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REPORT No. 138/17
PETITION 642-08
REPORT ON ADMISSIBILITY

JULIO CÉSAR ROTELA AND ALBERTO ENRIQUE BAEZ
ARGENTINA

Approved by the Commission at its session No. 2104 held on October 26, 2017.
165th Special Period of Sessions.

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I. INFORMATION ON THE PETITION

Petitioner:	Federal Office of Public Defender
Presunta víctima:	Julio César Rotela and Alberto Enrique Baez
Respondent State:	Argentina
Rights invoked:	Articles 7 (personal liberty) and 8 (judicial guarantees) of the American Convention on Human Rights ¹ ; Article XXV (protection from arbitrary arrest) of the American Declaration of the Rights and Duties of Man ² ; and other international treaty. ³

II. PROCESSING BEFORE THE IACHR⁴

Date petition filed:	May 28, 2008
Additional information received during the initial study stage:	June 9, 2008 and June 16, 2008
Date of notice of the petition to the State:	June 1, 2012
Date of first response from the State:	April 28, 2016
Additional observations by the petitioner:	November 19, 2012 and May 23, 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, Americana Convention (deposit of instrument of ratification September 5, 1984)

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES, AND TIME FOR FILING

Duplication of procedures and international <i>res judicata</i>:	No
Rights declared admissible:	Articles 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection) of the Convention, in relation to Article 1(1) (obligation to respect rights) of the same instrument
Exhaustion of domestic remedies or application of an exception:	Yes, on November 30, 2007 and February 10, 2011

¹ Hereinafter "Convention" or "American Convention."

² Hereinafter "American Declaration."

³ Articles 9 and 14 of International Covenant on Civil and Political Rights.

⁴ The observations of each party were duly forwarded to the other party.

Timely filing:

Yes, May 28, 2008

V. FACTS ALLEGED

4. The petitioner indicates that Messrs. Julio César Rotela and Alberto Enrique Baez (hereinafter “the alleged victims”) were subjected to pretrial detention as of August 31, 2002, by order of the Federal Court of Lomas de Zamora in the case under number 2557/8, for kidnapping for extortion and aggravated homicide; and that subsequently, on September 16, 2004, that court ordered that the detention be extended for one more year. This decision was appealed by the defense of the alleged victims; nonetheless, the Federal Court of Appeals of La Plata upheld it on February 17, 2005.

5. The petitioner alleges that on August 31, 2005, the legal term expired for holding the alleged victims in pretrial detention. At this point their detention was prolonged beyond a reasonable time, in view of which it sought the release of the alleged victims. This request was rejected by the Federal Court of Lomas de Zamora, which held that two years of detention and the extension of one year do not authorize the release of the alleged victims. This decision was appealed; however, on March 27, 2006, the Federal Court of Appeals for Criminal Cassation rejected the appeal based on the same reasons put forth by the court of first instance: the crime was very violent in nature and the victim was an adolescent, and the weight of the evidence made it preferable for the alleged victims not to be released before trial.

6. Subsequently, extraordinary appeals were filed in favor of both alleged victims for the federal Supreme Court of Justice to review the decisions to reject the application for release, yet those appeals were rejected. Accordingly, the alleged victims filed complaint appeals (*recursos de queja*) directly before the federal Supreme Court, which were found inadmissible on November 27, 2007, and notice of these decisions was given to the alleged victims on November 30, 2007. The petitioner argues that with these latest decisions domestic judicial remedies were exhausted with respect to the pretrial detention.

7. With respect to the progress in the principal proceeding, the petitioner indicates that the First Federal Criminal Court for Oral Proceedings (Tribunal Oral en lo Criminal Federal No. I) of La Plata convicted the alleged victims and sentenced them to life in prison on December 27, 2007, for the crime of kidnapping for extortion and aggravated homicide. Against this decision a motion for cassation was filed that was partially granted; and a complaint appeal on March 10, 2008, due to the fact that the grievances set forth in that motion for appeal were not admitted. The judgment of the court of first instance was appealed, and on February 10, 2011 the Second Chamber of the Federal Court for Criminal Cassation dismissed both appeals, both the motion for cassation and the complaint appeal, upholding the judgment of first instance. With that decision, the judgment became final.

8. In addition, the petitioner notes that on May 29, 2008 it brought an action challenging the constitutionality of Article 2 of Law 24,390 (amended by Law 25,430)⁵ – the provision used as a legal basis for prolonging the pretrial detention of the alleged victims – before the First Federal Criminal Court for Oral Proceedings) of the city of La Plata. According to its argument, this provision violates the rights to due process, defense at trial, liberty, the principle of the presumption of innocence, equality before the law, and the rank that the Constitution of Argentina accords international human rights instruments, since it allows for increasing the time of pretrial detention, in violation of international standards on the use of pretrial detention within a reasonable time.

⁵ According to the information provided by the petitioner, Articles 1 and 2 of Law 25,430 establish:

Article 1 – Pretrial detention may not last for more than two years without a judgment having issued. Nonetheless, when the number of offenses attributed to the accused or the evident complexity of the case has impeded its issuance within that time, it may be extended for one more year, by well-motivated resolution, which must be communicated immediately to the corresponding higher court for its proper oversight.

Article 2 – The times provided for in the preceding article shall not be counted for the purposes of this law when they are met after the issuance of a conviction, even if it is not a firm judgment.

9. On July 10, 2008 the court rejected the appeal based on the time of confinement of the convicts not being in conflict with the Constitution, or with international treaties; and that the reasonable time for being tried was respected in the specific case of the alleged victims. This resolution was challenged before the Federal Court of Appeals for Criminal Cassation, which on May 4, 2010, upheld the decision based on the argument that the alleged victims were heard and tried by competent courts at the time of the debate and the issuance of the judgment; and as they had been convicted, their presumptions of innocence were weakened. Against this decision Mr. Rotela filed an extraordinary appeal, which was rejected; and then a complaint appeal before the federal Supreme Court, which was also dismissed.

10. In summary, the petitioner argues that the alleged victims remained in pretrial detention for five years and four months – from August 31, 2002, until December 27, 2007 – just to get to the trial court judgment; and that the very prolongation of the process, which extended for more than nine years, violates both the right to personal liberty and the right to be tried in a reasonable time.

11. The Argentine State first argues that the petition was forwarded to it by the Inter-American Commission late, for it states that it was notified more than four years after it was submitted to the IACHR. The State further adduces that it is inadmissible because it lacks sufficient elements or grounds of evidence to establish Argentina's international responsibility for a violation of the rights enshrined in the American Convention. In this regard, it argues that the deprivation of liberty of the alleged victims was not prolonged beyond a reasonable time; and that the alleged victims had access, at all times, to independent and impartial courts, and at every moment had their judicial guarantees respected.

12. In addition, as regards to the substantiation of the proceeding, it argues that it occurred within a reasonable time, since the circumstances of both the case and the investigation were complex. Accordingly, the State asks the Commission to find the petition inadmissible, since the petitioner seeks to have the Commission review rulings by domestic judicial bodies that acted within their jurisdiction, in which case it would be sitting as a "fourth instance."

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIME FOR FILING

13. The petitioner argues that with respect to the arguments on the excessive prolongation of the alleged victims' pretrial detention, domestic judicial remedies were exhausted with the decisions of the federal Supreme Court of November 27, 2007. The Commission also observes, with respect to the principal criminal proceeding, considered as a whole and based on the information provided by the parties, that judicial remedies were exhausted with the decision of the Federal Court of Appeals for Criminal Cassation of February 10, 2011, by means of which it upheld the conviction in the trial court. The State, for its part, did not controvert the exhaustion of domestic remedies. Mindful of these considerations, and after analyzing the information available in the record, the Commission concludes that domestic remedies were definitively exhausted with said judicial resolutions as described in this paragraph; therefore, this petition meets the requirement established in Article 46(1)(a) of the Convention.

14. In addition, the Commission observes that the notice of the decisions of the Supreme Court of Justice that put an end to the procedural path followed by the alleged victims for calling into question the prolongation of their pretrial detention was given to them on November 30, 2007, and this petition was received at the IACHR on May 28, 2008, accordingly, within the six months established in the American Convention. Moreover, with respect to the alleged excessive prolongation of the criminal proceeding as a whole, the Commission considers that domestic remedies were exhausted with the decision issued by the Federal Court of Appeals for Criminal Cassation on February 10, 2011. In respect to having received the petition on a date prior to that ruling, the Commission concludes that this petition meets the requirement established in Article 46(1)(b) of the American Convention.

15. The Commission also takes note of the State's claim regarding the late forwarding of the petition and notes in this respect that neither the Convention nor the Rules of Procedure establish a deadline

for forwarding a petition to the State as of its receipt and that the deadlines established in the Rules of Procedure and the Convention for other stages are not applicable by analogy.⁶

VII. COLORABLE CLAIM

16. In view of the elements of fact and law set forth by the parties and the nature of the matter placed before it, the Commission considers that the arguments regarding the excessive prolongation of the pretrial detention of Julio César Rotela and Alberto Enrique Baez, and the duration of the criminal proceedings, tend to establish violations of the rights established at Articles 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention, in relation to the general obligations to respect and ensure the rights established at Article 1(1) to their detriment.

17. As regards to the International Covenant on Civil and Political Rights, the Commission is not competent to establish violations of the provisions of said treaty, without prejudice to which it may take it into account as part of its exercise of interpreting the provisions of the American Convention in the merits stage in the instant case, in the terms of Article 29 of the Convention. In addition, the Commission has established that when a state ratifies the American Convention it is the main source of human rights obligations, and not the American Declaration, when both are potentially applicable.

18. Finally, with respect to the State's fourth instance argument, the Commission observes that on admitting this petition it does not seek or claim to take the place of the jurisdiction of the domestic judicial authorities; rather, it will analyze, in the merits phase of the instant petition, whether the domestic judicial proceedings were conducted with the guarantees of due process and judicial protection, and whether the due guarantees of access to justice were offered the alleged victims in the terms of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 7, 8, and 25 of the American Convention, and also in relation to the obligations contained in Article 1(1) of said instrument;
2. To notify the parties of this decision;
3. To continue analyzing the merits issues; and
4. 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 Montevideo, Uruguay, on the 26 day of the month of October, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, James L. Cavallaro and Luis ernesto Vargas Silva, Commissioners.

⁶ See IACHR, Report No. 56/16. Petition 666-03. Admissibility. Luis Alberto Leiva. Argentina. December 6, 2016. See also I/A Court HR, *Case of Mémoli v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 22, 2013. Series C No. 295, paras. 30-33.