

**REPORT No. 40/12**  
DECISION TO ARCHIVE  
PETITION 3226-02  
MARIA YAMILETH SCOTT HERNANDEZ  
COSTA RICA  
March 20, 2012

**ALLEGED VICTIM:** Maria Yamileth Scott Hernandez  
**PETITIONER:** Maria Yamileth Scott Hernandez  
**ALLEGED VIOLATIONS:** Article 5.1 of the American Convention on Human Rights  
**DATE PROCESSING BEGAN:** March 11, 2003

**I. POSITION OF THE PETITIONER**

1. On August 28, 2002, the Inter-American Commission on Human Rights received a complaint lodged by María Yamileth Scott Hernández on account of the alleged violation of the right to health and humane treatment by the State of Costa Rica.

2. The petitioner alleged that she was the victim of malpractice on the part of the Costa Rican Social Security Institution, because in 1996 she was discovered to have a surgical needle lodged in her pelvis, an anomaly she attributes to presumed negligence on the part of the medical team that operated on her in 1986.

**II. POSITION OF THE STATE**

3. The State requested that the petition be declared inadmissible because domestic remedies had not been exhausted.

**III. PROCESSING BY THE IACHR**

4. The petition was received by the Commission on August 28, 2002. On March 11, 2003, pursuant to Article 34 of its Rules of Procedure in force at that time, the Commission began processing the case and requested pertinent information from the State, to be provided within two months. The reply was received on July 7, 2004.

5. The State's reply was forwarded to the petitioner on August 3, 2004, with a request that she submit any observations she deemed pertinent. There was no reply from the petitioner. That request for comments made on August 3, 2004 was reiterated by the IACHR on April 06, 2010. The Commission also asked that she remit up to date information so as to enable it to evaluate whether the grounds for the petition subsisted. The petitioner was also told that if the information was not received within one month, the IACHR could archive the petition under Article 48.1.b of the American Convention on Human Rights and Article 42 of its Rules of Procedure. There was no reply from the petitioner.

**IV. BASIS FOR THE DECISION TO ARCHIVE**

6. Article 48.1 of the American Convention on Human Rights and Article 42 of the IACHR's Rules of Procedure establish that, before determining admissibility, the Inter-American Commission shall ascertain whether the grounds for the petition still exist or subsist and if it believes they do not, it shall order the case to be closed. Likewise, Article 42.1.b of its Rules of Procedure establishes that the IACHR may decide to archive a case when the information necessary for the adoption of a decision is unavailable.

7. Subsequent to the original complaint, dated August 28, 2002, the petitioner made no further allegations and presented no more information. Furthermore, she did not reply to the request by the IACHR on April 6, 2010 for further information. In that request, she was also advised of the possibility that the case would be closed.

8. Consequently, the Commission lacks the wherewithal for determining whether the grounds that gave rise to the original complaint subsist and for making a final decision regarding the alleged violation of human rights. Pursuant to Article 48.1.b of the Convention and Article 42 of its Rules of Procedure, it therefore decides to archive this petition.

Done and signed in the city of Washington, D.C., on the 20<sup>th</sup> day of the month 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 Antoine, Commissioners.