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REPORT No. 55/18
PETITION 354-08
REPORT ON ADMISSIBILITY

CARLOS ALBERTO MOYANO DIETRICH
PERU

Approved by the Commission at its session No. 2127 held on May 5, 2018.
168th Special Period of Sessions

Cite as: IACHR, Report No. 55/17, Petition 354-08. Admissibility. Carlos Alberto Moyano Dietrich. Peru. May 5, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Carlos Alberto Moyano Dietrich
Alleged victim:	Carlos Alberto Moyano Dietrich
Respondent State:	Peru ¹
Rights invoked:	Articles 11 (right to privacy), 21 (private property), 25 (judicial protection), and 26 (social, economic and cultural rights) of the American Convention on Human Rights ² regarding articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	March 26, 2008
Additional information received at the stage of initial review:	July 28, 2009; January 30 and August 19, 2014
Notification of the petition to the State:	August 26, 2016
State's first response:	November 28, 2016
Additional observations from the petitioner:	June 20, 2017
Additional observations from the State:	October 2, 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 (instrument deposit made 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	Articles 8 (fair trial), 21 (private property), 25 (judicial protection) and 26 (economic, social and cultural rights) of the American Convention in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, October 11, 2007
Timeliness of the petition:	Yes, March 26, 2008

¹In accordance with the provisions of Article 17.2.a of the Rules of Procedure of the Commission, Commissioner Francisco José Eguiguren Praeli, of Peruvian nationality, did not participate in the debate or in the decision of the present case.

²Hereinafter "Convention" or "American Convention."

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

V. ALLEGED FACTS

1. Carlos Alberto Moyano Dietrich (hereinafter "the alleged victim" or "the petitioner"), alleges that the Peruvian State violated, among others, his rights to property, honor, and judicial protection. He argues that while he was serving as a captain of the Civil Guard (current National Police), he was illegally and arbitrarily dismissed as a result of Law 24.294 of "Police Reorganization", denying him any type of compensation and pension.

2. The petitioner indicates that, following his admission to the Officer's School of the Civil Guard on April 1, 1968, on December 30, 1969, the "Police Statute" (Decree Law No. 18,081) came into force, which established in article 8 that the pensions are property of the police officer and that they could not be withdrawn except by judicial decision, establishing in article 39 a minimum of 7 years of service to obtain the pension. He notes that he also recognized in article 72 the conservation of acquired rights in labor matters. He adds that on January 1, 1973, Decree Law No. 19,846, referring to the economic rights of military and police personnel, went into effect, which increased the minimum number of years of service required to obtain a pension from 7 to 15.

3. He refers that on February 4, 1986, after 14 years of service, while he was performing his duties in the city of Iquitos, and without prior notice or administrative inquiry, he was removed from his post, without compensation or pension, by application of Law 24,294, which delegated to the Executive Power the ability to reorganize the Police Forces. It adds that on December 22, 1986, Law 24,617 came into force, which established that the resolutions adopted in the light of the Law of "Police Reorganization" would not be susceptible of administrative or judicial actions.

4. He alleges that his unforeseen, illegal and arbitrary dismissal was reported to him through the media, especially by the newspaper "El Peruano," a situation that would have impaired his image before public opinion, affecting his dignity and honor. He adds that the same day of his dismissal, he and his family, consisting of his wife, his two minor children and his mother were violently evicted from their home located inside a Police Villa. He argues that this situation affected them not only economically, but also psychologically and socially, because they had to reduce food, school and medication costs, and their quality of life being drastically reduced. It also indicates that his salary and medical coverage were immediately suspended.

5. He points out that on May 5, 2003, following the return of democracy, he applied for a renewable retirement pension before the head of the National Police officers' pension department, requesting that the exception of Supreme Decree No. 0072-85-IN/DM of November 14, 1985 be applied to him, which established that, by exception and only for pensionable purposes, personnel retired under the Law of "Police Reorganization" should be included in the grounds of "age limit". However, on December 26, 2003, the administrative body rejected the petition through Ministerial Resolution No. 1456-2004-IN/PNP, even though on September 1, 2003, the Police Ombudsman's Office had declared that the right was entitled constitutionally and legally to receive a renewable retirement pension. He refers to having appealed on January 13, 2004 before the Ministry of the internal affairs, which on July 26, 2004, rejected his request.

6. The petitioner alleges that, since he did not obtain a favorable response through administrative channels, he filed a remedy of *amparo* against the Ministry of the Internal Affairs on August 13, 2004 before the Sixty-fifth Civil Court of Lima, requesting the granting of a renewable retirement pension on the basis that Supreme Decree No. 0072-85-IN/DM and Decree Law No. 18,081 would apply to it, since the economic rights recognized therein are rights acquired under the Constitution. On April 15, 2005, the court declared the complaint well-founded, stating that if the petitioner's pension benefits were not granted, his constitutional right to equality would be violated. Against this judgment, the Ministry of the Internal Affairs appealed to the First Civil Chamber of the Superior Court of Lima that on January 23, 2006 revoked the sentence, declaring the complaint inadmissible, because the petitioner did not comply with the 15 years of service. For this reason, the petitioner filed an appeal for constitutional tort, which on August 14, 2006 was declared inadmissible by the Constitutional Court, considering that there was no violation of any right, based

on the same previous argument. The petitioner reports that the notification of the ruling was made on October 11, 2007.

7. In addition, the petitioner accompanies information on at least 30 cases of former police officers who, upon retirement, had the same amount of services as him and for whose benefit the judicial authorities would have declared Supreme Decree No. 0072-85-IN- DM. Therefore, he claims to have suffered discrimination in respect of persons who were in the same situation.

8. On its behalf, the State alleges that the petitioner did not exhaust domestic remedies and that the facts described do not constitute a violation of the rights guaranteed in the American Convention. Regarding the exhaustion of domestic remedies, it indicates that the petitioner should have gone to the ordinary proceedings, such as the administrative litigation process and, although he demands that the allegations suffered be repaired, he did not go to the indemnification process through civil lawsuits. In addition, it indicates that the rules on social security were duly applied and that he did not prove that the Political Constitution of Peru reflects the doctrine of acquired rights. The State refers, in a sense contrary to the one alleged by the petitioner, that the Constitution adopts the criterion of the facts fulfilled and not that of the acquired rights. Therefore, it requests that the petition be declared inadmissible in all its extremes.

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

9. The petitioner alleges that he filed administrative remedies and an *amparo* action through the judicial system, which concluded with the inadmissibility of the constitutional complaint filed before the Constitutional Court, whose decision was notified on October 11, 2007. The State on its behalf alleges that there was no exhaustion of domestic remedies since the petitioner did not appeal through the ordinary way in a contentious administrative proceeding and that he did not attempt to act through civil proceedings to obtain compensation.

10. The Commission reiterates that the requirement of exhaustion of domestic remedies does not imply that the alleged victims have an obligation to exhaust all available remedies at their disposal. In this regard, the Inter-American Commission has argued that "if the alleged victim raised the issue by any of the valid and adequate alternatives under domestic law and the State had the opportunity to remedy the matter in its jurisdiction, the purpose of the international rule is fulfilled."² In this case, the Commission observes, for the purposes of the admissibility analysis, that the alleged victim exhausted the administrative remedies and filed and exhausted in several instances the remedy of *amparo* to assert his claim to obtain a pension and, therefore, the petition meets the requirement established in Article 46.1.a of the Convention.

11. Regarding the deadline for submission, the petition was filed with the IACHR on March 26, 2008, and the remedies were exhausted on October 11, 2007, with the notification of inadmissibility of the constitutional tort claim, therefore, the Commission observes that the petition was submitted within a period of six months in compliance with the requirement established in Article 46.1.b of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

12. In view of the factual and legal elements presented by the parties and the nature of the matter brought to their attention, the IACHR considers that, if the alleged violation of pensionable rights and the consequent impairment of labor rights and the property of the alleged victim are proven, as well as the impossibility of acting against the Law of "Police Reorganization" and its consequences, could characterize violations to the rights protected in articles 8 (judicial guarantees), 21 (private property), 25 (protection judicial) and 26 (economic, social and cultural rights) of the American Convention, in light of Articles 6 (work), 7 (just, equitable, and satisfactory conditions of work) and 9 (social security) of the Additional

² IACHR, Report N° 70/04, Petition 667/01, Admissibility, Jesús Manuel Naranjo Cárdenas Et Al., Pensioners of The Venezuelan Aviation Company – Viasa, Venezuela, October 15, 2004, para 52.

Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. The possible violations will be analyzed in connection with the general obligations set forth in articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law) of the Convention.

13. Regarding the claim on the alleged violation of Article 11 (honor and dignity) of the American Convention, the Commission observes that the petitioners have not offered allegations or sufficient support to allow *prima facie* consideration of their possible violation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8, 21, 25 and 26 of the American Convention, in accordance with Articles 1.1 and 2 thereof; and
2. To find the instant petition inadmissible in relation to Article 11 of the Convention; and
3. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights in the city of Santo Domingo, Dominican Republic, on the 5th day of the month of May, 2018. (Signed): Margarete 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.