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REPORT No. 137/18
PETITION 1154-08
REPORT ON INADMISSIBILITY

LEONARDO LÓPEZ AMANCIO
PERU

Approved electronically by the Commission on November 20, 2018.

Cite as: IACHR, Report No 137/18., Petition 1154-08. Inadmissibility. Leonardo López Amancio. Peru. November 20, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Leonardo López Amancio
Alleged victim:	Leonardo López Amancio
Respondent State:	Peru ¹
Rights invoked:	Articles 11 (protection of honor and dignity), 17 (protection of the family), 21 (private property) and 24 (equality before the law) of the American Convention on Human Rights ² in relation to Article 1.1 (obligation to respect rights)

II. PROCEDURE BEFORE THE IACHR³

Filing of the petition:	August 22, 2008
Notification of the petition to the State:	April 15, 2014
State's first response:	July 16, 2014
Additional observations from the petitioner:	December 30, 2014; March 2, 2016; May 25 and 30, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of instrument on July 28, 1978)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, January 31, 2008
Timeliness of the petition:	No

V. ALLEGED FACTS

1. Mr. Leonardo López Amancio (hereinafter "the petitioner" or "Mr. López Amancio"), who retired as a commander from the National Police of Peru (hereinafter "the PNP", by the Spanish acronym) due to disability, alleges discrimination and violation of his right to private property in the context of the calculation of his compensation for length of service (CTS). He maintains that the PNP incorrectly under-assessed the compensation due to him for 42 years of service in the institution. He alleges that the erroneous calculation was made by the application of rules appropriate to the common public sector, omitting the rules that govern the police.

¹ Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in either the discussion or decision in the present case, in accordance with Article 17.2.a) of the IACHR's Rules of Procedure.

² Hereinafter "the Convention" or "the American Convention"

³ The observations submitted by each party were duly transmitted to the opposing party.

2. The petitioner indicates that on November 5, 1998, the PNP decided that he should take invalidity retirement due to his condition of total and permanent disability. He explains that, as of December 1, 1998, he obtained his retirement pension and that he subsequently requested the payment of compensation for length of service from the PNP's Office of Economy and Finance. He indicates that on October 26, 1999, the PNP ordered the payment of 1,215.90 new soles (approximately USD \$360 at the time). The petitioner alleges that the calculation was based on Supreme Decree No. 213-90-EF, which was never published in the Official Gazette.

3. He points out that on August 25, 2003, he filed an *amparo* with the Sixth Civil Chamber of the Superior Court of Justice of Lima against the Office of Economy and Finance of the PNP, based on the secret nature of Supreme Decree No. 213-90-EF. The petitioner states that on December 15, 2004, the Sixth Civil Chamber of the Superior Court accepted his claim, declaring the assessment null and void because it was based on a rule whose publication never existed. Additionally, the Sixth Chamber ordered that a new assessment be issued recognizing the corresponding length of service, without the application of Supreme Decree No. 213-90-EF.

4. The petitioner indicates that the 51st Civil Court of Lima, in fulfillment of the above decision, ordered the Department of Economy and Finance of the PNP to prepare a new assessment. On July 8, 2006, the PNP issued a new assessment on the basis of Law No. 25,224 (referring to compensation for length of service to the personnel appointed at the time of cessation) and Legislative Decree No. 276 (Law on Bases in Administrative Careers and Public Sector Pay). The petitioner explains that these rules establish that the calculation of the CTS must be made based on a "principal remuneration", set by law at 40.53 new soles (approximately USD \$12 at the time), multiplied by the years of service, up to a maximum of 30 years, resulting in a settlement of 1,215.90 new soles (approximately USD \$360 at the time). He alleges that, on becoming aware of the assessment, he submitted his observations to the 51st Civil Court of Lima requesting the preparation of a new calculation based on the Rules of Law No. 19,846 on Police Pensions. He states that, according to these Rules, calculation of compensation must be made based on the last pensionable remuneration obtained, which in his case was 1,657.48 new soles (approximately USD \$492 at the time), multiplied by the number of years of service, which in his case would amount to 69,614.16 new soles (approximately USD \$20,560 at the time).

5. He claims that on September 12, 2006, the 51st Civil Court held his observations to be groundless and approved the assessment, without considering that Law No. 25,224 expressly excludes public employees governed by their own regime, nor the obligation of the police authorities to apply Law No. 19,846. The petitioner states that he appealed to the Sixth Civil Chamber of the Superior Court of Justice of Lima, which on July 3, 2007 upheld the decision of the 51st Civil Court, finding that Law No. 19,846 does not apply to personnel who obtain a disability pension.

6. Mr. López Amancio indicates that he complained that the judge of the 51st Civil Court Lima failed to comply with the judgment of the Sixth Civil Chamber of the Superior Court and failed to approve the assessment. The petitioner states that on October 22, 2007, the Public Prosecutor's Office declared the complaint unfounded and ordered the matter to be archived. This decision was upheld on June 12, 2008, by the Supreme Public Prosecutor of Internal Control. Additionally, he states that he filed an action to have the decision of the judges of the Sixth Civil Chamber declared null and void before the Fourth Civil Chamber of the Superior Court of Justice of Lima, which, on July 11, 2012, declared his claim inadmissible. He indicates that he appealed this decision before the Constitutional and Social Law Chamber of the Supreme Court, which on August 8, 2013 upheld the inadmissibility of the claim. He claims to have filed an appeal against this decision for breach of his constitutional rights, which was declared inadmissible by the Constitutional Court on June 17, 2015.

7. For its part, the State alleges that the judicial proceedings initiated by Mr. López Amancio were conducted within a framework of due process and in full respect for the effective jurisdictional protection and that, therefore, the IACHR cannot become a court of fourth instance substituting the internal judicial authorities in the interpretation of the scope of the rules of procedural law and applicable matters.

The State maintains that the facts presented by the petitioner do not characterize a violation of the rights and obligations established in the American Convention.

8. In this regard, the State alleges that the regulatory provisions of Law No. 19,846 govern the situation of active police personnel who take permanent retirement, expressly excluding those who have attained more than 15 years of service and those who receive disability pensions. It points out that, therefore, the domestic courts applied Law No. 25,224 in the absence of any other provision governing the benefit requested by the petitioner. It concludes that the petitioner has applied to the IACHR as a fourth instance because he disagrees with the decisions of the national courts unfavorable to him.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. The petitioner alleges that he filed a series of *amparo* lawsuits to protect his right to property and equality before the law against the CTS assessments made by the PNP. He also notes that he filed legal actions against the judges who allegedly calculated his CTS incorrectly, the last of which was dismissed on June 17, 2015, by the Constitutional Court. The State, for its part, does not present arguments regarding exhaustion and deadline requirements for filing.

10. According to the information available, on August 25, 2003, the petitioner filed an application for *amparo* against the decision of the Office of Economy and Finance of the PNP that assessed the amount of his CTS, which was upheld by the Sixth Civil Chamber of the Superior Court of Justice of Lima ordering a new assessment to be made. On September 12, 2006, the 51st Civil Court of Lima approved a new assessment. The petitioner appealed this decision, which was rejected by the Sixth Civil Chamber on July 3, 2007. Based on the information available, the Commission concludes that the domestic remedies used to remedy the violation alleged by the petitioner before the IACHR were exhausted by this decision, in compliance with the requirement established in Article 46.1.a of the Convention.

11. Regarding the requirement of timeliness of filing, the Commission notes that the last judicial decision in the context of the remedies pursued against the assessment of CTS was issued on July 3, 2007. Although the parties do not indicate the date of its notification, from the copy of the judicial certification of service No. 03239-2006-0, it appears that the judgment was notified on January 31, 2008. Since the petition before the IACHR was received on August 22, 2008, that is 6 months and 22 days after the notification of the last judicial decision, the Commission concludes that it does not comply with the period of 6 months established in Article 46.1.b of the Convention.

12. After the decision of July 3, 2007, the Commission observes that the petitioner filed a series of complaints against the judge of the 51st Civil Court and the judges of the Sixth Civil Chamber, which were declared inadmissible, the last dated June 17, 2015. In this regard, the IACHR reiterates that the domestic remedies that must be taken into account for the purpose of exhaustion of domestic remedies are those capable of resolving the legal situation infringed.⁴ In this case, the Commission notes that the remedies filed after the July 3, 2007 ruling were of a disciplinary nature and had the purpose of imposing sanctions on the aforementioned judges. Consequently, had these remedies been resolved in favor of the alleged victim they would not have remedied the situation brought before the IACHR in connection with the erroneous assessment of his CTS.

VIII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

⁴ IACHR, Report N° 84/08 (Admissibility), Petition 40-03, Blas Valencia Campos and others, Bolivia, October 30, 2008, para. 53.

Approved by the Inter-American Commission on Human Rights on the 20th day of the month of November, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.