

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

OF MAY 8, 2012

VICTIMS' LEGAL ASSISTANCE FUND

**CASE OF MENDOZA ET AL (CONFINEMENT AND LIFE IMPRISONMENT OF
ADOLESCENTS) v. ARGENTINA**

HAVING SEEN:

1. The brief of June 17, 2011, and the annexes thereto, by means of 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", the "Court" or the "Tribunal") a case against the Republic of Argentina (hereinafter, "Argentina" or the "State")

2. The communication of December 20, 2011, by which the representative of the alleged victims¹ (hereinafter, the "representative") submitted the brief containing pleadings, motions and evidence in relation to the instant case (hereinafter, the "brief of pleadings and motions"). In said brief, the representative requested to access the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter, the "Assistance Fund of the Court" or the "Fund") to guarantee the presence of two witnesses and two expert witnesses during the public hearing and cover the costs produced by the receipt of 15 testimonies and one expert opinion rendered through affidavit.

CONSIDERING THAT:

1. Argentina has been a State Party to the American Convention on Human Rights (hereinafter, the "American Convention" or the "Convention") since September 5, 1984 and, in accordance with Article 62 thereof, it has accepted the binding jurisdiction of the Court on that same date.

¹ The alleged victims' representative is Mrs. Stella Maris Martinez, Official Public Defender of Argentina.

2. In 2008, the General Assembly of the Organization of American States (hereinafter, the "OAS") established the Legal Assistance Fund of the Inter-American Human Rights System (hereinafter, the "Assistance Fund of the Inter-American System") and entrusted to the OAS Permanent Council its rules of procedure.² The purpose of the Assistance Fund is "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 terms of the Rules of Procedure adopted by the Permanent Council in November 2009⁴, the Assistance Fund of the Inter-American System shall maintain two separate accounts: one corresponding to the Inter-American Commission and another one corresponding to the Inter-American Court. As to the financing of the Assistance Fund of the Inter-American System, it currently depends on "[v]oluntary 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 Furthermore, according to article 4 of the Rules of Procedure approved by the Permanent Council, the Tribunal shall determine the merits of the request for assistance as well as the procedure for the approval of such assistance.

3. Based on the foregoing, the Tribunal adopted, on February 4, 2010, the Rules for the Operation of the Victims' Legal Assistance Fund of the Court (hereinafter, the "Rules of the Assistance Fund") in force since June 1, 2010, the purpose of which is to "regulate the operation and access to the Fund [...] for the litigation of cases before it".⁶ As established therein, the alleged victims who wish to access said Fund must fulfill three requirements: 1) they must request it in the brief containing pleadings, motions and evidence; 2) he or she must prove, by means of a sworn affidavit or other probative evidence that will satisfy the Tribunal, that they lack the economic resources necessary to cover the costs of litigation before the Inter-American Court and 3) they must precisely state the aspects of their participation in proceedings that require use of the resources of the Assistance Fund of the Court.⁷

4. According to the terms stipulated in article 3 of the Rules of the Assistance Fund of the Court, before a request to use such resources, the Court's Secretariat shall conduct a preliminary review of the request for assistance and shall require the requesting party to present the background information necessary so that the request may be submitted to the consideration of the Presidency. The Presidency of the Court shall evaluate each request and decide what may correspond, within a term of three months as of the date that the background information required is received

² See AG/RES. 2426 (XXXVIII-O/08) Order adopted by the OAS General Assembly during the XXXVIII Regular Period of Sessions 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*", paragraph 2.b.

³ AG/RES. 2426 (XXXVIII-O/08), *supra* note 2, paragraph 2.a, and CP/RES. 963 (1728/09), adopted on November 11, 2009 by the Permanent Council of the Organization of American States, "*Rules for the Operation of the Legal Assistance Fund of the Inter-American System of Human Rights*", article 1.1.

⁴ See Resolution CP/RES. 963 (1728/09); *supra* note 3, article 3.1.

⁵ Resolution 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, adopted by the Tribunal on February 4, 2010, article 1.

⁷ See Rules of the Assistance Fund, *supra* note 6, article 2.

5. The representative submitted the request in order to guarantee the receipt, at the public hearing before the Tribunal, of the testimonies of Marta Graciela Olgún and Stella Maris Fernández, mothers of Lucas Matías Mendoza and Ricardo David Videla Fernández, which are considered by the representative to be "essential for the exercise of the right to defense of [the alleged victims]". The representative requested the Court to cover the expenses deriving from trips, transfers, accommodation and travel during her stay in San José, Costa Rica. In case the statements are not received at the hearing, the representative requested to cover the expenses derived from rendering them through *affidavit*. Likewise, the representative requested the use of the Assistance Fund to "pay the expenses [...] incurred by the receipt, through *affidavit*, of the testimonies of César Alberto Mendoza, Claudio David Nuñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal, Isolina del Carmen Herrera, Ana Maria del Valle Brito, Florinda Rosa Cajal, Romina Beatriz Muñoz, Jorgelina Amalia Díaz, Dora Noemí Mendoza, Yolanda Elizabeth Nuñez, Omar Maximiliano Mendoza, Elizabeth Paola Mendoza, Yohana Elizabeth Roldán [and] Marilyn Estefanía Videla [...]".

6. Moreover, the representative requested the use of the Assistance Fund to guarantee the presence of expert witnesses Gimol Pinto and Sofia Tiscornia at the hearing before the Court. In this respect, the representative requested that the Assistance Fund covers the expenses incurred by "producing [expert reports] that would inevitable involve trips, transfer, accommodation and travel expenses for the specialists to be able to visit the detention places of César Alberto Mendoza, Claudio David Nuñez, Lucas Matías Mendoza [and] Saúl Cristian Roldán Cajal and the homes of their relatives, as well as the family of Videla Fernández[, relative of Ricardo David Videla Fernandez, deceased alleged victim]". In case the expert opinions are not received at the hearing, the representative requested that the Fund covers the expenses derived from their submission through *affidavit*. Moreover, the representative requested funds in order to "pay the expenses [...] incurred by the rendering through affidavit [...] of the expert opinion of Laura Sobredo, MD".

7. The representative based the request on the "lack of resources" of César Alberto Mendoza, Claudio David Nuñez, Lucas Matías Mendoza and Saul Cristian Roldán Cajal, "and on the *poor* socio-economic conditions in which their relatives and the next-of-kin of Ricardo David Videla Fernández live". To sustain said request, the representatives submitted the "sworn statements of earnings" of the following persons: Saúl Cristian Roldán Cajal; Stella Maris Fernández acting for herself and "in the exercise of parental authority and on behalf of her son Esteban Luis Videla"; Marilín Estefanía Videla⁸; Florinda Rosa Cajal; Johana Elizabeth Roldán⁹; Lucas Matías Mendoza; Claudio David Nuñez; César Alberto Mendoza; Romina Beatriz Muñoz; Dora Noemí Mendoza; Isolina del Carmen Herrera; Omar Maximiliano Mendoza; Marta Graciela Olgún; Elizabeth Paola Mendoza; Yolanda Elizabeth Nuñez; Jorgelina Amalia Díaz, and Ana María del Valle Brito. It is shown on the statements that these persons do not have the resources to bear the costs of the litigation of the instant case before the Inter-American Court of Human Rights.

8. The representative also filed the "social reports" of César Alberto Mendoza, Claudio David Nuñez, Lucas Matías Mendoza, Saúl Cristian Roldán Cajal and of the relatives of Ricardo David Videla Fernández.

⁸ In the brief of pleadings and motion, the name is written as follows: "Marilyn" Estefanía Videla.

⁹ In the brief of pleadings and motion, the name is written as follows: "Yohana" Elizabeth Roldán.

9. The Presidency verifies that the request to access the Legal Assistance Fund was filed in time fashion in the brief of pleadings and motions (*supra* Having Seen clause 2). Likewise, it notes that, on said occasion, the representative requested the use of said Fund in favor of the alleged victims of the instant case. The Presidency recalls that the Assistance Fund has been established for alleged victims.¹⁰ In this respect, the Presidency takes note of the lack of economic resources alleged by the alleged victims through their representative and considers that the statements rendered through affidavit, as well as the other probative items of evidence so furnished, are enough as a proof thereof, according to article 2 of the Rules of the Assistance Fund.

10. Moreover, the Presidency notes that the alleged victims have requested the assistance of said Assistance Fund to cover the expenses related to producing evidence before the Tribunal, specifically for the rendering of 17 statements and 3 expert opinions, at the hearing or through affidavit.

11. The Presidency recalls that the Assistance Fund of the Court consists of voluntary contributions of cooperation agencies (*supra* Considering clause 2) and that these limited resources are insufficient to cover all the expenses related to the appearance and possible presentation of evidence before the Tribunal, by the alleged victims and their representatives. In light of the above, this Presidency shall evaluate each request for assistance so submitted in respect of the available funds, bearing in mind the need for assistance that other cases before the Court may require, in order to safeguard the correct administration and fair distribution of the limited resources of said fund.

12. The Presidency takes note that, at this stage of the proceeding, it has not been determined whether the statements offered by the representatives shall be admitted by the Tribunal, as well as the manner in which they shall be rendered. In accordance with article 50.1 of the Court's Rules of Procedure, it is the Court or its Presidency who shall decide so, once the parties had forwarded the definitive lists of declarants proposed and had ensured the right to defense, based on the terms of articles 45 to 49 of this Tribunal's Rules of Procedure.

13. In light of the foregoing considerations, the Presidency declares admissible the request for access to the Legal Assistance Fund of the Court, submitted by the representative in favor of the alleged victims. Bearing in mind the resources available at present in the Fund, the Tribunal decides to grant the alleged victims the financial assistance required for the presentation of a maximum of five statements, rendered through affidavit or at the public hearing. Moreover, the President deems convenient to defer the decision on the specific allocation and object of the financial assistance that will be granted in favor of the alleged victims until this Presidency, or the Court, decides on the admissibility and relevance of the expert and testimonial evidence so offered, and the opening of the oral trial, according to article 50.1 of the Tribunal's Rules of Procedure, so as to know for a fact which statements shall be received by the Court, as well as the manner in which they shall be rendered.

THEREFORE:

¹⁰ See *Case of Contreras et al V. El Salvador*. Order of the President of the Inter-American Court of Human Rights of March 4, 2011; considering clause nine. *Case of the El Mozote Massacre V. El Salvador*. Order of the President of the Inter-American Court of Human Rights of December 1, 2011, Considering Clause 10.

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

in exercise of its authority in relation to the Victims' Legal Assistance Fund of the Court and in accordance with article 31 of the Tribunal's Rules of Procedure and article 2 of the Rules for the Operation of the Victims' Legal Assistance Fund of the Court,

DECIDES:

1. To declare admissible the request submitted by the representative in favor of the alleged victims to access the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, in such a way that the Court shall grant the financial assistance required for the presentation of a maximum of five statements, to be rendered through *affidavit* or at the public hearing, and to declare that the specific allocation and object of said assistance shall be determined upon the decision on the production of expert and testimonial evidence, and the opening of the oral trial, based on article 50 of the Tribunal's Rules of Procedure, according to the terms of Considering clause 13 of this Order.
2. To require the Secretariat of the Court to notify this Order to the representative of the alleged victims, the Republic of Argentina 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