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REPORT No. 100/18
PETITION 770-08
REPORT ON ADMISSIBILITY

OSCAR FREDDY PIASTRE NÚÑEZ
URUGUAY

Approved by the Commission electronically on September 16, 2018.

Cite as: IACHR, Report No. 100/18, Petition 770-08. Admissibility. Oscar Freddy Piastre Núñez.
Uruguay. September 16, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Oscar Freddy Piastre Núñez ¹
Alleged victim:	Oscar Freddy Piastre Núñez
Respondent State:	Uruguay
Rights invoked:	Article 7 (Personal Liberty) of the American Convention on Human Rights; ² and another international instrument ³

II. PROCEDURE BEFORE THE IACHR⁴

Filing of the petition:	July 1, 2008
Additional information received at the stage of initial review:	August 28 and December 12, 2008; April 21, 2009 ⁵
Notification of the petition to the State:	September 24, 2012
State's first response:	November 26, 2012

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 ratification instrument on April 19, 1985)

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 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the Convention, in relation to Articles 1.1 (Obligation to Respect Rights) and 2 (Domestic Legal Effects) thereof
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, August 17, 2011
Timeliness of the petition:	Yes, July 1, 2008

¹ The petition was initially filed by Attorney Graciela Mendoza Casenave, who, by a communication dated July 13, 2009, informed the IACHR she withdrew from representation of Mr. Oscar Freddy Piastre Núñez. Mr. Piastre has since been a petitioner and alleged victim.

² Hereinafter "Convention" or "American Convention."

³ Article 9 of the International Covenant on Civil and Political Rights.

⁴ The observations submitted by each party were duly transmitted to the opposing party.

⁵ On October 13, 2015 and June 8, 2017 the petitioner requested information on the processing of the instant petition.

V. ALLEGED FACTS

1. Mr. Oscar Freddy Piastre Núñez (hereinafter “the petitioner,” “the alleged victim” or “Mr. Piastre”) claims that he, along with other people, was arrested and charged on August 17, 1999 for looting and kidnapping, aggravated criminal association, and receipt of stolen property. Subsequently, on September 21, 2007 Mr. Piastre was convicted by the Criminal Trial Court, First Rotation, of Rivera department, to sixteen years in prison, pretrial detention time deducted.

2. On September 27, 2007 his defense counsel appealed that judgment. His defense counsel submits that it was not until October 31, 2008 that she could file her allegations (grievances), which the petitioner believes constitutes an unwarranted delay in the processing of the recourse. He also claims an unwarranted delay in the whole development of the criminal proceeding.

3. Moreover, he reports that he was held in pretrial detention for an unreasonable and excessively long time because by the time the instant petition was filed to the IACHR, he had been in pretrial detention for almost nine years, as the case was pending final settlement. He indicates that his counsel presented, on June 16, 2008, a first request for his release from prison, allegedly unanswered; and another on December 2, 2008, dismissed by a lower court and appealed on December 10 that year. As of petitioner’s last communication (April 21, 2009) this appeal was still pending settlement. The petitioner alleges that once the reasonable time for the conclusion of proceeding is due, there is no reason for him to be held in prison.

4. He also claims that there were other irregularities in the proceeding, such as the facts that: (a) he was arrested in Brazilian territory, two kilometers from the Uruguayan border, and turned in to the police of Rivera department in Uruguay without the legal formalities, that is, without an extradition process under the current treaties between the two countries; (b) he was arrested without a national or international arrest warrant from a competent judge; and (c) the presiding judge did not consider the polygraph test results as part of the evidence—although these benefitted him and the test had been paid for by Mr. Piastre himself. Furthermore, he submits, in general terms, that on December 12, 2008 he was sent to a maximum-security prison, in a department far from his domicile.

5. For its part, the State recognizes that the alleged victim presented his claims on the merits through an appeal on October 31, 2008. However, it submits that the alleged unwarranted delay in the proceeding was partly due to the difficulties found in notifying the conviction to the rest of the defendants in the case, and to the fact that Mr. Piastre’s counsel filed, on March 11, 2008, an application for the annulment of the proceedings, which was rejected by the presiding judge on March 28, 2008. Likewise, the State indicates that on November 26, 2009 the Criminal Court of Appeals, First Rotation, upheld the conviction. It claims that the petitioner’s defense counsel filed an appeal later dismissed by the Supreme Court of Justice by decision no. 3030/2411 of August 17, 2011.

6. Moreover, the State indicates that the petitioner’s defense counsel contested his detention through an appeal for legal protection that was rejected twice; and that she presented a constitutional appeal against the legal rules applied to the criminal proceeding held against Mr. Piastre, also dismissed. Finally, it submits that, based on the calculation of his imprisonment period, Mr. Piastre would finish serving punishment on August 17, 2015.

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

7. According to the information submitted by the parties, Mr. Piastre was arrested on August 17, 1999, sentenced to sixteen years in prison on September 21, 2007, a judgment upheld by a court of appeals on November 26, 2009, and by a court of cassation on August 17, 2011. Likewise, the petitioner claims that he applied for his release from prison twice in 2008, and the State reports that Mr. Piastre’s release was requested through an appeal for legal protection that was rejected twice. Therefore, the Commission observes that the parties do not controvert the facts that Mr. Piastre judicially challenged the excessively long pretrial detention time, that his release was denied by the corresponding criminal courts,

and that the criminal proceeding has concluded. In view of these facts, the Commission finds that the instant petition meets the requirement in Article 46.1.a of the American Convention.

8. The Commission also observes that judgment No. 3030/2411 from the Supreme Court of Justice was issued on August 17, 2011 and that this petition was received at the IACHR on July 1, 2008. Thus, this petition meets the requirement of timely presentation established in Article 46.1.b of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

9. In view of the elements of fact and law presented by the parties, and the nature of the matter brought to its attention, the Commission believes that, if proven, the allegations concerning the excessively long time in pretrial detention, the unwarranted delay in the criminal proceeding, and the violations of due process all could tend to establish violations of the rights enshrined in Articles 7 (Personal Liberty), 8 (Fair Trial) and 25 (Judicial Protection) of the American Convention, in accordance with Articles 1.1 and 2 thereof, to the detriment of Mr. Oscar Freddy Piastre Núñez.

10. Additionally, as for article 9 of the International Covenant on Civil and Political Rights, invoked by the petitioner, the Commission is not entitled to determine violations of the rules thereof; nevertheless, in the merits stage of this case, it may consider said instrument for the purpose of interpreting the rules of the American Convention under the terms of Article 29 of the Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 7, 8 and 25 of the American Convention, in connection with Articles 1.1 and 2 thereof; and

2. 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 on the 16th day of the month of September, 2018. (Signed):
Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.