

REPORT No. 109/12
DECISION TO ARCHIVE
PETITION 575-01
PERU
November 8, 2012

ALLEGED VICTIM: Carlos Humberto Martel Garibay

PETITIONERS: Carlos Humberto Martel Garibay and APRODEH

VIOLATION ALLEGED: Article 25 of the American Convention on Human Rights

DATE ON WHICH THE PROCESSING OF THE PETITION BEGAN: May 9, 2002

I. POSITION OF THE PETITIONERS

1. The petitioners alleged that the Peruvian State violated the right to judicial protection to the detriment of Carlos Humberto Martel Garibay, who was a Colonel in the Peruvian National Police Force until March 27, 1991, when he was ordered into retirement. The petitioners are claiming that the alleged victim's right to judicial protection was violated when a court order that had become *res judicata* was not carried out and which they assert had ordered his reinstatement, recognition of his rank, and payment of all amounts to which he was entitled as an officer in the National Police Force.

II. POSITION OF THE STATE

2. The State argued that the petition should be declared inadmissible and the record closed on the grounds that it was manifestly unfounded, as the petitioners had failed to prove the alleged violation. It also observed that the Inter-American Commission on Human Rights (IACHR) was not a court of fourth instance for decisions adopted by domestic courts. The State requested that the IACHR close the record on the petition, as there had been no procedural activity of any kind for 8 years.

III. PROCESSING WITH THE IACHR

3. The IACHR received the petition on August 22, 2001. It was registered as number P-575-01. On May 9, 2002, the IACHR forwarded the complaint to the Peruvian State and gave it two months in which to submit its response, in keeping with the Commission's Rules of Procedure then in force. The State did not submit any response.

4. On November 8, 2004, the IACHR requested updated information from the petitioners, which was sent on December 20, 2004. On January 5, 2005, the IACHR received a communication from the petitioner. The State sent information on May 5, 2011, which was forwarded to the petitioner on June 2, 2011. The petitioner was advised that if no observations or updated information was received within one month, the Commission might order the record closed, in keeping with Article 48(1)(b) of the American Convention on Human Rights..

IV. GROUNDS FOR THE DECISION TO ARCHIVE

5. Both Article 48(1)(b) of the American Convention on Human Rights and Article 42(1) of the Commission's Rules of Procedure provide that during the processing of a petition, and after the information has been received or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, it shall order the record to be closed.

6. In the present case, more than 7 years have passed since the petitioner's last communication. Despite the Commission's June 2, 2011 request for the petitioner's observations, the latter has not sent any additional observations or information. Given that fact and since the information available is not sufficient to arrive at a decision on the petition's admissibility or inadmissibility, the IACHR decides to archive the petition, pursuant to 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 8th day of November 2012. (Signed): José de Jesús Orozco Henríquez, President; Felipe González; Second Vice-President, Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz and Rose-Marie Belle Antoine, Commission Members.