

OEA/Ser.L/V/II
Doc. 138
1 August 2023
Original: Spanish

REPORT No. 128/23
PETITION 1110-12
REPORT ON INADMISSIBILITY

CARLOS ENRIQUE SALAS SALAZAR
COSTA RICA

Approved electronically by the Commission on August 1, 2023.

Cite as: IACHR, Report No. 128/23, Petition 1110-12. Inadmissibility.
Carlos Enrique Salas Salazar. Costa Rica. August 1, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Carlos Enrique Salas Salazar
Alleged victim:	Carlos Enrique Salas Salazar
Respondent State:	Costa Rica
Rights invoked:	Articles 5 (right to humane treatment), 8 (right to a fair trial), 9 (freedom from ex post facto laws) and 25 (judicial protection) of the American Convention of Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	June 12, 2012
Additional information received at the stage of initial review:	September 16, 2016
Notification of the petition to the State:	December 27, 2016
State's first response:	April 30, 2018, and December 14, 2018
Notification of the possible archiving of the petition:	July 19, 2022
Petitioner's response to the notification regarding the possible archiving of the petition:	August 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 instrument of ratification submitted 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	Not applicable
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of section VII
Timeliness of the petition:	Yes, under the terms of section VII

V. POSITION OF THE PARTIES*Allegations from the petitioner party*

1. Mr. Salas Salazar, in his capacity as petitioner and alleged victim, complains that he did not have access to a remedy that would allow for a comprehensive review of his conviction for the crime of

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

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

embezzlement. He also claims that the principles of presumption of innocence and the prohibition of *reformatio in peius* were also affected by the way in which the proceedings against him were conducted.

2. He informs that he held the position of Representative to the Legislative Assembly of the Republic of Costa Rica during the 1998-2002 period of government and that, due to the exercise of such function, the General Comptroller of the Republic denounced him together with two other persons for the crime of embezzlement. Specifically, he details that said agency attributed him to have managed modifications in the 2011 Budget Law, in order to give money to a private association, which, later, was used to cancel previous debts assumed by him with a supermarket that provided supplies to the population of the municipality of San Ramón.

3. He details that, despite the complaint, the Prosecutor's Office during the process only presented accusations against his co-defendants and, in his case, requested that he be acquitted. Thus, on October 13, 2005, the Trial Court of the First Judicial Circuit of Alajuela, San Ramón, acquitted him and the rest of the defendants.

4. He explains that the General Prosecutor's Office filed an appeal of cassation against this decision, questioning only the acquittal of the other two co-defendants. However, he mentions that, despite the fact that no challenges were filed against their acquittal, on March 13, 2006, the Third Chamber of the Supreme Court of Justice, through resolution 2006-00198, fully revoked the first instance decision and ordered a second trial with another court, considering that the evidence was not adequately assessed in the first instance sentence.

5. As a result of this decision, on October 20, 2006, the Trial Court issued a new decision and, on this occasion, sentenced the alleged victim, together with his co-defendants, for the crime of embezzlement, as a continuous crime against the Duties of the Public Function and the Public Treasury, to six years of imprisonment.

6. Faced with this decision, he argues that his defense filed an appeal of cassation, arguing: (i) the erroneous application of the substantive law, since the defendants were tried based on a regulation that was not in force at the time of the facts; (ii) the incorrect application of the crime of embezzlement, since the alleged victim did not meet the requirements provided by said criminal type, given that he was not an official with powers to administer, receive or have custody of money or assets of the Public Administration, nor was there a subtraction of these; and (iii) the absence of evidence to prove the presence of malice in the action. However, he points out that on June 4, 2010, the Third Chamber of the Supreme Court of Justice, by means of resolution 2010-00619, dismissed this action, arguing that the sentence was based on the regulations in force at the time of the facts and on the jurisprudence of the Supreme Court of Justice of the Nation on the concept of "public official".

7. He explains that, in view of this situation, on December 2, 2010, he filed a proceeding for review of the judgment and, subsequently, on February 11, 2011, he added allegations to said appeal. Likewise, he informs that on February 15, 2011, he filed a second proceeding for review of the judgment. He details that, by means of said appeals, he mainly alleged that: i) the court made an improper assessment of the evidence to prove the presence of fraud and the diversion of public funds; ii) the violation of his right under Article 8(2)(h) of the American Convention; and iii) the irregular revocation of his acquittal, despite the fact that the Prosecutor's Office did not request the modification of that part of the decision. However, on August 29, 2012, the Third Chamber of the Supreme Court of Justice, after joining both proceedings, declared arguments ii) and iii) inadmissible, indicating that he did not specify the specific defects that could not be reviewed through the appeals of cassation and that the procedural rules do not allow the revocation of the acquittal sentence to be reanalyzed through review. Likewise, he argues that on November 1, 2013, the aforementioned body analyzed in the merits stage argument i) and dismissed it, indicating that the conviction adequately assessed and supported his conviction.

8. Based on these considerations, Mr. Salas Salazar claims that Costa Rica did not give him the opportunity to challenge his conviction by means of an appeal, in accordance with Article 8(2)(h) of the

American Convention. He also claims that the procedural guarantee of the prohibition of *reformatio in peius* was violated, since the Third Chamber of the Supreme Court of Justice revoked his acquittal without the Prosecutor's Office having requested such a modification. He emphasizes that, if the Public Prosecutor's Office had wanted to challenge this decision, a specific procedure provided for in Costa Rican law should have been followed, which did not occur. Finally, he considers that the sentence imposed constituted inhuman and degrading treatment given the irregularities committed during the criminal proceedings, the lack of clarity of the criminal type and the fact that he had been previously prosecuted on other occasions for the same facts and acquitted.

Allegations of the State

9. For its part, the State replies that the petition is inadmissible for failure to exhaust domestic remedies, since at the time the petition was lodged, the Third Chamber of the Supreme Court of Justice had not yet ruled on the review proceedings filed by the alleged victim. In this regard, it argues that, since the aforementioned body only dismissed said appeals on November 1, 2013, the Commission must declare the claim inadmissible for failure to comply with the requirement set forth in Article 46(1)(a) of the American Convention.

10. Similarly, it argues that Mr. Salas Salazar also failed to make timely use of the special review mechanism devised as a result of the procedural reforms carried out in favor of persons with final sentences. On this point, the State emphasizes that the alleged victim did not make use of this mechanism, despite the fact that it is designed precisely for those persons with final sentences 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 states that at the time he was notified of this petition, Mr. Salas Salazar had the opportunity to file the special review procedure established in Transitory III of Law No. 8837.³ Therefore, it argues that the domestic legal system provided an additional option for the alleged victim to use at the appropriate procedural moment, and yet he did not use this avenue.

11. Finally, it refers that Mr. Salas Salazar did not use domestic remedies to claim the alleged violations of the rights contemplated in Articles 5 and 7 of the American Convention. It reports that although the petitioner's sister filed a writ of habeas corpus on his behalf, at no time did she allege any violation of personal integrity or personal liberty, but merely requested a review of what had already been decided in the criminal courts, thus distorting the purpose of the constitutional proceedings. Along these lines, it adds that the alleged victim did not file an amparo action either, in order to allege broader issues, referring to the rights to due process and judicial protection. Therefore, Costa Rica considers that the remedies used in the domestic jurisdiction prior to the filing of the petition were not adequately used.

12. On the other hand, the State argues in the alternative that, in the event that the Commission considers that the resolution of the appeal of cassation filed by the alleged victim exhausted the domestic jurisdiction, the petition is inadmissible for having been untimely submitted. It argues that despite the fact that on August 4, 2010, the Supreme Court of Justice notified the decision to reject the aforementioned appeal, Mr. Salas Salazar only filed this petition on June 12, 2012, and, therefore, incurred a delay of almost two years since the notification 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.

³ 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 specifically stated.

13. Finally, Costa Rica argues that the alleged facts do not characterize a human rights violation 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 factual and legal assessments made by the domestic judges and courts that acted within their competence.

14. It emphasizes that the Costa Rican legal system provides for a variety of remedies, mainly judicial, in order to offer individuals 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 allow for 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. PREVIOUS CONSIDERATIONS

15. The Commission notes 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, given that different decisions have been issued within the Inter-American system on this issue, 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 instant petition.

16. Thus, in the judgment in the case of *Herrera Ulloa v. Costa Rica* of July 2, 2004, the Inter-American Court of Human Rights⁴ examined the regulation established in the Criminal Procedure Code in force since 1998; and concluded that it did not have a “*remedy that would permit the higher court to do a thorough analysis or examination of all the issues debated and analyzed in the lower court*” considering the limitations the regulations had over the writ of amparo in the criminal procedure.⁵ Consequently, the Inter-American Court 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 not having guaranteed his right to appeal the ruling; and ordered Costa Rica “*to adapt its domestic legal system to conform to the provisions of Article 8(2)(h) of the Convention, in relation to Article 2 thereof*”.⁶

17. As a consequence of this judgment, Costa Rica reformed the regulation of its criminal procedure system in order to have a regulation consistent with the obligations contemplated in Article 8.2.h) of the American Convention. Thus, on June 6, 2006, Law No. 8503, called the “Law for the Opening of Criminal Cassation”, entered into force, which modified and added different articles of the Code of Criminal Procedure related to appeals and review of appeals. Likewise, and in what is relevant to the present case, said legislation established in its Transitory I, a special review procedure for “people convicted of a criminal act with a date prior to this Law, who have been prevented from filing an appeal against the sentence, due to the rules that regulated their admissibility on that date, [...], invoking in each case, the grievance and the factual and legal aspects that were not possible to know in cassation”. Based on this, the Inter-American Court considered that “through the grounds for review created by transitory provision I, a person convicted of a criminal offense could, in principle, obtain a comprehensive review of the judgment, including the factual and legal aspects”.⁷

18. The aforementioned law also incorporated several modifications to the legal regime of the appeal of cassation contained in the Code of Criminal Procedure. In the first place, a new cause was added to the list of defects in the sentence that justify cassation in Article 396, consisting of the fact that “the sentence has not been issued with due process or with an opportunity for defense”. Secondly, and with respect to the

⁴ Hereinafter “the Inter-American Court” or “I/A Court of HR”.

⁵ I/A Court H.R., Case of *Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, par. 167.

⁶ I/A Court H.R., Case of *Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, par. 198.

⁷ I/A Court H.R., Case of *Amrhein et al. v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, par. 262.

scope of the cassation court's review, Law 8503 incorporated Article 449 bis to the Code of Criminal Procedure, which reads:

The Court of Cassation shall assess the merits of the claims invoked in the appeal and their grounds, by examining the proceedings and the records of the hearing, so that it can evaluate the way in which the trial judges assessed the evidence and based their decision. If it does not have sufficient records to make this assessment, it may reproduce in cassation the oral evidence of the trial that, in its judgment, is necessary to examine the merits of the claim, and it will evaluate it in relation to the rest of the proceedings.

Likewise, it may directly evaluate the evidence that has been introduced in writing at trial.

19. 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 procedure, other reforms to the appeal regime and implementation of new rules for oral procedures in criminal proceedings," in force as of December 9, 2011, which created and regulated the appeal. In addition, Transitory III of said norm regulated two additional assumptions: i) for persons whose sentences were final at the time of entry into force of the law, it was established that they may file, for one time only, a review procedure in the first six months; and ii) for persons whose appeals of cassation were pending resolution at the time of entry into force of the law, it was established that they could request the conversion of the appeal of cassation already filed to an appeal under the new norm.

20. As a consequence of the aforementioned amendments, in the judgment of the case of *Amrhein et al. v. 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.

21. With regard to the first point, the Commission notes that in the aforementioned case, the Inter-American Court considered that the alleged victims should have filed the special remedy of review 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 is an exceptional remedy cannot be decisive, per se, to conclude that it is ineffective".⁸ 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 such remedy.

22. 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 because of the way in which the Costa Rican appeals system is regulated, or because of the manner in which the State addressed the situation of persons whose convictions were already final prior to the entry into force of Laws 8503 and 8837. This is because through said reforms, it remedied the deficiencies in the application of the appeal rules [...]"⁹ Likewise, it recalls that in the November 22, 2010 compliance monitoring resolution of the *Herrera Ulloa v. Costa Rica* case, the Court positively assessed the reforms introduced in the criminal procedural legislation; and by virtue of such amendments it concluded that "by guaranteeing the possibility of a broad control of the sentence issued by a trial court in criminal matters at the domestic level",¹⁰ Costa Rica had complied with its domestic legislation.

23. Notwithstanding the foregoing, the Commission notes that the aforementioned laws recognized that persons whose convictions had already become *res judicata* had the possibility of filing a review proceeding, albeit subject to compliance with certain requirements. In the case of Law 8503, the

⁸ I/A Court H.R., Case of *Amrhein et al. v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, par. 48.

⁹ I/A Court H.R., Case of *Amrhein et al. v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 25, 2018. Series C No. 354, par. 265.

¹⁰ I/A Court H.R., Case of *Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, par. 16.

Commission emphasizes that the appellant was required to invoke in his presentation “the grievance and the factual and legal aspects that could not be heard in cassation”. For its part, Transitory III of Law 8837 required for the review procedure to proceed that the convicted person “had previously alleged the violation of Article 8.2.h of the Convention”.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

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

29. With respect to the State's questioning of the fact that the exhaustion of domestic jurisdiction occurred after the petition was lodged, the IACHR reiterates its constant position that 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

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.

processing, changes occur in the state of exhaustion of domestic remedies. Nevertheless, the system of petitions and cases ensures that both the State and the petitioner have the full opportunity to present information and arguments in this regard.¹⁴

30. Based on the foregoing, in the instant case, the Commission notes that on June 4, 2010, the Third Chamber of the Supreme Court of Justice rejected the appeal of cassation filed by the alleged victim against his first instance conviction. Following this, Mr. Salas Salazar filed up to two appeals for review challenging his conviction, which the Third Chamber of the Supreme Court of Justice resolved on November 1, 2013.

31. In this regard, the State argues that the alleged victim was able to file the special review procedure provided for in Transitory III of Law No. 8837, given that it entered into force on December 9, 2011. However, the Commission recalls that, as a general rule, the petitioner only has, in principle, the obligation to exhaust ordinary domestic remedies¹⁵. In this sense, if the alleged victim raised the issue through one of the valid and adequate alternatives according to the domestic legal system and the State had the opportunity to remedy the issue in its jurisdiction, the purpose of the international standard has been fulfilled¹⁶

32. In this case, the Commission considers that, due to the way it is regulated and its position within the Costa Rican criminal procedure, the special review procedure contemplated in Transitory III of Law No. 8837 is extraordinary. Consequently, its exhaustion was not obligatory for the alleged victim, if he complied with previously using the appeal process, which, by virtue of the modifications introduced by Law No. 8503, was in principle an adequate way for their claims, referred to the affectation of the rights to appeal the ruling, to the presumption of innocence, to non *reformatio in peius* and to personal integrity, are duly addressed. As well, it should be noted that, in addition to this mechanism, Mr. Salas Salazar used up to two regular review procedures with reasonable expectations of success.

33. Similarly, although the State argues that Mr. Salas Salazar could raise his allegations through a writ of habeas corpus and/or amparo, the Commission recalls that the use of a constitutional remedy was not necessary to comply with the requirement established in Article 46.1.a) of the American Convention, due to the mechanisms previously used by the alleged victim.

34. Consequently, the Commission considers that the instant case meets the requirement set forth in Article 46(1)(a) of the American Convention. Furthermore, given that the decision that exhausted domestic remedies was issued when the instant case was under admissibility review, the Commission also concludes that this petition complies with the time limit requirement established in Article 46(1)(b) of the Convention.

VIII. ANALYSIS OF COLOURABLE CLAIM

35. The Commission identifies that the petitioner mainly questions two specific issues: i) the violation of the right to appeal the judgment; ii) the violation of the principles of presumption of innocence and the prohibition of *reformatio in peius*; and iii) the violation of his right to humane treatment.

36. Regarding the first aspect, the Commission recalls that the right to appeal the judgment before a different and higher judge or court is one of the minimum guarantees that every person subjected to a criminal investigation and proceeding has. Its purpose is to ensure the review of an adverse judgment so as to have the possibility of correcting judicial decisions that are contrary to law and to prevent an unjust decision from becoming *res judicata*.¹⁷ Along these lines, the Commission reiterates that it is irrelevant for international

¹⁴ IACHR, Report N. 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Ustusuástegui. Mexico. July 29, 2016, par. 33.

¹⁵ IACHR, Report No. 161/17, Petition 29-07. Admissibility. Andy Williams Garcés Suárez and family. Perú. November 30, 2017, par. 12.

¹⁶ IACHR, Report N. 70/04, Petition 667/01, Admissibility, Jesús Manuel Naranjo Cárdenas and others. Venezuela, October 15, 2004, par. 52.

¹⁷ I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, pars. 158 a 161; I/A Court H.R., Case of Mendoza et al. v. Argentina. Preliminary Objections, Merits and Reparations. Judgment of May 14, 2013. Series C No. 260 par. 242.

human rights law the name by which the available remedy is designated.¹⁸ What is important is that the remedy contemplated in domestic law meets a series of standards and, in that sense, is timely,¹⁹ accessible,²⁰ effective²¹ and, in particular, that it allows for a comprehensive review of the conviction.²²

37. Regarding this last point, the Inter-American Commission indicated in the Abella case with respect to Argentina that:

Article 8(2)(h) refers to the minimum characteristics of a remedy that serves as a check to ensure a proper ruling in both substantive and formal terms. From the formal standpoint the right to appeal the judgment to a higher court to which the American Convention refers should, in the first place, apply to every first instance judgment with the purpose of examining the unlawful application, the lack of application, or the erroneous interpretation of rules of law based on the operative part of the judgment. The Commission also considers that to guarantee the full right of defense, this remedy should include a material review of the interpretation of procedural rules that may have influenced the decision in the case when there has been an incurable nullity or where the right to defense was rendered ineffective, and also with respect to the interpretation of the rules on the weighing of evidence, whenever they have led to an erroneous application or non-application of those rules.²³

38. Along these lines, the IACHR has emphasized that, although the right to appeal does not necessarily imply a new trial or a new hearing, as long as the reviewing court is not prevented from studying the facts of the case, it is necessary in light of Article 8(2)(h) of the Convention that there be the possibility of pointing out and obtaining a response regarding errors that the judge or court of the lower instance may have committed. This means that it is not possible to exclude from the scope of the appeal certain categories such as factual issues; the manner in which the evidence was incorporated into the proceedings; and the evaluation that the judges of the lower instance made of it. The form and means of review will depend on the nature of the issues at stake, as well as the particularities of the criminal procedure system of the respective States.²⁴

39. Based on the aforementioned considerations, in the instant case the Commission notes that on October 20, 2006, the Trial Court sentenced the alleged victim for the crime of embezzlement to six years imprisonment. In response, the alleged victim filed an appeal in cassation, challenging both factual and legal aspects of the first instance decision. As a result, on June 4, 2010, the Third Chamber of the Supreme Court of Justice dismissed the aforementioned action, considering that the first instance decision was duly grounded.

40. In this regard, based on a reading of the text of the latter decision, the Commission considers that the Third Chamber of the Supreme Court of Justice reexamined the manner in which the court of first instance assessed the body of evidence in the case, in order to reject the questions raised by the alleged victim. In this regard, the Commission finds that the court began to analyze issues related to the application of substantive criminal law, specifically with respect to the subsumption of the petitioner's conduct under the criminal offense of embezzlement. Therefore, the Commission considers that, *prima facie*, no arguments or evidence have been presented that would make it possible to identify any restriction or limitation that would have prevented a comprehensive analysis of the issues raised by Mr. Salas Salazar against his first instance conviction.

¹⁸ I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, par. 158-161; UN, Committee of Human Rights. Gómez Vázquez v. Spain. Communication N. 701/1996. Decision of August 11, 2000, par. 11.1.

¹⁹ I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, par. 158.

²⁰ I/A Court H.R., Case of Barreto Leiva v. Venezuela. Merits, Reparations and Costs. Judgment of November 17, 2009. Series C No. 206, par.90.

²¹ 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 272-274.

²² I/A Court H.R., Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile. Merits, Reparations and Costs. Judgment of May 29, 2014. Series C No. 279, par.270.

²³ IACHR, Report N. 55/97. Case 11.137. Merits. Juan Carlos Abella. Argentina. November 18, 1997, par.261.

²⁴ IACHR, Report N. 172/10, Case 12.561. Merits, César Alberto Mendoza and others (Permanent prison of teenagers), Argentina, November 2, 2010, par. 189.

41. Notwithstanding the foregoing, the Commission notes that, following the filing of a review proceeding, the alleged victim again questioned the evidentiary assessment used to convict him, causing the Third Chamber of the Supreme Court of Justice to reanalyze and dismiss this claim. In the Commission's opinion, this mechanism provided Mr. Salas Salazar with a second opportunity to have his claims duly analyzed, without any error or limitation in the examination carried out by this court in the resolution of the review proceeding. Therefore, the IACHR concludes that, prima facie, no elements have been provided to identify a possible violation of the right contemplated in Article 8(2)(h) of the Convention.

42. Now, with respect to the second point, the Commission notes that despite the petitioner argues that the Prosecutor's Office initially decided not to charge him, according to the first instance judgment of October 20, 2006, it can be seen that the Trial Court of the First Judicial Circuit of Alajuela, San Ramón Branch, identifies Mr. Salas Salazar as a defendant, based on the arguments presented in the indictment. Nor does the Commission identify any documents in the case file that prove that the Public Prosecutor's Office has indeed requested the acquittal of the alleged victim, and therefore has no evidence to support the petitioner's allegation.

43. Similarly, the Commission notes that although the Prosecutor's Office presents specific arguments in its cassation brief against the other two co-defendants, the main basis of the appeal is the inadequate evidentiary assessment made by the trial court. In the Commission's opinion, this argument also called into question the acquittal of Mr. Salas Salazar and, therefore, enabled the Third Chamber of the Supreme Court of Justice to require a new analysis of the case. Consequently, given the documentation provided, the Commission does not consider that, prima facie, the manner in which the proceedings against the alleged victim were conducted constitutes an infringement of judicial guarantees.

44. Likewise, the Commission does not see, a prima facie violation of the principle of presumption of innocence, since the domestic courts respected the burdens of proof in the proceedings and, based on a plurality of evidence, reasonably determined the guilt of Mr. Salas Salazar and his co-defendants.

45. Finally, the Commission does not identify allegations or documents in the petition that allow it to infer that the personal integrity or the freedom from ex post facto laws of the alleged victim was affected.

46. Based on these considerations, the Commission concludes that the instant case does not present elements that could involve a possible violation of the rights enshrined in the American Convention or other Inter-American treaties.

VIII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; to continue with the analysis on the merits; 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:) Margarete May Macaulay, President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón and Carlos Bernal Pulido, Commissioners.