

REPORT No. 51/11
DECISION TO ARCHIVE
PETITION 12.155
PERU
March 23, 2011

ALLEGED VICTIM: Mirtha Andrea Santti Ali
PETITIONER: Mirtha Andrea Santti Ali
ALLEGED VIOLATIONS: Not stated
DATE PROCESSING BEGAN: May 26, 1999

I. POSITION OF THE PETITIONER

1. The petitioner and alleged victim said that she began working at the Geological, Mining and Metallurgical Institute (INGEMMET as in its Spanish acronym) on June 16, 1971, and was employed at that institution for more than 23 years. She said that on November 2, 1989, she joined the state pension scheme provided in Decree Law 20530. She claimed that on December 1, 1990, she was granted retirement and thereafter began to receive her pension on a regular basis in accordance with terms set down in the above decree law. She mentioned, however, that on March 29, 1993, INGEMMET issued resolution 034-93, which placed Ms. Mirtha Santti and other employees in a less favorable pension scheme.

2. The petitioner said that, having first exhausted administrative channels, she filed an action for *amparo* with the Specialized Court for Civil Matters in Lima, seeking her reinstatement in the scheme provided in Decree Law 20530. The petitioner said that on October 4, 1996, the action for *amparo* was admitted but the Pension Normalization Office lodged an appeal. According to the information furnished, on September 16, 1997, the Transitory Corporate Chamber Specialized in Public Law of the Superior Court of Justice of Lima accepted the appeal and rejected the action for *amparo*. According to information in the possession of the Commission, that decision was upheld by the Constitutional Court on August 13, 1998.

II. POSITION OF THE STATE

3. The State held that the Constitution of 1979, which was in force at the time of the events described in the petition, stipulated that workers who provided services to State-owned companies were not part of the civil service. The State said that in the time that she worked at INGEMMET the alleged victim was initially included in the public-sector employment scheme and then incorporated in the private-sector employment scheme, where she remained for more than 11 years. In those circumstances the State argued that when the petitioner was granted retirement, the time she served under both employment schemes was counted, which was forbidden under Article 14(b) of Decree Law 20530.

4. The State noted that the alleged victim has not stopped receiving her pension, but has been transferred to a new pension scheme because her inclusion in the Decree Law 20530 scheme was irregular. The State held that the petition was lodged after the deadline established in Article 46(1)(b) of the Convention and that the facts described do not raise a colorable claim of violation of rights under said instrument.

III. PROCESSING BY THE IACHR

5. The IACHR received the petition on February 1, 1999, and registered it as number 12.155. The petition was forwarded on May 26, 1999, to the State, which was given 90 days to respond,

in keeping with the IACHR Rules of Procedure then in force. On August 31, 1999, the State submitted its response and provided additional information on October 8, 1999, and March 16 and April 18, 2000. The petitioner, in turn, submitted additional briefs on June 25 and November 23, 1999; May 30 and August 30, 2000, and January 10, 2003.

6. On October 6, 2010, the IACHR requested updated information from the petitioner and advised her that if no response was forthcoming within a month, it could consider closing the record, in keeping with Article 48(1)(b) of the American Convention.

IV. BASIS FOR THE DECISION TO ARCHIVE

7. Both Article 48(1)(b) of the American Convention and Article 42(1) of the Rules of Procedure of the IACHR provide that at any time during the proceedings, after the information has been received, or after the period established has elapsed and the information has not been received, the IACHR shall ascertain whether the grounds for the petition still exist and, if they do not, shall order the record to be closed.

8. In the present case, the petitioner has not responded to the request for information made by the IACHR on October 6, 2010. Given that more than seven years have passed since the last communication from the petitioner, and since the available information is not sufficient to make a decision on the admissibility or inadmissibility of the complaint, the Commission hereby decides to archive it in accordance with Articles 48(1)(b) of the Convention and 42(1) of its Rules of Procedure.

Done and signed in the city of Washington, D.C., on the 23rd day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commission Members.