

AMICUS NETWORK

In the area of substantive legal reform, Vance Center coordinates the development of amicus brief curiae to support access to justice, and the protection and advancement of human rights at national, regional and international levels.

Matters

D.H. and Others v. the Czech Republic (Current)

Project: Intention to file Amicus Curiae Brief at the Grand Chamber of the European Court on Human Rights in November 2006

Focus: The brief will focus on the experience of the United States in using intent as a standard in reviewing claims to racial discrimination.

Petitioner: European Roma Rights Center; Open Society Justice Initiative

Collaborators: Simpson Thacher & Bartlett LLP / New York

Amici: New York City Bar Association; others forthcoming

Overview: This case is the first challenge at the European level to the practice of educational discrimination – widespread throughout Central and South East Europe – in which Roma children are routinely placed in schools for the mentally disabled regardless of their actual intellectual abilities. The case was first brought before the Strasbourg Court in 2000. In February 2006, the Court's Second Section ruled that although the Roma children suffered from a pattern of adverse treatment, they had not proved the Czech government's intent to discriminate. The Grand Chamber's agreement to review the case will allow it to address several major issues concerning the prohibition against discrimination in Article 14 of the European Convention of Human Rights. In their request for Grand Chamber referral, the applicants argued that the Second Section's restrictive reading of the concept of discrimination is inconsistent with the European Court's previous jurisprudence and the dominant trends in other leading courts in Europe and beyond. If allowed to stand, it would render the protection given by Article 14 theoretical and illusory. The case of *D.H. and Others v. the Czech Republic* presents a particularly compelling illustration of this crabbed interpretation of the non-discrimination guarantee, since it involved overwhelming evidence that Roma have been treated less favorably than similarly situated non-Roma for no objective and justifiable reason. The evidence included (i) actual admissions by the Czech government that disproportionate numbers of Roma were sent to special schools - on the basis of tests conceived for non-Roma - even though they were average or above-average in development; (ii) corroborating detailed and comprehensive statistical evidence that Roma in the city of Ostrava are routinely subjected to educational segregation and discrimination; and (iii) consistent findings by numerous inter-governmental bodies concerning discriminatory patterns in schools throughout the Czech Republic as a whole.

Marcela Valdes Diaz v. State of Chile

Project: Amicus Curiae Brief filed at the Inter American Commission on Human Rights in March 2006

Focus: The amicus brief contends that Ms. Valdes's termination from employment violates international law prohibiting discrimination based on sex, as well as emerging international standards directing States to direct and support, rather than penalize, victims of domestic violence.

Petitioner: Marcela Valdes Diaz – Chile

Collaborator: Mayer Brown Rowe & Maw LLP – Chicago

Amici: Legal Momentum

Overview: The petitioner, a member of the Carabineros de Chile (police force), filed a claim of domestic violence against her husband. Rather than investigating the allegations made by the claimant, the police took action against her and ultimately sanctioned her in the case. In addition, she was also sanctioned for filing a judicial protection brief before the final decision by the police force was granted. As a consequence of such sanctions, she was discharged from the police force. The petitioner alleges that the judicial appeals filed were rejected without a review on the merits of her claims. She alleges that the Republic of Chile violated her right to be treated equally by the court, and also defaulted on its obligation to prevent, sanction and eradicate violence towards women.

Karen Atala Riffo v. State of Chile

Project: Amicus Curiae Brief filed at the Inter American Commission on Human Rights in January 2006

Focus: Amici curiae presented psychological studies and decisions from U.S. and foreign jurisdictions to show that sexual orientation has no bearing on a person's ability to be a good parent, and that depriving Ms. Atala of custody of her children constitutes discrimination on the basis of sexual orientation.

Petitioners: Universidad Diego Portales; Universidad de Chile; Libertades Públicas – Chile

Collaborator: Morrison & Foerster LLP – New York / San Francisco

Amici: New York City Bar Association (lead); Human Rights Watch; International Gay and Lesbian Human Rights Commission; International Women's Human Rights Law Clinic at the City University of New York; Lawyers for Children, Inc.; Legal Aid Society of New York; Legal Momentum; National Center for Lesbian Rights

Overview:

On October 29, 2003 the Court of First Instance of the City of Villarrica rejected the lawsuit filed by Mr. Ricardo Jaime López Allendes against his former wife Ms. Jacqueline Karen Atala Riffo over custody of their three daughters. The daughters have been under Ms. Atala Riffo custody since she and Mr. López Allende separated, and continued to be under her custody after she began to openly live as lesbian and brought her female partner to the house where she lives with her children. Mr. López Allende claimed that under the Political Constitution of Chile and the United Nations Convention on Children Rights, the best interest of the children is to be furthered and protected, and that in order to achieve such goals the three girls should be under his custody. The court rejected such arguments, stating that nothing prevented Ms. Atala Riffo from

accomplishing such goals. The Appellate Court seating in the City of Temuco upheld the lower court decision, and Mr. López Allende appealed before the Supreme Court of Chile. On May 31, 2004, the Supreme Court overturned (in a split decision) the Appellate Court Decision, granting custody of the girls to Mr. López Allende. The Supreme Court stated that the girls are surrounded by social, familial and educational distress, and could be the subject of discrimination because of the homosexual relationship of their mother. It also stated that by freely and publicly assuming her lesbianism (to what she is entitled), she had given preference to her interest before those of her daughters, especially when she decided to live together with her partner. During the course of these proceedings, Ms. Atala, a judge in Chile, was disbarred.

Miguel I. González and Ms. Andrea Tuzec Fries v. State of Chile

Project: Amicus Curiae Brief filed at the Inter American Commission on Human Rights in April 2006

Focus: This case involves a claim of violation of the right to access to information involving genetically modified foods. The brief presents precedents in the U.S. in support of the following: that the documents containing "information on transgenic cultivation" are made accessible to the public; that the State of Chile release existing policy (not public) on genetically modified foods; and that the State develop stricter policies on the use and consumption of genetically modified foods as they relate to protecting conventional organisms.

Petitioner: Centro Austral de Derecho Ambiental (CEADA); Diego Portales University School of Law Public Interest and Human Rights Law Program; Organización de Consumidores y Usuarios de Chile – Chile

Collaborator: Dechert LLP – New Jersey

Amici: Article 19 – Global Campaign for Free Expression; Instituto Prensa Y Sociedad de Mexico; Libertad de Información Mexico; Open Society Justice Initiative

Overview: The case concerns several Chilean court decisions in which the public was denied access to information on government policies about transgenic food genetically modified. Currently, the Chilean Government allows the transference, manipulation, cultivation and commercialization of genetically modified organisms, without having implemented and published policies and measures related to the control and safeguard of bio-security. The absence of such policies has created a notable controversy between the Government and civil society organizations, concerning the inability of the CSOs to gain access to relevant information.

Colombia Diversa v. State of Colombia (D-6362)

Project: Amicus Curiae Brief filed at Constitutional Court in Colombia in August 2006

Focus: This case is being brought on the grounds of equal protection for lesbian, gay, bisexual, and transgender persons. The brief will focus on: the constitutional fairness of legal arrangements granting economic benefits to same-sex couples; the fact that allowing such arrangements does not jeopardize a traditional heterosexual notion of the family; the legal developments on this issue in other jurisdictions (i.e., Massachusetts,

Vermont, Canada, etc.); and developments on this issue in international human rights law.

Petitioners: Colombia Diversa – Colombia

Collaborator: Weil, Gotshal & Manges LLP – New York

Amici: New York City Bar Association (lead); National Center for Lesbian Rights International Gay & Lesbian Human Rights Commission; Professor Nan D. Hunter, Director, Center for Health, Science and Public Policy at Brooklyn Law School; Professor Katherine Franke, Co-Director of the Center for the Study of Law & Culture at Columbia Law School; The Allard K. Lowenstein International Human Rights Clinic at Yale Law School; Human Rights Watch

Overview: The case is a facial challenge against a national statute from 1990 that extended the economic benefits of marriage to unwed heterosexual couples living together for more than two years. The petitioner is challenging the exclusion of same-sex couples from the statute.

Carlos Baraona Bray v. State of Chile

Project: Amicus Curiae Brief to be filed at the Inter American Commission on Human Rights in August 2006

Focus: This case involves a claim of violation of freedom of expression. The brief addresses issues concerning criminal defamation and the procedural and substantive safeguards that should be adopted to ensure free and open debate on issues of public concern.

Petitioner: Diego Portales University School of Law Public Interest and Human Rights Law Program – Chile

Collaborator: Torys LLP – New York

Amici: Ad Idem/Canadian Media Lawyers Association; Canadian Journalists for Free Expression; Media Law Resource Center, Inc.

Overview: Chilean courts, including the country's Supreme Court, have upheld charges of libel and slander against Carlos Baraona Bray, effectively denying Mr. Baraona the lawful right to freedom of expression. Mr. Baraona accused Senator Sergio Paez of corruption in connection with the alleged granting of "political" favors to people who had illegally cut down Alerce trees (classified as endangered, declared a National Monument in Chile in 1976). Although Mr. Baraona argued that he was publicly questioning the role of the Senator in these matters, the courts found that the damage to the Senator's honor was actionable because Mr. Baraona had not proven the truth of his charges against the Senator. In issuing this ruling, the courts failed to address the issues of Mr. Baraona Bray's right to freedom of expression in political matters.

Eduardo Perales Martinez v. State of Chile (Current)

Project: Amicus Curiae Brief to be filed at the Inter American Commission on Human Rights in September 2006

Focus: This case involves a claim of violation of the petitioner's right to due process of law and freedom of speech.

Petitioner: Colombara Y Olmedo Abogados – Chile

Collaborator: Orrick, Herrington & Sutcliffe LLP – New York

Amici: Forthcoming

Overview: In 1998, the Government of Chile appropriated fourteen thousand million Chilean pesos (approximately US\$30,000,000) toward an increase in salaries for the members of Carabineros de Chile. The distribution was to be 60% for officers and the remaining 40% to the rest of the police force. In April of that same year, the petitioner, a member of the Carabineros de Chile (Chilean police force), in the context of an informal conversation at the officers' cafeteria in the city of Puerto Montt, Chile, repeated a joke he heard to six of his peer officers. The joke related to the distribution of the wages' increase, a topic that had been creating conflicts. The petitioner's fellow officers all laughed at the joke and afterward the topic of the conversation changed. Immediately after telling the joke, the petitioner was compelled by his superior to give an explanation of his joke since it could be considered sedition. Two days later, he was asked by the General in charge of his geographic area to voluntarily resign. The petitioner did not agree to quit unless the corresponding legal procedure was followed and dismissal was determined. The case was sent to the General in charge of human resources in Santiago who in turn sent it to the General Director of Carabineros, the maximum authority within the police force. The General Director of Carabineros requested the President of the Republic to issue a Supreme Decree to remove the petitioner from the police force. The President issued the Supreme Decree in June and the petitioner was effectively removed of his job. The petitioner appealed the Supreme Decree. In August, the Appeals Court overturned the President's Supreme Decree and ordered the petitioner's job restored. In October, the Supreme Court of Chile in turn overturned the Appeals Court's decision arguing that the power to issue Supreme Decrees is the prerogative of the President and he does not need to explain the motives of his decision.