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**REPORT No. 208/20**  
**PETITION 1006-11**  
REPORT ON ADMISSIBILITY

OSCAR DANILO SANTOS GALEAS  
HONDURAS

Approved by the Commission electronically on August 5, 2020.

**Cite as:** IACHR, Report No. 208/20, Petition 1006-11. Admissibility. Oscar Danilo Santos Galeas. Honduras. August 5, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Bertha Oliva, Oscar Danilo Santos Galeas y Patricia Molina
<b>Alleged victim:</b>	Oscar Danilo Santos Galeas
<b>Respondent State:</b>	Honduras
<b>Rights invoked:</b>	Articles 7 (personal liberty), 8 (fair trial), 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights <sup>1</sup> , in relation to its Article 1.1 (obligation to respect rights)

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

<b>Date of receipt</b>	July 29, 2011
<b>Notification of the petition to the State:</b>	December 15, 2015
<b>Additional observations from the State</b>	November 11, 2019
<b>State's first response:</b>	March 16, 2016
<b>Additional observations from the petitioners</b>	April 15, 2019
<b>Additional information received during the investigative stage:</b>	August 3, 2011, November 10, 2011, November 30, 2011 and March 7, 2012

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of instrument made on September 8, 1977)

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 7 (personal liberty), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights, in relation to its Article 1.1 (obligation to respect rights)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, Article 46.2.c) of the Convention applies.
<b>Timeliness of the petition:</b>	Yes, in the terms of section VI

<sup>1</sup> Hereinafter "the American Convention" or "the Convention".

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. The petitioners allege that the Honduran State has violated the rights of Mr. Oscar Danilo Santos Galeas to personal liberty, equality before the law, judicial guarantees and judicial protection, in the context of a criminal process that was excessively prolonged; and in which he was subjected to preventive detention and other precautionary measures in contravention of the American Convention.

2. The petitioners state that on November 8, 2007, the Public Ministry requested a prosecution against Mr. Santos for the alleged crime of breach and revelation of secrets, and abuse of authority in his capacity as a public official- the petitioners do not indicate their office or in which institution they worked for- and granted substitute measures to preventive detention, which consisted of not leaving the country and signing each week, and then each month, an assistance book before the Criminal Court of Letters of the Judicial Section of Tegucigalpa. The alleged victim complied with these measures from November 14, 2007 to July 2, 2009.

3. On July 1, 2009, the Public Ministry presented a new fiscal request with a request for an arrest warrant, which, in effect, was issued by the Criminal Court of First Instance of the Tegucigalpa Judicial Section. In view of the arrest warrant, Mr. Santos filed a letter of voluntary presentation before said court, in order to receive a substitute measure different from preventive detention. However, his request was rejected, and the preventive detention order remained in force, which he would have been forced to breach due to the coup d'état carried out in Honduras in those days. Mr. Santos was a former public official and as such considered it risky to turn himself in to the authorities amid the general climate of persecution against those who had been part of the deposed administration.

4. Subsequently, on May 10, 2010, Mr. Santos voluntarily appeared before the Criminal Court of First Instance of the Judicial Section of Tegucigalpa, to hear the new fiscal requirement for new crimes - the petitioners do not indicate which crimes - and the court granted the alternative measures to preventive detention. However, the Public Ministry appealed this decision before the Francisco Morazán First Court of Appeals, which on June 17, 2010 revoked the alternative measures and ordered preventive detention. Consequently, Mr. Santos was arrested on September 13, 2010; and, according to the petitioners, he was unable to oppose his arrest because it was applied the special procedure that provides that modifying a precautionary measure will not be notified. Even so, on September 2, 2010, Mr. Santos filed a constitutional writ before the Supreme Court of Justice, against the decision of the First Court of Appeals of Francisco Morazán. The petitioners indicate, in their communication to the IACHR of March 7, 2012, that at this time this action had not yet been resolved, when in principle it should be an expedited remedy. In subsequent communications they do not mention what would have been the result of this constitutional writ.

5. The petitioners indicate that in November 2010, Mr. Santos requested the review of the preventive detention measure before the Tegucigalpa Sentencing Court; however, this established as a condition for the application of other alternative measures, the payment of three million lempiras (approximately USD \$ 158,000.00 to date), an impossible figure for the alleged victim. The parents of the alleged victim proposed two real estates as a mortgage guarantee, and even COFADEH offered as guarantor of Mr. Santos' presentation of the process; however, both proposals were rejected by the Tegucigalpa Sentencing Court. In June 2011, the second hearing for the review of precautionary measures imposed on Mr. Santos was held. His defense again offered the presentation of mortgage guarantees, but this request was also denied by the Tegucigalpa Sentencing Court.

6. On June 23, 2011, Mr. Santos filed an appeal with the Francisco Morazán Criminal Court of Appeals for the imposition of preventive detention, a ruling that should have been resolved within three days of receiving the proceedings; however, as the Tegucigalpa Sentencing Court forwarded it on September 16, 2011, the process was resolved in February 2012. In its decision, the second instance court ordered that a review hearing on precautionary measures be held again, but it was not ruled on the provenance of other alternative measures. On October 2, the Tegucigalpa Sentencing Court ordered the release of Mr. Santos, in response to the two years that the law establishes as the maximum term of preventive detention, and granted him periodic appearance before the competent court.

7. The petitioners, in their communication of May 2018, indicate that Mr. Santos continues to comply with the alternative measures imposed, a fact that, according to what they allege, has affected his economic situation and that of his family. The petitioners further allege that there was inequality in the application of justice because two other co-defendants in the same criminal case were never deprived of their liberty. They maintain that the Tegucigalpa Sentencing Court was silent regarding the evidence presented for the bond, denying the mortgage guarantee; and they maintain that there was no judicial independence in the process because it was the same Tegucigalpa Sentencing Court that issued the resolution of the first hearing and the second. They further argue that the Public Ministry has done everything possible to hinder the process, delaying communications, presenting incomplete information, omitting information, among other delaying maneuvers.

8. Regarding the exhaustion of domestic remedies, the petitioners essentially allege that the criminal proceeding against the alleged victim has not yet concluded, and that as such an exception to the conventional requirement of exhaustion of domestic remedies is applicable. They also highlight that they presented the pertinent resources against the application of the preventive prison imposed on the alleged victim. They indicate that they did not receive a timely response to the constitutional writ filed on September 2, 2010; and that they also presented and exhausted all avenues to request the application of a measure other than preventive detention, holding three hearings for this purpose.

9. The State, for its part, maintains that the Court of Judgment with National Territorial Jurisdiction in Criminal Matters of Tegucigalpa is currently awaiting resolution of the judicial proceedings in the case against Mr. Santos for his alleged responsibility for twenty-one crimes for revelation of secrets aggravated. Regarding the right to personal liberty, the State indicates that since October 2, 2012, Mr. Santos obtained the benefit of the alternative measures of preventive detention. And that when the criminal case is pending resolution, it is shown that due process and judicial guarantees have not been violated because the alleged victim has the possibility of participating in the process. It adds that the proceedings were suspended before the court because the Public Ministry requested the rescheduling of the oral and public trial on April 4, 2016, and that the Special Prosecutor's Office for Organized Crime should restart the process because the case was sent to him on November 2, 2016. Thus, it argues that the petition does not meet the requirement of exhaustion of domestic remedies in Article 46.1.a) of the American Convention.

10. In its last communication of November 11, 2019, the State indicates that the November 2007 process described is still ongoing. In addition, it briefly mentions that Mr. Oscar Danilo Santos Galeas was convicted, in another process, of the crime of bribery on January 25, 2016. In this process, the sentence of deprivation of liberty was commuted thanks to the payment of 18,250 Lempiras (the equivalent of USD \$. 8,111.00). In addition, he was temporarily disqualified from holding public office until August 24, 2020 and for practicing law until August 24, 2025.

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

11. In the instant case, the Commission observes that the petitioners fundamentally allege the violation of the right to be tried within a reasonable time and the application of preventive detention to the detriment of the alleged victim in contravention of the standards of the Inter-American System. In this regard, they argue that the criminal proceeding they denounce are still pending, and therefore the exception of unjustified delay in the resolution of domestic remedies, established in Article 46.2.c) of the Convention, is applicable; and with regard to preventive detention, all pertinent remedies were exhausted. The State, for its part, questions the exhaustion of domestic remedies, precisely on the basis that said criminal proceeding would continue.

12. In light of these considerations, and after analyzing the information provided by the parties, the Inter-American Commission observes that the criminal proceeding against Mr. Oscar Danilo Santos Galeas - which is the subject of this petition - began in 2007; and that, according to the information available at the time of this report provided by the parties, it would continue in progress until the present, twelve years past. Furthermore, the date of the oral and public trial would not even have been defined. In this sense, the

Commission considers the exception of unwarranted delay in the resolution of domestic judicial remedies established in Article 46.2.c) of the American Convention to be applicable. Likewise, if it is taken into account that the process started in 2007; that the petition was filed in 2011; that the petitioners have remained active by internally litigating different aspects of this process, such as the cessation of the preventive detention of the alleged victim; and the procedural weight of being subjected to an unfinished criminal process remains to date, the Commission also considers that the presentation requirement is met within a reasonable period of time established in Article 32.2 of the Inter-American Commission's Regulations.

13. On the other hand, regarding the application of preventive detention as a measure to ensure the appearance of the alleged victim in the process, the Commission observes that, in effect, the petitioners presented various requests and means of defense, including the filing of a constitutional writ, in order to cease pre-trial detention of Mr. Santos. Which, despite these legal remedies, lasted up to the maximum of two years allowed by law.

## VII. ANALYSIS OF CHARACTERIZATION OF THE ALLEGED FACTS

14. The present petition fundamentally includes allegations regarding the excessive duration of a criminal process, in violation of the right to be tried within a reasonable period of time; and the application of the most severe precautionary measure that can be applied to an accused, in violation of the alleged victim's right to personal liberty. In the present case, elements are provided that show that the alleged victim was materially deprived of his personal liberty preventively by the maximum established in the law, and that the decision to keep him under this measure was unreasonably prolonged because the authorities had arbitrarily denied any possibility of applying a less rigorous alternative measure, since the Tegucigalpa Sentencing Court did not accept as a guarantee the bond offered by Mr. Santos' parents nor accepted that COFADEH was guarantor.

15. Furthermore, the Commission observes that neither the State nor the petitioner presented updated information on the constitutional writ filed, and whether the alleged victim continues with alternative measures that restrict his personal freedom. In light of these considerations, and after examining the factual and legal elements presented by the parties, the Commission observes that the facts denounced in the present petition are not manifestly unfounded and could constitute violations of Articles 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its Article 1.1, to the detriment of Mr. Oscar Danilo Santos Galeas.

16. In light of the claim regarding the alleged violation of Article 24 (equality before the law) of the American Convention, the Commission observes that the petitioners have not offered allegations or sufficient support that would make it possible to consider their possible violation *prima facie*. Likewise, it reiterates that the purpose of this petition is solely that related to the criminal proceeding against the alleged victim for the alleged crime of aggravated violation of secrets; and that, on the other hand, the process also followed against Mr. Santos for bribery, mentioned by the State, is not part of the factual basis of the instant case.

## VIII. DECISION

1. To declare the present petition admissible in relation to Articles 7, 8 and 25 of the Convention in relation to its Article 1.1; and
2. To declare the present petition inadmissible in relation to Article 24 of the Convention; and
3. Notify the parties of this decision; continue with the analysis of the merits of the matter; and 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 on the 5<sup>th</sup> day of the month of August, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.