

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

DECEMBER 1, 2011

VICTIMS' LEGAL ASSISTANCE FUND

CASE OF NADEGE DORZEMA *ET AL.* v. DOMINICAN REPUBLIC

HAVING SEEN:

1. The brief of February 11, 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 Dominican Republic (hereinafter "Dominican Republic" or "the State"). The attachment to the aforementioned brief, among other documents, was received by the Secretariat of the Court on March 3, 2011.

2. The brief of July 27, 2011 and its attachment, in which the 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 from the alleged victims to have recourse to the Victims' Legal Assistance Fund of the Inter-American Court (hereinafter "Assistance Fund of the Court" or "Fund") "to cover the costs of litigation before the Inter-American Court," which were specified. The attachments to the aforementioned brief were received by the Secretariat of the Court on August 10 and October 28, 2011.

3. The note of the Secretariat of September 12, 2011, in which the representatives were informed that their request, together with the additional information submitted, would be brought to the attention of the President of the Court (hereinafter "the President").

CONSIDERING THAT:

1. The Dominican Republic is a State Party to the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") since April 19, 1978

¹ The alleged victims in this case appointed as their representatives the Cherubin Tragelus Support Group for Repatriates and Refugees (*Grupo de Apoyo a los Repatriados y Refugiados Cherubin Tragelus* -GARR), the Cultural Dominican- Haitian Cultural Center (CCDH) and the International Clinic for the Defense of Human Rights of the University of Quebec in Montreal (CIDDHU).

and, according to Article 62 of the Convention, recognized the contentious jurisdiction of the Court on March 25, 1999.

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 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 it."³ As provided in 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 Fund⁷.

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. The President notes that, with respect to the request for resources from the Court's Assistance Fund, the representatives based their application on the "lack of sufficient

² Cf. AG/RES. 2426 (XXXVIII-O/08) Resolution adopted by the General Assembly of the OAS during the XXXVIII Ordinary Period of Sessions 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 CP/RES. 963 (1728/09), 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 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 for the Operation of the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, approved by the Court on February 4, 2010, Article 1.

⁷ Cf. Rules for the Operation of the Assistance Fund, *supra* note 6, Article 2.

financial resources to defray the litigation costs before the Inter-American Court” of the alleged victims and their family members. In this regard, the representatives submitted as attachments to the brief of pleadings and motions, sworn statements concerning the alleged social and economic damages caused to Joseph Desravine, Joseph Pierre, Sélafoi Pierre (also known as Celafoi Pierre), Renaud Tima, Rose-Marie Petit-Homme (also known as Célicia Petit-Homme), Sonide Nora and Rose Dol, as well as to Rose Fortilus (also known as Yola), Alise Fenesy, Antoinette Saint Phar, Elcéus Maxime, Illiodor Dorzema, Jolina George, Kernélus Guerrier, Levoyelle Alcé (also known as Lifaite Alcé or Phito) and Mélanie Sainvil (also known as Dieula), and the affidavits concerning the socio-economic evaluation prepared by a social worker regarding Noclair Flor Villien and Josue Maxime. In general terms, these statements describe the activities in which the alleged victims were engaged, the income that would be generated by those activities, the current reduction in income suffered by the aforementioned persons and the precarious situation in which they were living.

6. Furthermore, the representatives pointed out that “[t]he representative organizations are non-profit institutions that do not have specific funds to present this case [, and that] their actions have been largely voluntary and carried out with limited funds normally assigned to other actions.” Likewise, they argued that “without additional resources obtained from the Assistance Fund Legal it would not be possible to litigate the case in conditions consistent with the principle of equality of arms.”

7. The representatives explained that the alleged victims were requesting support from the Assistance Fund to cover the following expenses: (i) meeting of the alleged victims with their representatives to prepare the case, including transportation expenses for fourteen alleged victims or family members and for the legal team to Port-au-Prince (two people from Canada and two people from the Dominican Republic); (ii) meeting with the witnesses to prepare their testimonies for a future hearing before the Court, including transportation expenses for five witnesses and the legal team to Port-au-Prince (two people from Canada and two people from the Dominican Republic); (iii) hearing at the seat of the Inter-American Court, including the transport expenses of five witnesses and the legal team to Costa Rica (two people from Canada, seven people from Haiti and two people from the Dominican Republic), lodging and per diem expenses, and (iv) meeting of the alleged victims with the representatives after the hearing, including transportation costs for the fourteen alleged victims or relatives and the legal team to Port-au-Prince (two people from Canada and two people from the Dominican Republic).

8. Finally, the representatives submitted an estimate of the expenses to be covered by the Fund, both for the appearance of five witnesses and the legal team at a future public hearing and for the holding of three meetings between the alleged victims and the representatives, one in order to prepare the case, another for the appearance of the witnesses and a final meeting after the hearing. For the first item, the representatives estimated that the expenses for five witnesses and six members of the legal team would amount to a total of approximately US\$ 13,200.00 (thirteen thousand two hundred dollars of the United States of America). For the second item, the representatives calculated a cost of approximately US\$ 12,300.00 (twelve thousand, three hundred dollars of the United States of America). In total, the representatives requested US\$ 25,300.00 (twenty-five thousand, three hundred dollars of the United States of America) “to cover the litigation costs before the Court”⁸.

⁸ The President notes that the amount stated as the total requested differs by US\$ 200.00 (two hundred dollars of the United States of America) from the result obtained by adding up each of the expenses submitted.

9. First of all, the President confirms that the request for access to the Court's Assistance Fund was submitted at the appropriate time, in the brief of pleadings and motions (*supra* Having Seen paragraph 2). In this regard, he notes that the representatives submitted the request to have recourse to the Legal Assistance Fund on behalf of the alleged victims. Indeed, the President reiterates that the alleged victims are the ones who should benefit from the Assistance Fund⁹. Likewise, the President notes that this case involves numerous alleged victims, although at this stage of the proceeding there is no requirement to make a pronouncement on the identification of the alleged victims in the present case before the Court.

10. In this regard, the President takes cognizance of the lack of financial resources claimed by the alleged victims through their representatives and considered their sworn statements (*supra* Considering paragraph 5) as sufficient evidence of their lack of financial resources to cover the costs of litigation before the Inter-American Court. Likewise, he takes note of the total amount requested by the alleged victims through their representatives.

11. The President also confirms that the representatives requested resources from the Legal Assistance Fund to cover specific expenses of members of the legal team, based on the fact that they do "not have specific resources to litigate this case" (*supra* Considering paragraphs 6 and 7). Taking into account the facts stated in the aforementioned affidavits the President considers that, in order to ensure an adequate defense by said persons in the specific context of this case, it is pertinent to admit the application submitted by the representatives as indicated in considering paragraph 14.

12. 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.

13. The President notes that, at the present stage of the proceedings, it has not been determined whether or not the testimonies offered by the representatives shall be admitted by the Court, or which of these would be admitted, or the means by which these would be obtained. In accordance with Article 50.1 of the Court's Rules of Procedure, that decision is taken by the Court or 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.

14. Based on the foregoing considerations, the President considers valid the request made by the alleged victims, through their representatives, to have recourse to the Court's Legal Assistance Fund. Having regard to the resources currently available in the Fund, the alleged victims are to be granted the financial assistance necessary for the presentation of a maximum of three testimonies, either by affidavit or at a hearing, and for the appearance of one of the representatives at a future hearing to be held in this case. Likewise, the

⁹ Cf. *Case of González Medina et al. v. Dominican Republic*. Order of the President of the Inter-American Court of Human Rights of February 23, 2011, Considering paragraph No. 8, and *Case of Fornerón and daughter v. Argentina*. Order of the President of the Inter-American Court of Human Rights of May 31, 2011, Considering paragraph No. 7.

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, pursuant to Article 50.1 of the Rules of Procedure of the Court, 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 13).

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 Assistance Fund,

DECIDES:

1. To declare admissible the request submitted by the alleged victims, through their representatives, to have recourse to the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights, and to grant the financial assistance necessary for the presentation of a maximum of three testimonies, either by affidavit or at a public hearing, and for the appearance of one of the representatives in a future public hearing held in this case. The specific recipients and purpose of this assistance shall be determined when a decision is made on the production of the testimonial and expert evidence, and the opening of the oral proceedings, under the terms of Article 50 of the Court's Rules of Procedure, and in accordance with preambular paragraph 14 of this Resolution.

2. To order the Secretariat of the Court to notify the representatives of the alleged victims, the State of El Salvador 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