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REPORT No. 54/23
PETITION 1339-08
REPORT ON INADMISSIBILITY

LUIS FERNANDO ALPIZAR NAVARRO
COSTA RICA

Approved electronically by the Commission on May 12, 2023.

Cite as: IACHR, Report No. 54/23. Petition 1339-08. Inadmissibility.
Luis Fernando Alpizar Navarro. Costa Rica. May 12, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Dayan Alpizar
Alleged victim:	Luis Fernando Alpizar Navarro
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:	November 18, 2008
Additional information received at the stage of initial review:	April 5, 2013, June 6, 2013, October 6, 2015, and March 2, 2015
Notification of the petition to the State:	September 1, 2016
State's first response:	June 7, 2018
Additional observations from the petitioner:	December 7, 2018, and May 26, 2022
Additional observations from the State:	July 16, 2020
Notification of the possible archiving of the petition:	November 12, 2018
Petitioner's response to the notification regarding the possible archiving of the petition:	January 6, 2019

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 (instrument of ratification deposited 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. POSITIONS OF THE PARTIES

Allegations of the petitioner

1. The petitioner denounces that Mr. Alpizar Navarro did not have access to a remedy that allowed a comprehensive review of his conviction for the crime of rape and sexual abuse. Likewise, he argues that said conviction was not duly motivated and did not respect his rights to defense.

2. The petitioner points out that on March 30, 2004, the Public Prosecutor began an investigation against Mr. Alpizar Navarro for having assaulted two adolescents. As a consequence, after an investigation and criminal proceeding, on October 13, 2005, the Trial Court of the Second Judicial Circuit of San José, Goicochea, sentenced the alleged victim to forty-five years in prison for the crime of rape and sexual abuse. The representative of the alleged victim filed an appeal for cassation against this decision, questioning factual and legal aspects of the ruling, but on April 7, 2006, the Third Criminal Chamber of the Supreme Court of Justice confirmed the conviction. The petitioner explains that this decision was notified on July 12, 2006.

3. The petitioner affirms that all domestic remedies were exhausted with this last decision, leaving Mr. Alpizar Navarro with no chance to fully appeal his conviction. Notwithstanding, he states that on December 5, 2007, Mr. Alpizar Navarro's defense filed an appeal for review, but he maintains that on April 29, 2009, the Third Chamber of the Supreme Court rejected this claim.

4. Based on these factual considerations, the petitioner denounces that the State violated the right to appeal the conviction established in Article 8.2.h) of the Convention, considering that in Costa Rica there is no ordinary remedy to challenge a first instance conviction; and, as a result, the alleged victim had to directly file an appeal for cassation. Along these lines, it details that although Law No. 8503, Law on the Opening of Criminal Cassation, was promulgated, such norm is not operative, since the appeals for cassation and review continue to be limited, restricted and formalistic.

5. Likewise, he argues that he was convicted only based on the testimony of the victims in the criminal proceeding, without any other type of evidence, which affected his right to the presumption of innocence and to have a duly motivated decision. Finally, he argues that the legal charges against him were not specified in the context of the criminal proceedings against him and that, after his conviction, the Public Defense did not provide him with adequate help to file an appeal for review, limiting itself to indicating the reasons why the review of his conviction could not prosper.

Allegations of the Costa Rican State

6. The State, for its part, replies that the petition is inadmissible due to failure to exhaust domestic jurisdiction. It affirms that Mr. Alpizar Navarro did not comply with exhausting the domestic remedies before filing his petition, since he did not adequately use the ordinary appeal for review or the special review mechanisms based on the procedural reforms carried out in favor of persons with a final judgment.

7. Regarding the first appeal, it details that at the time this petition was filed, the appeal for review filed by the alleged victim was still pending, which was only resolved on April 29, 2009. Consequently, it maintains that Mr. Alpizar Navarro did not adequately exhaust domestic remedies before initiating this international proceeding.

8. In relation to the special review mechanisms, it highlights that the alleged victims did not use them despite the fact that they are designed precisely for those people with final convictions and who consider their right to appeal their conviction violated, in accordance with the Article 8.2.h) of the Convention. Along these lines, the State states that at the time it was notified of this petition, Messrs. Chinchilla Jiménez and Vizcayno Porras, between 2006 and 2011, had the opportunity to file the procedure established in the

transitory provisions of Law No⁹ 8503³ and, in the alternative, that they could use the special review mechanism provided for in Transitory III of Law No. 8837⁴. Therefore, it argues that the domestic law provided additional options for Mr. Alpizar Navarro to use at the appropriate procedural moment, and despite this, the petitioner did not do so. For these reasons, it requests the IACHR to find the present matter inadmissible for failure to comply with the requirement set forth in article 46.1a) of the Convention and, consequently, to order that the petition be archived.

9. Notwithstanding, the State argues that the petition was submitted in an untimely manner. In this regard, it alleges that despite the fact that on July 12, 2006, the alleged victim was notified of the judgment that dismissed the appeal for cassation that he filed against his conviction, the petitioner only filed this petition on November 18, 2008. Consequently, it considers that the period for lodging a petition established in Article 46.1.b) of the American Convention has not been respected.

10. Additionally, Costa Rica argues that the alleged facts do not characterize a human rights violation that is attributable to it. On the contrary, it argues that the petitioner wants the Commission to act as a fourth judicial instance and review the factual and legal assessments made by the domestic judges and courts that acted in the sphere of their competence.

11. It highlights that the Trial Court of the Second Judicial Circuit of San José sentenced the alleged victim after comprehensively analyzing different testimonies, as well as documentary evidence, among which were psychological studies carried out on the victims and a paternity report that showed that, as a result of the aforementioned sexual assaults, one of the victims gave birth to a girl. It adds that, from the beginning of the investigations, the Public Prosecutor's Office informed Mr. Alpizar Navarro of the facts for which he was being investigated, as well as the legal classification of such events and the existing evidence, for which reason his right to an adversarial system and to defense at all times. Lastly, it highlights that the Costa Rican Public Defender complied with its duties when advising the alleged victim in the appeal for review that he filed, without having committed any negligence. For this reason, it requests the IACHR to declare this matter inadmissible, given that no elements are provided that, *prima facie*, show violation of rights against Mr. Alpizar Navarro.

VI. PRELIMINARY CONSIDERATIONS

12. The Commission notes that the main purpose of this petition is to question the infringement of the right to appeal the conviction, enshrined in Article 8.2.h) of the American Convention. Because of this, given that different decisions have been issued within the Inter-American system on this matter, based on the changes implemented in the Costa Rican criminal procedure legislation, the IACHR deems it necessary to carry out a summary of these pronouncements in order to identify standards that allow to properly resolve this petition.

13. Thus, in its judgment of July 2, 2004, in the *Case of Herrera Ulloa v. Costa Rica*, the Inter-American Court of Human Rights⁵ examined a regulation included in the Code of Criminal Procedure since 1998 and concluded that it did not possess “*a liberal 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*”, given the limitations of the

³ Law No. 8503.- Transitory 1.- Persons convicted of a criminal act with a date prior to this Law, who have been prevented from filing an appeal for cassation against the conviction, due to the rules that regulated its admissibility in that date, may raise the review of the conviction before the competent court, invoking in each case, the grievance and the factual and legal aspects that could not be heard in cassation.

⁴ Law No. 8837.- Transitory III.- In all matters that have a final judgment at the time this Law enters into force, and in which the violation of Article 8.2.h) of the American Convention on Human Rights has previously been alleged, the convicted person will have the right to file, only once, during the first six months, a review procedure that will be heard in accordance with the powers established in this Law, by the old Courts of Cassation or the Third Criminal Chamber. In matters that are pending resolution and in which the violation of article 8.2 h) of the American Convention on Human Rights has previously been alleged, the appellant will be given a period of two months to readapt his appeal for cassation to an appeal, which will be presented before the old Courts of Cassation or the Third Chamber, as appropriate, which will forward the file to the new Courts of Appeal for resolution. Under penalty of inadmissibility, the grievance must be specifically specified.

⁵ Hereinafter, the “Inter-American Court” or the “I/A Court H.R.”.

appeal for cassation in the criminal jurisdiction⁶. Therefore, the Inter-American Court declared that the Costa Rican State violated articles 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 conviction; and order 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”⁷.

14. As a consequence of this judgment, Costa Rica reformed the regulation of its criminal procedure to have a regulation in accordance with the obligations enshrined in Article 8.2.h) of the American Convention. Thus, on June 6, 2006, Law No. 8503, called the “Law on the Opening of Criminal Cassation”, came into force, which modified and added different articles of the Code of Criminal Procedure related to appeals and review appeals. Likewise, and in what is relevant to the present case, said legislation established in its Transitory I, a special review procedure for “persons convicted of a criminal act with a date prior to this Law, who have been prevented from filing an appeal for cassation against the conviction, due to the rules that regulated its admissibility on that date [...] invoking, in each case, the grievance and the factual and legal aspects that could not be heard in cassation.” In light of 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”⁸.

15. Additionally, both the Commission and the I/A Court HR also verified that Law No. 8837 was published on June 9, 2010, entitled “Creation of the appeal of the conviction, other reforms to the challenge regime and implementation of new orality rules in criminal proceedings”, effective as of December 9, 2011; which created and regulated the appeal. In addition, Transitory III of said norm regulated two additional cases: i) for persons whose convictions were final at the time the law entered into force, it was established that they may file, for a single time, a review procedure in the first six months; and ii) for persons whose appeals were pending resolution at the time the law entered into force, it was established that they could request the conversion of the appeal already presented to an appeal in accordance with the new norm.

16. As a consequence of the aforementioned modifications, in the judgment of the case of *Amrhein et al. v. Costa Rica* on April 25, 2018, the Inter-American Court re-evaluated the Costa Rican criminal procedure regulation; and expanded its legal criteria both regarding the exhaustion of domestic jurisdiction, as well as the analysis of the merits of cases on the same subject.

17. In relation to the first point, the Commission highlights that, in such case, the Inter-American Court considered that the alleged victims should have filed the appeal for special review based on Transitory I of Law 8503 of 2006 during the admissibility stage of the petition, since it was specifically intended for people with final convictions; and because of that, “the fact that it is an exceptional remedy cannot be decisive, per se, to conclude that it is ineffective”⁹. Consequently, following the aforementioned jurisprudence, the Commission considers that, in order to determine the admissibility of a matter on this subject, it must determine whether the aforementioned appeal was available to the alleged victims after the issuance of their conviction, and if so, verify whether or not they have exhausted such a remedy.

18. Finally, for the purposes of analyzing 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 (...) because through said

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, para. 167.

⁷ 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, para. 198.

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, para. 262.

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, para. 48.

reforms, it remedied the deficiencies in the application of the appeal rules (...)”¹⁰. Likewise, it recalls that in the supervision of compliance order of November 22, 2010, in the case of Herrera Ulloa vs. Costa Rica, the Court positively valued the reforms introduced in the criminal procedure legislation and, by virtue of such modifications, concluded that “by ensuring increased monitoring of judgments issued by a trial court in criminal law matters at the domestic level”¹¹, Costa Rica had fully complied with adapting its internal legislation.

19. Notwithstanding this, the Commission emphasizes that the aforementioned norms granted those whose convictions had already acquired the status of *res judicata* the possibility of filing a review procedure, although subject to compliance with certain requirements. In the case of Law 8503, the Commission notes that the appellant was required to invoke in his presentation “the grievance and the aspects of fact and law that could not be heard in cassation”. For its part, Transitory III of Law 8837 demanded for the admissibility of the review procedure that the convicted person “had previously alleged the violation of Article 8.2.h of the Convention”.

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 force¹². 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”¹³.

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

¹⁰ 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, para. 265.

¹¹ I/A Court H.R., Case of Herrera Ulloa v. Costa Rica. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 22, 2010, para. 16.

¹² IACHR. Report No. 33/14. Case 18.820. Merits. Manfred Amrhein and others. Costa Rica. April 4, 2014. Paras. 217-220.

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 260.

of their convictions”¹⁴. 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

25. Based on the previously stated considerations, the Commission observes that, in this matter, on April 7, 2006, the Third Criminal Chamber of the Supreme Court of Justice dismissed the appeal for cassation filed by Mr. Alpizar Navarro against his conviction of October 13, 2005. The IACHR also notes that, additionally, on April 29, 2009, the Third Chamber of the Supreme Court of Justice dismissed the appeal for review filed by the defense of Mr. Alpizar Navarro on December 5, 2007.

26. On this point, the State submits, among other arguments, that the alleged victim could request a comprehensive review of his sentence through the special review mechanisms established in Transitory I of Law No. 8503 and in Transitory III of Law No. 8837 and, despite this, he did not use these remedies.

27. 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.*”¹⁵ Specifically, the information provided shows that, after the notification of the denial of his cassation appeal, Mr. Alpizar Navarro 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.

28. 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 information¹⁶.

29. 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.

30. 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.

¹⁴ 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.

¹⁵ 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.

¹⁶ IACHR, Report No. 168/17, Petition 1502-07. Admissibility. Miguel Ángel Morales Morales. Peru. December 1, 2017, para. 18.

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 12th day of the month of May 2023.
(Signed:) Margarete May Macaulay, President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón and Carlos Bernal Pulido, Commissioners.