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REPORT No. 126/23
PETITION 566-11
REPORT ON INADMISSIBILITY

LUIS ÁNGEL ALVARADO LÓPEZ
COSTA RICA

Approved electronically by the Commission on August 1, 2023

Cite as: IACHR, Report No. 126/23, Petition 566-11. Inadmissibility.
Luis Ángel Alvarado López. Costa Rica. August 1, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Luis Ángel Alvarado López
Alleged victim:	Luis Ángel Alvarado López
Respondent State:	Costa Rica
Rights invoked:	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	April 26, 2011
Notification of the petition to the State:	November 8, 2016
State's first response:	February 9, 2017
Additional observations from the State:	December 15, 2022
Notification of the possible archiving of the petition:	November 9, 2021
Petitioner's response to the notification regarding the possible archiving of the petition:	December 10, 2021

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 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	Does not apply
Exhaustion of domestic remedies or applicability of an exception to the rule:	No, in the terms of section VII
Timeliness of the petition:	Does not apply

V. POSITION OF THE PARTIES*Allegations of the petitioner*

1. Mr. Alvarado López, in his capacity 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 homicide and aggravated robbery.

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

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

2. He reports that on April 19, 2004, the Trial Court of Guanacaste, Liberia, by judgment No. 66-04, sentenced him to forty years of imprisonment for the offense of aggravated homicide against his wife and attempted aggravated homicide against his own daughter.

3. He claims that his public defender filed a cassation remedy against this decision, denouncing: i) the violation of the rights to due process and defense, due to the fact that the testimony of his daughter was made through an anticipation of trial, without the possibility of him being present to exercise his defense; ii) the lack of evidentiary grounds, since the sentence did not transcribe integrally all the testimonies rendered in the process; and iii) the presence of formal defects in the grounds for the sentence. However, on December 3, 2004, the Third Chamber of the Supreme Court of Justice, by resolution No. 1390-2004, dismissed this remedy, arguing that none of the allegations formulated in the cassation brief demonstrated that there had been an error that merited the nullity or variation of the appealed decision.

4. In view of this situation, he refers that he initiated a review proceeding against his conviction, alleging: i) the erroneous application of substantive law, since the crime of aggravated homicide was not established, but only the crimes of serious injury and attenuated homicide for having acted in a state of violent emotion; ii) the violation of the rules of sound criticism, given the excessive weight given by the judges to the forensic medical examinations; and iii) the violation of the principle of impartiality. However, he holds that on March 16, 2012, the Third Chamber of the Supreme Court of Justice dismissed the appeal, considering that no error had been demonstrated in the conviction.

5. Based on these considerations, Mr. Alvarado López claims that Costa Rica did not grant him the opportunity to contest his conviction by means of an appeal, in accordance with the provisions of Article 8.2.h) of the American Convention. He also holds that although at the time of filing his petition the last remedy filed was pending resolution, due to the delay of the Third Chamber of the Supreme Court in resolving the aforementioned review proceeding, the exception to the exhaustion of domestic jurisdiction provided for in Article 46.2.c) of the Convention was met.

Allegations of the Costa Rican State

6. For its part, the State contends that the petition is inadmissible for failure to exhaust domestic jurisdiction. It holds that, at the time the petition was filed, the Third Chamber of the Supreme Court of Justice had not yet ruled on the review proceeding filed by the alleged victim against the decision that dismissed his cassation appeal. In this regard, it argues that since the aforementioned body only dismissed the aforementioned proceeding on March 16, 2012, the Commission must declare the claim inadmissible for not meeting the requirement set forth in Article 46.1.a) of the American Convention.

7. Similarly, the State argues that Mr. Alvarado López did not make timely use of the special review mechanisms devised as a result of the procedural reforms introduced in favor of persons with final sentences. On this point, it stresses that the alleged victim did not use these avenues, despite the fact that they are designed precisely for those persons with final convictions and who consider that their right to appeal their conviction has been violated, in accordance with Article 8.2.h) of the Convention. Along these lines, the State holds that at the time he was notified of this petition, Mr. Alvarado López had the opportunity to file the special review procedure established in Transitory I of Law No. 8503³, and, failing that, it could subsequently use the special review mechanism provided for in Transitory III of Law No. 8837⁴. Therefore, the State argues that the

³ Law No. 8503.- Transitory 1.- Persons convicted of a criminal act prior to this Law, who have been prevented from filing a cassation remedy against the sentence, due to the rules that regulated its admissibility on that date, may file a review of the sentence before the competent court, invoking in each case, the grievance and the aspects of fact and law that were not possible to be heard in cassation.

⁴ Law No. 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, once only, during the first six months, a review procedure that shall be heard according to the competencies established 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 appeal 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 clearly specified.

domestic legal system provided additional options for the alleged victim to use them at the appropriate procedural moment; however, he did not do so.

8. On the other hand, the State also argues that in the event that the Commission considers that the resolution of the cassation remedy filed by the alleged victim exhausted the domestic jurisdiction, the petition is inadmissible for untimeliness. It argues that despite the fact that on December 3, 2004, the Third Chamber of the Supreme Court of Justice dismissed the aforementioned remedy, Mr. Alvarado López only filed this petition on April 26, 2011, and therefore incurred a delay of almost seven years since the adoption of the aforementioned decision. Consequently, it requests the IACHR to declare the present case inadmissible for not complying with the six-month time limit requirement set forth in Article 46.1.b) of the American Convention.

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

10. It stresses that the Costa Rican legal system provides for a series of remedies, mainly judicial, in order to offer individuals, the means to determine different types of rights. Along these lines, it specifies that said remedies comply with the rules of due process and guarantee fair access and a balanced discussion in the proceedings, and thus respect the norms of the American Convention. Therefore, it considers that it is not the Commission's responsibility 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. PREVIOUS CONSIDERATIONS

11. The Commission observes that part of 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.

12. Thus, in the judgment in the case of *Herrera Ulloa vs. Costa Rica* of July 2, 2004, the Inter-American Court of Human Rights⁵ examined the regulation established in the Criminal Procedural Code in 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 debated and analyzed by the lower court*”, given the limitations of the regulation of cassation appeals in the criminal law field⁶. 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*”⁷.

13. 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 with regard to appeals for cassation and review. Likewise, and relevant to the present case, such law 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 remedy against the sentence, due to the rules that governed*

⁵ Hereinafter the “Inter-American Court” or the “IHR Court”.

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.167.

⁷ 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.

its admissibility at that date [...] invoking, in each case, the grievance and the factual and legal aspects that could not be heard in cassation". By virtue of this, the Inter-American Court considered that *"by means of 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 matters"*⁸.

14. In addition, both the Commission and the IACHR Court also noted that on June 9, 2010, Law No. 8837 was published, called "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 law.

15. As a consequence of the aforementioned modifications, 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.

16. With regard to the first point, the Commission highlights 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"*⁹. Consequently, following the aforementioned jurisprudence, the Commission considers that, in order to determine the admissibility of a case on this issue, 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 said remedy.

17. 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 recourse system is regulated, nor for the way in which the State addressed the situation of persons whose sentences were already final prior to the entry into force of Laws 8503 and 8837, since, by means of said reforms, it remedied the deficiencies in the application of the recourse norms[...]"*¹⁰. 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 review of the sentence issued by a criminal trial court at the domestic level"*¹¹, Costa Rica had complied with adapting its domestic legislation.

18. Without prejudice to the foregoing, the Commission stresses that the aforementioned laws recognized the possibility for those whose convictions had already become *res judicata* to file a review proceeding, although subject to compliance of certain requirements. In the case of Law 8503, the Commission points out that the appellant was required to invoke in its filing *"the grievance and the factual and legal aspects that could not be heard in cassation"*. In turn, Transitory III of Law 8837 required that for the review procedure to proceed, the convicted person *"has to have previously alleged a violation of Article 8.2. h) of the Convention"*.

⁸ IHR Court. Case of Amrhein and others vs. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, para.262.

⁹ IHR Court. Case of Amrhein and others vs. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, para.48.

¹⁰ IHR Court. Case of Amrhein and others vs. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, para.265.

¹¹ 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.

19. In that sense, the Commission reaffirms that the way in which the review procedure established by Transitory I of Law 8503 was regulated could generate limitations in terms of the accessibility of the appeal, and, consequently, does not in itself guarantee the right to a full review of the conviction to all those who were convicted during the original text of the Criminal Procedural Code¹². The same conclusion can be reached with regard to the appeal for review established in Transitory III of Law 8837, since the law included the requirement of having previously alleged the violation of the right to appeal as a procedural requirement for the review remedy.

20. Nonetheless, the Commission recognizes, first of all, that the Constitutional Chamber of the Supreme Court of Justice of Costa Rica has repeatedly referred in its rulings to the need to “*ensure the right to appeal, excluding formalities that would prevent the review of convictions, in order to comply with the provisions of Article 8.2.h of the Convention*”¹³.

21. Likewise, the IACHR considers that, despite the obstacles to the admissibility of the appeal incorporated in the wording of Transitory I of Law 8503, the appeal for review recognized therein represented an additional opportunity for a convicted person to obtain a comprehensive review of his or her sentence. This comprehensive review depended, in essence, on the way in which the judges of the appellate courts interpreted the procedural norms in force in light of the jurisprudence of the Constitutional Chamber of the Supreme Court of Justice of Costa Rica, Article 8.2.h of the American Convention and the decision of the IHR Court in the *Herrera Ulloa* case.

22. In particular, and in line with the Court's decision, the Commission observes that, bearing in mind that such legislative amendments to the Costa Rican appeal system were adopted as a result of the rulings of the bodies of the Inter-American human rights system, it is reasonable as grounds for admissibility of the appeal that the interested parties should invoke the possible errors that may have been committed by the judge or court of the lower court.

23. Consequently, taking into account the specificities that exist with regard to this issue in the Costa Rican system, as a result of the judgments handed down by the Inter-American system, and specifically with what was stated by the IHR Court in the “*Amrhein*” case, the Commission considers that it is not appropriate to make an abstract evaluation of each of the remedies available in the criminal procedural legislation, but rather “*a case-by-case analysis of the appeals actually filed by the alleged victims in order to determine whether the manner in which they were resolved in the Costa Rican appeal system, taking into account its reforms, respected their right to a comprehensive review of their convictions*”¹⁴. Which, in principle, requires an analysis of the merits by the IACHR, unless the information provided by the parties shows that the facts raised by the petitioner do not *prima facie* characterize violations of the American Convention, in the terms of Article 47 thereof.

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

24. With regard to the State's questioning of the fact that the exhaustion of domestic jurisdiction occurred after the petition was filed, the IACHR reiterates its constant position according to which the analysis of the requirements set forth in Articles 46 and 47 of the Convention must be made in light of the situation in force at the time the admissibility or inadmissibility of the claim is decided. It is very frequent that, during the processing, there are changes in the state of exhaustion of domestic remedies. Nonetheless, the system of

¹² IACHR. Report No. 33/14. Case 12.820. Merits. Manfred Amrhein and others. Costa Rica. April 4, 2014. Para. 217 - 220.

¹³ IHR Court. Case of Amrhein and others vs. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354. para.260.

¹⁴ IHR Court. Case of Amrhein and others vs. Costa Rica. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354. para.266.

petitions and cases ensures that both the State and the petitioner have a full opportunity to present information and arguments in this regard¹⁵.

25. In the instant case, the Commission observes that on March 16, 2012, the Third Chamber of the Supreme Court of Justice dismissed the petition for review filed by the alleged victim against his conviction. On this point, the State argues, in other allegations, that the alleged victim could have requested a full review of his conviction through the special review mechanisms established in the transitory provisions of Law No. 8503 and No. 8837, and, despite this, he did not use these avenues.

26. In accordance with the allegations presented, the Commission observes that the State complied with its duty to specify the domestic remedies that were not exhausted and the reasons why they were adequate and effective to resolve the legal situation of the alleged victim. Indeed, since its first jurisprudence, the Inter-American Court established that "*the State claiming non-exhaustion is responsible for indicating the domestic remedies to be exhausted and their effectiveness*"¹⁶. Specifically, the information provided shows that, after the denial of his cassation appeal, Mr. Alvarado López had at his disposal the special review procedure established in Transitory I of Law No. 8503 to challenge his conviction and obtain a full review of that ruling, since this provision entered into force on June 6, 2006 and the Third Chamber of the Supreme Court of Justice dismissed his cassation remedy on December 3, 2004.

27. On this point, the Commission reiterates that the Inter-American Court considered that the aforementioned mechanism, together with Transitory III of Law No. 8837, guarantee the right to a comprehensive review of a conviction and, therefore, comply with the obligation established in Article 8.2.h) of the American Convention. Under this understanding, the precedent of the case of *Amrhein and others vs. Costa Rica* established that the alleged victims who allege a violation of the right contemplated in the aforementioned Article 8.2.h) and/or other related guarantees must use this avenue if it was available at the time of the facts, or otherwise they must demonstrate its lack of accessibility or suitability. Accordingly, the Commission has also considered that when the State complies with its duty to question the exhaustion of domestic remedies in due time and form, it is up to the petitioner to make a ruling on the matter¹⁷.

28. In this vein, since the petitioner does not present allegations aimed at contesting the arguments and information presented by Costa Rica; nor does he question that, in the instant case, the special review mechanism contemplated in Transitory I of Law No. 8503 lacked any element that would affect 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 set forth in Article 46.1.a) of the American Convention and, consequently, it is appropriate to declare the present petition inadmissible.

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.

Approved by the Inter-American Commission on Human Rights on the 1st day of the month of August 2023. (Signed:) Margarette May Macaulay, President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón and Carlos Bernal Pulido, Commissioners.

¹⁵ IACHR, Report No. 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Ustusuástegui. Mexico. July 29, 2016, para. 33.

¹⁶ IHR Court. Case of Velásquez Rodríguez vs. Honduras. Preliminary Exceptions. Judgment of June 26, 1987. Series C No. 1, para. 88; and Case of Cuya Lavy and others v. Peru. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of September 28, 2021. Series C No. 438, para. 27.

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