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REPORT No. 242/21

PETITION 816-11

REPORT ON INADMISSIBILITY

MIGUEL GERARDO VILLEDA KATTÁN
EL SALVADOR

Approved electronically by the Commission on September 17, 2021.

Cite as: IACHR, Report No. 242/21, Petition 816-11. Admissibility. Miguel Gerardo Villeda Kattán. El Salvador. September 17, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Miguel Ángel Eduardo Villeda Rivera
Alleged victim:	Miguel Gerardo Villeda Kattán
Respondent State:	El Salvador
Rights invoked:	Not specified

II. PROCEEDINGS BEFORE THE IACHR¹

Filing of the petition:	June 14, 2011
Notification of the petition to the State:	May 23, 2017
State's first response:	July 28, 2017
Additional observations from the petitioner:	October 14, 2020
Warning on potential archive of the petition:	June 17, 2020
Reply by the petitioner to the warning of potential archive of the petition	July 28, 2020

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 ratification instrument on July 23, 1978)

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:	No
Timeliness of the petition:	No

V. ALLEGED FACTS

1. The petitioner and father of nine-year-old boy Miguel Gerardo Villeda Kattán (hereinafter “the alleged victim”) denounces that his son was kidnapped from his residence on June 21, 2001, by a group of people; and that he was later assassinated by personnel of the Police Reaction Group of the National Civil Police (hereinafter “PRG” and “NCP”, respectively) in the operation carried out to rescue him. The petitioner indicates that the use of indiscriminate force in said operation caused the death of his son; and that only the kidnapers were found responsible for these actions and the actions carried out by the police agents had not been clarified.

¹ The observations submitted by each party were duly transmitted to the opposing party.

2. The petitioner indicates that he had informed the NCP about the kidnapping two hours before it took place, and that he had given them details that included the address of the place where the kidnappers would be found, their identity, and the plaque, make and color of the vehicle that would be used for the crime. He adds that the NCP gave immediate coverage to the place where the kidnappers were, so they could see their car when they left and then when they returned with the alleged victim on board. He explains that when the car returned with the alleged victim, the kidnappers entered the house and closed the gates, and that two kidnappers remained in the courtyard of the place. He points out that the PRG took over the procedure, during which the officers spoke loudly to the kidnappers through megaphones, announcing that they were surrounded and that they needed to deliver the alleged victim.

3. Additionally, the petitioner submits that the kidnappers requested the telephone number of the Director of the NCP and that they tried to contact him without success, because he refused to answer. He points out that the Director of the NCP then gave the order to the Deputy Director of the PRG for the personnel to forcibly enter the place to apprehend the kidnappers and rescue the alleged victim. He affirms that upon entering the building, two shots were heard from inside the house allegedly injuring two policemen, which led the Deputy Director of the PRG to take a rifle and fire repeatedly; the body of the alleged victim received seven bullet wounds, one of them in the head.

4. He points out that a woman's voice was heard from inside, indicating that they should not continue shooting and that the alleged victim was allegedly dead; and that the Deputy Director would have immediately changed the rifle with the intention that subsequent investigations would not incriminate him. He also alleges that there was indiscriminate use of force that caused the death of his son; that the procedure did not follow the protocols; and that, despite the fact that the kidnappers were prosecuted and sentenced to serve prison time, there are no investigations or sanctions regarding the actions of the police during the procedure.

5. The State, for its part, reports that on June 21, 2001, a police procedure was carried out by the PRG of the NCP and other police units, in order to rescue the alleged victim, who had been kidnapped that same day. It adds that the alleged victim was killed during the rescue operation, and that the group of kidnappers was detained at the scene. The State also points out that after an investigation by the Attorney General's Office ("AGO") under reference 74-US-2-2001, six people were prosecuted and convicted of murder and aggravated kidnapping to the detriment of the alleged victim, as well as for the illegal possession, carrying or handling of weapons of war.

6. The State indicates that on June 27, 2001, six days after the occurrence of the kidnapping and the death of the alleged victim, the Office of the Attorney for the Defense of Human Rights initiated an *ex officio* investigation regarding the police procedure that was carried out to rescue the child Villeda Kattán, registered in file 01-0761-01, concluding that there were deficiencies in the police procedure carried out to release the alleged victim.

7. It also highlights that the PRG initiated an investigation for simple homicide against four police officers, because during the rescue procedure two members of the group of kidnappers died and the alleged victim was murdered. As a result of the investigation, on November 16, 2001, the PRG requested the 9th Court of Peace of San Salvador the definitive dismissal of the four police officers, because the investigation failed to determine which police officers were the ones who caused the death of the persons mentioned; the Court agreed to the request.

8. The State adds that the NCP General Inspectorate also carried out an *ex officio* investigation into the actions of the police agents who participated in the rescue operation. As part of the investigation, nine of them were interviewed, who declared that they did not know the reason that triggered the exchange of shots between the kidnappers and the police; the Inspector General concluded that there was no merit in continuing with a disciplinary investigation against the police officers. Finally, the State points out that at the time of the events the PRG had an Organization Manual authorized in 1996 and an Operational Plan on specific missions of said Group and of the Anti-Kidnapping Group, approved in 2000.

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

9. The State alleges that it does not have a record of complaints before the corresponding authorities against the police officers who participated in the rescue operation of the alleged victim, signaling them as those responsible for his death; there is also no evidence of claims related to the lack of investigation of the actions carried out by the police at the time of the procedure. The State also argues that the petition was presented to the IACHR on June 14, 2011 and that the judicial decision of December 9, 2002 that convicted those responsible for the kidnapping and murder of the alleged victim, was final because no appeal was filed. This assertion has not been disputed by the petitioner, who has not provided information tending to prove otherwise.

10. The available information leads the Inter-American Commission to conclude that the petitioner did not present his allegations in a timely manner in the domestic jurisdiction, since he did not present any recourse against the decision that convicted those responsible for the kidnapping; he also did not file complaints against the police agents that he considered responsible for the death of the alleged victim, nor did he question the investigations of the PRG. Consequently, this petition does not meet the requirement of exhaustion of domestic remedies pursuant to Article 46.1 (a) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

11. Given that in the preceding section the IACHR has concluded that the petitioner did not exhaust domestic remedies, it is unnecessary to analyze whether the alleged facts characterize possible violations of the American Convention.

VIII. DECISION

1. To declare the present petition inadmissible.
2. To notify the parties of this decision; to publish this decision, and to 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 17th day of the month of September, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández and Stuardo Ralón Orellana, Commissioners.