



Pro bono: Redefining family

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Eugenio Gormáz, Stephanie Cruz, Florencia Fuentealba, Aileen Gorodischer and Antonia Nudman

Latin Lawyer spoke to lawyers from Chilean firm Albagli Zaliasnik about how they helped two mothers become one of the first couples in the country's history to gain equal recognition as parents.

In 2021, the Albagli Zaliasnik team, which involved partner Eugenio Gormáz and associates Stephanie Cruz, Florencia Fuentealba, Aileen Gorodischer and Antonia Nudman, started helping the biological mother of two children and her partner receive recognition as a family unit under local law. At that time, Chilean law only allowed for civil unions between same-sex couples – a legal status that lacks the parental and adoption rights that married partners enjoy. The lawyers set out through a minefield of local and international law to prove that the concept of family can take many forms.

However, the legislative landscape in Chile had changed dramatically by the time the country's First Family Court laid down its ruling. In March last year, the Marriage Equality Act came into effect giving, among other things, same-sex families the same protections previously only available to straight couples.

Months of pro bono work and a rejuvenated legal system led the court to order, just one month later, for the nonbiological mother's name to be added to both her children's birth certificates.

The four associates describe the case as a passion project and a victory for LGBTQ+ people in Chile.

Nine Latin American countries now recognise same-sex marriages. Argentina was the first to legalise such unions back in 2010, with Brazil, Chile, Colombia, Costa Rica, Cuba, Ecuador, Mexico and Uruguay following suit over the past decade.

How did your firm get involved in the project?

Stephanie Cruz: Our firm decided to take the case from Fundación Pro Bono Chile after many others had rejected it. In this specific case, the issue was considered pro bono because of its public interest.

None of the attorneys that took on the case focus their practice on litigation, so we all went out of our comfort zone and really

wanted to get involved out of pure love for the issue and volunteer work.

What kind of legal work did you provide?

Antonia Nudman: We began with finding the main argument that would convince the judge to rule in favour of the family. When we started the case, there had only been one favourable ruling and around 50 unfavourable ones. Another favourable ruling was passed while we worked on the case, which also helped us.

The first step was to prepare an extensive report on the case law. Over a period of two months, we looked at rulings based on international treaties that Chile had ratified. These rulings, for example, considered the principles of non-discrimination and the best interests of children.

One particularly helpful case involved a lesbian mother whose parental rights were taken away by a Chilean judge because of her sexual orientation. However, the mother took the case to the Interamerican Court of Human Rights and won. That was an important precedent for our country with regards to non-discrimination.

Florencia Fuentealba: We also wanted to review how the concept of “family” had been understood in those rulings. The concept of “family” has changed over time and is not set in stone. In this case, the fact that the two children have two mothers should give them state protection under international human rights law because together they can be considered a family.

In Chile, the Constitution says that it is the state’s duty to protect all types of families without distinction. That principle helped us establish that, despite what our civil law said, there was a greater duty of the state to protect these children.

Antonia Nudman: We then started working on the lawsuit, which included our position on the children’s filiation rights. We collected photographs of the family, as well as letters from doctors and teachers who knew them, and took these to the hearing to prove that the mothers were involved in the same way in their children’s lives.

What were the toughest challenges that you faced during the project?

Florencia Fuentealba: The main obstacle was defining a strategy that would allow us to legally prove that our legislation did not forbid same-sex parents. On top of that, as the two mothers in this case were civil partners, we had to prove that a family is not only defined by marriage.

We demonstrated to the judge that our legislation could recognise a family in which there are two mothers. Our law says that the mother’s filiation mainly comes from giving birth to the child, but the “other parent” also has filiation through their emotional relationship to the child. The law understood that “other parent” meant “a man”, but we showed that another mother could fulfil that role.

We also identified potential violations that could arise if the family did not receive legal recognition. In economic terms, this relates to inheritance rights and alimony. But lack of family status also denied them inalienable rights for children, such as the rights to have an identity and a family, and their own dignity.

Proving this to the family courts, which are typically very conservative, was challenging.

What significance does this case have for Chile?

Aileen Gorodischer: This case has contributed to a change in the way that Chile’s justice system resolves these types of cases, showing that the well-being of children and families are key to Chilean society and the international community.

As we only had two previous cases to use as precedents, the success of this case will also provide a stronger basis for future legal work in this area.

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