

OEA/Ser.L/V/II.  
Doc. 62  
21 February 2020  
Original: Spanish

**REPORT No. 52/20**  
**PETITION 1394-07**  
REPORT ON ADMISSIBILITY

KATYA NATALIA MIRANDA JIMÉNEZ AND FAMILY  
EL SALVADOR

Approved electronically by the Commission on February 21, 2020.

**Cite as:** IACHR, Report No. 52/20, Petition 1394-07. Admissibility. Katya Natalia Miranda Jiménez and Family. El Salvador. February 21, 2020.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Human Rights Institute of the Central American University "José Simeón Cañas"
<b>Alleged victim:</b>	Katya Natalia Miranda Jiménez and family
<b>Respondent State:</b>	El Salvador
<b>Rights invoked:</b>	Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights <sup>1</sup> in conjunction with its Article 1.1; Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women <sup>2</sup> in relation to its Articles 3 and 4.

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	October 25, 2007
<b>Notification of the petition to the State:</b>	September 28, 2011
<b>State's first response:</b>	January 18, 2012
<b>Additional observations from the petitioner:</b>	November 17, 2018
<b>Additional observations from the State:</b>	January 24, 2012

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (deposit of instrument made on June 23, 1978); Convention of Belém do Pará (deposit of instrument made on January 26, 1996)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights), 4 (right to life), 5 (right to humane treatment), 19 (rights of the child); Article 7 of the Convention of Belém do Pará
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, September 24, 2014
<b>Timeliness of the petition:</b>	Yes, October 25, 2007

<sup>1</sup> Hereinafter "the American Convention" or "the Convention".

<sup>2</sup> Hereinafter "the Convention of Belém do Pará".

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. FACTS ALLEGED

1. The Human Rights Institute of the Central American University “José Simeón Canas” (hereinafter “the petitioner” or “the IDHUCA”) files a complaint on the alleged violations of the human rights of the girl Katya Natalia Miranda Jiménez indicating that subsequent to her rape and murder, the State failed to conduct diligent investigations to clarify the facts and prosecute those responsible; it also alleges human rights violations of her family members, in particular her mother Hilda María del Carmen Jiménez and sister Gina Marcela Miranda Jiménez.

2. The petitioner indicates that on April 3, 1999, the 9-year-old girl Katya Natalia was walking on the beach with a group of her family members, including her sister Gina Marcela, her father (who was Captain in the El Salvador Armed Forces and served as head of Department Four of the Presidential General Staff), her paternal grandfather, a paternal uncle (who was deputy commissioner of the National Civil Police and deputy chief of the Criminal Investigation Division of the latter), a cousin of her father (who was captain of the EL Salvador Air Force) and four other relatives. It indicates that the group stayed in a property whose administration had been given to the girl’s paternal grandfather and where he also employed two guards. The petitioner observes that Katya Natalia’s mother was with her daughters for most of that day until she retired to participate in a vigil. After an argument, she agreed to leave the girls together with their father and other relatives.

3. It then indicates that at 9 pm that day, the girl Katya Natalia prepared to sleep in a camping tent together with her father and her sister. She was then sexually assaulted and murdered on the beach sometime between midnight of the same day or the early hours of the next. The petitioner points out that the perpetration of this crime required the abduction of the girl firstly from the tent where she slept with her father and then out from the property. They indicate that, according to declarations of the relatives present, the abduction occurred without the father, the relatives or the guards noticing. However, in its view, given the circumstances of physical proximity in which the family group was sleeping, it was practically impossible for the girl to have been abducted by a stranger.<sup>4</sup>

4. It argues that the initial involvement the state authorities in connection with the girl’s death lacked due diligence and that, inter alia: on arrival at the beach, police officers found several individuals surrounding the corpse and contaminating the crime scene, despite which they failed to carry out a visual inspection, cordon off the area, or gather information on the events;<sup>5</sup> the agent of the Attorney General’s Office (hereinafter “the FGR”) was late in arriving at the scene of the crime, and once there, failed to protect the area, and omitted a request for support from the Criminal Scientific Investigation Laboratory, which only intervened a month after the murder; the girl’s body was improperly handled, since it was moved from the place where she was found, and the family members present during the night of the crime removed some clothing found at the scene, among others.

5. It indicates that six months after the murder, police and prosecutorial investigations yielded no results. Katya Natalia’s mother then made public a complaint on the negligence shown by the authorities in conducting a serious and effective investigation. After this complaint and the public’s reaction to the events, the FGR worked with the hypothesis that one or more of the family members present could have been the perpetrators. As a result investigations were carried out against the grandfather for rape, aggravated sexual assault and aggravated homicide; against the father for abandonment of a minor; and against the property’s security personnel for a cover up.

6. It alleges that the judicial investigations were not conducted in an appropriate manner and complained about the following alleged irregularities: undue interference by the State Intelligence Agency; on

<sup>4</sup> It indicates that Katya Natalia’s father – who repeatedly stated that he remained sleeping by the side of his daughters in the small camping tent without noticing the abduction – was Chief of the Fourth Department of the Presidential General Staff, which has the role of ensuring the safety of the President of the Republic and foreign dignitaries.

<sup>5</sup> It highlights that due to the presence of the paternal uncle – as deputy from the Criminal Investigation Division of the Police – he was duty bound to secure the crime scene.

December 9, 1999, the Attorney General of the Republic arbitrarily ordered the “a factual reconstruction” despite the fact that this procedural step should have been ordered and supervised by the competent judicial authority; the investigating judge showed bias and applied gender stereotypes against Katya Natalia's mother, for instance, blaming her for “abandoning” her daughter and insinuating that had she behaved as a “responsible mother” she could have prevented the rape and murder;<sup>6</sup> the judge gave an opinion in advance about the case before the media and allowed the witnesses proposed by the defense to alter and conceal information about the case.

7. The petitioner observes that on October 13, 2000, the investigating judge issued a judgment provisionally acquitting the four individuals under investigation. In the ruling, the judge pointed out that she had incorporated into the file reports gathered in breach of the provisions of the code of criminal procedure that given the contamination of the crime scene, the only available evidence had been tainted. The judge also fixed a period of one year for the FGR to conduct four procedural steps, including investigating the four individuals who found the girl, and amplify a witness’ statement. It alleges that the year elapsed without the FGR carrying out any of the four procedural steps, thus leading to the judge issuing a final acquittal on October 15, 2001, in favor of the four individuals under investigation.

8. It adds that on January 29, 2003, representatives of IDHUCA, on instructions from Katya Natalia's mother, filed a new complaint for the rape and murder of Katya Natalia, seeking a reopening of the investigations closed as from the final acquittal of the four individuals under initially under investigation. Later, on April 30, 2003, the same representatives filed a new claim on the grounds that because only the girl's paternal grandfather had been unsuccessfully prosecuted, the other eleven adults who were in the property on the night of the murder should be investigated for not only their possible participation in the murder and sexual assault but also for their possible involvement in the crimes of concealment, complicity and procedural fraud. They allege that these complaints were never dealt with and that the FGR failed to take any further procedural steps. Then, on May 14, 2007, IDHUCA representatives submitted a new brief to the FGR, signed by Katya Natalia's mother and accompanied by a letter of support signed by more than seven thousand individuals requesting the immediate reopening of the investigations in order to avoid the application of the statute of limitations to the present case. It indicates that Attorney General answered this request, indicating that “the statute of limitations was already applicable to the case.” It maintains that the State failed in its obligation to investigate and prosecute the individuals responsible for the crimes committed against Katya Natalia, as is evidenced in the acquittal decision. Finally, it notes that on September 24, 2014, the Criminal Chamber of the Supreme Court of Justice issued a judgment acquitting Katya Natalia's paternal grandfather and four others for the crimes committed against the girl.

9. The State, for its part, recognizes the efforts made by Katya Natalia's mother to articulate various sectors of Salvadoran society around the fight against violence towards women and children. It points out that the investigations carried out by the state authorities succeeded in establishing the violation of the right to life and humane treatment of the child through the crimes of homicide and rape.<sup>7</sup> It indicates that the Procurator for the Defense of Human Rights issued a special report on May 9, 2002, indicating that there were omissions and deficiencies revealed in the initial steps of the investigation. It explains that the Procurator concluded that the officials initially engaged presumed that the girl had drowned and discarded any possibility that her death was due to an act of violence, as a result of which they failed to protect the scene of the crime, in breach of their legal duty, thereby frustrating an element necessary for the subsequent investigation.<sup>8</sup> It adds that on May 17, 2001, the Supreme Court of Justice reprimanded the investigating judge in charge of the initial proceedings against Katya Natalia’s paternal grandfather and three other persons for having shown bias in favor of the accused and for insulting the girl's mother.

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<sup>6</sup> It also indicates that when the mother objected to the insults received from the girl's grandfather, the judge reprimanded her instead of the grandfather.

<sup>7</sup> It indicates that the investigations revealed that the cause of death was asphyxiation by immersion preceded by hymen rupture prior to the girl's death.

<sup>8</sup> The report also identified deficiencies in the FGR's performance.

10. It also indicates that on September 23, 2009, new criminal proceedings were initiated against the girl's paternal grandfather and six others for the crime of the aggravated kidnapping of the girl Katya Natalia. As a result, on March 23, 2011, the grandfather was found guilty as a direct perpetrator and sentenced to 13 years and four months of formal imprisonment.<sup>9</sup> In its communication filed on January 18, 2012, it indicated that an appeal had been lodged against this ruling with the Criminal Chamber of the Supreme Court of Justice, which was still pending. It adds that the social reaction to the case of Katya Natalia's death led the Legislative Assembly to nominate April 4 of each year - the anniversary of Katya's rape and murder - as "National Day for the Eradication of the Sexual violence against the children of El Salvador". It also states its duty and responsibility to move forward in this case and to provide all the information required.

## **VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

11. The Commission notes that the information provided by the petitioner shows that the second criminal proceedings carried out in connection with the crimes allegedly perpetrated against Katya Natalia Miranda Jiménez concluded on September 24, 2014, with an acquittal of the accused. The State has failed to contradict this information or make observations regarding whether or not the petition meets the admissibility requirements for exhaustion of domestic remedies and timeliness for submission. Nor has it indicated the existence of other unexhausted domestic remedies that could be adequate to address the claims of the petitioner at the domestic level. For these reasons, and given that the petition was filed on October 25, 2007, the Commission concludes that this petition fulfills the requirements of Articles 46.1 (a) and (b) of the American Convention.

## **VII. ANALYSIS OF COLORABLE CLAIM**

12. The Commission observes that the instant petition includes allegations pertaining the competent state authorities for the investigation and prosecution in of the death and alleged rape of the girl Katya Natalia Miranda Jiménez not having acted with impartiality and not having complied with the strict due diligence required by the nature of the case.

13. Attending to these considerations and after having examined the elements of fact and law brought forward by the parties, the Commission considers that the allegations of the petitioning party are not manifestly groundless and require a study on the merits as the alleged facts, in proven, could characterize violations to articles 8 (right to a fair trial), 24 (equal protection) and 25 (right to judicial protection) of the American Convention in relation to its Articles 1.1. (obligation to respect rights), 4 (right to life), 5 (right to humane treatment) and 19 (rights of the child); as well as Article 7 of the Convention of Belém do Pará.

14. With regard to the allegations of violations of Articles 3 and 4 of the Convention of Belém do Pará, the IACHR notes that according to Article 12 of said treaty the *ratione materiae* competence of the Commission to establish violations to the treaty in the context of an individual case is limited to its Article 7. With respect to the other articles, the Commission may consider and take them onto account in the merit's stage for its interpretation and application of the American Convention and other relevant instruments, in accordance with Article 29 of the said Convention.

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 8, 24 and 25 of the American Convention in relation to its Articles 1.1, 4, 5, and 19; and in relation to Article 7 of the Convention of Belém do Pará.

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<sup>9</sup> The remaining accused were found guilty as participating accomplices and sentenced to 8 years and 10 months formal imprisonment.

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 21<sup>st</sup> day of the month of February, 2020. (Signed): Joel Hernández, President; Antonia Urrrejola, First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Margarete May Macaulay, and Julissa Mantilla Falcón, Commissioners.