate.

4. Institutional impact: The case highlights the need for universities – even if they are private – to respect hiring standards, clearly differentiating teaching functions from administrative functions to avoid irregular situations.

### ***Presentation of the personal position***

The critical analysis of the jurisprudence of the Constitutional Court (TC) in relation to the employment contracts subject to the modality of university professors of private universities shows a worrying omission: the TC has not adequately distinguished the teaching categories established by the University Law (ordinary, extraordinary and contracted). It has erroneously generalized that the only way to obtain valid contracts is through public competition, even in the case of teachers hired under the private sector and with a fixed-term contractual relationship, subject to Legislative Decree No. 728 and Supreme Decree No. 003-97-TR.

From this perspective, I argue that the interpretation of the Constitutional Court distorts the applicable labor legal regime and generates legal uncertainty. Constitutional principles such as the primacy of reality, the inalienability of labor rights, interpretation favorable to the worker and effective judicial protection are violated. It is unacceptable that, under the pretext of not having accessed by competition, rights derived from a de facto, prolonged, continuous employment relationship with the provision of essential services for the university are disregarded.

### ***Proposal for the solution of the problem***

I propose a proposal structured on three levels:

#### **A. Normative:**

1. Legislative amendment: Include in University Law No. 30220 a special chapter that expressly regulates the labor regime of professors hired in private universities, establishing clear criteria for hiring, stability, contractual distortion and minimum inalienable rights.

2. Interpretative unification: Issue an interpretative law that reaffirms that professors hired from private universities are governed exclusively by the legislation of private activity (D.L. No. 728) and, therefore, have the right to protection against arbitrary dismissal and to the application of the figure of contractual distortion.

#### **B. Jurisprudence:**

1. Review of precedents of the Constitutional Court: Promote a binding precedent that recognizes the validity of fundamental labor rights also in the private university environment, respecting the distinction between ordinary and contract teachers.

2. Incorporation of the principle of primacy of reality as a binding constitutional criterion in university labour relations.

#### **C. Institutional:**

1. SUNEDU and MINEDU must issue binding directives that establish as a licensing

requirement the protection of minimum labor rights of contracted teachers, including objective criteria for contractual evaluation and control of abuse of modal contracting.

2. Creation of an Office of the Ombudsman for Private University Teachers, as an autonomous body within the Ministry of Education, to monitor compliance with the labor rights of private teachers and provide free legal advice in the event of arbitrary dismissals.

### ***Social impact of the implementation of the proposal***

The implementation of this proposal will have a significant social impact:

1. Dignification of the university professor:

- It revalues the work of teachers in the private sector, ensuring minimum working conditions and recognizing the contribution of those who teach under temporary ties.
- It strengthens the constitutional principle of work as the axis of human development, promoting emotional, economic and professional stability and well-being.

2. Legal certainty and reduction of conflict:

- By establishing clear rules on the validity and limits of fixed-term contracts, litigation is foreseen and effective judicial protection is facilitated.
- Predictability is granted to universities and balance in labor relations, promoting a culture of compliance.

3. Improvement of educational quality:

- Teachers with minimal stability and respected labor rights will be able to devote more time to research, innovation, and pedagogical improvement.
- SUNEDU, in its work of continuous supervision and supervision, may incorporate compliance with minimum labor standards for contracted university professors into its evaluation criteria. This measure could be implemented as part of the actions of continuous improvement and assurance of educational quality, in accordance with the current framework for the renewal of licensing and supervision.

4. Justice and equity:

- Structural discrimination between ordinary and contract teachers is corrected, guaranteeing the same fundamental rights to both when there is an effective employment relationship.
- The Social Rule of Law is reinforced by preventing private universities from using legal artifices to avoid labor obligations.

### **Conclusions**

1. The Constitutional Court does not adequately guarantee the fundamental rights of university professors hired under private universities.

Throughout the investigation, it has been shown that there is a repeated omission of the Constitutional Court when recognizing fundamental labor rights in contracts subject to modality, especially in the context of the regime of private activity regulated by Legislative Decree No. 728. This confirms the general hypothesis of the investigation: the Constitutional Court does not recognize, in its jurisprudence, the fundamental rights inherent to these contracts, despite being

protected by the Constitution.

2. There is an ambiguity in the constitutional interpretation in the face of the normative antinomy between the University Law and the general labor legislation.

The research has shown that the Constitutional Court applies, in a partial and even contradictory manner, the University Law as the exclusive source to determine the validity of teaching employment relationships, omitting the complementary application of Legislative Decree No. 728 and Legislative Decree No. 882. This conduct increases legal uncertainty and violates principles such as the primacy of reality and the inalienability of rights.

3. Fundamental labor rights, such as the right to stability, protection against arbitrary dismissal, and fair remuneration, must be respected in all validly constituted contracts, even if they are for a fixed term.

It has been shown that contracted university professors fulfill structural functions in academic activity, which is why it is unconstitutional to leave them unprotected by the mere absence of public competition. The essential content of their fundamental rights must be guaranteed in any type of legal-labor relationship.

4. The jurisprudence of the Constitutional Court shows a lack of uniformity and progressive development in the protection of private university teachers.

Through the analysis of the selected judgments, it is concluded that the Court has not established a clear jurisprudential line on the applicable labor regime nor has it adequately weighed the impact of its decisions on the right to quality higher education and university autonomy with labor content.

5. A regulatory and institutional reform is required to guarantee an effective protection of the labor rights of teachers in private universities.

The proposal presented in the corresponding chapter is a structural response that seeks to fill the legal vacuum identified, through clear legislation, specialized advocacy and state supervision with a guarantee approach. Its implementation will have a positive impact on the quality of education, labor dignity and legal security of the university sector.

6. Research fulfills its purpose by responding to the central problem and achieving the objectives set.

It has been possible to identify the fundamental rights involved, the existing protection deficit, the contradictions in the jurisprudence of the Constitutional Court and the bases for a comprehensive legal solution. The hypothesis has been confirmed at all levels: general and specific, consolidating a solid theoretical, doctrinal and jurisprudential framework on the labor regime of private university teachers.

## **Recommendations**

1. To the Congress of the Republic:

- It is recommended that an interpretative law be enacted that clearly establishes that employment contracts subject to modality in private universities are governed by Legislative Decree No. 728, even in the case of university professors. This law must ensure that access through public competition is not an exclusive requirement for the existence of fundamental labour rights.

2. To the Constitutional Court:

- It is recommended that the Constitutional Court, in its future decisions, uniformly and progressively apply the constitutional labor principles, especially the primacy of reality, effective protection of fundamental rights, and the pro-worker principle in cases involving university labor relations subject to modality.
- The Court is also urged to issue a binding precedent that clarifies the legal regime applicable to teachers hired in private universities.

3. To the Ministry of Education and SUNEDU:

- Incorporate, within the framework of the functions of supervision and continuous supervision, mechanisms that verify respect for the minimum labor rights of teachers hired in private universities.
- Issue specific directives that oblige private universities to adequately justify the use of fixed-term contracts and avoid their improper use as a mechanism for job insecurity.

4. To private universities:

- It is recommended to review and adapt their teacher hiring policies, eliminating practices that violate fundamental rights, such as unnecessary rotation or the non-arbitrary renewal of contracts.
- Implement internal offices for the defense of university professors, in order to prevent labor conflicts and guarantee internal complaint and appeal mechanisms, respecting due process.

5. To contracted university professors:

- They are recommended to organize as a union and systematically document their employment relationship, functions performed, schedules, payments and evaluations, as means of proof in case of future legal controversies.
- Promote strategic litigation with the accompaniment of labor rights organizations, in order to generate judicial precedents that strengthen its legal position.

6. To legal and academic researchers:

- Continue researching the labor regime of contracted university professors, especially from a focus on the constitutionalization of labor law and control of conventionality.
- It is recommended to develop lines of research compared with university systems in other countries, to support better standards of teacher protection in the framework of higher education.

## **Funding**

The implementation of the proposal entails costs mainly for the State and for private universities, but these are reasonable and compensated by the structural benefits it generates:

### **A. Costs to the State:**

1. Legislative and administrative:

- Drafting, debate and promulgation of complementary legal regulations (modifications to the University Law and issuance of interpretative law).

- Approximate cost: S/ 500,000 in technical and legislative operational processes.

## 2. Institutional functioning:

- Creation and maintenance of the Office of the Ombudsman for Private University Teachers:
- Minimum infrastructure, legal and administrative personnel.
- Estimated annual cost: S/ 1.2 million (in a decentralized headquarters).

## 3. Training and supervision:

- SUNEDU and MINEDU must update their technical equipment and carry out periodic audits in private universities.
- Approximate annual cost: S/ 800,000.

### **B. Costs for private universities:**

#### 1. Contractual adaptation:

- Evaluation and restructuring of current employment contracts to avoid distortion.
- Estimated cost per institution: S/ 20,000 to S/ 50,000, depending on the size of the university.

#### 2. Recognition of labor rights:

- Payment of retroactive labor benefits in case of lawsuits won by teachers.
- Eventual increase in annual labor costs of 10% to 15% for contracted teachers.

### **Benefits of the proposal**

The social, institutional and educational benefits of the proposal far outweigh the costs indicated:

#### **A. Social and legal benefits:**

##### 1. Strengthening of fundamental rights:

- Protection of decent work and recognition of the labor reality of contracted teachers.
- Promotion of the principle of equality and non-discrimination within the university community.

##### 2. Reduction of labor conflicts:

- Reduction of legal proceedings for arbitrary dismissal or contractual distortion.
- Generation of legal certainty for both teachers and universities.

#### **B. Educational and institutional benefits:**

##### 1. Improvement of educational quality:

- Teachers with stable conditions can better plan their teaching, research and participate in university life.

- Incentive for more qualified professionals to enter university teaching.

##### 2. Compliance with licensing standards:

- SUNEDU will be able to evaluate not only academic and infrastructural aspects, but also labor, [posthumanism.co.uk](http://posthumanism.co.uk)

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raising the standard of the Peruvian university system.

### 3. Revaluation of the teaching role:

- The image of the teacher as a pillar of the university and a transforming agent of society is strengthened.

- The principle of progressivity in social rights is guaranteed.

### **C. Institutional benefits:**

#### 1. Promotion of responsible universities:

- Private universities will be incentivized to meet higher ethical and legal standards.

- Promotes an institutional culture oriented towards university social responsibility.

#### 2. Strengthening the Rule of Law:

- Respect for legality, labour rights and judicial decisions for the benefit of the worker consolidate a democratic and fair system.

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