

REPORT No. 51/12
DECISION TO ARCHIVE
PETITION 904-98
PERU
March 20, 2012

ALLEGED VICTIMS: Members of the Association of Former Employees of the Social Security (Asociación de Ex-Empleados del Seguro Social—ASESSP)

PETITIONER: Association of Former Employees of the Social Security (ASESSP)

ALLEGED VIOLATIONS: Articles 1, 24 and 25 of the American Convention on Human Rights

DATE THE PROCEEDING STARTED: April 27, 2006

I. POSITION OF THE PETITIONER

1. The petitioner asserted that the alleged victims are former employees of the Peruvian Social Security Institute (Instituto Peruano de Seguridad Social—IPSS), whose pension system was governed by Decree Law No. 20530, with entitlement to a pension based on the salary scale of IPSS employees currently working. It indicated that, on July 23, 1992, the Executive Branch enacted Decree Law No. 25636, transferring the budget for paying the pensions of public sector retirees to the Ministry of Economy and Finance.

2. The petitioner asserted that, at the beginning of 1993, the Ministry of Economy and Finance notified IPSS that it did not have the resources to meet the stipulations provided for in Decree Law No. 25636. It indicated that, on the basis of this situation, the IPSS had not been able to bring pension payments for the alleged victims in line with the salary adjustments made for employees currently working in the IPSS.

3. The petitioner described proceedings filed on constitutional grounds and based on the failure to fulfill constitutional mandates to guarantee the right of the alleged victims to receive their retirement payments in line with pay raises as provided for in Decree Law No. 20530. According to information provided, the legal appeals were heard and ruled for the petitioners, but the Public Administration has not as yet implemented what the court has ordered.

II. POSITION OF THE STATE

4. The State argued that the facts spelled out in the initial petition of November 12, 1998 have changed substantially, because in a judgment made by the Constitutional Court on January 12, 2001, the pensioners of ESSALUD (formerly IPSS) covered under Decree Law No. 20530 “have been receiving retirement pensions in line with current salaries, because all of the payments they would have received had they continued to work were added, which amount was then compared with the earnings of a working public servant with the same pay grade.” The State added that “the IPSS or ESSALUD has no outstanding debt with the retirees under Decree Law No. 25636, because the rationalization process that started in 1992 never led to any failure to pay the pensioners any raise that might have been allocated to civil servants under government labor laws.”

5. Finally, the State claimed that the petition should be declared inadmissible in accordance with Article 47(b) of the Convention, because the facts that have been submitted do not tend to show a violation of rights provided for in the above-mentioned instrument.

III. PROCEEDINGS WITH THE IACHR

6. On November 12, 1998, the petition was received and registered under number 904-98. On January 27, 2006, IACHR requested up-to-date information from the petitioner, but did not receive any response. On March 8, 2006, at its 124th regular session, IACHR held a working meeting on various petitions alleging that the Peruvian State had not adjusted the retirement pension payments of former employees of public enterprises or decentralized government institutions in line with current pay scales, although the courts had issued final judgments for the petitioners. On that occasion, Mr. Alexander Bazán attended the working meeting on behalf of the Association of Former Employees of the Social Security Institute and the alleged victims of the present petition.

7. On April 27, 2006, the petition was forwarded to the State, which was granted two months to submit a response. On July 5, 2006, Peru submitted its response, which was then sent to the petitioner on July 14, 2006.

8. On June 2, 2011, the IACHR requested up-to-date information from the petitioner and indicated that, if it did not receive any reply within one month, it would be able to consider archiving the petition, in conformity with Article 48(1)(b) of the Convention.

IV. BASIS FOR THE DECISION TO ARCHIVE

9. Both Article 48(1)(b) of the American Convention on Human Rights and Article 42(1) of the Rules of Procedure of the IACHR provide, that, in the processing of a petition, once the information has been received or the time-limits have expired without the information being received, the IACHR shall verify whether or not there exist or subsist the grounds for the petition, and if these grounds do not exist or subsist, it shall order that the case file be archived.

10. In the present case, more than 13 years have elapsed since the initial petition was received, and since then the petitioner has not submitted any further documents. Despite the request for up-to-date information made on June 2, 2011, the petitioner has not sent any response. Under these circumstances, as available information is insufficient to take a decision on the petition's admissibility or inadmissibility, IACHR hereby decides to archive the present petition in conformity with Article 48(1)(b) of the American Convention and Article 42(1) of its Rules of Procedure.

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