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REPORT No. 58/23
PETITION 85-09
REPORT ON INADMISSIBILITY

EFRAÍN FUENTES MOLINA
COSTA RICA

Approved by the Commission electronically on May 12, 2023.

Cite as: IACHR, Report No. 58/23, Petition 85-09. Inadmissibility.
Efraín Fuentes Molina. Costa Rica. May 12, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Efraín Fuentes Molina
Alleged victim:	Efraín Fuentes Molina
Respondent State:	Costa Rica
Rights invoked:	Articles 7 (personal liberty), 8 (fair trial), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	January 27, 2009
Additional information received at the stage of initial review:	November 10, 2011, June 25, 2012 and August 7, 2015
Notification of the petition to the State:	October 20, 2016
State's first response:	October 29, 2018
Additional observations from the petitioner:	December 22, 2022
Notification of the possible archiving of the petition:	December 21, 2021
Petitioner's response to the notification regarding the possible archiving of the petition:	January 11, 2022

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 the instrument of ratification made on April 8, 1970)

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	N/A
Exhaustion of domestic remedies or applicability of an exception to the rule:	No, in the terms of section VII
Timeliness of the petition:	N/A

¹ Hereinafter, "the American Convention" or "the Convention"

² The observations submitted by each party were duly transmitted to the opposing party.

V. FACTS ALLEGED

Allegations of the petitioner

1. Mr. Fuentes Molina, as petitioner and alleged victim, claims that he did not have access to a remedy that would allow for a full review of his conviction for the crime of aggravated rape and sexual abuse.

2. He informs -without providing details on the investigation process- that on July 13, 2007, the Cartago Trial Court, by means of judgment 282-07, sentenced him to thirty-two years of imprisonment for the crimes of aggravated rape and sexual abuse against a minor.

3. In this regard, he claims that the judgment was not adequately grounded, and therefore he is unjustly imprisoned. In the opinion of the petitioner, this situation constitutes differential treatment against him and implies a denial of his rights to judicial guarantees and judicial protection. Likewise, he argues that he filed a complaint for false testimony against the person who initiated the criminal proceeding against him, but he did not receive a response.

Allegations of the Costa Rican State

4. The State, for its part, complements the information provided by the petitioner and reports that on August 9, 2007, the defense of the alleged victim filed a cassation remedy, arguing that the evidence provided does not show that he was guilty of the crimes charged. However, on December 10, 2007, the Criminal Cassation Court of the Second Judicial Circuit of San José declared it inadmissible.

5. Likewise, it holds that in view of this decision, on February 4, 2008, the representation of Mr. Fuentes Molina filed a proceeding for review of the sentence, arguing that his conviction was based on false testimony and that there was new evidence that proved his innocence. However, on July 3, 2008, the Criminal Cassation Court of Cartago, rejected it by means of resolution 2008-01 90, considering that no evidence or arguments were provided to discredit the conviction.

6. Finally, the State argues that on June 4, 2010, Mr. Fuentes Molina filed a writ of *habeas corpus*, claiming that his right to contest the judgment had been affected, but on June 10, 2010, the Constitutional Chamber rejected this claim outright based on the following considerations:

[...] It should be pointed out that if the defendant considers that the principle of double instance has been violated in the criminal proceeding against him, this is a disagreement that he should allege properly in the criminal jurisdictional proceeding, since it is not up to this Court to supplant the criminal jurisdiction or to act as an appellate court on the matter, nor is it up to this Court to enter into an assessment of the terms of the rulings which are being questioned or to analyze the evaluation of the evidence that would have been made by the judge in order to consider the existence of the crime charged or the participation of the accused as proven, since this would imply interfering with the competence of the criminal jurisdiction, which is constitutionally reserved to the corresponding judges [...]

On the other hand, it should be noted that, in compliance with the order of the Inter-American Court of Human Rights, Law number 8503 on the "*Opening of Criminal Cassation*" was enacted, through which several articles of the Criminal Procedural Code and the Organic Law of the Judiciary were reformed. In addition, on May 3, 2010, the draft law of legislative file number 17143, on the double instance in criminal matters, was sent to the Executive Power for its approval and subsequent publication, according to the provisions of Article 124 of the Political Constitution.

7. Based on this information, Costa Rica requests that the petition be dismissed as untimely. It argues that although the alleged victim was notified of the outcome of the review procedure on July 4, 2008, he only filed his petition on January 27, 2009, exceeding the six-month period provided for in Article 46.1.b) of the

Convention. Consequently, it requests the Commission to declare the instant case inadmissible for failure to comply with the timeliness requirement for filing.

8. In addition, it argues that the petition is inadmissible for failure to exhaust domestic remedies; it considers that the alleged victim did not exhaust domestic remedies at the time of filing his petition, since he only filed an amparo remedy on February 27, 2009, with the same allegations described in this petition. Consequently, since at the time this complaint was filed, such remedy had not yet been used, it considers that this case should be rejected for not complying with the requirement set forth in Article 46.1.a) of the Convention.

9. Likewise, it alleges that Mr. Fuentes Molina did not use the special review mechanisms either, despite the fact that they are designed precisely for those persons with final convictions, who consider that their right to appeal their sentence in accordance with Article 8.2.h) of the Convention has been breached. Along these lines, the State holds that Mr. Fuentes Molina had the opportunity to file the procedure set forth in Transitory Provision III of Law N^o 8837.³ Therefore, it argues that the domestic legal system provided additional options for Mr. Fuentes Molina to use them at the appropriate procedural moment; however, he did not do so.

10. Finally, the State also argues that the petitioner did not make adequate use of the remedies available to him in the constitutional jurisdiction. On this point, it holds that, at the time of filing this claim, the alleged victim had not used the remedy of habeas corpus to contest a possible violation of his right to personal liberty, and, therefore, he had not exhausted this procedure prior to the presentation of his petition to the IACHR.

11. Finally, Costa Rica argues that the alleged facts do not characterize a human rights violation attributable to the State. On the contrary, it argues that the petitioner intends that the Commission act as a fourth judicial instance and review the assessments of fact and law made by the domestic judges and courts that acted within the sphere of their competence.

12. The State stresses that the Costa Rican legal system provides for a variety of remedies, mainly judicial, in order to offer people, the means to determine different types of rights. Along these lines, it specifies that such remedies comply with the rules of due process and guarantee fair access and a balanced discussion in the proceedings, and therefore respect the norms of the American Convention. Therefore, it considers that it does not correspond to the Commission to analyze the present case, since the existence of a domestic judgment that has been issued outside due process or that has apparently violated any other right guaranteed by the Convention has not been proven.

VI. PRELIMINARY CONSIDERATIONS

13. The Commission notes that the main purpose of this petition is to question the violation of the right to appeal a judgment, as provided for in Article 8.2.h) of the American Convention. Therefore, since several decisions have been issued within the inter-American system on this matter, in light of the amendments implemented in Costa Rican criminal procedure legislation, the IACHR deems it necessary to review these rulings in order to identify standards that will allow it to adequately resolve the present petition.

14. Thus, in the judgment in the case of *Herrera Ulloa vs. Costa Rica* of July 2, 2004, the Inter-American Court of Human Rights⁴ examined the regulations established in the Criminal Procedural Code in

³ Law N^o 8837.- Transitory III.- In all cases that have a final judgment at the time of entry into force of this Law, and that the violation of Article 8.2.h) of the American Convention on Human Rights has been previously alleged, the convicted person shall have the right to file, one time only, during the first six months, a review procedure that shall be heard according to the competencies set forth in this Law, by the former Courts of Cassation or the Third Criminal Chamber. In cases that are pending resolution and that the violation of Article 8.2 h) of the American Convention on Human Rights has been previously alleged, the appellant shall be given a term of two months to readapt his cassation remedy to an appeal, which shall be filed before the former Courts of Cassation or the Third Chamber, as appropriate, which shall forward the file to the new Courts of Appeal for its resolution. Under penalty of inadmissibility, the grievance must be specifically stated.

⁴ Hereinafter "the Inter-American Court" or the "IHR Court".

force since 1998, and concluded that it did not have “*a remedy that would allow the higher court to conduct a comprehensive and integral analysis or review of all the issues discussed and analyzed by the lower court*”, given the limitations of the regulation of cassation remedies in the criminal law field⁵. Consequently, the IACHR declared that the Costa Rican State violated Article 8.2.h) of the Convention in relation to its articles 1.1 and 2 to the detriment of Mr. Mauricio Herrera Ulloa, by failing to guarantee his right to appeal the judgment; and ordered Costa Rica to “*adapt its domestic legal system to the provisions of Article 8.2.h of the American Convention, in relation to Article 2 thereof*”.⁶

15. As a consequence of this judgment, Costa Rica reformed the regulation of its criminal procedural system in order to have a regulation in accordance with the obligations contemplated in Article 8.2.h) of the American Convention. Thus, on June 6, 2006, Law No. 8503, known as the “Law on the Opening of Criminal Cassation” entered into force, which amended and added various articles of the Criminal Procedural Code related to the appeals for cassation and review. In addition, and relevant to the present case, this legislation established in its Transitory I, a special review procedure for “*persons convicted of a criminal act prior to this Law, who have been prevented from filing a cassation appeal against the sentence, due to the rules that regulated its admissibility on that date [...] invoking, in each case, the offense and the aspects of fact and law that could not be heard in cassation*”. By virtue of this, the Inter-American Court considered that “*through the ground for review created by Transitory I, a person convicted of a criminal offense could, in principle, obtain a comprehensive review of his or her sentence, including both factual and legal issues*”.⁷

16. In addition, both the Commission and the IACHR Court also noted that on June 9, 2010, Law No. 8837 was published, entitled “Creation of the appeal of the sentence, other reforms to the challenge regime and implementation of new rules of orality in criminal proceedings,” in force as of December 9, 2011, which created and regulated the appeal. In addition, Transitory III of said law regulated two additional assumptions: i) for persons whose sentences were final at the time the law came into force, it was established that they may file, for one time only, a review procedure within the first six months; and ii) for persons whose cassation appeals were pending resolution at the time the law came into force, it was established that they may request the conversion of the cassation appeal already filed to an appeal under the new norm.

17. As a consequence of the aforementioned amendments, in the judgment of the case of *Amrhein and others vs. Costa Rica* of April 25, 2018, the Inter-American Court re-evaluated the Costa Rican criminal procedural regulation; and expanded its legal criteria both with respect to the exhaustion of domestic jurisdiction, as well as the analysis of the merits of cases on the same subject matter.

18. In relation to the first point, the Commission stresses that, in the aforementioned case, the IACHR Court considered that the alleged victims should have filed the special review appeal based on Transitory I of Law 8503 of 2006 during the admissibility process of the petition, since it was specifically intended for persons with final convictions; and therefore, “*the fact that it would be an extraordinary remedy cannot be decisive, per se, to conclude its ineffectiveness*”.⁸ Consequently, following the aforementioned jurisprudence, the Commission considers that, in order to determine the admissibility of a case on this matter, it must determine whether or not the aforementioned remedy was available to the alleged victims after the issuance of their conviction, and if so, whether or not they exhausted such remedy.

19. Finally, for purposes of the analysis of the characterization of the petitions, the Commission notes that the Inter-American Court concluded in the aforementioned judgment that it was not appropriate to “*declare a violation of Article 2 of the American Convention for the way in which the Costa Rican remedy system is regulated, nor for the way in which the State addressed the situation of persons whose sentences had already*

⁵ IHR Court. Case of Herrera Ulloa vs. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para.167.

⁶ IHR Court. Case of Herrera Ulloa vs. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para.198.

⁷ IHR Court. Case of Amrhein and others vs. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, para.262.

⁸ IHR Court. Case of Amrhein and others vs. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, para.48.

become final prior to the entry into force of Laws 8503 and 8837, since, through said reforms, it remedied the deficiencies in the application of the recursive norms [...].⁹ Likewise, it recalls that in the compliance monitoring resolution of November 22, 2010 in the case of *Herrera Ulloa vs. Costa Rica*, the Court positively assessed the reforms introduced in the criminal procedural legislation and, by virtue of such modifications, concluded that “by guaranteeing the possibility of a broad control of the judgment issued by a trial court in criminal matters at the domestic level”,¹⁰ Costa Rica had complied with adapting its domestic legislation.

20. In this vein, the Commission reaffirms that the way in which the review procedure set out by Transitory I provision of law 8503 could generate limitations with regard to the accessibility of the remedy and, therefore, it does not guarantee by itself the right to a thorough examination of the conviction of all those individuals that were convicted during the time that the original text of the Code of Criminal Procedure was in force¹¹. An identical conclusion can be reached with regards to the motion for review enshrined in Transitory III provision of law 8837, given that the rule included the requisite to have previously alleged the violation of the right to appeal as a condition for admissibility of the motion.

21. Nevertheless, the Commission acknowledges, first, that the Constitutional Chamber of the Supreme Court of Justice of Costa Rica made reference, in repeated statements, to the need to “ensure the right to appeal, excluding formalities that prevent the review of convictions, with the purpose of fulfilling what is established by article 8.2.h of the Convention”.¹²

22. Additionally, the IACHR considers that, despite the obstacles to the admissibility of the procedure included in the drafting of Transitory I provision of law 8503, the review procedure recognized in it meant an opportunity which was additional to the writ of cassation for a convicted individual to obtain a thorough review of his or her conviction. Said thorough review was dependent, in essence, of the way in which judges in higher courts interpreted the procedural rules in force in light of the jurisprudence of the Constitutional Chamber of the Supreme Court of Justice of Costa Rica, of article 8.2.h and of the decision of the Inter-American Court of Human Rights in the “Herrera Ulloa” case.

23. In particular, and in line with the decision of the Court, the Commission notes that, taking into account that such legislative reforms to the Costa Rican criminal appeal system were adopted as a result of the decisions of the Inter-American Human Rights System, it is reasonable to establish as a condition of admissibility of the review procedure that the interested party had to invoke the possible errors which the lower judge or court may have made.

24. Consequently, taking into account the existing specificities with regard to this matter in the Costa Rican system, resulting from the decisions adopted by the Inter-American System, and in line with the decision of the Inter-American Court of Human Rights in the “Amrhein” case, the Commission considers that it is not appropriate to undertake an abstract assessment of each of the remedies available in the law of criminal procedure, but rather, a “case by case analysis of the remedies actually filed by the alleged victims to determine if the way in which they were decided by the Costa Rican appeals system, taking its reforms into account, respected their right to a thorough review of their convictions”.¹³ This in principle requires a substantive analysis by the IACHR, unless from the information of the parties it is observed that the facts raised by the petitioner do not characterize prima facie violations of the American Convention, in the terms of its Article 47.

⁹ IHR Court. Case of Amrhein and others vs. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, para.265.

¹⁰ IHR Court. Case of Herrera Ulloa Vs. Costa Rica. Supervision of Compliance with Judgment. Resolution of the Inter-American Court of Human Rights of November 22, 2010, para. 16.

¹¹ IACHR. Report No. 33/14. Case 18.820. Merits. Manfred Amrhein and others. Costa Rica. April 4, 2014. Paras. 217-220.

¹² I/A Court H.R. Case of Amrhein and others v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, para 260.

¹³ I/A Court H.R. Case of Amrhein and others v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, para 266.

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

25. Based on the foregoing considerations, the Commission observes that, according to the information provided by the State, the alleged victim could have requested a full review of his conviction through the special review mechanisms established in Transitory III of Law No. 8837, but in spite of this, he did not use this channel.

26. According to the arguments presented, the Commission observes that the State fulfilled its duty to specify the internal remedies that were not exhausted and the reasons why these were adequate and effective to address the legal situation of the alleged victim. Indeed, since its first jurisprudence, the Inter-American Court established that "*the State that alleges non-exhaustion has the burden of identifying the internal remedies that must be exhausted and their effectiveness*".¹⁴ Specifically, the information provided shows that, after the denial of his cassation appeal, Mr. Fuentes Molina had the special review mechanism established in Transitory I of Law No. 8503 available to him to challenge his conviction and achieve a comprehensive review of such judgment, since this provision entered into force on June 6, 2006.

27. In this regard, the Commission reiterates that the Inter-American Court considered that the aforementioned mechanism, together with Transitory III of Law No. 8837, allows guaranteeing the right to a comprehensive review of a conviction and, therefore, complies with the obligation established in Article 8.2.h) of the American Convention. Under this understanding, the precedent of the Amrhein and others vs. Costa Rica case established that alleged victims who allege an impact on the right contemplated in said Article 8.2.h) and/or other related guarantees must use such remedies if they were available at the time of the events, or otherwise demonstrate their lack of accessibility or suitability. In a consistent sense, the Commission has also considered that when the State fulfills its duty to question in a timely manner the exhaustion of internal remedies, it is up to the petitioner to replicate this information.¹⁵

28. In that sense, since the petitioner does not present arguments aimed at replicating the arguments and information presented by Costa Rica, nor questions that, in the case at hand, the special review mechanism lacked any element that affects its suitability or effectiveness, the Commission concludes that, in application of the standards established by the Inter-American Court of Human Rights, the present case does not meet the requirement provided in Article 46.1.a) of the American Convention and, consequently, it is appropriate to declare the present petition inadmissible.

29. Finally, since the requirement of prior exhaustion of internal remedies was not met and none of the exceptions provided for in Article 46.2 of the Convention are configured, there is no basis for examining the requirement of presentation of the petition.

30. Similarly, the petitioner does not provide sufficient information to analyze whether there is a delay in the complaint filed for false testimony. Consequently, this aspect of the petition does not meet the requirement of Article 46.1.a) of the Convention either.

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.

¹⁴ I/A Court H.R., Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para 88; and Case of Cuya Lavy et al. v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 28, 2021. Series C No. 438.

¹⁵ IACHR, Report No. 168/17, Petition 1502-07. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, para. 18.

Approved by the Inter-American Commission on Human Rights on the 12th day of the month of May 2023.
(Signed:) Margarete May Macaulay, President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón
and Carlos Bernal, Commissioners.