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Title/Style of Cause: Jose Alberto Perez Meza v. Paraguay
Doc. Type: Decision
Decided by: President: Claudio Grossman;
First Vice-President: Juan Mendez;
Second Vice-President: Marta Altolaguirre;
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated: 10 October 2001
Citation: Perez Meza v. Paraguay, Petition 19/99, Inter-Am. C.H.R., Report No. 96/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
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I. PROCESSING BY THE IACHR

1. The complaint was received on July 30, 1999, during the on-site visit to Paraguay. The IACHR acknowledged receipt of the complaint and reported that it was being studied on October 26, 1999.
2. On February 2, 2001, the petitioner was asked to provide updated information on the allegations and on the remedies pursued under the domestic jurisdiction.
3. On June 6, 2001, the IACHR asked the petitioner for additional information, a copy of the case file, and a report on the "apparent marriage" system under Paraguayan law.

II. ALLEGED VIOLATIONS

4. Alleged violation of Article 24 of the Convention (equality before the law).

III. PETITIONER'S ALLEGATIONS AND ARGUMENTS

5. On July 24, 1999, the petitioner, José Alberto Pérez Meza began ordinary proceedings for the recognition of a de facto partnership against the estate of Mr. Jenaro Antonio Espínola Tami, represented by his sole heir, Carlos Alfredo Espínola Tami, on the grounds of the sentimental and de facto relations he maintained with the deceased on an uninterrupted basis from 1967 to 1987. Over the course of this relationship, the two of them made their respective economic contributions and, together, they set themselves the task of creating the Pindú Museum

Foundation; thus, claims the petitioner, they established a commercial and an intimate partnership.

6. In the first instance in these proceedings, on September 2, 1998, the suit was dismissed because, in the court's opinion, there was a de facto partnership between the deceased and the petitioner that lasted until 1980 but, in December 1981, the petitioner enacted a notarial deed in which he freely and voluntarily waived the right to any sort of action, including action taken as a partner in the deceased's undertakings, and was therefore disqualified from pursuing any claim in that regard.

7. In June 1999 the petitioner filed for appeal and annulment with Paraguay's Civil and Commercial Appeals Tribunal, the first chamber of which decided to overturn the judgment because the lower court had not correctly resolved the objection based on statutory limitations invoked by the defendant. It thus decided to annul the first-instance judgment and then to reject the application for the recognition of the de facto partnership, stating that although the partnership existed up until 1980, the petitioner had freely and voluntarily renounced all right to make claims; consequently, his suit was not admissible.

8. In July of that year, the petitioner filed for a motion of unconstitutionality against that ruling with the Paraguayan Supreme Court. The Supreme Court, however, resolved to reject the unconstitutionality action in limine because it failed to specifically identify the affected constitutional provisions and to clearly and concretely substantiate the facts.

9. Finally, in October 1999, the petitioner filed for the reversal and revocation of the judgment before the Supreme Court. The Court responded that the situation was not one of those provided for in law and consequently the remedy was not admissible.

10. As a result of the failure to secure recognition for his de facto partnership with the deceased and in light of the loving relationship the petitioner maintained with the deceased, which kept them together as a couple and as an economic partnership, and faced with the imminent seizure of their common goods by the deceased's only heir, on November 1, 1999, the petitioner began proceedings for the recognition of an "apparent marriage. "

11. His suit was dismissed in limine as inadmissible since the Paraguayan Civil Code specifically prohibits marriage between persons of the same sex and, in addition, the Paraguayan Constitution only allows an apparent marriage or common-law union between a man and a woman.

12. The petitioner appealed against this judgment to the fifth chamber of the Civil and Commercial Appeals Tribunal; this court resolved to uphold the decree dismissing the suit and to rule the appeal nonexistent on the grounds of inadequate substantiation.

13. Finally, the petitioner filed for a motion of unconstitutionality with the Supreme Court of Justice which, on November 3, 2000, rejected the suit in limine because it failed to identify the unconstitutional provision in question and to explain the specific harm caused.

14. In his different submissions to the IACHR, the petitioner states that on repeated occasions he has been a victim of discrimination on account of his sexual choice.

IV. ANALYSIS BY THE IACHR

15. First of all, attention should be paid to the proceedings begun to secure recognition of the de facto partnership between the petitioner and the deceased. As can be seen in the case file, the Paraguayan courts analyzed the evidence submitted by the petitioner in depth and resolved that he had failed to demonstrate the existence of such a de facto partnership. The petitioner wants the IACHR to reassess the evidence submitted to the domestic courts in order to determine whether or not a de facto partnership actually existed. The IACHR cannot review evidence already assessed by the domestic courts unless a violation of the Convention has been committed. The petitioner's arguments and the evidence provided contain no elements that could tend to establish a violation of Article 25 of the Convention. The petitioner has neither argued nor proven that the evidence was assessed by the Paraguayan judicial authorities in an arbitrary fashion that would tend to establish a violation of the Convention. On the contrary: he has merely indicated his disagreement with the analysis of the evidence carried out by the Paraguayan authorities, and the case file contains nothing that could constitute a violation of the Convention. Consequently, as regards the first claim, the Commission must declare the petition inadmissible for noncharacterization of the facts.

16. With respect to the proceedings for securing recognition of the apparent marriage, it is clear that Paraguayan law only allows apparent marriages or common-law unions between men and women. Thus, Article 51 of the Constitution provides that: "De facto unions between a man and woman with no legal impediments for contracting matrimony that meet the requirements of stability and exclusivity shall produce effects similar to those of marriage, in accordance with the terms set by law." In addition, Article 140(g) of the Paraguayan Civil Code expressly prohibits marriage between persons of the same sex. It is therefore clear that the situation invoked by the petitioner (marriage between persons of the same sex) is not provided for by Paraguay's domestic laws and, consequently, he does not enjoy legal protection in his claim for recognition as the spouse of the deceased. The case file indicates that the courts rejected his applications because that circumstance was not legally provided for.

17. The Commission notes that the petitioner has at no time argued, before either the Paraguayan legal authorities or the Inter-American Commission, that those legal provisions are discriminatory. The Commission notes that the case file documents do not indicate that the petitioner ever invoked the corresponding domestic remedies to attack those laws. Neither has the petitioner claimed, before either the Paraguayan courts or the IACHR, that the enforcement of Paraguayan laws, in the different legal venues at which he has appeared, discriminates against homosexual couples. The Commission must therefore declare the petition inadmissible on the grounds that domestic remedies have not been exhausted.

V. DECISION

18. The IACHR concludes that the petition is **INADMISSIBLE** in that the allegations regarding the proceedings to secure recognition for the de facto partnership between the

petitioner and the deceased are manifestly groundless in accordance with Article 47(c) of the American Convention, since the Commission is not authorized to rule on a fourth-instance basis.

19. With respect to the regulations governing marriage in Paraguay, the documents submitted to the IACHR do not indicate that the petitioner pursued and exhausted the corresponding domestic remedies and, consequently, the provisions of Article 46(a) of the American Convention have not been met.

20. Decision: The IACHR concludes that the petition is INADMISSIBLE in that the allegations it contains are manifestly groundless in accordance with Article 47(c) of the American Convention and because domestic remedies have not been exhausted as required by Article 46(a) of the American Convention.

21. Done and signed at the headquarters of the Inter-American Commission on Human Rights on the tenth day of October, 2001. (Signed): Claudio Grossman, President; Juan Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.