

Concerning your letter to Rafael Correa Delgado (Eco.), President of Ecuador, copied to me via email, allow me to make several clarifications regarding compulsory redundancies in our country.

At the beginning of your letter, you state that there have been "**arbitrary dismissals**" and that thousands of public sector workers have been dismissed "without **legal** administrative procedures, other than the implementation of Executive Decree 813 of 2011 and the application of the concept of compulsory redundancy (*renuncia obligatoria*)." On this point, allow me to inform you that the procedure for compulsory redundancy is not arbitrary but subject to analysis by the senior authority of each public institution and their work teams. You are probably not in receipt of all the information on the issue under discussion.

It is incorrect to state that there has been no legal administrative procedure. The legal basis for compulsory redundancy procedures is set out in section k) of article 47 of the Organic Public Service Law (LOSEP), under which all authorities are empowered to optimize their staff, independently of performance evaluation and voluntary redundancies, the latter procedures being set out in sections a) and i) of article 47 of the law. Allow me to provide you with an outline and an analysis of the relevant provisions of Ecuadorian labour law.

The Constitution of the Republic of Ecuador, approved by a majority of the Ecuadorian people, and published in Official Gazette No. 449 of 20 October 2008, establishes, in article 227, that the administration of public services shall be governed by the principles of effectiveness, efficiency, quality, hierarchy, devolution, decentralisation, coordination, participation, planning, transparency and evaluation.

The second paragraph of article 229 of the Constitution provides that the "law shall define the lead agency for human resources and salaries for the whole of the public sector and shall regulate recruitment, advancement, promotion, incentives, the disciplinary regime, security, the system of remuneration and termination of employment."

In accordance with article 229 of the Constitution of Ecuador, LOSEP was approved by the National Assembly and published in the Second Supplement to the Official Gazette No. 294 of 6 October 2010. Article 47 provides for the definitive termination of employment of public sector workers. Section k) of the said article provides for compulsory redundancies (*compra de renunciaciones con indemnización*), the procedure for which is established by the LOSEP General Regulations, as set out in Executive Decree No. 813, published in the Supplement to the Official Gazette No. 489 of 12 July 2011. The Executive therefore has the power to regulate and operationalise all laws in accordance with our Constitution and laws. The General Regulations provide that staff shall be compensated 100% in cash for this type of termination.

Second, referring to the procedure for compulsory redundancies, your letter

states that “these facts, Mr President, give us to understand that the political reform is having a serious impact on employment in the public sector, causing labour insecurity and violating the right to work of public sector employees.” On this matter, allow me to inform you that the number of workers made redundant so far is less than 2% of the total number of public sector workers, so your use of the words “serious impact” does not apply. Moreover, thanks to our government’s successful economic policy, the rate of unemployment in Ecuador stands at around 5.5%, the lowest rate in recent decades and one of the lowest in the world. In addition, our government appreciates it when public sector workers comply with their aims and objectives, and therefore, for the first time in history, they will be paid in accordance with variable pay scales based on performance, as provided for by LOSEP, introduced under the administration of Rafael Correa (Eco.).

On this point, you state that compulsory redundancies generate labour insecurity and violate the right to work. On this matter, I must inform you that Ecuadorian labour legislation does not mention the legal concept of job security (*inamovilidad laboral*). All public sector workers have the right to work, as set out in the Ecuadorian Constitution. However, they can be dismissed using one of the legally approved procedures, one of these being compulsory redundancy, through which they receive financial compensation. Ecuador has applied and continues to apply similar concepts, such as summary dismissal (*despido intempestivo*) as provided for in the Labour Code and the Organic Law on Public Sector Companies, which also provides for compensation to be paid for termination of employment. These concepts are legal and constitutional. Termination of employment is subject to financial compensation.

Third, you state that compulsory redundancies “are seriously affecting health services.” On this matter, it is important to clarify that, prior to the compulsory redundancy of health service employees, the working day was increased from four or six hours to eight hours in the largest hospitals, which practically doubled the provision of health care. The compulsory redundancy of approximately 110 doctors has, therefore, in no way affected the hospitals. Moreover, the impact is minimal, when it is considered we have approximately 7000 doctors.

Fourth, you state that the Ecuadorian state, in its role as employer, “is ignoring basic labour principles such as social dialogue, cooperation and negotiation.” Allow me to clarify that the Ecuadorian state observes all international treaties signed and ratified by our country. The national government has always been open to social dialogue, so much so that, as regards collective bargaining in the public sector, this government department has an “open-door” policy to social dialogue with the country’s labour sectors. We have had more than 300 working meetings in less than two years with leaders of trade unions and associations, which has resulted in our country enjoying a very low rate of labour disputes, unlike the huge expressions of dissatisfaction in other countries. In addition, allow me to inform you that the present administration has increased the number of trade unions approved by 300%, compared to other governments.

Fifth, your letter urges the President “to take the necessary corrective measures to make the Ecuadorian state a model employer.” Perhaps you are unaware that Ecuador has just awarded sizeable and historic pay rises to primary and

secondary school teachers, doubling their salaries in many cases and that public sector pay levels allow the state to compete with the private sector and recruit the most talented workers into public service. Public sector pay is currently comfortably higher than the unified basic wage in the private sector. All this is due to government policies that boost employment, not only in terms of quantity, but also in terms of quality.

We are currently implementing a profound and historic process of institutional restructuring, which involves: a) the physical transformation of institutions; b) the introduction of technological tools; c) reorganisation of administrative procedures so that public sector workers can carry out their duties in more dignified workplaces and improve services to citizens d) the optimization of human resources. The public sector now provides better pay, performance-related pay and dignified and attractive pensions that open the way for a younger generation to embark on a career in public service. As a result, the Ecuadorian state now has highly efficient institutions, such as the national postal service (Correos del Ecuador), the Civil Registry, railway company (Empresa de Ferrocarriles), customs (Aduanas del Ecuador) and the National Telecommunications Company (CNT). We want to have the best public services in Latin America and, why not, one of the best in the world, because citizens have a right to quality public services.

Finally, you call on the President to stop implementation of Executive Decree 813 as “its constitutionality is open to serious doubts.” Allow me to remind you that the institution responsible for deciding whether or not it is constitutional is the Constitutional Court of Ecuador, and a ruling is awaited. Meanwhile, no decision exists that determines the suspension of implementation of the law and its regulations.

Thank you for your suggestion that we promote a process of social dialogue “with international accompaniment” but you can be sure that Ecuador, as a sovereignty country, will decide the best way of conducting its internal business. As I have made clear, we are promoting social dialogue as never before. We, in government, are responsible for ensuring the welfare of the 14 million people that live in Ecuador. All Ecuadorians have the right to efficient public services, which is the fundamental basis for the development of any country, and we can never allow individual interests to triumph over collective interests.

Yours faithfully

Richard Espinosa Guzmán, B.A.
MINISTER OF LABOUR

Richard Espinosa Guzmán, B.A.
MINISTRO DE RELACIONES LABORALES



GOBIERNO NACIONAL DE
LA REPUBLICA DEL ECUADOR



Ministerio
de Relaciones
Laborales

- Av. República del Salvador N34-183 y Suiza
02 381 4000
- Salinas 1750 y Bogotá
02 256 3250 / 02 256 0370
- Clemente Ponce N15-59 y Piedrahíta
02 254 8900 / 02 254 2580