

**ORDER OF THE PRESIDENT OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS**

OF APRIL 15, 2011

VICTIMS' LEGAL ASSISTANCE FUND

CASE OF THE BARRIOS FAMILY v. VENEZUELA

HAVING SEEN:

1. The brief of July 26, 2010, and its attachments, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") a case against the Bolivarian Republic of Venezuela (hereinafter "Venezuela" or "the State"). The original brief and its attachments were received by the Court's Secretariat on August 16, 2010.

2. The brief of December 25, 2010, in which the representatives of the presumed victims¹ (hereinafter "the representatives") presented their brief with pleadings, motions and evidence in relation to this case (hereinafter also the "pleadings and motions brief"), and requested use of the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Court's Assistance Fund" or "the Fund") "to cover some specific costs related to the production of evidence during the processing of this case before the Court," which they specified. The original brief was received by the Secretariat of the Court on January 18, 2011, and the attachments were received on January 14, 18 and 19, 2011.

3. The note of January 24, 2011, in which, among other matters, the Secretariat advised the parties that the President of the Court (hereinafter "the President") would be informed of this request, together with the probative information forwarded.

4. The brief of March 25, 2011, in which the Bolivarian Republic of Venezuela presented, among other matters, its answer to the brief submitting the case together with observations on the pleadings and motions brief. The original brief and its attachments were received by the Court's Secretariat on April 8, 2011.

CONSIDERING THAT:

1. Venezuela has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since August 9, 1977, and accepted the compulsory jurisdiction of the Court on June 24, 1981.

¹ The presumed victims in this case appoint the Justice and Peace Human Rights Commission of Aragua State, the Center for Justice and International Law (CEJIL), and the *Comité de Familiares de las Víctimas de los Sucesos de Febrero-Marzo* (COFAVIC) [Committee of Relatives of the Victims of the Events of February-March] as their representatives.

2. In 2008, the General Assembly of the Organization of American States (hereinafter the "OAS") created the Legal Assistance Fund of the Inter-American Human Rights System (hereinafter "the Inter-American System's Assistance Fund) and commissioned the OAS Permanent Council to draft the Fund's rules of procedure.² The Assistance Fund was created "to facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system."³ According to the Rules of Procedure adopted by the Permanent Council in November 2009,⁴ the Inter-American System's Assistance Fund has two separate accounts: one corresponding to the Inter-American Commission and the other to the Inter-American Court. As regards the financing of the Inter-American System's Assistance Fund, currently this depends on "voluntary capital contributions from the Members States of the OAS, the Permanent Observer States, and other States and donors that may wish to collaborate with the Fund."⁵ In addition, according to article 4 of the Rules of Procedure approved by the Permanent Council, it corresponded to the Court to establish the formal requirements for eligibility to request assistance, and also the approval procedure.

3. Consequently, on February 4, 2010, the Court adopted the Rules of Procedure of the Court's Assistance Fund, which came into force on June 1, 2010, with the purpose of "regulat[ing] the operation of, and access to, the Victims' Legal Assistance Fund [...] for the litigation of cases before it."⁶ As established in these Rules of Procedure, a presumed victim must fulfill three requirements in order to use this Fund: (1) request this in the brief with pleadings, motions and evidence; (2) prove, by means of a sworn affidavit and other appropriate evidence that satisfies the Court, that they lack sufficient financial resources to cover the costs of litigation before the Inter-American Court, and (3) indicate precisely which aspects of their participation in the proceedings require the use of the resources of the Court's Assistance Fund.

4. Article 3 of the Rules of Procedure of the Court's Assistance Fund stipulates that, on receiving a request to use these resources, the Secretariat of the Court must conduct a preliminary review of the request for assistance and require the requesting party to present any additional background information required for the request to be submitted to the consideration of the President of the Court, who will assess the petition and take the pertinent decision within three months of receiving all the necessary information.

5. The President observes that, regarding the request for resources from the Court's Assistance Fund, on January 14, 2011, the representatives forwarded a brief by e-mail in which they requested "the Court's [...] comprehension with regard to the absence of the attachment [corresponding to the sworn statement of Eloísa Barrios], because [owing to] the recent death of Néstor Caudi Barrios, the Barrios family has been unable to give their attention to this matter." The Court's Secretariat received the sworn statements of Eloísa Barrios and the independent accountant (*infra* eighth considering paragraph) on January 19,

² AG/RES. 2426 (XXXVIII-O/08) Resolution adopted by the thirty-eighth OAS General Assembly, at the fourth plenary session, held on June 3, 2008, "Establishment of the Legal Assistance Fund of the Inter-American Human Rights System," operative paragraph 2(b).

³ AG/RES. 2426 (XXXVIII-O/08), *supra* note 2, operative paragraph 2(a), and Resolution CP/RES. 963 (1728/09), *supra* note 2, article 1(1).

⁴ CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS Permanent Council, "Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System."

⁵ Rules of Procedure of the Inter-American System's Assistance Fund, *supra* note 4, article 2(1).

⁶ Rules of Procedure of the Inter-American Court of Human Rights on the Operation of the Victims' Legal Assistance Fund approved by the Court on February 4, 2010, Article 1.

2011, four days outside the time frame for forwarding the attachments to the brief with pleadings, motions and evidence.

6. Neither the State nor the Inter-American Commission presented observations on the representatives' request, or on the evidence justifying it. In this regard, the President recalls that, on February 21, 2011, the Court adopted an order in the proceedings on provisional measures, *inter alia*, with regard to the attempt on the life of Mr. Caudi Barrios on January 2, 2011. In addition, Mr. Caudi Barrios was a beneficiary of the provisional measures ordered in this case and is a presumed victim in this litigation.

7. The President observes that the representatives had advised the Court of the alleged death of Mr. Caudi Barrios and it appeared to constitute a situation of *force majeure* in relation to the presentation of evidence under Article 57(2) of the Rules of Procedure.⁷ For its part, the State did not contest this evidence in its answering brief. Consequently, the President exceptionally, admitted the evidence indicated in the fifth considering paragraph *supra*.

8. The representatives based their request on the lack of financial resources of the members of the Barrios family, presumed victims in this case, "to cover the costs of the litigation before the Court" (*supra* having seen paragraph 2). In this regard, they attached a statement signed by Eloisa Barrios, in representation of her family, in which she indicates that "she does not have the sums required to send documents and the testimony collected and, especially, to take expert witnesses to the seat of the Court for an eventual public hearing." In addition, they forwarded the document entitled "Report of the independent public accountant on the review of personal income," providing information on the monthly income of Eloísa Barrios corresponding to December 2010.

9. The representatives also indicated that "there are a series of expenses that the representatives are able to cover at this stage of the proceedings before the Court, and [...] therefore, the [presumed] victims have not included them in their request for assistance from the Fund. This is in the understanding that the corresponding amounts [would be] reimbursed by the State under costs and expenses if the Court should determine this in its judgment in this case." The said expenses would include "representation expenses [of the representative organizations,] fees; travel of CEJIL lawyers to Venezuela to work on the litigation of the case before the Court and to prepare for the hearing; plane tickets, and accommodation and per diem for three CEJIL lawyers, two COFAVIC lawyers and Luis Aguilera at the place where the hearing is held, and logistic expenses during the preparation and holding of the hearing."

10. The representatives specified that the presumed victims are requesting help from the Assistance Fund to cover: (i) the travel expenses, including air fare, hotel and per diem for up to nine witnesses and five expert witnesses that the Court may summon to testify during the hearing, and (ii) the expenses to prepare in Venezuela the affidavits with the testimony and expert opinions that the Court finds it pertinent to receive. They stressed that, at this stage of the proceedings, they were not in a position to determine whether all the witnesses and expert witnesses proposed in their pleadings and motions brief would be admitted by

⁷ Article 57(2) of the Rules of Procedure establish that:

Exceptionally, and having heard the opinion of all those participating in the proceedings, the Court may admit evidence if the party that has offered it adequately explains that the evidence was not presented or offered at the procedural moments established in Articles 35(1), 36(1), 40(2), and 41(1) of these Rules of Procedure due to *force majeure* or serious impediment. Additionally, the Court may admit evidence that refers to an event which occurred after the procedural moments indicated.

the Court or whether, if they were admitted, they would be called on to testify in person or before notary public. Likewise, they were unaware of the place where the Court will decide to convene the eventual hearing of the case, so that "the travel expenses could vary considerably." Consequently, they asked the Court that, if it accepted their request, it do so taking into account "the testimony and expert opinions that it decides to admit in its order [under] Article 50 of the [Court's] Rules of Procedure," and if the Court accepts the request in part, that it indicate the number of testimonies and expert opinions that will be covered by the Fund.

11. Nevertheless, the representatives presented an estimate of the expenses to be covered by the Fund for the appearance of the deponents at an eventual public hearing at the seat of the Court. Under this hypothesis, the representatives estimated a total of approximately US\$19,783.00 (nineteen thousand seven hundred and eighty-three United States dollars) for nine deponents and five expert witnesses. Should the Fund cover the production of sworn statements, they stated that "the production before notary public in Venezuela of the affidavits with the testimonies and expert opinions would have a variable additional cost, which has not been included in the calculation of the expenses."

12. First, the President confirms that the request to use the Court's Assistance Fund was made at the appropriate occasion in the pleadings and motions brief (*supra* having seen paragraph 2). In this regard, he notes that, at that time, the representatives made a request on behalf of the presumed victims, because they are the ones who should benefit from the Fund.

13. In addition, the President takes note of the lack of financial resources alleged by the presumed victims and finds that the statement signed by Eloísa Barrios and the report of the independent public accountant prove this (*supra* fifth and eighth considering paragraphs).

14. Furthermore, the President observes that the presumed victims have requested assistance from the said Fund to cover costs related to the production of evidence before the Court; specifically for the presentation of testimony, either during the public hearing or by means of affidavits (*supra* tenth considering paragraph). He also takes note of the representatives' observation that they were unable to determine precisely the expenditure that this would require during this stage of the proceedings before the Court, even though they have presented an estimate with regard to the public hearing.

15. The President recalls that the Court's Assistance Fund is made up of voluntary contributions from cooperating sources (*supra* second considering paragraph), and that these limited resources are insufficient to cover all the expenses relating to the appearance and eventual presentation of evidence before the Court by the presumed victims. Consequently, in each specific case, the President must assess the request for assistance in relation to the available funds, taking into account the needs for assistance that could arise in other cases before the Court, in order to ensure the proper administration and fair distribution of the Fund's limited resources

16. The President takes note that, at the current stage of the proceedings, it has not been determined which of the testimonies offered by the representatives will be received by the Court, or in what form they will be received.

17. Based on the foregoing considerations, the President finds admissible the presumed victims' request to use the Court's Legal Assistance Fund to cover expenses relating to the adequate appearance of deponents and presentation of testimony to the Court. In this

regard, based on the resources currently available in the Court's Assistance Fund, the presumed victims will be awarded the necessary financial assistance for the presentation, charged to the Fund, of a maximum of three testimonies, either by affidavit or at the public hearing. In addition, he finds it appropriate to postpone determination of the specific amount, purpose and object of the financial assistance that will be provided to the presumed victims until such time as this President, or the Court, rules on the admissibility and relevance of the testimonial and expert evidence offered, and on the opening of the oral proceedings, in accordance with Article 50(1) of the Court's Rules of Procedure, in order to be certain which testimonies will be received by the Court, and also the way in which they will be presented (*supra* fifteenth considering paragraph).

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of his authority in relation to the Victims' Legal Assistance Fund of the Court and in accordance with Article 31 of the Court's Rules of Procedure and Article 3 of the Rules of Procedure of the Court's Legal Assistance Fund,

DECIDES:

1. To declare admissible the request submitted by the presumed victims, through their representatives, to use the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, so that the necessary financial assistance will be granted for the presentation of a maximum of three testimonies, and that the specific amount, purpose and object of this assistance will be defined when deciding on the presentation of testimonial and expert evidence, and on the opening of the oral proceedings, in accordance with Article 50 of the Court's Rules of Procedure, as established in the seventeenth considering paragraph of this order.

2. To require the Secretariat of the Court to notify this order to the representatives of the presumed victims, the Bolivarian Republic of Venezuela, and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary