

DSV-148-2016

San José, May 18, 2016

Judge Roberto F. Caldas
President
Inter-American Court of Human Rights

Sir,

In my capacity as Vice President, acting as President, of the Republic of Costa Rica, I hereby address the Inter-American Court in order to submit the brief with a request for an Advisory Opinion made by the State of Costa Rica under the provisions of paragraphs 1 and 2 of Article 64 of the American Convention on Human Rights.

I wish to advise the Court that the Executive has appointed Marvin Carvajal Pérez, General Counsel of the Presidency of the Republic, Eugenia Gutiérrez Ruiz, General Counsel a.i. of the Ministry of Foreign Affairs and Worship, and myself, as Vice President of Republic, as State Agents in these proceedings

Accept, Sir, the assurances of my highest consideration.

[Signed and sealed]

Ana Helena Chacón Echeverría
Vice President
acting as President of the Republic

GOVERNMENT OF THE REPUBLIC OF COSTA RICA

May 17, 2016

Judge Roberto F. Caldas
President
Inter-American Court of Human Rights

Sir,

The State of Costa Rica, a member of the inter-American human rights system, by virtue of the authority established in paragraphs 1 and 2 of Article 64 of the American Convention on Human Rights (hereinafter "the American Convention") and based on the procedure established in Title III of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), addresses the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") in order to request:

- (a) An ADVISORY OPINION on the protection provided by Articles 11(2), 18 and 24 in relation to Article 1 of the Convention as regards recognition of a change in a person's name based on his or her gender identity.
- (b) An ADVISORY OPINION on the compatibility of the practice consisting in applying article 54 of the Civil Code of the Republic of Costa Rica, Law No. 63 of September 28, 1887, to those persons who wish to change their name based on their gender identity, with Articles 11(2), 18 and 24 in relation to Article 1 of the Convention
- (c) An ADVISORY OPINION on the protection provided by Articles 11(2) and 24 in relation to Article 1 of the Convention to the recognition of patrimonial rights derived from a relationship between persons of the same sex.

In accordance with the provisions of Articles 70 and 72 of the Rules of Procedure, the request is presented as follows:

A. DEFINITION OF AGENTS AND PROCEDURAL DOMICILE

The State of Costa Rica appoints Ana Helena Chacón Echeverría, Vice President of the Republic, Marvin Carvajal Pérez, General Counsel of the Presidency of the Republic, and Eugenia Gutiérrez Ruiz, General Counsel a.i. of the Ministry of Foreign Affairs and Worship, as Agents of the State for these proceedings

In addition, the procedural domicile shall be the Legal Department of the Presidency of the Republic, located in the Presidential Palace, in front of the Zapote branch of the Banco Nacional, Central canton, province of San José.

Lastly, the following e-mail addresses may be used for correspondence relating to these proceedings: marvin.carvajal@presidencia.go.cr, diego.gonzalez@presidencia.go.cr, egutierrez@rree.go.cr, and dirección.juridica.rree@gmail.com.

B. CONSIDERATIONS ON WHICH THE REQUEST IS BASED

It has been acknowledged that progress in the recognition of the human rights derived from sexual orientation and gender identity has been uneven in the different States that are members of the inter-American system. A broad range of alternatives may be appreciated, from countries that have recognized rights fully to those who are lesbian, gay, bisexual, transgender or intersex, to other States members that, at the present time, retain laws in force that prohibit any form of lifestyle and expression contrary to heteronormativity or that have neglected to recognize the rights of these groups.

The State of Costa Rica recognizes that, in the cases of *Atala Riffo and daughters v. Chile* and *Duque v. Colombia*, the Inter-American Court determined that acts which denigrate individuals owing to both their gender identify and, especially in these cases, their sexual orientation constituted a category of discrimination protected by the Convention.

Specifically, in these cases, the Court established:

“Bearing in mind the general obligations to respect and guarantee the rights established in Article 1(1) of the American Convention, the interpretation criteria set forth in Article 29 of that Convention, the provisions of the Vienna Convention on the Law of Treaties, the resolutions of the OAS General Assembly, the standards established by the European Court, and the mechanisms of the United Nations (supra paras. 83 to 90), the Inter-American Court establishes that the sexual orientation of persons is a category protected by the Convention. Therefore, any regulation, act, or practice considered discriminatory based on a person’s sexual orientation is prohibited. Consequently, no domestic regulation, decision, or practice, whether by state authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation.” (Case of *Atala Riffo and daughters v. Chile*. Merits, reparations and costs. Judgment of February 24, 2012. Series C No. 239, para. 91, and Case of *Duque v. Colombia*. Merits, reparations and costs. Judgment of February 26, 2016. Series C No. 310, para 104).

Despite the cogency and breadth of the resolutions cited above, the State of Costa Rica still has doubts concerning the content of the prohibition of discrimination based on sexual orientation and gender identity. In other words, difficulties still persist when determining whether certain actions are covered by this category of discrimination. In this regard, an interpretation by the Inter-American Court of the above-mentioned standards would provide crucial input for the State of Costa Rica and all the countries of the inter-American human rights system, because it would allow them to adapt domestic law to the inter-American standards that protect the individual and his or her rights. In other words, it would guide and reinforce the actions taken by the States to comply fully with their obligations in relation to these human rights.

In the same vein, we consider that the Court should issue its opinion on the conformity with the Convention of the practice of requiring those who wish to change their name based on their gender identity to use the non-contentious jurisdictional proceedings established in article 54 of the Civil Code of the Republic of Costa Rica. In view of the fact that this procedure entails expenses for the applicant and signifies a delay, the Court is asked whether the application of this norm to the above-mentioned cases is contrary to human rights.

The said article of the Civil Code is transcribed below to allow the Court to appreciate its implications:

"Article 54. Every Costa Rican entered in the Civil Registry may change his or her name following the authorization of the court, which shall be obtained by means of the respective non-contentious jurisdictional proceeding."

Based on the above, the Government of the Republic of Costa Rica, fully understanding the value of the Advisory Opinion mechanism in order to attain the objectives sought by the inter-American human rights system, wishes to submit a series of questions in order to obtain the Inter-American Court's interpretation of the content of the category of discrimination based on sexual orientation and gender identity. In the words of the Court:

"... the interpretation task it must perform in the exercise of its advisory function seeks not only to clarify the meaning, purpose and rationale of the provisions of international human rights law but, above all, to support the Member States and organs of the OAS so that they are able to meet their relevant international obligations fully and effectively, and to define and implement public policies in the area of human rights" (Advisory Opinion No. OC-21/14 of August 19, 2014. Series A No. 21, para. 29).

C. PROVISIONS THAT REQUIRE INTERPRETATION

As mentioned, the State of Costa Rica respectfully requests the interpretation of whether Article 11(2), 18 and 24, in relation to Article 1, of the American Convention provide protection for recognition of an individual's change of name in keeping with his or her gender identity.

In addition, the State of Costa Rica requests that the Court rule on the compatibility of the practice consisting in the application of article 54 of the Civil Code of the Republic of Costa Rica, Law No. 63 of September 28, 1887, to those who wish to opt to change their name based on their gender identity, with Article 11(2), 18 and 24, in relation to Article 1, of the American Convention.

Lastly, the State of Costa Rica requests the interpretation of whether Articles 11(2) and 24, in relation to Article 1, of the American Convention provide protection for recognition of patrimonial rights deriving from a relationship between persons of the same sex.

D. QUESTIONS REGARDING WHICH AN OPINION IS REQUESTED

Gender identity

1. Taking into account that gender identity is a category protected by Articles 1 and 24 of the American Convention, and also the provisions of Articles 11(2) and 18 of the Convention: does this protection and the American Convention signify that the State must recognize and facilitate the change of name of the individual in keeping with his or her gender identity?

1.1 If the answer to this question is affirmative, could it be considered contrary to the American Convention that the person wishing to change his or her Christian name can only use a jurisdictional proceeding, and that no relevant administrative proceeding exists?

1.2 Could it be understood that, pursuant to the American Convention, article 54 of the Civil Code of Costa Rica should be interpreted in the sense that those who wish to change their Christian name based on their gender identity are not obliged to submit to the jurisdictional proceeding established therein, but rather

that the State must provide them with a free, rapid and accessible administrative procedure to exercise that human right?

Patrimonial rights derived from relationships between persons of the same sex

2. Taking into account that non-discrimination based on sexual orientation is a category protected by Articles 1 and 24 of the American Convention, as well as the provisions of Article 11(2) of the Convention: does this protection and the American Convention signify that the State must recognize all the patrimonial rights derived from a relationship between persons of the same sex?

2.1 If the answer to this question is affirmative, is a law that regulates relationships between persons of the same sex required in order for the State to recognize all the patrimonial rights that derive from this relationship?

E. COROLLARY

Based on the legal and factual elements presented, the State of Costa Rica formally requests the Inter-American Court to accept this request for an Advisory Opinion.

Finally, as established in paragraphs 3 and 4 of Article 73 of the Rules of Procedure, the State of Costa Rica agrees, in relation to the request made under Article 64(2) of the American Convention, that the Court invite or authorize any interested party to submit an opinion on the issue. Furthermore, it agrees that the Court may convene a hearing.

Accept, Sir, the assurances of my highest consideration for you and the other judges of the Court.

[Signed and sealed]

Ana Helena Chacón Echeverría
Vice President of the Republic

[Signed and sealed]

Marvin Carvajal Pérez
Legal Counsel
Presidency of the Republic

[Signed and sealed]

Eugenia Gutiérrez Ruiz
Legal Counsel, a.i.
Ministry of Foreign Affairs and Worship

**GOVERNMENT OF THE REPUBLIC
OF COSTARICA**

**MARVIN CARVAJAL PÉREZ
LEGAL COUNSEL
PRESIDENCY OF THE REPUBLIC
CERTIFIES**

That the following document, duly signed and sealed, corresponds to the version in force of article 54 of the Civil Code of the Republic of Costa Rica, Law No. 63 of September 28, 1887. The text has been obtained from the National System of Legislation in Force of the Office of the Attorney General of the Republic. -----

This certification has been issued at 16:30 hours on May 17, 2016.

[Signed and sealed]

MCP

Legal Department
Presidency of the Republic of Costa Rica

ARTICLE 54. Every Costa Rica entered in the Civil Registry may change his or her name following the authorization of the court, which shall be obtained by means of the respective non-contentious jurisdictional proceeding.

(This article was amended by Law No. 5476 of December 21, 1973, article 2, and Law No. 7020 of January 6, 1986, article 2. The numbering of the article has been revised from 36 to 54 in the current version).

[Signed and sealed]

MCP

Legal Department
Presidency of the Republic of Costa Rica