

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

NOVEMBER 23, 2011

VICTIMS' LEGAL ASSISTANCE FUND

CASE OF FURLAN AND FAMILY v. ARGENTINA

HAVING SEEN:

1. The brief of March 15, 2011 and its attachment, 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 Republic of Argentina (hereinafter "Argentina" or "the State").

2. The brief of July 26, 2011, in which the inter-American defenders, acting as 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") for the purpose of undertaking the "defense in the international proceedings [and] for expenses required for the intervention of inter-American defenders," which were specified and were accompanied by supporting documents.

3. The note of August 24, 2011, in which the Secretariat of the Court (hereinafter "the Secretariat") informed the parties that their request, together with the probative evidence submitted, would be brought to the attention of the President of the Court (hereinafter "the President").

CONSIDERING THAT:

1. Argentina is a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since September 5, 1984 and recognized the contentious jurisdiction of the Court on that same date.

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

¹ Mr. Danilo Furlan, in representation of Sebastián Furlan and his family, appointed the inter-American defenders María Fernanda López Puleio and Andrés Mariño as his representatives.

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 it³. 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 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. Article 37 (Inter-American Defender) of the Court’s Rules of Procedure states that “[i]n cases where alleged victims are acting without duly accredited legal representation, the Court may, on its own motion, appoint an Inter-American defender to represent them during the processing of the case.” As established in the introductory remarks to the Rules of the Court, the implementation of the position of the inter-American defender “guarantees

² 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.

that any alleged victim has access to lawyer to represent his or her interests before the Court and ensures that financial reasons do not impede such access to legal representation." Thus, the position of the inter-American defender enables alleged victims who lack financial resources, or legal representation, to obtain assistance in proceedings before the Inter-American Court.

6. The Inter-American Court signed an Agreement with the Inter-American Association of Public Defender Offices (hereinafter "AIDEF")⁷ whereby defenders belonging to said Association would undertake the legal representation of the alleged victims before the Court in the context of the application of Article 37 of the Court's Rules of Procedure. Said agreement regulates the procedure to be followed for the appointment of the representative and other relevant aspects.

7. Article 4 of the aforementioned Agreement regulates the use of the Victim's Legal Assistance Fund when an inter-American defender intervenes as follows:

Legal representation before the Inter-American Court by the person appointed by the Inter-American Association of Public Defender Offices is free of charge and he or she shall only charge for expenses arising from the defense.

The Inter-American Court of Human Rights shall, to the extent possible, and through the Victims' Legal Assistance Fund, cover reasonable and necessary expenses incurred by the designated inter-American defender.

The designated inter-American defender shall present to the Court all the necessary receipts accounting for the expenses incurred in the course of processing the case before it.

8. Bearing in mind the provisions of the aforementioned Article 4, the President emphasizes that, unlike other cases before the Court in which it has been stated that alleged victims are the ones who may make use of the Assistance Fund⁸, the present decision must consider the expenses required both by the alleged victims and by the inter-American defenders. This, in acknowledgement of the fact that this case concerns alleged victims who do not have a legal representative in the proceedings before the Inter-American Court and whose representation shall be undertaken by an inter-American defender, pursuant to Article 37 of the Rules of the Inter-American Court, and therefore assistance shall be granted to cover, to the extent possible, reasonable and necessary expenses arising from legal representation in the litigation of the case.

9. The President notes that, with regard to the request for resources from the Court's Assistance Fund, the inter-American defenders based their request "on the fact that [their] clients lack the resources to cover the costs of litigation before the Inter-American Court." In this regard, they submitted three "socio-environmental reports" as attachments to the

⁷ AIDEF is "a not-for-profit civil institution, which is apolitical, non religious and is socially and culturally comprised of state institutions of Public Defender Offices and Associations of Public Defenders of America that undertake the representation, legal counsel and technical defense at the trials of persons according to laws, constitutions and international treaties. Its objectives, *inter alia*, are to uphold the effective application of the human rights and guarantees enshrined in international agreements and conventions, national constitutions and domestic laws, in the sphere of public defense; and to promote the necessary legal assistance and representation of persons and of justiciable rights, facilitating an effective defense and access to justice with due quality and experience." Agreement of Understanding between the Inter-American Court of Human Rights and the Inter-American Association of Public Defender Offices signed on September 25, 2009 and entered into force on January 1, 2010.

⁸ *Cf. Case of Contreras et al. v. El Salvador*. Petition submitted by the Alleged Victims. Decision of the President of the Inter-American Court of Human Rights, March 4, 2011, Considering paragraph 9.

brief of pleadings and motions. One of these reports describes “the precarious housing and working conditions of the alleged victims, the meager income that [Mr. Sebastián Furlan] earns as a street vendor and obtains from social security benefits.” Another report refers to “the precarious conditions” in Mr. Claudio Furlan’s home, as well as his work and family situation. Finally, another report describes the “state of vulnerability” in which Danilo Furlan finds himself. In addition, the inter-American defenders submitted a sworn statement signed by Mr. Claudio Erwin Furlan regarding “the limited nature of his income and the constant financial assistance that he provides to his family of origin.” In his statement he pointed out that he does “not have the resources to cover costs related to travel, transfers, accommodation and *per diem* expenses for his intervention as a witness” in the present case.

10. Specifically, the inter-American defenders requested the use of the Victims’ Fund for: i) attendance of witnesses and experts at the hearing before the Court, and ii) reimbursement of necessary expenses and of the estimated expenses of the inter-American defenders.

11. Regarding the first item, the inter-American defenders explained that the alleged victims were requesting assistance from the Fund to cover: i) the expenses of Mr. Claudio Furlan, brother of Sebastián Furlan, for travel, transfers, accommodation and *per diem* expenses; ii) estimated expenses incurred in a possible rendering of testimonies through affidavits by Danilo Furlan, Teresa Grossi and Violeta Florinda, and iii) costs of travel, transfers, accommodation and *per diem* expenses related to the expert testimonies offered through Gustavo Moreno, Pablo Rosales, Estela Rodríguez and Laura Subies or, should the case arise, the payment for receiving their testimonies through affidavits, as determined at the procedural stage referred to in Article 46 of the Court’s Rules of Procedure.

12. As to the second item, the representatives requested reimbursement for the following “necessary expenses and estimated expenses” of the inter-American defenders: i) the cognitive evaluation carried out at the “*Centro de Estudios de la Memoria y la Conducta INECO*” to assess the current health status of Mr. Sebastián Furlan, at an appraised cost of one hundred and sixteen dollars of the United States of America (US\$ 116.00); ii) expenditures made prior to submitting the brief of pleadings and motions, specifically the cost of receiving the *pen drive* containing the computerized case files, for the sum of twenty-three dollars of the United States of America and eighty-nine cents (US\$ 23.89); iii) estimated future expenses, such the cost of sending the original document plus two copies of the brief of pleadings and motions and its attachments via *courier* service, at a cost that has yet to be determined, and iv) the intervention of the inter-American defenders during the hearings: travel expenses, transfers, accommodation and *per diem* expenses during their stay in the city of San Jose, Costa Rica, to attend the hearing envisaged in this case.

13. Bearing in mind the foregoing points, the President first 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).

14. Likewise, the President takes cognizance of the lack of financial resources claimed by the alleged victims and accepts the relevant socio-environmental reports and the sworn statement by Mr. Claudio Erwin Furlan as evidence thereof (*supra* Considering paragraph 9).

15. Likewise, the President reiterates that the reasonable and necessary expenses incurred by the designated defenders shall be covered, to the extent possible, through the Assistance Fund. The President reminds the defenders that they should submit to the Court all the receipts accounting for expenses incurred during the processing of this case. In this

regard, he takes note of the receipts submitted for expenses related to the cognitive assessment of Sebastián Furlan and the receipt for the *pen drive* containing the brief submitting the case and its attachments. The President also notes that an invoice is pending for the sending by *courier* of some attachments to the brief of pleadings and motions.

16. Furthermore, the President confirms that the inter-American defenders have requested assistance from the Fund to cover expenses related to the production of evidence before the Court, specifically for the presentation of testimonies, either at a hearing or through affidavits (*supra* Considering paragraph 11), and to the preparation of expert reports.

17. 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.

18. The President notes that, at the present stage of the proceedings, it has not been determined which of the testimonies offered by the inter-American defenders shall be admitted 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. Likewise, it is possible that various scenarios could arise that could increase the item of expenses incurred by the inter-American defenders.

19. Based on the foregoing considerations, the President considers valid the request submitted by the alleged victims to have recourse to the Court's Legal Assistance Fund, and considers valid the request by the inter-American defenders to have access to that same Fund, on the understanding that the funds would be used to cover reasonable and necessary expenses incurred by the defenders in order to process the case before this Court. 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 18).

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 Court's Legal Assistance Fund and Article 4 of the Agreement of Understanding between the Inter-American Court of Human Rights and the Inter-American Association of Public Defender Offices,

DECIDES:

1. To declare admissible the request submitted by the alleged victims and their inter-American defenders to have recourse to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, and to grant the financial assistance necessary to cover reasonable and necessary expenses that have been duly accounted for, and that shall be accounted for, by the defenders for the purpose of processing the case before this Court. The specific amount, recipient and purpose of this assistance shall be determined when a decision is made on the production of the testimonial and expert evidence and, if applicable, on the opening of the oral proceedings under the terms of Article 50 of the Court's Rules of Procedure, and in accordance with preambular paragraphs 15 to 19 of this Decision.
2. To order the Secretariat of the Court to notify the representatives of the alleged victims, the Republic of Argentina 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