

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

OF JUNE 1, 2011

VICTIMS' LEGAL ASSISTANCE FUND

CASE OF NESTOR JOSÉ AND LUIS UZCÁTEGUI *ET AL.* v. VENEZUELA

HAVING SEEN:

1. The brief of November 11, 2010, and its attachments, in which the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted a case to the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court").

2. The brief of March 1, 2011, and its attachments, in which the representatives of the presumed victims¹ (hereinafter "the representatives") presented their brief with pleadings, motions and evidence (hereinafter the "pleadings and motions brief") and, based on the Court's Rules of Procedure on the Operation of the Victims' Legal Assistance Fund (hereinafter "the Rules of Procedure of the Assistance Fund"),² included a request "for legal assistance for the next of kin of Néstor José Uzcátegui to cover some costs [which they specified] related to the production of evidence during the proceedings in this case before the Court."

3. The brief of May 13, 2011, in which the State of Venezuela (hereinafter "the State") forwarded the answer to the brief presenting the case and its observations on the pleadings and motions brief.

CONSIDERING THAT:

1. Venezuela ratified the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") on August 9, 1977, and accepted the compulsory jurisdiction of the Court on June 24, 1981.

¹ The organizations that have acted as representatives of the presumed victims in this case are the *Comité de Familiares de Víctimas de los Sucesos de Febrero-Marzo de 1989* (COFAVIC) [Committee of Relatives of the Victims of the Events of February-March], and the Center for Justice and International Law (CEJIL).

² *Cf.* 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

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 rules of procedure for the Fund.³ 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."⁴ According to the said Rules of Procedure adopted by the Permanent Council, 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, in order to "regulate 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, in order to use this Fund, a presumed victim must fulfill three requirements: (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 the aspects of their participation in the proceedings that require the use of the resources of the Court's Assistance Fund.

4. As stipulated in article 3 of the Rules of Procedure of the Court's Assistance Fund, 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 required information.

5. The representatives based their request on the lack of the necessary financial resources to cover the costs of the litigation before the Court. In this regard, they attached a statement of the capital assets of Luis Uzcátegui prepared by a certified public accountant, which attests that Mr. Uzcátegui "has no capital assets at this time."

6. Furthermore, the representatives advised that they would be in a "position to assume a series of expenses [...] 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, in the understanding that the Court would take these expenses into account when determining the costs and expenses to be reimbursed by the State, if appropriate.

³ 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."

⁴ 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).

⁵ Rules of procedure of the Inter-American System's Assistance Fund, *supra* note 3, 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.

7. The representatives specified that the presumed victims requested help from the Assistance Fund to cover: (i) travel expenses (including “air fares, hotel and per diem”) for the persons that the Court summons to testify in the hearing, including presumed victims, witnesses and expert witnesses; (ii) the expenses of the notary arising from certifying the statements of presumed victims, witnesses and expert witnesses that the Court finds pertinent to receive by affidavit, and (iii) the expenses and travel arising from the preparation of the expert appraisals, “in those cases in which the experts need to travel to Venezuela or within the country in order to prepare them.” They underlined 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 the Court, and did not know where the Court would decide to convene the eventual hearing of the case, so that “the travel expenses could vary considerably.” Accordingly, they asked the Court, if it accepted their request, to do so taking into account the testimonies and expert opinions that it decided to admit in the order issued based on Article 50 of its Rules of Procedure⁷ and, if it accepted it in part, that the Court indicate the number of testimonies and expert opinions that would be covered by the Fund.

8. In addition, the representatives submitted an estimate of the expenses to be covered by the Fund, both for the appearance of the deponents at an eventual public hearing, and for producing sworn statements. In the case of the former, the representatives estimated that the total amount for the eventual statements of eight witnesses and four expert witnesses would be approximately US\$ 16,956.00 (sixteen thousand nine hundred and fifty-six United States dollars), at US\$ 1,413.00 (one thousand four hundred and thirteen United States dollars) for each deponent, including travel expenses, accommodation and per diem, if the hearing were held at the seat of the Court.

9. 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), on behalf of the next of kin of Néstor José Uzcátegui. The President recognizes that this request should be understood to have been made on behalf of the presumed victims, exclusively, because it is they who request the use of the Fund. To this end, the President considers sufficient the capital assets statement of Luis Uzcátegui prepared by a certified public accountant, as evidence of his lack of financial resources to cover the costs of the litigation of this case before the Court. The President also observes that the said organizations represent 11 members of Néstor José Uzcátegui’s family.

10. Furthermore, the President observes that the presumed victims have requested assistance from the said Fund to cover expenses related to the production of evidence before the Court, specifically for the presentation of statements by presumed victims, witnesses and expert witnesses, either at a hearing or by means of an affidavit. 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.

11. 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

⁷ Rules of Procedure of the Court approved at its eighty-fifth regular session held from November 16 to 28, 2009.

in other cases before the Court, in order to ensure the proper administration and fair distribution of the Fund's limited resource.

12. The President takes note that, at the current stage of the proceedings, it is not possible to determine which of the testimonies offered by the representatives will be received by the Court, or in what form they will be received. Under Article 50(1) of the Court's Rules of Procedure, this determination corresponds to the Court or to its President, once the parties have forwarded their final lists of the deponents they propose and the right to defense has been ensured, in the terms of Articles 45 to 49 of the Court's Rules of Procedure.

13. Based on the foregoing considerations, the President finds admissible the presumed victims' request to use the Court's Legal Assistance Fund, in the understanding that it will be to cover expenditure relating to the adequate appearance of deponents in an eventual public hearings, as well as the presentation of testimony to the Court. In this regard, based on the resources currently available in the 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 statements of presumed victims and of the testimonial and expert evidence offered and, as appropriate, 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* twelfth 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 thirteenth 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 State 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