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REPORT No. 124/23
PETITION 192-10
REPORT ON INADMISSIBILITY

CARLOS ALBERTO ALVARADO MOYA
COSTA RICA

Approved electronically by the Commission on August 1, 2023.

Cite as: IACHR, Report No. 124/23, Petition 192-10. Inadmissibility. Carlos Alberto Alvarado Moya. Costa Rica. August 1, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Carlos Alberto Alvarado Moya
Alleged victim:	Carlos Alberto Alvarado Moya
Respondent State:	Costa Rica
Rights invoked:	Articles 5 (humane treatment), 8 (fair trial), 9 (principle of legality and retroactivity), 24 (equality before the law) and 25 (judicial protection) of the American Convention on Human Rights ¹ ; and Articles 6 and 7 of the Inter-American Convention to Prevent and Punish Torture

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	February 10, 2010
Notification of the petition to the State:	April 25, 2017
State's first response:	September 20, 2017
Additional observations from the petitioner:	July 10, 2018, July 12, 2018, and May 10, 2021
Additional observations from the State:	March 12, 2021, and September 22, 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 instrument of ratification on April 8, 1970); and Inter-American Convention to Prevent and Punish Torture (deposit of instrument of ratification on February 8, 2000).

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
Timeliness of the petition:	Does not apply

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

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

V. POSITION OF THE PARTIES

Allegations of the petitioner

1. The petitioner and alleged victim, Mr. Carlos Alberto Alvarado Moya, argues that he did not have access to a remedy that would allow for a full review of his criminal conviction. He also claims that the decision also affected other judicial guarantees, due to alleged irregularities committed during the proceedings, and that the sentence imposed constituted cruel, inhumane, and degrading treatment.

2. The petitioner narrates that after various proceedings, on April 30, 2008, the Trial Court of the Second Judicial Circuit of San José, by judgment 04-005374-0647, sentenced him to twenty-three years of imprisonment for the crimes of aggravated grand fraud, fraudulent administration of a larger amount, insider trading, and providing banking information.

3. He filed an appeal in cassation against this judgment, mainly raising the lack of authenticity, suitability and sufficiency of the evidence used to support the conviction. He also holds that he provided new evidence and reiterated his arguments on some of the evidence used in the first instance. Nonetheless, he claims that on July 9, 2009, the Third Chamber of the Supreme Court rejected this action, considering that the judgment was adequately reasoned. The petitioner holds that in order to reach this conclusion, the collegiate dismissed all the testimonial evidence and only accepted a few written documents. That same day he filed an appeal for clarification and addendum against this decision, but on October 2, 2009, the same Third Chamber dismissed this remedy, arguing that it was not necessary to clarify any point of the cassation decision.

4. In this regard, the petitioner holds that, contrary to Costa Rica's contention, it was not reasonable to file the motion for review regulated in Transitory I of Law No. 8503, since said law establishes that it is not admissible to raise "*by way of review, matters that were already discussed and resolved in cassation, unless they are based on new reasons or new elements of evidence*". In the petitioner's opinion, this shows that the review was a restricted route since the only aspects of fact and law that could be heard were those which could not be heard in cassation. Therefore, given the characteristics of the alleged victim's case, in which there were allegations and offers of proof in cassation that were rejected, it was not possible to obtain something different by way of review.

5. Without prejudice to this, he explains that on November 26, 2010, he filed a review remedy, arguing the lack of assessment of the evidence provided in cassation and including as part of its grounds the approval of Transitory III of Law 8837. However, on June 14, 2013, the Third Chamber of the Supreme Court of Justice dismissed this action, arguing mainly that Article 411 of the Criminal Procedural Code prevents the review of grounds that were already discussed in cassation and reiterating that the evidence offered was not of interest or novelty. By way of example, the petitioner cites the following argument used by the aforementioned chamber:

The evidentiary possibilities opened by our legislation for this stage of the process are not unlimited, but according to the reform made to article 449 of the Criminal Procedural Code by the so-called "Law of Opening of Criminal Cassation", it is necessary that the evidence is indispensable to prove the alleged grievance or that it agrees with those cases in which it is admitted for review. In the present case, neither of the two circumstances concur, because the grievance raised by the petitioners (sic) can be demonstrated by means of the evidence already taken (or even correspond to another proceeding, as could be before the Sentence Execution Judge in an eventual incident to take the appropriate measures regarding the situation of the accused); and, on the other hand, they are not novel elements or that were unknown at the time of the trial, in spite of which they were not offered at the time. Consequently, since they are neither indispensable nor novel, the reception of these depositions must be rejected.

6. Thus, in the petitioner's opinion, the aforementioned situation demonstrates that his conviction acquired the status of *res judicata* without him having had the opportunity to exercise his right to

review of the conviction. He argues that although the State enacted Law No. 8837 in order to guarantee the right contemplated in Article 8.2.h) of the Convention, this remedy was not effective since the regulation was discriminatory in that it made access to it conditional upon having previously challenged the violation of the right to appeal the judgment by means of a cassation remedy. The petitioner also holds that the aforementioned regulation does not permit the filing of an appeal, but only an appeal for review, and that it only entered into force months after the filing of this petition.

7. Likewise, he considers that since he was fifty years old at the time of his conviction, the authorities, in practice, have decreed that he should spend the last two thirds of his life in prison, which would constitute cruel, inhumane, and degrading treatment, and in a way would also be a kind of life imprisonment. He adds that this situation of imprisonment caused him different urological, digestive, metabolic and cardiological problems, which confirms the affectation of his right to humane treatment.

8. Finally, he argues that Article 9 of the Convention was violated, since the conducts attributed to him do not constitute the criminal offenses used to convict him due to the absence of malice.

Allegations of the Costa Rican State

9. The State, for its part, replies that the petition is inadmissible for failure to exhaust domestic remedies. It holds that Mr. Alvarado Moya failed to exhaust domestic remedies before filing his petition, since he did not use the ordinary remedy of review or the special review mechanisms created as a result of the procedural reforms introduced in favor of persons with final sentences. Likewise, it argues that the alleged victim did not use the appropriate mechanisms to claim the alleged violations of the rights contemplated in Articles 5 and 9 of the Convention.

10. With respect to the first remedy, it specifies that only on November 26, 2010, that is, nine months after submitting his petition to the IACHR (February 10, 2010), the alleged victim filed a judgment review proceeding before the Third Chamber of the Supreme Court of Justice, which on June 14, 2013, declared the remedy inadmissible. Therefore, in the State's opinion, the alleged victim did not use this procedural avenue correctly prior to the filing of his petition.

11. With regard to the special review mechanisms, it holds that the alleged victim did not use these avenues, although they are designed precisely for those persons with final convictions, who consider that their right to appeal their conviction in accordance with Article 8.2.h) of the Convention has been violated. Along these lines, the State holds that Mr. Alvarado Moya had the opportunity to file the procedure established in the transitory provisions 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 domestic legal system provided additional options for Mr. Alvarado Moya to use them at the appropriate procedural moment; however, he did not do so.

12. Without prejudice to the foregoing, the State adds that Mr. Montoya also failed to use the remedies available to him in the constitutional jurisdiction. In particular, it argues that despite the fact that he had at his disposal the constitutional action to claim the violation of the principle of legality, he decided not to resort to this remedy. The State stresses that, in accordance with Article 73 of Law No. 7135, this remedy is applicable "*against laws and other general provisions, including those originated in acts of private parties which*

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.

infringe, by action or omission, any constitutional norm or principle". Consequently, Costa Rica holds that this aspect of the petition cannot prosper either.

13. Finally, it adds that if it intended to question a possible practice of torture, the alleged victim should have filed a criminal complaint, describing the facts that supported his claim. For the aforementioned reasons, it requests the IACHR to declare the present case inadmissible for not complying with the requirement set forth in Article 46.1.a) of the American Convention.

14. Likewise, 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.

15. Emphasizes that within the Costa Rican legal system a variety of remedies, mainly judicial, have been provided to offer people means to determine rights of different kinds. Along these lines, it specifies that such means comply with the rules of due process and guarantee fair access and allow a balanced discussion in the processes, for which reason they respect the norms of the American Convention. Therefore, it considers that it is not up to the Commission to analyze this matter, since the existence of a national judgment that was handed down outside due process or that apparently violated any other right guaranteed by the Convention has not been proven.

16. Additionally, in relation to the right to personal integrity and the principle of legality, Costa Rica maintains that the petitioner does not specify the specific harm that was caused to the alleged victim, nor does it provide evidence to determine any violation of these rights. In a similar vein, with respect to Articles 6 and 7 of the Inter-American Convention to Prevent and Punish Torture, it highlights that the petitioner does not provide any specific allegations that would make it possible to identify that an act of torture has been committed.

VI. PREVIOUS CONSIDERATIONS

17. 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, 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.

18. 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.

19. 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

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.

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 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.

20. As well, 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 justifies 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 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 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.

21. 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.

22. 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.

23. 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.

24. 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*

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.

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.

25. 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".

26. 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.

27. 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.

28. 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.

29. 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.

30. 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

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.

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.

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

31. 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 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.¹⁵

32. Based on the previously stated considerations, the Commission observes that, in the instant case, on July 9, 2009, the Third Chamber of the Supreme Court of Justice rejected the appeal filed by the alleged victim against his conviction of First instance. Subsequently, the representation of Mr. Alvarado Moya filed an appeal for review, but on June 14, 2013, the Third Chamber of the Supreme Court of Justice dismissed it.

33. In this regard, although the State argues that Mr. Alvarado Moya could use the special review procedure provided for in Transitory I of Law No. 8503, the Commission notes that, according to the text of the provision, this procedure could only be used by persons convicted prior to June 6, 2006, the date of enactment of the aforementioned law. Therefore, in the Commission's opinion, the mechanism was not available to the alleged victim, given the date on which his conviction was issued, and therefore it is not necessary to exhaust it in order to comply with the requirement set forth in Article 46(1)(a) of the American Convention.

34. Notwithstanding the foregoing, the State argues that the alleged victim could also file the special review procedure contemplated in Transitory III of Law No. 8837, given that it entered into force on December 9, 2011. However, the Commission recalls that, as a rule, the petitioner only has, in principle, the obligation to exhaust ordinary domestic remedies. 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 fulfilled.

35. 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 ideal way for their claims, referring to the affectation of the rights to appeal the ruling and to the principle of legality, are duly addressed. Notwithstanding the foregoing, the Commission emphasizes that it is not clear whether, for the situation of the alleged victim, the review procedure was appropriate to remedy the alleged impairment, since it requires that the involvement of the right contemplated in article 8.2.h) of the Convention.

36. Consequently, the Commission considers that the State had the opportunity to resolve the situation denounced through its internal mechanisms and, therefore, the requirement set forth in Article 46.1.a) of the American Convention is met. Furthermore, given that the resolution of the last appeal for review occurred when the present matter was under admissibility study, the Commission concludes that the time requirement set forth in Article 46.1.b) of the Convention is also met.

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.

¹⁵ IACHR, Report N. 35/16, Petition 4480-02. Admissibility. Carlos Manuel Veraza Ustusuástegui. Mexico. July 29, 2016, par. 33.

37. Finally, in relation to the other allegations presented, the Commission does not identify that information was provided to demonstrate that the State was aware of the alleged violations of personal integrity to the detriment of the alleged victim. Therefore, with respect to this point of the petition, the requirement set forth in Article 46.1.a) of the Convention is not met.

VIII. ANALYSIS OF COLOURABLE CLAIM

38. The Commission identifies that the petitioner is mainly questioning two specific issues: i) the violation of the right to appeal the judgment; and ii) the violation of other judicial guarantees and the principle of legality.

39. 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*.¹⁶ Along these lines, the Commission reiterates that it is irrelevant for international human rights law the name by which the available remedy is designated.¹⁷ What is important is that the remedy contemplated in domestic law meets a series of standards and, in that sense, is timely,¹⁸ accessible,¹⁹ effective²⁰ and, in particular, that it allows for a comprehensive review of the conviction.²¹

40. 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.²²

41. 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

¹⁶ 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.

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, par. 158-161; UN, Committee of Human Rights. *Gómez Vázquez v. Spain*. Communication N. 701/1996. Decision of August 11, 2000, par. 11.1.

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.

¹⁹ 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.

²⁰ 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.

²¹ 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.

²² IACHR, Report N. 55/97. Case 11.137. Merits. *Juan Carlos Abella*. Argentina. November 18, 1997, par.261.

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.²³

42. Based on these considerations, the Commission observes that on April 30, 2008, the Trial Court of the Second Judicial Circuit of San José, through judgment 04-005374-0647, sentenced the alleged victim to twenty-three years of imprisonment for the commission of the crimes of aggravated fraud, fraudulent administration of greater amounts, use of privileged information and provision of banking information. Faced with this, the alleged filed an appeal, questioning both factual and legal aspects of the first instance decision. However, on July 9, 2009, the Third Chamber of the Supreme Court of Justice rejected this appeal.

43. In this regard, after reading the text of this last resolution, the Commission considers that the Third Chamber of the Supreme Court of Justice conducted a re-examination of the manner in which the court of first instance assessed the existing body of evidence in the cause and, in response to the grievances raised by Mr. Alvarado Moya's defense, confirmed the conviction. In this sense, the Commission appreciates that the court entered into the analysis of issues related to the application of the substantive criminal law, with regard to the subsumption of the petitioner's conduct to the criminal category attributed and that, although it dismissed some evidence, this was based on the fact that they did not contribute anything new to the analysis. Therefore, the Commission considers that, prima facie, no arguments or evidence have been presented to identify any restriction or limitation that has prevented a comprehensive analysis of the questions raised by Mr. Alvarado Moya against his first instance conviction. Consequently, 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.

44. Nor does the Commission identify any elements in the petitioner's allegations that would make it possible to establish any violation of due process in the manner in which the criminal proceedings against the alleged victim were conducted. According to the information available in the case file, the alleged victim's representatives had the opportunity to actively participate in the proceedings and to extensively question aspects of fact and law.

45. 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, in the terms of Article 47 of this treaty.

IX. 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:) Margarete May Macaulay, President; Roberta Clarke Second Vice President; Julissa Mantilla Falcón and Carlos Bernal Pulido, Commissioners.

²³ IACHR, Report N. 172/10, Case 12.561. Merits, César Alberto Mendoza and others (Permanent prison of teenagers), Argentina, November 2, 2010, par. 189.