

ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF AUGUST 22, 2013
VICTIMS' LEGAL ASSISTANCE FUND
CASE OF FORNERÓN AND DAUGHTER v. ARGENTINA

HAVING SEEN:

1. The judgment on merits, reparations and costs (hereinafter "the Judgment") delivered by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") on April 27, 2012, in which it decided, *inter alia*, that:

7. The State must [...] reimburse the Victims' Legal Assistance Fund the amount established in paragraph 210 of [the said] Judgment.

2. The note of the Secretariat of the Court (hereinafter "the Secretariat") of June 1, 2012, in which, pursuant to Article 67(1) of the Rules of Procedure of the Court, the Argentine Republic (hereinafter "the State" or "Argentina") was notified of the Judgment (*supra* having seen paragraph 1).

3. The communication of August 24, 2012, in which the State asked the Court to provide the information required to make the corresponding reimbursement to the Victims' Legal Assistance Fund of the Court (hereinafter "the Legal Assistance Fund" or "the Assistance Fund of the Court").

4. The note of August 30, 2012, in which the Secretariat provided the State with the information needed to make the reimbursement to the Legal Assistance Fund.

5. The notes of February 4, May 7 and June 4, 2013, in which, on the instruction of the President of the Court, the State was reminded that, according to paragraph 210 of the Judgment (*supra* having seen paragraph 1), it must reimburse the Legal Assistance Fund the sum of US\$9,046.35 (nine thousand and forty-six United States dollars and thirty-five cents). In addition, the State was informed that, as indicated in paragraph 210, the State should have reimbursed the said amount within 90 days of notification of the Judgment, a time frame that had expired on August 30, 2012.

6. The brief of July 5, 2013, in which the State presented the annual report required in the eighth operative paragraph of the Judgment, in which it referred to the "pecuniary aspects of [the said] Judgment."

CONSIDERING THAT:

1. One of the jurisdictional functions of the Court is to monitor compliance with its decisions.
2. Argentina has been a State Party to the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) since September 5, 1984, and accepted the contentious jurisdiction of the Court the same day, pursuant to Article 62 of this treaty.
3. According to Article 67 of the American Convention, the State must comply promptly and fully with the judgments of the Court. Also, Article 68(1) of the American Convention stipulates that: “[t]he States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties.” Therefore, the States must ensure implementation at the domestic level of the Court’s decisions in its judgments.¹
4. The obligation to comply with the decisions in the Court’s judgments corresponds to a basic principle of international law, supported by international case law, according to which, States must comply with their international treaty obligations in good faith (*pacta sunt servanda*) and, as this Court has already indicated and as established in Article 27 of the 1969 Vienna Convention on the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.² The treaty obligations of the States Parties are binding for all the powers and organs of the State.³
5. 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 “Assistance Fund of the Inter-American System”) and commissioned the OAS Permanent Council to draw up the corresponding regulations.⁴ This Assistance Fund was created in order 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.”⁵ According to the provisions of the Rules of Procedure adopted by the OAS Permanent Council in November 2009, the Assistance Fund of the Inter-American System has two separate accounts: one corresponding to the Inter-American Commission and the other to the Inter-American Court.⁶ 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

¹ Cf. *Case of Baena Ricardo et al. Competence*. Judgment of November 28, 2003. Series C No. 104, para. 60, and *Case of Abrill Alosilla et al. v. Peru. Monitoring compliance with judgment*. Order of the Court of May 22, 2013, third considering paragraph.

² Cf. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention* (Arts. 1 and 2 American Convention on Human Rights). Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 35, and *Case of Abrill Alosilla et al. v. Peru. Monitoring compliance with judgment*. Order of the Court of May 22, 2013, fourth considering paragraph.

³ Cf. *Case of Castillo Petruzzi et al. v. Peru. Monitoring compliance with judgment*. Order of the Court of November 17, 1999, third considering paragraph, and *Case of Abrill Alosilla et al. v. Peru. Monitoring compliance with judgment*. Order of the Court of May 22, 2013, fourth considering paragraph.

⁴ Cf. AG/RES. 2426 (XXXVIII-O/08), Resolution adopted by the thirty-eighth General Assembly of the OAS, during the fourth plenary session, held on June 3, 2008, “*Creation of the Legal Assistance Fund of the Inter-American Human Rights System*,” operative paragraph 2(b).

⁵ AG/RES. 2426 (XXXVIII-O/08), *supra*, operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted by the OAS Permanent Council on November 11, 2009, “*Rules of Procedure for the Legal Assistance Fund of the Inter-American Human Rights System*,” article 1(1).

⁶ Cf. Resolution CP/RES. 963 (1728/09), *supra*, article 3(1).

permanent observer States, and other States and donors that may wish to collaborate with the Fund.”⁷ Also, according to article 4 of the Rules of Procedure approved by the Permanent Council, it is for the Court to regulate the eligibility requirements in order to request assistance, as well as the procedure for the approval of this assistance.

6. In accordance with the above, on February 4, 2010, the Court adopted its Rules for the Operation of the Victims’ Legal Assistance Fund (hereinafter “the Rules of the Assistance Fund”), which have been in force since June 1, 2010, in order to “regulate the operation of, and access to, the [...] Fund [...] for the litigation of cases before [the Inter-American Court].”⁸ Article 5 of these Rules, with regard to “Reimbursement of costs to the Victims’ Legal Assistance Fund,” indicates that “[t]he Court shall evaluate in its judgment whether to order the respondent State to reimburse expenditures made from the Legal Assistance Fund of the Inter-American Court of Human Rights.” Consequently, the reimbursement to the Legal Assistance Fund of the amounts ordered by the Inter-American Court within the time frame established by the Court forms part of compliance with the Court’s judgments.

7. In view of the violations declared in the Judgment, and based on the provisions of article 5 of the Rules of the Legal Assistance Fund, the Court ordered the State to reimburse the Fund the sum of US\$9,046.35 (nine thousand and forty-six United States dollars and thirty-five cents), for the expenses incurred to ensure the appearance at the public hearing held in this case of one presumed victim and one of the representatives, as well as for the expenses of preparing and delivering an affidavit made by one witness. This amount should have been reimbursed within 90 days of notification of the said Judgment. However, this time frame expired on August 30, 2012, and, at the date of the issue of this Order, the State has not yet complied with the reimbursement ordered (*supra* having seen paragraphs 1 and 5).

8. According to the eighth operative paragraph of the Judgment, the State should have provided the Court with a report on the measures adopted to comply with it within one year of notification of the Judgment. Argentina presented the said report on July 5, 2013. In this report, the State did not refer specifically to the measures adopted to comply with the reimbursement of the amount corresponding to the Legal Assistance Fund. However, in general, it indicated that it “was waiting for information on the pecuniary aspects of the Judgment from the agencies with primary competence in this regard, and the Court would be advised in this regard as soon as possible.” It is not clear to the Court whether this general reference to “the pecuniary aspects of the Judgment” includes the reimbursement of the amount corresponding to the Court’s Assistance Fund. Nevertheless, the Court notes that the State has not yet reimbursed the amount ordered in the Judgment to the Legal Assistance Fund even though almost a year has passed since the respective time frame expired.

9. Currently, the resources available in the Court’s Assistance Fund are limited. In this regard, the Court underscores that it was the OAS itself that found it pertinent to create the Legal Assistance Fund in order to benefit presumed victims; the Fund is therefore addressed to the latter.⁹ Hence, its satisfactory operation and the availability of its resources are

⁷ Cf. Resolution CP/RES. 963 (1728/09), *supra*, article 2(1).

⁸ Rules of the Inter-American Court of Human Rights for the Operation of the Victims’ Legal Assistance Fund, approved by the Court on February 4, 2010, article 1.

⁹ Cf. *Case of Contreras et al. v. El Salvador*. Order of the President of the Court of March 4, 2011, ninth considering paragraph, and *Case of Osorio Rivera et al. v. Peru*. Order of the acting President of the Court of March 12, 2013, ninth considering paragraph.

designed to ensure access to inter-American justice to those presumed victims who lack the required financial resources. Consequently, the failure of States to comply promptly with reimbursement to the Legal Assistance Fund of the amount ordered in the corresponding judgments directly affects its sustainability and, above all, the presumed victims' access to justice before the Court.

10. Based on the above, the Court orders the State, in compliance with its treaty-based obligations, to proceed as soon as possible, to reimburse the Court's Assistance Fund the US\$9,046.35 (nine thousand and forty-six United States dollars and thirty-five cents), indicated in paragraph 210 of the Judgment. Also, within 30 days of notification of this Order, the State must advise the Court of the measures taken to make the reimbursement ordered.

THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

pursuant to Articles 67 and 68 of the American Convention, 25 of the Statute of the Court, and 69 of the Court's Rules of Procedure, and articles 1, 4 and 5 of the Rules of the Legal Assistance Fund,

DECLARES THAT:

1. As indicated in considering paragraphs 7 and 8 of this Order, the Argentine Republic has not complied with its obligation to reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the amount indicated in paragraph 210 of the Judgment delivered in this case (*seventh operative paragraph of the Judgment*).

AND DECIDES:

2. To require the Argentine Republic to proceed, as soon as possible, to reimburse the Court's Legal Assistance Fund the amount indicated in paragraph 210 of the Judgment, pursuant to considering paragraph 10 of this Order.

3. To require the Argentine Republic, within 30 days of notification of this Order, to advise the Inter-American Court of Human Rights of the measures taken to comply with its obligation to reimburse the Legal Assistance Fund the amount indicated in paragraph 210 of the Judgment, pursuant to considering paragraph 10 of this Order.

4. To require the Secretariat of the Inter-American Court of Human Rights to notify this Order to the Argentine Republic, the representatives of the victims, and the Inter-American Commission on Human Rights.

Diego García-Sayán
President

Manuel E. Ventura Robles

Alberto Pérez Pérez

Eduardo Vio Grossi

Roberto de F. Caldas

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary