

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

**MAY 18, 2012**

**VICTIMS' LEGAL ASSISTANCE FUND**

**CASE OF NORÍN CATRIMÁN *ET AL.* v. CHILE**

**HAVING SEEN:**

1. The brief of August 7, 2011, the Merits Report No. 176/10 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") an application against the State of Chile (hereinafter "Chile" or "the State"). The attachments to the aforementioned brief were received at the Secretariat of the Court on August 24, 2011.

2. In this case, the representatives of the eight alleged victims did not reach agreement over the designation of a common intervenor, for which reason the Court authorized the appointment of more than one common intervenor, in application of Article 25(2) of the Court's Rules of Procedure.<sup>1</sup> The representatives informed the Court that the Center for Justice and International Law (hereinafter "CEJIL") and the International Federation for Human Rights (hereinafter "FIDH") would act as common intervenors in representation of all the alleged victims. On October 31, 2011 the aforesaid common intervenors were notified of the submission of the case.<sup>2</sup>

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<sup>1</sup> Rules approved by the Court in its eighty-fifth regular session held on November 16-28, 2009.

<sup>2</sup> On December 28, 2011 the alleged victims Patricia Troncoso Robles and Aniceto Norín Catrimán informed the Court of their decision to replace the FIDH as their legal representative and presented their new instructions to be represented by the attorney Ylenia Hartog. On December 30, 2011 Ms. Hartog submitted a request to participate as a third common intervenor and to be granted a new term to present a brief of pleadings, motions and evidence. The Inter-American Court decided to deny these requests by the new representative, taking into account the procedural moment at which were presented, after the submission of the case had been notified to the two common intervenors designated, and just one day prior to the expiry of the term set for presenting the brief of pleadings, motions and evidence. The Court considered that, according to the principles of promptness and

3. The brief of December 30, 2011, in which CEJIL, the common intervenor of the representatives of the alleged victims, submitted its brief with pleadings, motions and evidence (hereinafter the "pleadings and motions brief of CEJIL"), together with a request from the alleged victim Víctor Ancalaf to receive assistance from the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "the Assistance Fund of the Court" or "Fund"). The alleged victim requested, through said intervenor, assistance to cover: (i) the travel expenses "of the persons that the Court may summon to testify at a hearing, including Victor Ancalaf, and of the witnesses and expert witnesses that the Court may deem pertinent to hear orally"; (ii) "notary expenses arising from the taking of statements of the [alleged] victims, witnesses and expert witnesses that the Court may consider pertinent to receive by affidavit," and (iii) "travel expenses" for the expert testimony by the psychologist Vargas.

4. The briefs of December 31, 2011, in which the FIDH, common intervenor of the representatives of the alleged victims, submitted its brief with pleadings, motions and evidence (hereinafter the "pleadings and motions brief of the FIDH"), as well as a request on behalf of the alleged victims Pascual Pichún Paillalao and Florencio Jaime Marileo Saravia to receive assistance from the Fund. Specifically, they requested assistance to cover "the expenses related to the appearance before the C[ourt]" of the two aforementioned alleged victims. The attachments to said briefs were presented on January 19, 2012, and included written statements by the aforementioned alleged victims regarding their financial situation.

5. The note of January 11, 2012 of the Secretariat of the Court (hereinafter "the Secretariat"), in which, in accordance with Articles 2 and 3 of the Rules for the Operation of the Victims' Legal Assistance Fund of the Court (hereinafter the "Rules of the Assistance Fund"), CEJIL was asked to submit the required evidence regarding the aforementioned alleged victim's lack of sufficient financial resources to cover the costs of litigation before the Court.

6. The briefs of January 13 and 30, 2012 and their annexes, in which CEJIL presented evidentiary elements in relation to the lack of financial resources of the alleged victim who is requesting assistance from the Fund (*supra* having seen paragraphs 3 and 5).

7. The notes of the Secretariat of February 20, 2012, in which the briefs with pleadings, motions and evidence, the requests of the alleged victims for assistance from the Fund and the respective documentation were forwarded to the State, to the two common intervenors of the representatives and to the Inter-American Commission. Likewise, the parties and the Commission were informed that these requests would be brought to the attention of the President of the Court (hereinafter "the President"), for the relevant purposes.

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preclusion of the process, it was not appropriate to admit those requests at the procedural stage at which they were submitted, since this would imply revising the decision authorizing the participation of more than one common intervenor, adopted by the Court at the appropriate procedural moment, and would also imply extending a term that is non-extendable under the Rules of Procedure with regard to the presentation of the briefs of pleadings, motions and evidence of the common intervenors. The Court recalled, *inter alia*, that it is up to the two common intervenors authorized in this case to provide all the rest of the representatives with information on the status of the proceeding before the Court and to receive and convey the pleadings, motions and evidence that they wish to submit before the Court through those common intervenors.

## CONSIDERING THAT:

1. Chile has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since August 21, 1990 and recognized the contentious jurisdiction of the Court on that same date, according to Article 62 thereof.
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 OAS.<sup>3</sup> This 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.”<sup>4</sup> As established in the aforementioned Rules of Procedure approved by the Permanent Council in November 2009,<sup>5</sup> 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 Member States of the OAS, the Permanent Observer States, and other States and donors that may wish to collaborate with the Fund.”<sup>6</sup> 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, and the procedure for approving such assistance.
3. Accordingly, on February 4, 2010 the Court adopted the Rules for the Operation of the Victims’ Legal 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.”<sup>7</sup> As established therein, alleged victims wishing to access the Fund must follow three steps: (1) request assistance in the written brief containing pleadings, motions and evidence; (2) indicate, by means of a sworn affidavit and other probative evidence that will satisfy the Court, that they lack the financial resources necessary 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 Victims’ Legal Assistance Fund.<sup>8</sup>
4. As stipulated in Article 3 of the Rules of the Court’s Assistance Fund, the requests for assistance were first examined by the Secretariat of the Court. After receiving the documents required completing the background information (*supra* having seen paragraphs 3 to 6), the Secretariat submitted these petitions to the consideration of the President of the Court, to be evaluated and decided in accordance with the relevant provisions. In the first place, the President confirms that the request for access to the Court’s Assistance Fund was

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<sup>3</sup> 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).

<sup>4</sup> AG/RES. 2426 (XXXVIII-O/08), *supra* note 3, operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009 by the Permanent Council of the OAS, “*Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System*,” Article 1(1).

<sup>5</sup> Cf. Resolution CP/RES. 963 (1728/09), *supra* note 4, Article 3(1).

<sup>6</sup> Resolution CP/RES. 963 (1728/09), *supra* note 4, Article 2(1).

<sup>7</sup> 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.

<sup>8</sup> Cf. Rules of the Assistance Fund, *supra* note 7, Article 2.

submitted at the appropriate procedural stage. Likewise, he notes that the representatives made the request to access the Legal Assistance Fund on behalf of the alleged victims. Indeed, the President reiterates that the alleged victims are the ones who should benefit from the Assistance Fund.<sup>9</sup>

5. The request submitted by CEJIL is based on the “precarious social and economic” situation of the alleged victim Víctor Ancalaf Llaupe, who “works in agricultural activities in his community, [...] and] most of his work is within the subsistence economy,” to which “are added the difficulties to integrate fully into the Community as a result of the stigma arising from his trial and conviction for terrorist activities.” To support this request, CEJIL also submitted a certificate of “socioeconomic accreditation” issued by the Department of Community Development of the Municipality of Collipulli, Chile regarding the situation of Mr. Ancalaf Llaupe and his family.<sup>10</sup> CEJIL specified that the alleged victim Víctor Ancalaf requested support from the Assistance Fund to cover: (i) the travel expenses “of the persons that the Court may summon to testify at a hearing, including Victor Ancalaf, and the witnesses and expert witnesses that the Court may deem pertinent to hear orally”; (ii) “notary expenses derived from taking the statements of the [alleged] victims, witnesses and expert witnesses that the Court may consider pertinent to receive by affidavit”, and (iii) “[e]xpenses and travel” for the expert report to be prepared by the psychologist Vargas.

6. The petition submitted by FIDH requesting that the alleged victims Pascual Pichún Paillalao and Florencio Jaime Marileo Saravia receive assistance to cover “the expenses related to [their] appearance before the C[ourt]” is based on the fact that “they are farmers, Mapuche small-holders, inserted in a subsistence economy and do not have sufficient income to cover their travel [expenses] and accommodation in the place of the trial.” To support this request the FIDH presented the written statements of said alleged victims in relation to their economic resources.<sup>11</sup> Likewise, the FIDH explained that the alleged victims “were represented free of charge, throughout the domestic proceedings [...] by lawyers of the Public Criminal Defense Office and, for the purposes of processing the case followed before the Inter-American Commission [...] have been represented by lawyers *ad honorem*, as well as by the FIDH.” Furthermore, it was indicated that “[t]he budget of the FIDH assigned for the litigation of [this] case [...] is allocated to finance the participation and intervention in the hearings before the Inter-American Court of [three] lawyers [...], two other alleged victims<sup>12</sup>, and two expert witnesses,” and that “[f]or those reasons the FIDH does not have the necessary funds to cover the expenses related to the appearance before the [Court ] of [the alleged victims] Pascual Pichún and Jaime Marileo”.

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<sup>9</sup> Cf. *Case of González Medina et al. v. Dominican Republic*. Order of the President of the Court of February 23, 2011, eighth considering paragraph, and *Case of Massacres of El Mozote and Surrounding Areas v. El Salvador*. Order of the President of the Inter-American Court of December 1, 2011, tenth considering paragraph.

<sup>10</sup> The certificate signed on January 17, 2012 confirms that the family of Mr. Ancalaf Llaupe is in the “1<sup>st</sup> most vulnerable quintile of the population” and “is currently included in the [...] Social Protection and Solidarity System of Chile.” CEJIL also presented a copy of Mr. Ancalaf’s health card granting him access to health services as a person lacking resources, and provided information on the rates of poverty and indigence that affect the Mapuche People in Chile.

<sup>11</sup> In his statement of December 20, 2011 the alleged victim Florencio Jaime Marileo Saravia stated that he did “not have sufficient funds to finance [his] trip to the hearings at the Inter-American Court in Costa Rica.” In his statement of January 11, 2012 the alleged victim Pascual Pichún Paillalao stated that he “does not have sufficient funds to travel to Costa Rica to participate in the hearings in this case”.

<sup>12</sup> Juan Patricio Marileo Saravia and José Hunechunao Mariñán.

7. The President takes cognizance of the lack of financial resources claimed by the three aforementioned alleged victims through the common intervenors. According to Article 2 of the Rules of the Fund, the certificate of "socioeconomic accreditation" regarding Mr. Ancalaf Llaupe's situation (*supra* considering paragraph 5) and the affidavits rendered by the alleged victims Jaime Marileo and Pascual Pichún regarding their financial situation (*supra* considering paragraph 6) constitute sufficient evidence of their lack of financial resources, which is complemented with the information on the rates of poverty and indigence that affect the Mapuche People in Chile.

8. Likewise, the President confirms that both CEJIL and FIDH specified the costs related to the process for which the alleged victims require assistance. In this regard, he notes that the alleged victims Pichún Paillalao and Marileo Saravia have requested assistance from the Fund to cover expenses related to "their appearance" before the Court (*supra* considering paragraph 6). For his part, the alleged victim Ancalaf has requested assistance to cover the travel expenses of "the persons that the Court may summon to testify at a hearing," the "notary expenses for taking the statements of the [alleged] victims, witnesses and expert witnesses that the Court consider pertinent to receive by affidavit," as well as the expenses associated with the psychologist's expert report (*supra* considering paragraph 5).

9. The President recalls that the Assistance Fund of the Court 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 the possible appearance of the alleged victims, their representatives and the presentation of evidence before the Court. Therefore, in each specific case, a request for financial assistance must be considered 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.

10. The President notes that, at the present stage of the proceedings, it has not been determined whether the testimonies offered by the representatives shall be received by the Court, or the means by which these shall be obtained. In accordance with Article 50(1) of the Court's Rules of Procedure, that decision is taken by the Court or by its President, once the parties have submitted the definitive lists of proposed declarants and the right to defense has been guaranteed, under the terms of Articles 45 to 49 of the Court's Rules of Procedure.

11. Based on the foregoing considerations, the President considers valid the request submitted by the alleged victims to access the Court's Legal Assistance Fund. Accordingly, having regard to the resources currently available in the 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 public hearing. 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.

**THEREFORE:**

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

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

**DECIDES:**

1. To declare admissible the request submitted by the alleged victims, through the common intervenors of the representatives, to have access 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, either by means of affidavits or at a public hearing. 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, in accordance with considering paragraphs 9 to 11 of this Order.

2. To order the Secretariat of the Court to notify this Order to the common intervenors of the representatives of the alleged victims, to the State of Chile and to 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