

OEA/Ser.L/V/II.
Doc. 133
August 1, 2023
Original: Spanish

REPORT No. 123/23
PETITION 1670-10
REPORT ON INADMISSIBILITY

OMAR GERARDO HERNÁNDEZ CÓRDOBA
COSTA RICA

Approved by the Commission electronically on August 1, 2023

Cite as: IACHR, Report No. 123/23, Petition 1670-10. Inadmissibility. Omar Gerardo Hernández Córdoba. Costa Rica. August 1, 2023.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Alexander Rodríguez Campos
Alleged victim:	Omar Gerardo Hernández Córdoba
Respondent State:	Costa Rica
Rights invoked:	Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention of Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	November 22, 2010
Additional information received at the stage of initial review:	December 13, 2010, and September 18, 2014
Notification of the petition to the State:	October 17, 2016
State's first response:	February 17, 2017
Additional observations from the State:	June 14, 2022, and September 13, 2022
Notification of the possible archiving of the petition:	December 21, 2021
Petitioner's response to the notification regarding the possible archiving of the petition:	January 3, 2022, and April 20, 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	None
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. The petitioner alleges that Mr. Hernández Córdoba did not have access to a remedy that would allow for a comprehensive review of his conviction for the crime of aggravated homicide and aggravated

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

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

robbery. The petitioner also claims that this criminal sanction also affected other judicial guarantees, due to the irregularities committed during the proceedings and the inadequate evaluation of the evidence.

2. The petitioner informs that the Public Prosecutor's Office processed criminal proceeding number 08-002549-0057-PE against Mr. Hernández Córdoba, and as a result, on August 24, 2009, the Trial Court of the First Judicial Circuit of Alajuela sentenced him to thirty years of imprisonment for the commission of the crimes of aggravated homicide and aggravated robbery in ideal concurrence.

3. The alleged victim filed an appeal of cassation challenging: i) the violation of the *in dubio pro-reo* principle; ii) the lack of correlation between the accusation and the sentence; iii) the lack of grounds for the decision; iv) the breach of the chain of custody of the evidence; and v) the lack of sufficient reason for the conviction. However, it states that on April 21, 2010, the Third Chamber of the Supreme Court of Justice declared it inadmissible, considering that the judgment of first instance adequately assessed all the evidence provided in the process in order to support its decision. Likewise, it held that during the process no procedural or grounding defect was committed in the decision that merits its nullity, since the entire process was carried out based on a certain factual framework and no breach of the chain of custody of the evidence was identified.

4. In view of this situation, he indicates that on February 15, 2011, the alleged victim filed a review proceeding against his conviction, alleging that it affected his right to due process. Likewise, on May 25, 2012, Mr. Hernández Córdoba also filed a special review proceeding, based on Transitory III of Law No. 8837, arguing that his right under Article 8(2)(h) of the American Convention was affected. However, on May 24, 2013, the Third Chamber of the Supreme Court of Justice, after accumulating both review proceedings, analyzed the claims raised by the alleged victim and dismissed them, considering that they lacked grounds.

5. Subsequently, on July 5, 2013, Mr. Hernández Córdoba filed a challenge against the judges of the Third Chamber of the Supreme Court of Justice who intervened in the rejection of his appeals for review. However, he points out that on March 7, 2014, the aforementioned chamber dismissed the appeal, arguing that it was filed out of time.

6. Based on the aforementioned factual considerations, the petitioner alleges that Costa Rica violated the right set forth in Article 8(2)(h) of the Convention, since the Third Chamber of the Supreme Court of Justice did not comprehensively review the first instance conviction; rather, it followed merely formalistic criteria to reject the claims raised by Mr. Hernández Córdoba in his appeal of cassation. In the petitioner's opinion, this is a consequence of the limited and restricted regulation of the aforementioned appeal of cassation in Costa Rican law.

7. It also argues that the mechanisms approved by the State to guarantee individuals the right contemplated in Article 8(2)(h) of the Convention were not effective in addressing the case of the alleged victim. In this regard, it states that despite the fact that Mr. Hernández Córdoba filed a review proceeding based on Transitory III of Law No. 8837, the Third Chamber of the Supreme Court of Justice dismissed it without conducting any substantive analysis of the claims raised. Similarly, he refers that Law No. 8503 did not change the practice of the domestic courts, since they continued to apply restrictive criteria in the resolution of the appeals of cassation, declaring them inadmissible without conducting an analysis of the arguments raised.

8. Finally, it argues that the Third Chamber of the Supreme Court of Justice rejected the special review proceeding filed based on Transitory III of Law No. 8837 without substantiating its decision. On the contrary, it explains that the decision of said Chamber only analyzed the arguments raised in the first appeal for review, without addressing the second one.

Allegations of the Costa Rican State

9. For its part, the State replies that the petition is inadmissible for failure to exhaust domestic jurisdiction. It asserts that, at the time the petition was filed, Mr. Hernández Córdoba had not yet filed an appeal for review of the decision that dismissed his appeal of cassation. In this regard, it argues that since the alleged victim only used the aforementioned process of review on February 15, 2011, that is, almost three months after

this petition was lodged, 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. Hernández Córdoba did not make timely use of the special review mechanisms devised as a result of the procedural reforms carried out in favor of persons with final sentences. On this point, it emphasizes that the alleged victim did not make use of these processes, despite the fact that they are designed precisely for those persons with final convictions and who consider that their right to appeal their conviction has been violated, in accordance with Article 8(2)(h) of the Convention. Along these lines, the State states that at the time he was notified of this petition, Mr. Hernández Córdoba had the opportunity to file the special review procedure established in the transitory provisions of Law No. 8503,³ and, failing that, he could also use the special review mechanism provided for in Transitory Provision III of Law No. 8837.⁴ Therefore, it argues that the domestic legal system provided additional options for the alleged victim to use at the appropriate procedural moment, and yet he did not use these avenues.

11. 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.

12. 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 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

13. 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.

14. Thus, in the judgment in the case of *Herrera Ulloa v. Costa Rica* of July 2, 2004, the Inter-American Court of Human Rights⁵ 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.⁶ 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

³ Law No. 8503.- Transitory 1.- Persons convicted of a criminal act prior to this Law, who have been prevented from filing an appeal of cassation 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 factual and legal aspects 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 specifically stated.

⁵ Hereinafter “the Inter-American Court” or “I/A Court of HR”.

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. 167.

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”*.⁷

15. Because 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”.⁸

16. 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.

17. 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.

18. 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”.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 such remedy.

19. 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 [...]”.¹⁰ 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

⁷ /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.

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. 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, par. 48.

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, par. 265.

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”,¹¹ Costa Rica had complied with its domestic legislation.

20. 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 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”.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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”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.

¹¹ 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.

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.

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.

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

26. 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

27. Based on this premise, the Commission observes that, according to the information in the case file, in accordance with the jurisprudence of the Inter-American Court in the case of *Amrhein et al. v. Costa Rica*, Mr. Hernández Córdoba complied with a review procedure, based on Transitory III of Law No. 8837, in order to question the alleged violation of his right to a full review of his conviction. Thus, as a result of this action, on May 24, 2013, the Third Chamber of the Supreme Court of Justice rejected the aforementioned review procedure.

28. Consequently, since the alleged victim used the procedure provided by the State to question possible violations of the right set forth in Article 8(2)(h) of the American Convention, 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

29. The Commission identifies that the petitioner mainly questions three specific issues: i) the violation of the right to appeal the conviction; ii) the violation of the presumption of innocence, due to the inadequate grounds for Mr. Hernández Córdoba's conviction; and iii) the violation of judicial guarantees, due to the manner in which the criminal proceeding against him was conducted.

30. 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 in such a way as to provide 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

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

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, par. 158-161; 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 Catrín 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.

31. 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

32. 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.²³

33. Based on the aforementioned considerations, in the instant case the Commission notes that on August 24, 2009, the Trial Court of the First Judicial Circuit of Alajuela sentenced Mr. Hernández Córdoba to thirty years of imprisonment for the commission in ideal concurrence of the crimes of aggravated homicide and aggravated robbery. In response, the alleged offender filed an appeal of cassation, questioning both factual and legal aspects of the first instance decision. However, on April 21, 2010, the Third Chamber of the Supreme Court of Justice dismissed the appeal, after analyzing all the claims presented by Mr. Hernández Córdoba.

34. In this regard, based on a reading of the text of the latter decision, the Commission considers that the Court of Criminal Cassation reexamined the way in which the trial court assessed the body of evidence in the case, and in response to the grievances raised by the defendant's defense, it explained why the reasoning used to establish Mr. Hernández Córdoba's guilt did not affect the principles of sound criticism and the presumption of innocence. Likewise, the Commission appreciates that the court also entered into the analysis of issues related to the application of the substantive criminal law, specifically with respect to the subsumption of the defendant's conduct to the crime of aggravated homicide. 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 challenges raised by Mr. Hernández Córdoba against his first instance conviction.

35. Notwithstanding the foregoing, the Commission notes that, following the filing of a special review proceeding based on Transitory III of Law No. 8837, on May 24, 2013, the Third Chamber of the Supreme Court of Justice again analyzed the alleged victim's challenges to his conviction, and once again dismissed them. According to the information in the case file, the Commission notes that in the aforementioned decision, it examined all of Mr. Hernández Córdoba's arguments, referring mainly to the lawfulness and plausibility of certain evidence used to support the conviction, as well as the chain of custody used to safeguard it. In this regard, although the alleged victim argues that the court did not examine all the claims presented in the special review procedure, the Commission notes that no evidence or elements have been provided that would allow it to identify any omission in the judgment. Consequently, the IACHR concludes that, prima facie, no elements have been provided that would make it possible to identify a possible violation of the right contemplated in Article 8(2)(h) of the Convention.

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

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.

36. Now, with respect to the second point, referring to the grounds for the conviction against the alleged victim, the Commission notes that the conviction of Mr. Hernández Córdoba was based on various evidentiary elements, such as testimony and material gathered from the investigation conducted by the Public Prosecutor's Office. Thus, based on these elements, the domestic courts considered that the commission of the crimes of aggravated homicide and robbery was duly proven.

37. In the Commission's opinion, the aforementioned elements make it possible to verify that the domestic courts, with respect for the principle of the presumption of innocence, relied on different proceedings to support Mr. Hernández Córdoba's guilt and consequent conviction. 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. In short, prima facie there are no other possible violations of the rights to judicial guarantees (Article 8), judicial protection (Article 25), or other related rights established in the American Convention in the file of the instant petition.

38. 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.

VIII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 1st day of the month of August 2023. (Signed:) Esmeralda Arosemena de Troitiño, First Vice President; Joel Hernández García, Julissa Mantilla Falcón and Stuardo Ralón Orellana, Commissioners.