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**REPORT No. 263/22**  
**PETITION 105-13**  
REPORT ON INADMISSIBILITY

MARIO CHEVEZ ARGUEDAS  
COSTA RICA

Approved electronically by the Commission on September 28, 2022.

**Cite as:** IACHR, Report No. 263/22. Petition 105-13. Inadmissibility.  
Mario Chevez Arguedas. Costa Rica. September 28, 2022.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Edwin Duarte Delgado
<b>Alleged victim:</b>	Mario Chevez Arguedas
<b>Respondent state:</b>	Costa Rica
<b>Rights invoked:</b>	Article 8 (fair trial) of the American Convention on Human Rights <sup>1</sup>

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

<b>Filing of the petition:</b>	January 25, 2013
<b>Notification of the petition to the State:</b>	March 28, 2016
<b>State's first response:</b>	July 29, 2016
<b>Additional observations from the petitioner:</b>	November 2, 2017 and January 16, 2019
<b>Additional observations from the State:</b>	March 21, 2017; September 13, 2018; and June 7, 2022
<b>Notification of the possible archiving of the petition:</b>	April 4, 2022
<b>Petitioner's response to the notification regarding the possible archiving of the petition:</b>	April 11, 2022

**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 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**

<b>Duplication of procedures and International res judicata:</b>	No
<b>Rights declared admissible:</b>	None
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, in the terms of Section VI

**V. POSITION OF THE PARTIES**

1. The petitioner claims the international responsibility of Costa Rica for the violation of the fair trial rights of Mr. Mario Chevez Arguedas, due to his prosecution and criminal conviction under the application of a retroactive law to his detriment.

2. The petitioner claims that on January 27, 2003, the Public Ministry of Osa summoned Mr. Chevez for his alleged participation in the crime of embezzlement to the detriment of Banco Nacional de Costa

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

<sup>2</sup> The observations of each party were duly transferred to the opposing party.

Rica. From the information contained in the casefile, it appears that in 2009 the National Bank of Costa Rica filed a complaint against Mr. Chevez for the crime of embezzlement and on March 18, 2010, the Osa Criminal Court held the preliminary hearing. In view of this fact, his defense filed a motion for defective procedural activity arguing, mainly, that the statute of limitations had expired according to the provisions of Articles 31, 32 and 33 of the Criminal Procedural Code, in force at the time of the facts the statute of limitations for the crime imputed to Mr. Chevez had already elapsed, this being six years counted from the facts charged against him -in 2002- until the filing of the complaint -in 2009-.

3. In addition, Mr. Chevez's defense argued that the Osa Criminal Court retroactively applied the Law on Corruption and Illicit Enrichment of the Public Function (hereinafter "Law 8422"), since this law came into force in October 2004 and the facts imputed to Mr. Chevez occurred in 2002. In this sense, the petitioner's defense specifies that Law 8422 determines new statute of limitations for functional crimes, specifically, in its article 62.a) it establishes that: *"The criminal action with respect to offenses against the duties of public office and those provided for in this Law shall be subject to the statute of limitations as established by the applicable legislation; however, the following rules shall apply [...] a) Once the statute of limitations has been interrupted, the time periods set forth in Article 31 of the Code of Criminal Procedure shall run again for a new period, without any reduction whatsoever"*. Consequently, on June 30, 2010, the Criminal Court of Osa declared that the motion was dismissed, determining that although Law 8422 was applied retroactively, this was due to the fact that:

[...] The prohibition of retroactive criminal laws only applies to material law. The issue of the statute of limitations and its connection with the principle of applying the most favorable criminal law, with the Constitutional Court establishing that the provisions of the new procedural law on the statute of limitations cannot be considered a more favorable criminal law to be applied retroactively for the benefit of the defendant, since this is a procedural matter and the principle of retroactive application of the most favorable law refers to substantive law [...].

4. Consequently, on October 28, 2011, the Trial Court of the Second Judicial Circuit of the Southern Zone, in Osa, sentenced Mr. Chevez to six years of imprisonment for the crime of embezzlement to the detriment of Banco Nacional de Costa Rica. Dissatisfied with this, Mr. Chevez's defense filed an appeal, which on June 29, 2012 was declared unfounded by the Court of Appeal of Sentence of Cartago, determining the following: i) the case against Mr. Chevez dates back to 2002; ii) on January 27, 2003 he was summoned by the Public Ministry; iii) on October 29, 2004 Law 8422 came into force; however, it was suspended for three years and five months due to an action of unconstitutionality filed against it; iv) the statute of limitations period for the crime charged against Mr. Chevez was suspended due to the unconstitutionality action, pursuant to Article 34 of the Criminal Procedure Code; v) on May 7, 2008 the Constitutional Chamber ruled on the constitutionality of Law 8422; and vi) on August 29, 2009 the preliminary hearing against Mr. Chevez was held. Thus, concluding that the time period for the criminal case to be time-barred had not passed.

5. Dissatisfied with said resolution, on August 1, 2012, Mr. Chevez filed a cassation remedy; however, on September 20, 2012, the Third Chamber of the Supreme Court of Justice declared said remedy inadmissible in considering, inter alia, that Law 8422 is of a procedural nature and its application is due from the moment of its effectiveness, regardless of the date on which the facts under investigation occurred. On the other hand, on November 7, 2012, Mr. Chevez filed an habeas corpus remedy before the Constitutional Chamber of the Supreme Court of Justice; however, on November 14 of the same year, the Constitutional Chamber rejected it, determining that the essence of the habeas corpus remedy deals with violations to personal liberty and that Mr. Chevez raised within the same the incorrect application of norms by the first and second instance courts.

6. In sum, the petitioner claims that the trial court that sentenced Mr. Chevez to six years in prison for the crime of embezzlement and the appellate court that upheld said sentence, violated his fair trial guarantees by retroactively applying Law 8422, arguing that the acts charged against him occurred in 2002; and that said law was not in force at that time, so that the crime was prescribed as of August 5, 2009.

7. On its part, the State considers that the petition should be dismissed due to lack of exhaustion of domestic remedies; on the one hand, because Mr. Chevez did not file the proceeding for review of the judgment against the judgment of June 29, 2012, through which the Cartago Court of Criminal Appeals dismissed the appeal, which is the appropriate remedy to review aspects of the facts, merits and basis of the sentence within the Costa Rican criminal justice system. On the other hand, it holds that the habeas corpus filed by Mr. Chevez was not the appropriate remedy for the purpose of questioning the decisions of the domestic courts, specifically, with respect to his indictment and criminal conviction for the crime of embezzlement, reiterating that the appropriate remedy was the sentence review procedure provided for in Costa Rican legislation.

8. With respect to the statute of limitations claimed by the petitioner, it states that pursuant to the provisions of the Court of Appeals for Criminal Judgment of Cartago, the statute of limitations on the criminal action brought against Mr. Chevez had not expired, pursuant to the following:

Since article 81 of the Law of the Constitutional Jurisdictional Law establishes that when an action of unconstitutionality is filed, a final resolution should not be issued on the matter being discussed, as long as the Chamber does not pronounce itself, this circumstance affects the pending judicial processes where discuss the application of what is being challenged and in this case it is Law 8422 and specifically the questioned article 62, applicable in this case, the law was suspended for three years, five months and eight days, making the necessary count, the cause that the accused is followed, before the suspension due to the action of unconstitutionality according to article 34 subsection 1 of the Criminal Code, when the law was implemented, 12 months and two days had elapsed since the beginning of this case, missing approximately 57 months and 28 days for this cause to prescribe, the Constitutional Chamber ruled on the constitutionality of the law on May 7, 2008, which by the date the preliminary hearing was called, nineteen months and ten days had elapsed. Therefore, the term for this cause to have prescribed had not elapsed. Therefore, this reason is declared without place.

9. As for the alleged retroactive application of Law 8422 by the domestic courts, the State holds that the Third Chamber of the Supreme Court of Justice, in ruling on the cassation remedy, established that since Law 8422 is procedural in nature, it applies from the time of its entry into force, regardless of the date on which the events under investigation occurred; and therefore, it does not violate the principle of retroactivity of the law since it is not a substantive norm. Finally, it argues that the petitioner seeks to have the Commission act as what it calls a "fourth instance body" by requesting that it review the decisions of the national judicial bodies that acted in accordance with the legal system.

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

10. The petitioner claims that the courts retroactively applied Law 8422 of October 6, 2004, thereby violating the principle of non-retroactivity of the law and Mr. Chevez's right to a fair trial. Petitioner holds that according to the date of the commission of the crime -2002- the statute of limitations was in accordance with the provisions of the Code of Criminal Procedure and not in accordance with the exceptions foreseen in Law 8422.

11. With regard to the claim raised by the petitioner in the instant petition, it has been proven in the casefile, according to information provided by the State itself, that Mr. Chevez filed the following remedies in the course of the criminal proceedings against him:

Legal remedy or action	Judicial body	Resolution	Date of judgment
Incident of defective procedural activity	Criminal Court of Osa	Inapplicable	June 30, 2010
Appeal	Cartago Court of Appeals of Judgment	Inapplicable	June 29, 2012

Cassation remedy	Third Chamber of the Supreme Court of Justice	Inadmissible	September 20, 2012
Habeas corpus	Constitutional Chamber of the Supreme Court of Justice	Rejected	November 14, 2012

12. Based on the above table, it is observed that Mr. Chevez filed several ordinary and extraordinary remedies against the criminal proceeding that sentenced him to six years in prison for the commission of the crime of embezzlement to the detriment of Banco Nacional de Costa Rica, in which he alleged the violation of due process due to the retroactive application of Law 8422, thus exhausting the remedies available to him in the course of the aforementioned proceeding.

13. The State, in turn, contests the lack of exhaustion of domestic remedies due to the fact that Mr. Chevez did not file the domestic review procedure for review of the judgment. In this regard, the Commission recalls that:

the requirement of exhaustion of domestic remedies does not mean that the alleged victims necessarily have the obligation to exhaust all remedies available to them. Consequently, if the alleged victim raised the issue through one of the valid and adequate options under the domestic legal system and the State had the opportunity to address the issue in its jurisdiction, the purpose of the international standard is fulfilled<sup>3</sup>.

14. Furthermore, the State argues that the habeas corpus filed by Mr. Chevez was not the appropriate remedy for the purpose of contesting the alleged erroneous application of the law in the criminal proceeding against him, contrary to its nature, for which reason it was rejected. With respect to this point, since the procedural guarantee whose non-compliance is claimed by the petitioner is independent of the nature of the habeas corpus, the Commission will not consider it for the purpose of analyzing the exhaustion of domestic remedies due to its lack of suitability with respect to the facts claimed by the petitioner before the Inter-American system.

15. Nonetheless, the IACHR observes that Mr. Chevez did file a cassation remedy against the denial of the appeal that confirmed the legality of the application of Law 8422 against him, which was resolved on the merits by the Third Chamber of the Supreme Court of Justice. The State, in this regard, unlike the habeas corpus remedy, has not argued its adequacy nor has it made any ruling concerning the appropriate time period for the filing of the petition. Therefore, the Commission concludes that with the judgment of September 20, 2012, with which the cassation remedy was rejected, domestic remedies were exhausted. Likewise, taking into account that the aforementioned cassation judgment is dated September 20, 2012, and that the petition was received by the Executive Secretariat of the IACHR on January 25, 2013, the Commission concludes that the petition meets the admissibility requirements established in Articles 46.1.a) and 46.1.b) of the American Convention on Human Rights.

## **VII. ANALYSIS OF COLORABLE CLAIM OF THE POSITIONS OF THE PARTIES**

16. The petitioner argues that the Costa Rican courts retroactively applied Law 8422 of October 6, 2004, to the detriment of Mr. Chevez, extending the statute of limitations period for the facts charged against Mr. Chevez for the crime of embezzlement, to his detriment.

17. Thus, with regard to the subject matter of this petition, the Commission recalls that the standard of evaluation at the admissibility stage differs from that used to rule on the merits of a petition; therefore, the Commission must conduct a *prima facie* evaluation to determine whether the petition establishes the basis for the violation, possible or potential, of a right guaranteed by the Convention, but not to establish the existence of a violation of rights. This determination on the characterization of violations of the American Convention constitutes a primary analysis, which does not imply a prejudgment on the merits

<sup>3</sup> IACHR, Report No. 16/18. Admissibility. Victoria Piedad Palacios Tejada de Saavedra. Peru. February 24, 2018, para. 12.

of the case<sup>4</sup>. This is so in accordance with Article 36.2 of the IACHR Rules of Procedure, regardless of the content of the report itself.

18. Closely related to the subject matter of the petition, the jurisprudence of the Inter-American Court has established that:

This Court considers that the application of norms which regulate the procedure in an immediate manner does not violate Article 9 of the Convention, because it takes as a reference the moment in which the procedural act takes place and not that of the commission of the criminal offense, unlike the norms that establish crimes and penalties (substantive), where the pattern of application is precisely the moment of the commission of the crime. That is to say, the acts that make up the procedure are exhausted according to the procedural stage in which they originate and are governed by the rule in force that regulates them. By virtue of this, and since the process is a legal sequence in constant movement, the application of a rule that regulates the procedure after the commission of an alleged criminal act does not *per se* contravene the principle of legality<sup>5</sup>.

19. Along these lines, the national courts, in resolving the appeals filed by Mr. Chevez, ruled on the retroactive application of Law 824, establishing that this, being of a procedural nature, applies from the moment of its entry into force, regardless of the date on which the alleged facts occurred; and that the prohibition of retroactive application of criminal laws refers to those of a substantive nature (those relating to crimes and penalties).

20. On the other hand, and after carefully analyzing the information provided by both parties, the IACHR does not identify *prima facie* any other potential violation of Articles 8 (fair trial) and 25 (judicial protection) enshrined in the American Convention to the detriment of Mr. Mario Chevez Arguedas. On the contrary, it is observed that in all instances his claims were answered in a timely manner.

21. Therefore, the Inter-American Commission reiterates that it does not observe *prima facie* possible violations of the rights established in the American Convention in the context of the criminal proceedings raised by the petitioner; and concludes, therefore, that the present petition is inadmissible under the terms of Article 47.b) of the American Convention.

## VIII. DECISION

1. To declare the present 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.

Approved by the Inter-American Commission on Human Rights on the 28<sup>th</sup> day of the month of September, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarette May Macaulay, Second Vice President; Roberta Clarke, and Carlos Bernal Pulido, Commissioners.

<sup>4</sup> IACHR, Report No. 69/08, Petition 681-00. Admissibility. Guillermo Patricio Lynn. Argentina. October 16, 2008, para. 48.

<sup>5</sup> IHR Court. Case of Liakat Ali Alibux vs. Suriname. Preliminary Exception, Merits, Reparations and Costs. Judgment of January 30, 2014 ("IHR Court Liakat Ali Alibux Judgment"), para.69.