

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

OF AUGUST 3, 2015

**VICTIMS' LEGAL ASSISTANCE FUND
REQUESTED BY THE REPRESENTATIVE OF THE VICTIMS**

**CASE OF DACOSTA CADOGAN AND BOYCE *ET AL.* V. BARBADOS
MONITORING OF COMPLIANCE WITH JUDGMENT**

HAVING SEEN:

1. The Judgments on the preliminary objections, merits, reparations and costs (hereinafter "the Judgments") issued by the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court" or "the Tribunal") on November 20, 2007 in the case of *Boyce et al.* and on September 24, 2009 in the case of *Dacosta Cadogan*, both against the State of Barbados (hereinafter "the State" or "Barbados"). Both cases address, *inter alia*, the death penalty to which Mr. Tyrone DaCosta Cadogan, as well as Lennox Ricardo Boyce, Jeffrey Joseph, Frederick Benjamin Atkins and Michael McDonald Huggins, were sentenced. All of the aforementioned men were sentenced for the commission of the criminal offence of murder under Section 2 of the "Offences Against the Person Act 1994", which prescribed death penalty as the mandatory punishment for the crime of murder.
2. The notes of the Secretariat of the Court (hereinafter "the Secretariat") of April 5, 2015, wherein it was communicated to the parties and to the Commission that the President of the Court considered it necessary to summon them to a private hearing on monitoring compliance with the Judgments of both cases, to be held on July 1, 2015, at the Court's seat, during its 109th Regular Period of Sessions.
3. The brief presented on June 25, 2015, wherein Barbados requested that, "in light of current exigencies of the Government", the hearing "be deferred".
4. The notes of the Secretariat of June 25, 2015, wherein it was communicated to the parties and to the Commission that, at the request of the State, the Court had decided to defer the hearing that was scheduled for July 1, 2015.

5. The brief presented on July 9, 2015, wherein the victims' representatives¹ in both cases requested access to the Victims' Legal Assistance Fund (hereinafter "Victims' Fund") in relation to the planned appearance of Mr. Saul Lehrfreund and Mr. Andrew Pilgrim QC as the victims' representatives at the aforementioned hearing.

6. The notes of the Secretariat of July 9, 2015, wherein it was communicated to the parties and to the Commission that the President of the Court had decided to reschedule the private monitoring compliance with the Judgments hearing until September 3, 2015, at the Court's seat, during its 110th Regular Period of Sessions.

7. The notes of the Secretariat of July 14, 2015, wherein the Court forwarded to the parties and to the Commission the request made by the victims' representatives (*supra* Having Seen 5) and communicated that the request had been put under the advisement of the President of the Court.

CONSIDERING THAT:

1. In 2007 and 2009 (*supra* Having Seen 1), the Court issued the Judgments on the preliminary objections, merits, reparations and costs in the Cases of *Boyce et al.* and *Dacosta Cadogan*, respectively, against the State of Barbados. Thus, both cases are in the stage of monitoring compliance with the Judgments.

2. The President of the Court decided to summon the State, the victims' representatives, and the Commission to a private hearing to monitor compliance with the Judgments of both cases, which was to be held on July 1, 2015, at the Court's seat. The purpose of the hearing was to receive complete and updated information from the State and the representatives on the actions taken in both cases, as well as the observations of the Inter-American Commission (*supra* Having Seen 2). However, on June 25, 2015, the State requested that the hearing be deferred due to "current exigencies of the Government". The same day, the Secretariat informed the parties and the Commission that following orders from the plenary of the Court, it had decided to suspend the July 1, 2015 private hearing. It also informed them that the hearing would be rescheduled, taking into account the opinion of the victims' representatives.

3. On July 9, 2015, the victims' representatives filed a request to be granted access to the Victims' Legal Assistance Fund. They expressed that, in both cases, the victims are being represented on a *pro bono* basis by the firm Simons Muirhead & Burton and by Mr. Andrew Pilgrim QC, as they are indigent and lack the economic resources necessary to cover the costs of litigation before the Inter-American Court. All related costs associated with the litigation are being borne by The Death Penalty Project (DPP) at Simons Muirhead & Burton. The DPP is a non-governmental organization with charitable status in the United Kingdom. They requested access to the Victims' Legal Assistance Fund to cover costs incurred by the victims' legal representatives to travel to the Court in order to attend the private hearing which was scheduled for July 1, 2015. The representatives explained that the costs relate to expenses incurred due to the late cancellation of flights for Saul Lehrfreund and Andrew Pilgrim QC to travel to Costa Rica from the United Kingdom and Barbados, respectively, costs that amounted to £ 1,252.54 (one thousand two hundred fifty-two British pounds and fifty-four pence). Finally, they expressed that, once the Court reschedules the private

¹ The representatives of the victims are lawyers of the firm Simons Muirhead & Burton, based in London, among them Mr. Saul Lehrfreund. Mr. Andrew Pilgrim QC, a lawyer from Barbados, is also a representative.

hearing, those travel costs will be paid for by the DPP at Simons Muirhead & Burton; however, the organization has a restricted level of funding available to cover the costs for the hearing, and the organization is unable to meet both the costs already spent for the adjourned hearing and the additional costs for the re-scheduled hearing².

4. On July 9, 2015, the Secretary informed the parties and the Commission that the President of the Court had decided to reschedule the private monitoring compliance with the Judgments hearing of both cases for September 3, 2015, during its 110th Regular Period of Sessions.

5. In accordance with Article 3 of the Rules for the Operation of the Victims' Legal Assistance Fund³ (hereinafter "the Rules of the Assistance Fund"), the request for assistance was submitted by the Secretariat of the Court for consideration by the President of the Court, who is to decide this matter.

6. In the present Order, the President of the Court shall grant or deny access to the Legal Assistance Fund during the stage of monitoring compliance with the Judgment. The Court has already ruled on the scope of its authority to consider, in an exceptional manner, petitions to access the Legal Assistance Fund outside of the context of litigation on the merits of contentious cases⁴. After that, the President of the Court has issued Orders applying the criteria developed by the Court regarding monitoring of compliance⁵.

7. On this occasion, given the resources currently available in the Assistance Fund, the President deems it feasible to examine the request for assistance submitted by the representatives of the victims in the current stage of monitoring compliance with the Judgments, since this would not impair the attention given to requests for support from the Assistance Fund to cover costs related to an effective appearance and presentation of evidence at hearings before the Court in contentious cases currently at the stage of merits, and possible reparations and costs⁶. The President of the Court further recalls that the

² They filed as evidence: the copy of two invoices from June 4, 5 and 30, 2015 issued by the travel agency, Business Travel Direct, Invoices. 1851682, 1852178 and 5054699, and a chart that indicated how much money they were requesting from the Legal Assistance Fund.

³ Rules for the Operation of the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, approved on February 4, 2010. These Rules entered into force on June 1, 2010, and their purpose is to "regulate the operation of and access to the Fund [...], for the litigation of cases before it."

⁴ Cf. *Case of the Miguel Castro Castro Prison v. Peru*. Order of the Inter-American Court of Human Rights of September 2, 2010. Available in: http://www.corteidh.or.cr/docs/asuntos/castro_fv_10.pdf The Court indicated that, pursuant to Article 2 of the Rules of the Assistance Fund, the Fund's resources are used to cover the cost of litigation before the Court during the processing of a contentious case prior to delivery of the judgment. The Tribunal established the possibility, as an exception, of considering the admissibility of a request for support from the Assistance Fund outside the framework of the litigation on the merits of contentious cases, in the following terms:

the Court is aware that the amounts ordered for costs and expenses in the Judgment issued by the Court in [the] case [of the Miguel Castro Castro Prison] did not include future expenses that the victims or their representatives might incur during the stage of monitoring compliance with judgment, and that Article 69(3) of the Court's current Rules of Procedure allow the Court to summon hearings during that stage to evaluate the status of compliance with the judgment. Thus, the Court may consider requests for resources from the Assistance Fund outside the framework of the litigation of the merits of contentious cases, provided that the expenses are reasonable and necessary, and duly proven, so that the victims or their representatives who can demonstrate a lack of sufficient economic resources can attend a future hearing. (Considering 16)

⁵ Cf. *Case of the Miguel Castro Castro Prison v. Peru*. Order of the Acting President of Inter-American Court of Human Rights of July 29, 2013. Available in: http://www.corteidh.or.cr/docs/asuntos/castro_fv_13_ing.pdf and *Case of Barrios Family v. Venezuela*. Victims' Legal Assistance Fund of January 09. Available in: http://www.corteidh.or.cr/docs/asuntos/barrios_fv_15.pdf

⁶ The rules and the funds available from the Victims' Assistance Fund are aimed at covering expenses that could arise during the litigation of the merits and possible reparations and costs in contentious cases before the

Assistance Fund of the Court does not receive resources from the OAS' regular budget, but rather is comprised of voluntary contributions⁷.

8. During the stage of monitoring compliance of both cases, two factors arise that together influence the President's decision to consider the aforementioned request for support from the Legal Assistance Fund. The first is that the sum ordered by the Court in the Judgment for reimbursement of costs and expenses did not include any future expenses that might be incurred by victims in the stage of monitoring compliance with the Judgments. This Presidency also takes into account the fact that the State of Barbados requested the Court to defer the aforementioned private monitoring of compliance with judgment hearing on June 25, 2015; that is, just six days before it was scheduled to take place on July 1, 2015.

9. In order to assess the admissibility of the request submitted by the representatives of the victims, this Presidency shall now determine whether the requirements indicated on Article 2 of the Rules of the Fund⁸, as established by the Court regarding monitoring of compliance (*supra* Considering 6), have been fulfilled.

10. Regarding the requirement that any victim requesting support must "lack sufficient economic resources", the representatives of the victims noted that the victims are being provided with free legal representation and all related expenses and costs associated with the litigation are being borne by The Death Penalty Project, a non-governmental organization with charitable status in the United Kingdom. The Court takes note that, to the present day, the victims of both cases are incarcerated, which evidently does not allow them to procure the economic means necessary to cover the cost of the representatives and others during this stage of monitoring compliance with the Judgments before the Court. Based on the foregoing and taking into account what was asserted by representatives of the victims, the President of the Court considers proven that the victims lack the economic resources to be able to cover the expenses incurred due to the late cancellation of the representatives' flights to participate in the private hearing, which was deferred due to the State's request.

11. The President of the Court considers that the representatives' application also complies with the requirement that any support requested must be used to cover reasonable and necessary expenses, keeping in mind that the representatives requested limited and specific financial assistance to appear at the private hearing. The representatives only requested reimbursement for the expenses incurred due to the late cancellation of flights because the private hearing was deferred⁹, given that The Death Penalty Project will be able to cover the cost of flights to attend the rescheduled private

Court pending a decision, with priority given to expenses related to an effective appearance and presentation of evidence at the hearings before the Court. *Cf. Case of the Miguel Castro Castro Prison v. Peru*. Order of the Inter-American Court of Human Rights of September 2, 2010, Considering para. 15 and *Case of the Miguel Castro Castro Prison v. Peru*. Order of the Acting President of Inter-American Court of Human Rights. considering 8.

⁷ The financing of the Assistance Fund of the Inter-American System 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". *Cf.* Resolution CP/RES. 963 (1728/09), *supra* note, Article 2(1).

⁸ Establishes that alleged victims wishing to have access to the Fund must follow three steps: 1) request assistance in the 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.

⁹ In accordance with the evidence filed by the representatives of the victims, when Mr. Pilgrim's flight was cancelled the airline did not reimburse him any of the money. As for Mr. Lehrfreund's flight, the airline reimbursed him some of the money, but did charge a cancellation fee.

hearing on September 3, 2015. Additionally, the President notes that this is the first time that the representatives have requested access to the Legal Assistance Fund.

12. Based on the foregoing, the President of the Court considers admissible the request of the representatives of the victims and orders that funds from the Legal Assistance Fund be assigned to cover the expenses incurred by The Death Penalty Project (*supra* Considering 3 and 10) due to the late cancellation of flights after the July 1, 2015 hearing was deferred. According to the documentation provided by the representatives, these costs amount to £ 1,252.54 (one thousand two hundred fifty-two British pounds and fifty-four pence).

13. The Court shall take the pertinent and necessary measures to cover these costs with resources from the Legal Assistance Fund; therefore, the aforementioned amount will be reimbursed to The Death Penalty Project.

14. In accordance with Article 4 of the Rules of the Assistance Fund, the Secretariat shall open a file of costs in order to record the expenditure made in relation to said Fund.

15. Finally, the President of the Court recalls that, pursuant to Article 5 of the Rules of the Assistance Fund, Barbados shall be notified in due course of the expenditure made from said Fund so that it may submit any observations, if it so wishes, within the term established for that purpose. Once the established term for observations has expired, the President of the Court shall then decide whether to order the State to reimburse the Assistance Fund for the expenditure incurred.

THEREFORE:

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

in the exercise of his authority in relation to the Victims' Legal Assistance Fund, and in accordance with Article 31 of the Court's Rules of Procedure and Articles 2 to 6 of the Rules of the Legal Assistance Fund,

DECIDES:

1. To declare admissible the request of the victims, submitted by their representatives during the stage of monitoring compliance with judgment in the *case of Boyce, et al.* and the *case of DaCosta Cadogan*, both against the State of Barbados, to receive support from the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, specifically to cover the expenses incurred due to the late cancellation of the flights after the scheduled July 1, 2015 hearing on monitoring compliance with the Judgments was deferred, in accordance with Considering paragraphs 10 to 14 of this Order.

2. To require, pursuant to Article 4 of the Rules of the Court on the Operation of the Victims' Legal Assistance Fund, that the Secretariat of the Court open a file on expenses, documenting the expenditure made in application of said Fund.

3. To require the Secretariat of the Court to notify this Decision to the victims' representatives, to the State of Barbados, and to the Inter-American Commission on Human Rights.