

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

OCTOBER 24, 2012

VICTIMS' LEGAL ASSISTANCE FUND

CASE OF J. v. PERU

HAVING SEEN:

1. The brief dated January 4, 2012, and its annexes whereby the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") presented this case against the Republic of Peru (hereinafter "Peru" or "the State") before the Inter-American Court of Human Rights (hereinafter "the Inter-American Court," or "the Court").

2. The brief dated May 15, 2012, whereby the representative and alleged victim (hereinafter the "representative" or "alleged victim") submitted the brief of pleadings, motions and evidence regarding this case (hereinafter "brief of pleadings and motions"), as well as its annexes, which were received on May 31, 2012. In that brief, the representative asked to be able to access the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter the "Assistance Fund of the Court," "the Assistance Fund," or the "Fund") in order to cover the expenses of translating a document from German, photocopying the brief of pleadings and motions, and sending the annexes of that brief to Costa Rica, as well as the expenses incurred for the participation in the public hearing held in this case of four witnesses and three "individuals who form part of the legal representation in this case," along with expenses incurred through submission of certain evidence for the hearing.

3. The notes dated July 11 and 12, 2012, from the Secretariat of the Court (hereinafter "the Secretariat"), whereby, following the instructions of the acting President of the Court (hereinafter "the acting President") the alleged victim was asked, *inter alia*, to submit the sworn affidavit required under Article 2 of the Rules for the Operation of the Victims' Legal Assistance Fund of the Court (hereinafter "Rules of the Assistance"), as well as any other probative evidence regarding the victims' alleged lack of financial resources to cover the costs of litigation before the Court.

* Judge Diego García-Sayán, of Peruvian nationality, recused himself from this matter, pursuant to Article 19 of the Statute and Article 19(1) of the Rules of Procedure of the Court. For this reason, pursuant to Articles 4(2) and 5 of the Rules of Procedure of the Court, Judge Manuel E. Ventura Robles, Vice President of the Court, served as acting President with regard to this request.

4. The communication dated July 17, 2012, and its annexes, whereby the representatives submitted, *inter alia*, the sworn affidavit requested by the acting President (*supra* Having Seen clause 3), along with a copy of the alleged victims' credit card statement for the month of June of 2012.

5. The brief of September 26, 2012, whereby the State submitted its brief answering the brief submitting the case and brief containing observations on the brief of pleadings and motions (hereinafter "answer brief"). In that brief, the State argued that "the Inter-American Court should not accept the request to access the [...] Victims' Legal Assistance Fund," as she had not demonstrated a lack of financial resources.

6. The note from the Secretariat dated October 4, 2012, whereby, following instructions of the acting President, the alleged victim was given a deadline for submitting any observations considered to be pertinent regarding the State's objection regarding the pleading of lack of financial resources.

7. The brief of October 11, 2012, and its annexes, whereby the representative submitted its observations regarding the State's objection regarding the request to access the Assistance Fund of the Court.

CONSIDERING THAT:

1. Peru ratified the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention") on July 28, 1978, and, in accordance with Article 62 of the Convention, recognized the contentious jurisdiction of the Court on January 21, 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 System of Human Rights (hereinafter "the Assistance Fund of the Inter-American System") and entrusted the Permanent Council of the OAS with establishing its rules of procedure.¹ The 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."² According to the Rules of Procedures adopted by the Permanent Council in November of 2009,³ the Assistance Fund of the Inter-American System consists of two separate accounts: one corresponding to the Inter-American Commission and the other to the Inter-American Court. Regarding the financing of the Assistance Fund of the Inter-American System, it currently depends on the "[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."⁴ Likewise, pursuant to Article 4 of the Rules of Procedure approved by the Permanent Council, it is the Court's responsibility to establish the eligibility requirements for requesting assistance, as well as the proceeding for approving requests.

¹ Cf. AG/RES. 2426 (XXXVIII-O/08) Resolution adopted by the General Assembly of the OAS during the XXXVIII Regular Period of Sessions of the OAS, during the fourth plenary session, held on June 3, 2008, "Creation of the Legal Assistance Fund of the Inter-American System of Human Rights," operative paragraph 2(b).

² AG/RES. 2426 (XXXVIII-O/08), *supra* note 1, 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 Right System," Article 1(1).

³ Cf. Resolution CP/RES. 963 (1728/09), *supra* note 2, Article 3(1).

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

3. Based on this, on February 4, 2010, the Court adopted the Rules for the Operation of the Victims' Legal Assistance Fund of the Court, in force as of June 1, 2010, which "regulate the operation of, and access to, the [...] Fund [...] for the litigation of cases before it."⁵ As established therein, in order for an alleged victim to be able to access that Fund, the following three requirements must be met: 1) the request must be made in the brief of pleadings, motions, and evidence; 2) the petitioner must demonstrate, via sworn affidavit and other probative evidence that will satisfy the Court that he or she lacks the financial resources necessary to cover the cost of litigation before the Inter-American Court; and 3) the petitioner must indicate which precise aspects of his or her defense during the process require the use of resources from the Assistance Fund of the Court.⁶

4. Pursuant to the provisions of Article 3 of the Rules of Procedure of the Assistance Fund of the Court, when a request is made to use its resources, the Secretariat of the Court will carry out a preliminary examination and ask the petitioner to submit the information necessary to establish the background and submit it for the President's consideration together with the request. The President of the Court will evaluate the petition and rule accordingly within a period of three months, as of the receipt of all of the background information required.

5. In this case, according to what the Commission indicated on submitting it before the Court, the representative is also the alleged victim of the violations allegedly committed by the State of Peru in this case. In the brief of pleadings and motions, the alleged victim stated that she "[did] not have the financial resources to cover the expenses of litigation in this matter." In this sense, she indicated that "when examining this request, it should be taken into consideration that in this case, a) the [alleged] victim is not being represented by an organization that receive[s] funding for that [purpose], but rather she is representing herself[and b)] [t]hat because the Peruvian State did not reimburse her for the costs and expenses incurred in 2007 [in connection with the case of the Miguel Castro Castro Prison v. Peru], she suffers from a financial deficit that has resulted in mounting debt over several years." In support of her request, the representative and alleged victim submitted a sworn affidavit in which she "solemnly declare[d] that [she did] not have sufficient financial resources to cover the cost of litigation" and that she has "debts incurred as a result of the [alleged] persecution that [she has] been subjected to by the Peruvian State ([for example] by legally defending herself from an illegal extradition attempt in 2008), as well as all expenses during the litigation in the case of *Castro Castro v. Peru*, for which the State has not reimbursed costs. Likewise, she submitted a note on May 8, 2012, from a bank indicating that sufficient funds were not available to cash a check written by the alleged victim; a bank statement dated March 20, 2012, indicating a negative account, and a credit card statement from June of 2012 indicating the debt on the card.

6. The State alleged that "the sworn affidavit from the petitioner seeks to base [the need for assistance] on inexact information, [as] has not been the victim of persecution by the Peruvian State. The State has only exercised its obligation and duty to investigate alleged criminal acts of terrorism. The expenses resulting from this are the result of her decision to not appear before national authorities." It indicated that "the petitioner seeks to demonstrate an alleged lack of financial resources with simply a monthly bank statement, which does not truly reflect an economic and financial situation." It highlighted that "the fact that the petitioner is not represented by an organization [...] is due solely and exclusively to her own decision and cannot be blamed on the State nor cited as a reason for lack of

⁵ 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.

⁶ Cf. Rules of Procedure of the Assistance Fund, *supra* note 5, Article 2.

resources." Additionally, it indicated that in the brief of pleadings and motions, the representative indicated having carried out "specialization courses and educational programs abroad, as well as teaching work" and had been the recipient of a monetary award from the Gruber Foundation, "things that by all indications would argue against a lack of financial resources." According to the State, the use of the Assistance Fund in this case "would denature its purpose and goal" of "covering the litigation expenses for individuals [...] facing a dreadful economic situation, such as, for example, the indigent." This is not the situation with the alleged victim, "who has for more than 19 years been living abroad and [who has a] professional profile that she herself points to in the [brief of pleadings and motions]."

7. In response to these objections from the State, the representative observed that "the Peruvian State has not demonstrated why [the] sworn affidavit is not 'probative evidence' or why it should be given less legal weight than the sworn affidavit provided by any other victim." Additionally, she indicated that contrary to what the State had indicated, she "[sought] the support of organizations with human and material resources" to assist her in the litigation. However, they turned her down precisely "due to a lack of material and human resources," for which she provided evidence. She highlighted that in addition to the bank account statement, she submitted "other evidence demonstrating that [... she is] in debt [...] and [that] she [is] facing financial difficulties." She explained that her qualifications "do not contradict a lack of financial resources," as "she studied international law thanks to scholarships obtained through her own academic efforts," for which she provided a document as evidence. Likewise, she indicated that "far from being able to pursue a normal working life" she has had to face litigation in two cases before the Inter-American System because "the Inter-American Commission on Human Rights separated [her] complaint [...] into two." She indicated that litigation in the case of the Miguel Castro Castro Prison "left her [...] with a debt of approximately 120,000 thousand pounds sterling [...]" and that even though the Court ordered the State to reimburse her in the amount of US\$75,000 (seventy-five thousand dollars of the United States of America) for costs and expenses, Peru "has not complied with this," for which reason the Gruber prize "in no way 'made [her] rich.'" In addition, she argued that the Rules of Procedure of the Fund "do not disqualify anyone" based on place of residence "nor do they require the victim to be completely indigent in order to access legal aid. Rather, aid is granted based on the objective financial situation of the victim that makes him or her incapable of covering legal costs." Finally, the representative attached, *inter alia*, a new bank account statement from September of 2012, once again showing a negative balance.

8. First of all, the acting President finds that the request to access the Assistance Fund of the Court was submitted in a timely fashion in the brief of pleadings and motions (*supra* Having Seen clause 2). Likewise, he recalls that the alleged victims "are the ones who shall benefit from the [Assistance] Fund."⁷ Nevertheless, he notes that in this case, the alleged victim is representing herself.

9. Regarding the State's objections with regard to the alleged victim's lack of financial resources, the acting President highlights that evaluation of an alleged victim's lack of resources must take into account the alleged victim's situation at the time the litigation before the Court takes place. In this sense, the acting President observes that the State's objections do not invalidate the evidence provided by the representative regarding her

⁷ Cf. *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 9, and *Case of Suarez Peralta v. Ecuador*. Order of the President of the Inter-American Court of Human Rights of September 14, 2012, Considering clause 10.

current financial situation. Although there is evidence in the case file indicating that the alleged victim received academic awards in 2006 and 2007, for which she received a certain amount of money, no evidence was provided indicating that this money remains available to the alleged victim. On the contrary, the evidence provided by the representative reveals that the alleged victim is currently in debt, a situation that would not exist were the amounts of money indicated by the State available. In addition, the acting President notes that it is not necessary to prove "a dreadful economic situation" or "indigence" to access the Victims' Assistance Fund of the Court. Pursuant to the Rules of Procedure of the Fund, it must be proven that the "economic resources necessary to cover the cost of litigation before the Inter-American Court" are lacking. Therefore, the acting President finds that the objections raised by the State are not admissible, and therefore finds that the sworn affidavit and other probative elements provided pursuant to Article 2 of the Rules of Procedure of the Assistance Fund are sufficient evidence of the alleged victims' current lack of financial resources.

10. The alleged victim's request to the Assistance Fund of the Court was filed in order to cover the expenses of translating a document from German to Spanish, photocopying the brief of pleadings and motions, and sending the annexes of that brief to Costa Rica, as well as the expenses incurred for the participation in the public hearing to be held in this case of four witnesses and three "individuals who [would] form part of the legal representation in this case."

11. Regarding this, the acting President recalls that the Assistance Fund of the Court is formed through voluntary contributions from donors (*supra* Considering clause 2), and that the limited resources are not sufficient to cover all the expenses incurred by the alleged victims and the representatives related to appearing and presenting evidence before the Court. Based on this, this Presidency must evaluate the request for assistance presented in each case according to the funds available, taking into account the needs for assistance that may be presented in other cases before the Court, all with the purpose of ensuring the correct administration and just distribution of the Fund's limited resources.

12. Likewise, the acting President notes that as of this stage of the proceeding, it has not yet been decided which testimony offered by the representative will be received by the Court, nor the way in which that testimony will be received. Pursuant to Article 50(1) of the Rules of Procedure of the Court, this decision rests with the Court or its President once the parties have submitted the final lists of declarants that they propose and the right to defense has been ensured, pursuant to the terms of articles 45 through 49 of the Rules of Procedure of the Court.

13. By virtue of these considerations, the President admits the request to access the Assistance Fund of the Court presented by the alleged victim. Based on the resources currently available in the Fund, the alleged victim will be granted the financial aid necessary to present, at the expense of the Fund, a maximum of two testimonies, whether by affidavit or in a public hearing, and for the appearance of a representative at the public hearing to be held in this case. Likewise, the President finds it convenient to postpone the determination of the specific recipients and purposes of the financial aid that will be provided to the alleged victim until such time as this Presidency - or the Court - rules on the admission and relevance of the expert evidence and testimony offered, and the opening of the oral proceeding, pursuant to Article 50(1) of the Rules of Procedure of the Court, in order to be certain of the testimony to be received by the Court as well as the way in which it is to be received.

THEREFORE:

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

in exercise of his authority with regard to the Fund and pursuant to Article 31 of the Rules of Procedure of the Court and Article 3 of the Rules of Procedure of the Legal Assistance Fund of the Court,

DECIDES TO:

1. Declare admissible the request submitted by the alleged victim to have access to the Victims' Legal Aid Fund of the Inter-American Court of Human Rights, such that the financial assistance necessary for the presentation of a maximum of two testimonies be granted, whether by affidavit or in a public hearing, and the appearance of a representative during the public hearing. The recipients and purpose of the aid will be specified at the moment a ruling is made on the adduction of the testimonial evidence and the opening of the oral procedure, under the terms of Article 50 of the Rules of Procedure of the Court, in keeping with what has been established in Considering paragraph 13 of this Order.

2. Order the Secretariat of the Court to notify the Republic of Peru, and the Inter-American Commission on Human Rights of this Order.

Manuel Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary

So ordered,

Manuel Ventura Robles
Acting President

Pablo Saavedra Alessandri
Secretary