

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

OF DECEMBER 12, 2013

VICTIMS' LEGAL ASSISTANCE FUND

CASE OF ROCHAC HERNÁNDEZ *ET AL.* v. EL SALVADOR

HAVING SEEN:

1. The brief of March 21, 2013, 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") a case against the Republic of El Salvador (hereinafter "the State" or "El Salvador"). The annexes to this brief were received by the Court's Secretariat on April 8, 2013.

2. The brief of July 24, 2013, 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") with regard to this case. The annexes to this brief were received by the Secretariat on August 13, 2013. The representatives asked the Court to "grant the request for legal assistance by the [presumed] victims in this case to cover some specific costs related to the production of evidence during the proceedings before the Court in this case," and described the expenses to be covered by the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter "the Court's Assistance Fund" or "the Fund").

3. The communication of September 13, 2013, in which, among other matters, the Secretariat advised the parties that the presumed victims' request to access the Fund would be examined and submitted to the consideration of the President of the Court (hereinafter "the President").

4. The brief of November 7, 2013, in which the State forwarded its answer to the submission of the case and with observations on the pleadings and motions brief.

CONSIDERING THAT:

1. El Salvador has been a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since June 23, 1978, and accepted the contentious jurisdiction of the Court on June 6, 1995, pursuant to Article 62 of this instrument.

¹ The presumed victims in this case appointed the *Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos* as their representatives.

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 “Assistance Fund of the Inter-American System”) and commissioned the OAS Permanent Council to draw up the corresponding regulations.² The 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.”³ According to the provisions of the Rules of Procedure adopted by the OAS Permanent Council in November 2009,⁴ 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. 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.”⁵ Also, according to article 4 of the Rules of Procedure approved by the Permanent Council, it was left to the Court to regulate the eligibility requirements in order to request assistance, as well as the procedure for the approval of this assistance.

3. In accordance with the above, on February 4, 2010, the Court adopted the Rules for the Operation of the Victims’ Legal Assistance Fund, (hereinafter “the Rules of the Assistance Fund”), 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 Court].”⁶ As these Rules establish, in order for presumed victims to have access to this Fund, they must meet three requirements: (i) request this in their pleadings, motions and evidence brief; (2) prove, by means of a sworn statement or other appropriate probative means that satisfy the Court, that they lack sufficient financial resources to cover the costs of the litigation before the Inter-American Court, and (3) indicate precisely which aspects of their defense in the proceedings require the use of resources from the Assistance Fund.⁷

4. As stipulated in article 3 of the Rules of the Court’s Assistance Fund, following a request to use its resources, the Secretariat of the Court will conduct a preliminary review and will require the applicant to forward any information needed to complete the file and submit this to the President, together with the application. The President of the Court will evaluate the application and take the pertinent decision within three months of receiving all the required information.

5. In the instant case, the representatives advised that the presumed victims’ next of kin wished to have access to the Court’s Assistance Fund because “[s]ince the [alleged] disappearance of the children in this case, [...] they have taken a series of steps in order to determine the whereabouts of their family members, to seek the truth, and for an investigation into the events and those who perpetrated the disappearance.” Consequently, “they have had to incur expenses that exceeded their budget [and, c]urrently, their financial

² 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).

³ AG/RES. 2426 (XXXVIII-O/08), *supra*, note 2, 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).

⁴ Cf. Resolution CP/RES. 963 (1728/09), *supra* note 3, article 3(1).

⁵ Resolution CP/RES. 963 (1728/09), *supra* note 3, article 2(1).

⁶ 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.

⁷ Cf. Rules of the Assistance Fund, *supra* note 6, article 2.

situation is very limited, and this prevents them from assuming the expenses required by previous proceedings, as well as those that the actual proceedings before this Court could generate.”

6. The representatives specified that the presumed victims requested the assistance of the Fund to cover: (i) travel expenses, including “airfare, hotel, and per diem,” of the persons that the Court might call to testify in the hearing, including presumed victims, witnesses, expert witnesses, and representatives of the family members; (ii) notary fees arising from the affidavits of presumed victims, witnesses, and expert witnesses that the Court finds it pertinent to receive, and (iii) travel and expenses derived from executing the expert appraisals included in the pleadings and motions brief, in the cases in which the expert witnesses need to travel to El Salvador, or internally within the country, to execute them, as well as the expenses of the expert witnesses that the Court calls to provide their expert opinion during the hearing.

7. The representatives have not presented an estimate of the costs to be covered by the Fund for the deponents to appear at an eventual public hearing, for the production of affidavits, or for the production of the expert opinions offered.

8. First, the President notes that the request to access the Fund was presented opportunely in the pleadings and motions brief (*supra* having seen paragraph 2). He also notes that, on that occasion, the representatives made the request on behalf of the presumed victims; and the President reiterates that the Fund is for the presumed victims.⁸

9. The President has verified that, as annexes to the pleadings and motions brief, the representatives forwarded affidavits relating to the financial constraints, and to the expenses incurred as a result of the facts of this case, provided by María Juliana Rochac Hernández, Juana Francisca Bonilla, Ester Abarca Ayala and Julio Antonio Flores. The President observes that this case relates to numerous presumed victims and that, at this procedural stage, it is not appropriate to rule on the proper identification of the presumed victims in this case before the Court.

10. Consequently, the President takes note of the lack of financial resources alleged by some presumed victims through their representatives, and considers that the affidavits provide sufficient evidence for this, pursuant to article 2 of the Rules of the Assistance Fund.

11. The President also observes that the presumed victims have requested the assistance of the said Fund to cover expenses related to the production of evidence before the Court, specifically for the presentation of testimony, either at the hearing or by affidavit, and the execution of expert appraisals (*supra* considering paragraph 6). He also takes note that, at this procedural stage before the Court, the representatives have not been able to determine precisely the expenses that this will generate, nor have they presented an estimate.

12. In this regard, the President recalls that the Fund is constituted by voluntary contributions from sources of cooperation (*supra* considering paragraph 2) 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 and their representatives. Consequently, in each case, the President must evaluate the request for

⁸ 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, ninth considering paragraph, and *Case of Osorio Rivera et al. v. Peru*. Order of the President of the Inter-American Court of Human Rights of March 12, 2013, ninth considering paragraph.

assistance that has been presented in relation to the funds available, taking into account the possible needs for assistance in other cases before the Court, in order to ensure the proper administration and fair distribution of the Fund's limited resources.

13. The President notes that, at the actual stage of the proceedings, it is not possible to determine which of the statements offered by the representatives will be received by the Court, or how they will be received. Under Article 50(1) of the Court's Rules of Procedure, this decision corresponds to the Court or to its President once the parties have forward the final lists of the deponents they propose, and the right of defense has been ensured, in the terms of Articles 45 to 49 of the Court's Rules of Procedure.

14. Based on the foregoing, the President finds that the presumed victims' request to access the Court's Assistance Fund, made through their representatives, is appropriate. Based on the resources currently available in the assistance Fund, the presumed victims will be granted the financial assistance necessary for the presentation, paid for by the Fund, of a maximum of five statements and, as appropriate, the Court will specify which will be received by affidavit and which during the public hearing. In addition, the President considers it desirable to postpone the determination of the specific amount, destination and purpose of the financial assistance to be provided to the presumed victims until the time when the President or the Court decides on the admissibility and relevance of the testimony offered and on the opening of the oral proceeding, pursuant to Article 50(1) of the Court's Rules of Procedure, in order to be certain which statements will be received by the Court, and how they will be provided.

THEREFORE:

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

in exercise of his attributes in relation to the Victims' Legal Assistance Fund and pursuant to Article 31 of the Court's Rules of Procedure and article 3 of the Rules of the Assistance Fund,

DECIDES:

1. To declare that the request made by the presumed victims, through their representatives, to access the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights is acceptable, and therefore the necessary financial support will be granted for the Fund to finance the presentation of a maximum of five statements, either by affidavit or during the public hearing, and that the specific amount, destination, and purpose of this assistance will be defined when deciding on the production of testimonial and expert evidence, and the opening of the oral proceedings, pursuant to Article 50 of the Court's Rules of Procedure, as established in considering paragraph 14 of this Order.

2. To require the Secretariat of the Court to notify this Order to the representatives of the presumed victims, the Republic of El Salvador, 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