

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

NOVEMBER 28, 2011

VICTIMS' LEGAL ASSISTANCE FUND

CASE OF CASTILLO GONZÁLEZ *ET AL.* v. VENEZUELA

HAVING SEEN:

1. The brief of February 22, 2011, 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") an application against the Bolivarian Republic of Venezuela (hereinafter "Venezuela" or "the State"). The attachments to said brief were received by the Secretariat of the Court on March 3, 2011.

2. The brief of July 16, 2011, in which the representatives of the alleged victims¹ (hereinafter "the representatives") presented their pleadings, motions and evidence in this case (hereinafter the "brief of pleadings and motions"), together with a request to have recourse to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "Assistance Fund of the Court" or "Fund") "to cover certain costs related to the production of evidence during the proceedings in the present case before the Court," which were specified. The attachments to the aforementioned brief were received by the Secretariat of the Court on August 8 and September 6, 2011.

3. The note of September 13, 2011, in which the Secretariat of the Court (hereinafter "the Secretariat") informed the parties that their request would be brought to the attention of the President of the Court (hereinafter "the President").

4. The brief of November 15, in which the State presented, *inter alia*, its response to the brief presenting the case and its observations on the brief of pleadings and motions. The attachments were received by the Secretariat on November 23, 2011.

¹ The alleged victims in this case appointed as their representatives the *Vicaría Episcopal de Derechos Humanos* of Caracas and the Center for Justice and International Law (*Centro por la Justicia y el Derecho Internacional* - CEJIL).

CONSIDERING THAT:

1. Venezuela is a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since August 9, 1977 and recognized the contentious jurisdiction of the Court on June 24, 1981.

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 Assistance Fund of the Inter-American System”) and entrusted its regulation to the Permanent Council of the OAS². Said 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 it”³. In accordance with the Rules of Procedure adopted by the Permanent Council of the OAS in November 2009⁴, the Assistance Fund of the Inter-American System maintains two separate accounts: one for the Inter-American Commission and the other for the Court. As to the financing of the Assistance Fund of the Inter-American System, this is currently comprised of “voluntary capital contributions from the Member States of the OAS, the Permanent Observer States and other States and donors that may wish to collaborate with the Fund”⁵. Likewise, pursuant to Article 4 of the Rules of Procedure approved by the Permanent Council, the Court shall determine the eligibility requirements for requesting assistance as well as the procedure for approving such assistance.

3. Accordingly, on February 4, 2010 the Court adopted the Rules for the Operation of the Assistance Fund, (hereinafter the “Rules of the Assistance Fund”), which entered into force on June 1, 2010, and whose purpose is to “regulate the operation of, and access to, the [...] Fund, for the litigation of cases before it”⁶. As established therein, alleged victims wishing to have access to the Fund must follow three steps: 1) request assistance in the written brief containing pleadings, motions and evidence; 2) demonstrate, by means of a sworn affidavit and other probative evidence that will satisfy the Court, that they lack the financial resources needed to cover the cost of litigation before the Inter-American Court, and 3) state precisely the aspects of their participation in the proceedings that require the use of resources of the Court’s Legal Assistance Fund.

4. As stipulated in Article 3 of the Court’s Assistance Fund, in response to a request to have recourse to the Fund’s resources, the Secretariat of the Court shall conduct a preliminary review of the request for assistance and shall require the

² Cf. AG/RES. 2426 (XXXVIII-O/08) Resolution adopted by the General Assembly of the OAS during the Thirty-eighth Regular Session of the OAS, 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), adopted on November 11, 2009 by the Permanent Council of the OAS, “*Rules for the Operation of the Victims’ Legal Assistance Fund of the Court Inter-American Court of Human Rights*”, Article 1.1.

⁴ CP/RES. 963 (1728/09), *supra* note 3, Article 3.1.

⁵ CP/RES. 963 (1728/09), *supra* note 3, Article 2.1.

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

requesting party to present the background information necessary so that the request may be submitted to the consideration of the Presidency. The President of the Court shall then evaluate the request and make a decision within three months as of the date on which the background information required is received.

5. The President notes that the representatives requested resources from the Court's Assistance Fund in their brief of pleadings and motions submitted on July 16, 2011 and in the attachments received on August 8, 2011 presented a sworn statement by Ms. Yelitze Lisbeth Moreno Cova together with a receipt for payment of her fortnightly salary for the "Thirteenth *Quincena* (two-week period) of the year 2011" from the Ministry of the Popular Power for Education.

6. The representatives based their application on the fact that the family of Joe Luis Castillo González "does not have the financial resources necessary to cover the costs and expenses of litigation before the Inter-American Court (*supra* Having Seen 2). In this regard, in a statement signed by Ms. Yelitze Lisbeth Moreno Cova, on behalf of her family, she explains that she "lack [s] the necessary funds to cover the costs of litigation before the Inter-American Court [...]in the [present] case," and includes information on her fortnightly income as of the date of July 8, 2011.

7. On the other hand, the representatives pointed out that "there are a number of expenses that the representatives are in a position to cover at this stage of the proceeding before the Court, and [...] therefore the [alleged] victims have not included [these] in their application for assistance from the Fund. This is on the understanding that those amounts [would be] reimbursed by the State in respect of expenses and costs if the Court so orders in its [R]uling in this case." Said expenses would include "the representation expenses [of the representative organizations]; travel [expenses] for the lawyers of CEJIL to Venezuela to work on the case before the Court and prepare the hearing; air tickets, accommodation and *per diem* expenses for three lawyers of CEJIL, and two lawyers from the Vicaría de Caracas to the place where the hearing is to be held [,] and logistical expenses during the preparation and holding of the hearing."

8. The representatives explained that the alleged victims are requesting support from the Assistance Fund to cover the following expenses: i) travel expenses, including air tickets, hotel and *per diem* expenses for up to four witnesses and four expert witnesses that the Court may summon to give evidence at a hearing, and ii) expenses for the formalization of affidavits in Venezuela of any testimonies and expert witnesses that the Court may consider admissible. The representatives emphasized that, at this stage of the proceedings, they were not in a position to determine whether all the witnesses and experts proposed in their brief of pleadings and motions would be admitted by the Court and also that they did not know where the Court would decide to hold the future hearing of this case, for which reason "the travel expenses could vary considerably." In view of the foregoing, they requested that, should Court approve this request, to do so bearing in mind "the testimonies and expert reports that it may decide to admit in its Decision [pursuant to] Article 50 of the Rules of Procedure [of the Court]" and, that if it should accept the request in part, the Court should indicate the number of expert reports and testimonies to be covered by the Fund.

9. Notwithstanding the foregoing, the representatives submitted an estimate of the costs to be covered by the Fund for the appearance of the deponents at a future public hearing at the seat of the Court. Based on this assumption, the representatives

estimated the total expenses for four witnesses and four experts at approximately US\$11,304.00 (eleven thousand three hundred and four dollars of the United States of America). Assuming that the Fund would cover the cost of obtaining sworn statements, they pointed out that “the formalization of affidavits for the notarization of testimonies and expert reports in Venezuela implies an additional variable cost, which has not been included in the calculation of estimated expenses.” Finally, the representatives requested that the State be required to reimburse said expenses to the Fund, according to Article 5 of the Rules of the Fund. This, without prejudice to the amounts for expenses and costs that the Court may determine for the alleged victims and their representatives and that should be directly reimbursed to them.

10. The President confirms that the request for access to the Court’s Assistance Fund was submitted in a timely manner in the brief of pleadings and motions (*supra* Having Seen paragraph 2). In this regard, he notes that the representatives submitted the request to have recourse to the Legal Assistance Fund on behalf of the alleged victims, since they are the ones who should benefit from the Assistance Fund.

11. Likewise, the President takes cognizance of the lack of financial resources claimed by the alleged victims and considers the statement signed by Ms. Yelitza Lisbeth Moreno Cova and the pay slip issued by the Ministry of the Popular Power for Education as sufficient evidence thereof (*supra* Considering paragraphs 5 and 6).

12. At the same time, the President notes that the alleged victims have requested assistance from the Fund to cover expenses related to the production of evidence before the Court, specifically to present statements, either at a public hearing or by means of affidavits (*supra* Considering paragraph 8). Likewise, he takes cognizance of the fact that the representatives have submitted a table of estimated expenses in case the evidence is to be presented.

13. The President recalls that the Court’s Legal Assistance Fund is comprised of voluntary contributions from donor sources (*supra* Considering paragraph 2), and that these limited resources are insufficient to cover all the expenses related to a possible appearance and presentation of evidence before the Court by the alleged victims. Therefore, in each specific case, the Presidency must consider a request for financial assistance on the basis of the resources available and bearing in mind the need for assistance that might arise in other cases before the Court, in order to ensure the correct administration and fair distribution of the Fund’s limited resources.

14. The President notes that, at the present stage of the proceedings, it has not been determined whether or not the testimonies offered by the representatives shall be admitted by the Court, or the means by which these shall be obtained.

15. Based on the foregoing considerations, the President considers valid the request made by the alleged victims to have recourse to the Court’s Legal Assistance Fund to cover the expenses related to the appearance of deponents and the presentation of testimonies to the Court. Accordingly, having regard to the resources currently available in the Court’s Assistance Fund, the alleged victims shall be granted the financial assistance necessary for the presentation of a maximum of four testimonies, either by affidavit or at a hearing. Likewise, the President considers it appropriate to defer a decision on the specific amount, recipients and purpose of the financial assistance to be provided to the alleged victims, until such time as the Presidency, or the Court, rules on the validity and relevance of the evidence offered by experts and witnesses and on the opening of the oral proceedings, in accordance with

Article 50.1 of the Court's Rules of Procedure, in order to have certainty regarding which of the testimonies shall be admitted by the Court, and the means by which these shall be obtained. (*supra* Considering paragraph 14).

THEREFORE:

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

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

DECIDES:

1. To declare admissible the request submitted by the alleged victims, through their representatives, to have recourse to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, and to grant the financial assistance necessary for the presentation of a maximum of four testimonies. The amount, recipients and purpose of this assistance shall be determined when a decision is made on the production of the testimonial and expert evidence, and the opening of the oral proceedings, under the terms of Article 50 of the Court's Rules of Procedure, and in accordance with preambular paragraph 15 of this Decision.

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

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary