

Atala Riffo and Daughters v. Chile

ABSTRACT¹

This case is about a Judge in Chile who lost a custody battle for her children after she came out as a lesbian. This case is remarkable because it is one of the first to address squarely LGBTI rights and discrimination on the basis of sexual orientation. Eventually, the Court found Chile in violation of the American Convention, and Chile fully complied with the order, and implemented sweeping legislative changes to move towards a more inclusive society.

I. FACTS

A. Chronology of Events

March 29, 1993: Ms. Karen Atala Riffo (“Ms. Atala Riffo”), a Chilean lawyer and judge, marries Mr. Jaime López Allendes (“Mr. López Allendes”).²

1994, 1998, 1999: The children of Ms. Atala Riffo and Mr. López Allendes, M., V., and R., are born.³

March 2002: Ms. Atala Riffo and Mr. López Allendes legally separate.⁴ In the separation agreement, they decide that Ms. Atala Riffo will maintain the care and custody of their three daughters in Villarrica, with weekly visits to Mr. López Allendes’ home in Temuco.⁵

June 2002: Ms. Atala Riffo and Ms. Emma de Ramón begin an intimate relationship.⁶

1. Shushan Khorozyan, Author; Diane Chang, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. *Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 254, ¶ 30 (Feb. 24, 2012); *Atala Riffo and Daughters v. Chile*, Provisional Measures, Order of the President of the Court, Inter-Am. Ct. H.R. (ser. E) ¶ 1 (Nov. 26, 2013).

3. *Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, ¶ 30.

4. *Id.*

5. *Id.*

6. *Id.* ¶ 14, n.37.

November 2002: Ms. Emma de Ramón moves into Ms. Atala Riffo's home with Ms. Atala Riffo's three daughters and eldest son from a previous relationship.⁷

January 14, 2003: Mr. López Allendes files a custody suit with the Juvenile Court of Villarrica ("Juvenile Court") because he is concerned that the physical and emotional development of his daughters is at serious risk if they continue to live with their mother, who has, in his opinion, an untraditional, intimate relationship with another woman.⁸

January 28, 2003: Ms. Atala Riffo responds to the custody suit, arguing that the Chilean Civil Code and the law on minors do not consider a "different sexual choice" a valid reason for disqualifying her as a parent.⁹

The Juvenile Court orders for discovery to establish facts regarding the grounds for disqualification of parents to have custody of their minors and the type of environment the minors will grow up in.¹⁰ The Juvenile Court also orders a hearing and requests the following evidence to be presented: (1) psychological reports on the parents and the three daughters; (2) psychiatric reports on the parents; (3) a private hearing with the minors; (4) socioeconomic report on the family; and (5) confirmation from the Psychology Department of the University of Chile on whether any psychological studies have been conducted to show differences between children raised by heterosexual compared to homosexual couples.¹¹

March 10, 2003: Mr. López Allendes files for provisional custody so that he can have custody of his daughters before the proceedings in Juvenile Court conclude.¹² He argues that Ms. Atala Riffo's sexual choice threatened the development of their daughters socially and psychologically, and that her priorities were not maternal at that time.¹³ Ms. Atala Riffo answers, stating that her sexual orientation does not in any way affect her ability to be a mother.¹⁴

April 8, 2003: The Juvenile Court holds a private hearing with M., V.,

7. *Id.* ¶ 30.

8. *Id.* ¶ 31.

9. Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, ¶ 32.

10. *Id.* ¶ 33.

11. *Id.*

12. *Id.* ¶ 39.

13. *Id.*

14. *Id.* ¶ 40.

and R.. Ms. Atala Riffo's eldest son also has the opportunity to be heard in front of the court.¹⁵

May 2, 2003: The court awards Mr. López Allendes provisional custody, even though it recognizes that it has no legal basis to find Ms. Atala Riffo incompetent as a parent.¹⁶ The court argues: (1) her sexual orientation disrupts the normalcy of the family routine, thereby placing her interests and personal well-being above her daughters' emotional well-being and their opportunity for appropriate social awareness; and (2) she has placed her own needs before her maternal role in a way that could affect the development of her minor children.¹⁷

May 13, 2003: After giving custody of her daughters to Mr. López Allendes in accordance with the provisional order, Ms. Atala Riffo seeks to prevent the Juvenile Court judge from hearing the rest of the custody proceeding on incompatibility grounds, and calls his ruling on provisional custody discriminatory.¹⁸

May 14, 2003: The Juvenile Court finds Ms. Atala Riffo's claim of incompatibility meritorious and therefore disqualifies the judge in accordance with Article 120 of the Code of Civil Procedure.¹⁹

October 29, 2003: The Juvenile Court issues a decision rejecting the custody suit, finding that the mother's sexual orientation does not impede her from properly raising her children.²⁰ Mr. López Allendes appeals the order and files a temporary injunction petition, arguing that the custody decision would dramatically change the status quo for his daughters.²¹

November 24, 2003: The Temuco Court of Appeals ("Appeals Court") grants the injunction, effectively keeping custody of the couple's daughters with Mr. López Allendes.²² Ms. Atala Riffo files disciplinary complaints for disqualification and recusal because of the injunction, but the

15. Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, ¶ 36.

16. Atala Riffo and Daughters v. Chile, Official Summary Issued by the Inter-American Court of the Decision (Merits, Relief and Costs), Inter-Am. Ct. H.R. (ser. C) No. 254, 2 (Feb. 24, 2012).

17. *Id.*

18. Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, ¶ 42.

19. *Id.* ¶ 43, n.60.

20. Atala Riffo and Daughters v. Chile, Official Summary Issued by the Inter-American Court of the Decision (Merits, Relief and Costs), ¶ 3.

21. *Id.* ¶¶ 2-3; Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, ¶ 50.

22. Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, ¶ 51.

Supreme Court of Justice later finds no abuse of discretion in the decision.²³

March 30, 2004: The Appeals Court upholds the Juvenile Court's decision.²⁴

April 5, 2004: Mr. López Allendes files a remedy of complaint with the State Supreme Court against the appellate judges and requests provisional custody of his daughters, arguing again that their mother's sexual orientation will confuse them and impair their development.²⁵ The Court grants his request.²⁶

April 2004: The Appeals Court orders a disciplinary investigation en banc against Ms. Atala Riffo.²⁷ The Appeals Court is determined to inquire about the newspaper articles referencing her lesbian relationship and her use of personnel at the court where she served as a judge to carry out proceedings ordered by the judge of the Juvenile Court in her custody case.²⁸ The Appeals Court determined that the mention of Ms. Atala Riffo's sexuality in a newspaper damaged the perception of the judiciary and that she used her judicial personnel improperly during the Juvenile Court proceeding.²⁹

May 30, 2004: The Fourth Chamber of the Supreme Court of Justice of Chile accepts Mr. López Allendes' remedy of complaint, and grants him final custody of his daughters.³⁰

B. Other Relevant Facts

While Chile is one of the most economically developed states in Latin America, it is also one of the least socially progressive states.³¹ It is

23. *Id.* ¶ 52.

24. *Atala Riffo and Daughters v. Chile*, Official Summary Issued by the Inter-American Court of the Decision (Merits, Relief and Costs), ¶ 3.

25. *Atala Riffo and Daughters v. Chile*, Merits, Reparations and Costs, ¶ 53.

26. *Id.*

27. *Atala Riffo and Daughters v. Chile*, Official Summary Issued by the Inter-American Court of the Decision (Merits, Relief and Costs), ¶ 3.

28. *Id.*

29. *Id.* ¶¶ 3-4.

30. *Id.*

31. *Hundreds of Chilean Same-Sex Couples Eagerly Await Legalization of Civil Unions*, (October 21, 2015), <https://www.theguardian.com/world/2015/oct/21/chile-same-sex-civil-unions-legal>.

one of the few states that still outlaws abortion in all situations.³² In 2004, the State is the last country in Latin America to legalize divorce.³³ In November 2011 and April 2012, the State's Supreme Court and Constitutional Tribunal, respectively, held that same-sex couples cannot marry in Chile.³⁴ They also conclude that even if same-sex couples wed elsewhere, the State will not recognize the marriages.³⁵

In 2013, presidential candidate Ms. Michelle Bachelet is on the front line advocating for equality for homosexuals and changes to abortion laws.³⁶ She explains that, while a law for equality is a step in the right direction, it will not make sufficient change within the society.³⁷ Accordingly, she feels the State should actively promote a culture that accepts and recognizes gender differences.³⁸ Her main focus is that children should grow up accepting homosexuality as a natural part of society.³⁹ Chilean polls indicate that only a quarter of citizens support same-sex marriages.⁴⁰ As of October 2015, after Ms. Bachelet wins the presidency, she announces that Chile has socially progressed by taking the first step towards equality by passing a law to recognize same-sex unions.⁴¹

II. PROCEDURAL HISTORY

A. Before the Commission

November 24, 2004: Ms. Atala Riffo and her attorneys – Ms. Verónica Undurraga Valdés, Mr. Claudio Maraga Klenner, Mr. Felipe González Morales and Mr. Domingo Lovera Parmo – file a petition with the Inter-American Commission of Human Rights (“the Commission”).⁴²

32. *Id.*

33. *Id.*

34. Hunter T. Carter, *Same-Sex Marriage in Chile*, (June 7, 2012), <http://www.americasquarterly.org/same-sex-marriage-in-chile>.

35. *Id.*

36. *Hundreds of Chilean Same-Sex Couples Eagerly Await Legalization of Civil Unions*, *supra* note 31; Diogo Ximenes, *Chile Approves gay unions: President pushes for gay ‘marriage,’* (April 21, 2015), <https://www.lifesitenews.com/news/chile-approves-gay-unions-president-pushes-for-gay-marriage>.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Hundreds of Chilean Same-Sex Couples Eagerly Await Legalization of Civil Unions*, *supra* note 31.

41. Ximenes, *supra* note 36.

42. Atala Riffo and Daughters v. Chile, Admissibility Report, Report No. 42/08, Inter-Am. Comm’n H.R., Case No. 12.502, ¶ 1 (Jul. 23, 2008); The attorneys are from the Public Liberties Association, the Public Interest Clinic of Universidad Diego Portales, and the Ideas Foundation. *Id.* ¶ 5.

September 19, 2005: The Commission recommends the parties settle.⁴³

March 7, 2006: The State acknowledges its intention to negotiate a friendly settlement.⁴⁴

October 11, 2007: The petitioners inform the Commission that the parties have reached a friendly settlement.⁴⁵

July 23, 2008: The Commission approves the Report on Admissibility No. 42/08.⁴⁶

December 18, 2009: The Commission approves the Report on Merits No. 139/09.⁴⁷ The Commission finds that the State has violated Article 24 (Right to Equal Protection) in relation to Article 1(1) (Obligation of Non-Discrimination) to the detriment of Ms. Atala Riffo, and Articles 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), 17(4) (Best Interest of Children in Case of Dissolution), 19 (Rights of the Child), and 25(1) (Right of Recourse before a Competent Court), in relation to Article 1(1) of the American Convention (“the Convention”) to the detriment of Ms. Atala Riffo and her daughters.⁴⁸

The Commission recommended that the State: (1) provide Ms. Atala Riffo and her daughters with remedies for human rights violations, and (2) create legislation, policies, initiatives, and programs against discrimination based on sexual orientation, especially in the judiciary.⁴⁹

B. Before the Court

September 17, 2010: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁵⁰

43. *Id.* ¶ 7.

44. *Id.*

45. *Id.* ¶ 10.

46. *Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs*, ¶ 2.

47. *Id.*

48. *Id.* ¶ 2, n.5

49. *Id.*

50. *Id.*

1. Violations Alleged by Commission⁵¹

Article 11 (Right to Privacy)

Article 17(1) (Family's Right to Be Protected)

Article 17(4) (Equality of Spouses)

Article 19 (Rights of the Child)

Article 24 (Right to Equal Protection)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violation Alleged by Representatives of the Victims⁵²

Same Violations Alleged by Commission.

August 18, September 6, and October 18, 2011: Mr. Reinaldo Bustamante Alarcón submits multiple communications on behalf of Mr. López Allendes.⁵³ Specifically, he requests: (1) that the minors participate in the proceedings and legal representation by Mr. López Allendes before the Commission; (2) to have an intervener during the proceeding; (3) to withdraw the proceedings before the Commission and the Court; and, (4) to collaborate with the State's brief.⁵⁴

November 29, 2011: The Court issues its Decision that the three minors know they have the right to be heard by the Court and understand the consequences of exercising those rights.⁵⁵

November 30, 2011: In response to Mr. Bustamante's briefs, the Court orders: (1) "the three girls must be informed of their right to be personally heard by the Court;" (2) the Court does not have the authority to address requests submitted by individuals that are not the alleged victims of the case; (3) there are not any issues with the process by which the notice was served; and (4) Mr. López Allendes does not have standing to present

51. *Id.* ¶ 3.

52. *Atala Riffo and Daughters v. Chile, Merits Reparations and Costs*, ¶ 5; Ms. Atala Riffo and her daughters officially assign Ms. Sáez, Helena Olea, and Jorge Contesse as their representatives ("representatives"). *Id.*

53. *Id.* ¶ 8.

54. *Id.*

55. *Id.* ¶ 12.

arguments.⁵⁶ The Court also receives *amici curiae* briefs from 32 individuals and organizations from around the world.⁵⁷

III. MERITS

A. *Composition of the Court*⁵⁸

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice-President
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

56. *Id.*

57. *Id.* ¶ 10. These organizations were: (1) the National Association of Judges of Chile (*Asociación Nacional de Magistrados del Poder Judicial de Chile*); (2) the Ombudsgay organization; (3) Mr. José Pedro Silva Prado; (4) Mr. José Ignacio Martínez Estay; (5) Human Rights Group of the Law Department of the Pontificia Universidad Católica of Río de Janeiro; (6) Mr. Diego Freedman; (7) Ms. María Inés Franck and Mr. Jorge Nicolás Lafferriere; (8) the Research Seminary on Family and Individual Law of the Law School of the Pontificia Universidad Católica of Argentina; (9) Mr. Luis A. González Placentia and Mr. José Luis Caballero Ochoa; (10) Ms. Úrsula C. Basset; (11) Ms. Judith Butler; (12) Mr. Alejandro Romero Seguel and Ms. Maite Aguirrezabal Grünstein; (13) Mr. Carlos Álvarez Cozzi; (14) Mr. James J. Silk; (15) Ms. María Sara Rodríguez Pinto; (16) Ms. Natalia Gherardi; (17) Ms. Laura Clérico, Ms. Liliana Ronconi, Mr. Gustavo Beade and Mr. Martín Aldao; Messrs. Carlo Casini, Antonio Gioacchino Spagnolo and Joseph Meaney; (19) the Chancellor and members of the *Universidad Católica Santo Toribio de Mogrovejo*; (20) Ms. María del Pilar Vásquez Calva; (21) Ms. Suzanne B. Goldberg, Mr. Michael Kavey, and Ms. Adriana T. Luciano; (22) Ms. Elba Nuñez Ibáñez, Gabriela Filoni, Jeannette Llaja and Mr. Gastón Chillier; (23) Mr. Brent McBurney and Mr. Bruce Abramson; (24) Ms. Gail English and Ms. Shirley Richards; (25) *Colombia Diversa* and *Centro de Derechos Humanos y Litigio Internacional*; (26) Messrs. Piero A. Tozzi and Brian W. Raum; (27) Mr. Jorge Rafael Scala; (28) the Center for Global Justice, Human Rights and the Rule of Law (*Centro para la Justicia Global, los Derechos Humanos y el Estado de Derecho*) of the Law School at Regent University; (29) Mr. Álvaro Francisco Arnaya Villareal, Ms. Bárbara Mora Martínez and Ms. Carolina Restrepo Herrera; (30) Ms. Lisa Davis, Ms. Jessica Stern, Ms. Dorothy L. Fernández, Ms. Megan C. Kieffer, Ms. Rachel M. Wertheimer, Ms. Erin I. Herlihy, and Mr. Justin D. Hoogs; (31) the Department of Sexual and Reproductive Rights of the Program on Health Rights, Division of Legal Studies of the Center for Economic Research and Education (*Área de Derechos Sexuales and Reproductivos del Programa de Right to Salud, División de Estudios Jurídicos del Centro de Investigación and Docencia Económicas*). *Id.*

58. *Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs*, n.1. Judge Vio Grossi did not participate in the proceedings in accordance with Article 19(1) of the Rules of Procedure of the Inter-American Court since he is a Chilean national. *Id.*

B. Decision on the Merits

February 24, 2012: The Court issues its Judgment on Merits, Reparations and Costs.⁵⁹

The Court found unanimously that Chile had violated:

Article 24 (Right to Equal Protection), in relation to Article 1(1) of the Convention, to the detriment of Ms. Atala Riffo,⁶⁰ because:

The Court notes that, during the custody process, Ms. Atala Riffo was discriminated against in two different ways.⁶¹ The first was with the Judgment and the second was with the ruling on temporary custody.⁶² In order to determine if there was a link between the Supreme Court of Justice and the Juvenile Court's decisions, and the sexual orientation of Ms. Atala, the Court had to analyze the "arguments presented by the national judicial authorities, their actions, the language used, and the context the judicial decisions were made."⁶³

While using this analysis, the Court noted that the custody claim was filed under the assumption that Ms. Atala Riffo could not properly care for her daughters because of her sexual choices and lesbian relationship, and that this directly and harmfully affected the development of her daughters.⁶⁴ Therefore, the custody process focused on Ms. Atala Riffo's sexual orientation and her living situation with her partner.⁶⁵

Specifically, the Court found that the Supreme Court used the following reasons for the judgment: (1) Ms. Atala Riffo's cohabitation with her partner affected the emotional and psychological well-being of her daughters and their family, social, and educational environment; (2) the alleged risk that her daughters faced developmental problems regarding "potential confusion over sexual roles" because they lacked a father figure in the home; (3) the alleged risk that exposed her daughters to vulnerability in their social setting because of possible discrimination; and (4) Ms. Atala Riffo allegedly placed her desires above her daughters'

59. *See generally id.*

60. *Id.* "Operative Paragraphs" ¶ 1.

61. *Id.* ¶ 95.

62. *Id.*

63. *Id.*

64. *Id.* ¶ 96.

65. *Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, ¶ 96.*

wellbeing when she expressed her homosexuality.⁶⁶ These factors critically examined Ms. Atala Riffo's sexual orientation and her living situation when establishing the judgment for custody.⁶⁷

The Supreme Court focused on the well-being of the girls and their best interests, and while that is legitimate, the Court did not reference explicit proof of damage or risk Ms. Atala Riffo's daughters would face as a result of their mother's sexual orientation.⁶⁸ The Court's failure to demonstrate "explicit proof of damages" is an unsuitable standard for restricting protected rights, specifically the right to parent without losing child custody on the basis of sexual orientation.⁶⁹ An argument about a child's "best interest" cannot be used as justification for discriminating against an individual's sexual orientation.⁷⁰ The Court noted that stereotypes and groundless assumptions about the parent's ability to raise the child are not appropriate methods for furthering the legitimate goal of protecting the child's best interest.⁷¹

Regarding the risk of social discrimination, the Court determined that society in general is working to become more inclusive, with the State and its legislature trying to increase social progress.⁷² As such, the Court cannot consider possible social stigma as a result of a parent's sexual orientation a legitimate "harm" when looking at a child's best interest, since this legitimized discrimination.⁷³ Therefore, the risk of social discrimination was not a valid argument in determining the daughters' best interests.⁷⁴ As for the increased contact with another female parent figure as a result of the cohabitation, the Court determined that custody with Ms. Atala Riffo did not deprive the girls of their father since he could still have contact with them; there was no substantiated proof of specific harm to the girls related to this issue.⁷⁵ Next, the Court looked at Ms. Atala Riffo's interests compared to her daughters' interests and found that limiting Ms. Atala Riffo's to those traditionally held by women would require her to renounce "an essential aspect of her identity," and thus would not

66. *Id.* ¶ 97.

67. *Id.*

68. *Id.* ¶ 110.

69. *Id.*

70. *Id.*

71. *Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs*, ¶ 111.

72. *Id.* ¶ 120.

73. *Id.* ¶ 121.

74. *Id.* ¶ 122.

75. *Id.* ¶ 131.

protect her daughters' best interests.⁷⁶ Lastly, the Court determined that the language in the Supreme Court's decision stereotyped the type of environment Ms. Atala Riffo's daughters should be raised in and cannot be justified by the Convention.⁷⁷ Therefore, the State violated Article 24 (Right to Equal Protection) to the detriment of Ms. Atala Riffo.⁷⁸

The Court also noted the visit to Ms. Atala Riffo's workplace.⁷⁹ There were reports that expressly referred to Ms. Atala Riffo's sexual orientation and the articles that were published about her sexual orientation.⁸⁰ Therefore, one of the reasons for the visit to Ms. Atala Riffo's workplace was to confirm the articles written about her sexual orientation.⁸¹ This constituted unlawful, discriminatory treatment for forming the basis of a disciplinary investigation and also violated Article 24 (Right to Equal Protection).⁸²

Article 24 (Right to Equal Protection), in relation to Articles 19 and 1(1) of the Convention, to the detriment of Ms. Atala Riffo's daughters,⁸³ because:

The Court considered any discrimination against the minors by interpreting Article 2 of the Convention on the Rights of the Child, which states that the children can be discriminated against if their mother faces such opposition.⁸⁴ For example, in this case, since the Court has already established that there was discrimination on the basis of the mother's sexual orientation, the children may also have been discriminated against.⁸⁵ The Court used this analysis because the Supreme Court used evidence of the mother's sexual orientation during the custody proceedings, and this issue would not have been a problem if it involved heterosexual parents.⁸⁶ Further, this decision deprived the girls of their mother, and thus violated their rights under Article 24 (Right to Equal Protection).⁸⁷

76. *Id.* ¶ 140.

77. Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, ¶ 145.

78. *Id.* ¶ 146.

79. *Id.* ¶ 218.

80. *Id.*

81. *Id.*

82. *Id.* ¶¶ 219, 222.

83. Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, "Operative Paragraphs" ¶ 2.

84. *Id.* ¶¶ 150-51.

85. *Id.* ¶ 154.

86. *Id.* ¶ 155.

87. *Id.*

Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), in relation to Article 1(1) of the Convention, to the detriment of Ms. Atala Riffo,⁸⁸ because:

The purpose of Article 11 (Right to Privacy) is to “prohibit all arbitrary or abusive interference in a person’s private life, and encompasses various spheres of the intimate realm as well as the private lives of families.”⁸⁹ Therefore, public authorities or other third parties cannot abusively or arbitrarily intrude on an individual’s privacy.⁹⁰ The Court stressed Ms. Atala Riffo’s private life includes her sexual orientation, which is protectable in a democratic society and falls within the “requirements of suitability, necessity and proportionality.”⁹¹ The Court differentiated sexual orientation from specific parental behaviors that cause damage to the child, which can be used during custody proceedings.⁹² Therefore, since the custody proceedings stereotyped Ms. Atala Riffo’s sexual orientation when determining her fitness as a parent, they interfered with her privacy in violation of Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity).⁹³

Further, Ms. Atala Riffo made the following statement regarding the visit at the court that she worked at as a judge:

“the minister [Lillo] sat down at my desk, in my office, checked my personal computer, checked all the websites I had visited. Afterwards he questioned all the staff members at the Court, one by one, and also questioned the cleaning staff and then my fellow judges. . . [t]hat is, he questioned 6 colleagues asking them whether or not I was a lesbian.”⁹⁴

As a result of this inquest, Ms. Atala Riffo “felt deeply humiliated, exposed, as if [she] had been stripped naked and thrown into a public square.”⁹⁵ Therefore, since the investigations against Ms. Atala Riffo were arbitrary, they interfered with her right to privacy under Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family,

88. *Id.* “Operative Paragraphs” ¶ 3.

89. *Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs*, ¶ 161.

90. *Id.*

91. *Id.*, ¶¶ 164-65.

92. *Id.* ¶ 165.

93. *Id.* ¶ 167.

94. *Id.* ¶ 226.

95. *Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs*, ¶ 227.

*Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity), which extends to her professional life.*⁹⁶

Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity) and 17(1) (Family's Right to Be Protected), in relation to Article 1(1) of the Convention, to the detriment of Ms. Atala Riffo and her daughters,⁹⁷ because:

*The Court noted that the Supreme Court and the Juvenile Court's emphasis on Ms. Atala Riffo's "cohabitation with her lesbian partner" when ruling on the custody proceedings violated the right to family life.*⁹⁸ *Article 17 (Rights of the Family) of the Convention requires the State to favor protecting children, but it also favors "the development and strength of the family unit," and stated that it is closely related to Article 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity) since it also protects the home and family.*⁹⁹ *Here, Ms. Atala Riffo testified that before the provisional custody order, she, her partner, her son, and her daughters had a close family relationship;*¹⁰⁰ *this constituted a distinct family unit that deserved protection under the Convention.*¹⁰¹ *Therefore, the State's arbitrary interference with the Atala Riffo family's rights to family and privacy through the provisional custody order violated Articles 11(2) (Prohibition of Arbitrary Interference with Private Life, Family, Home, Correspondence, and of Unlawful Attacks on Honor, and Dignity) and Article 17(1) (Family's Right to Be Protected) of the Convention.*¹⁰²

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 19 and 1(1) of the Convention, to the detriment of Ms. Atala Riffo's daughters,¹⁰³ because:

*This Article gives every person the right to be heard when a proceeding involves their rights, and this includes children.*¹⁰⁴ *The United Nations*

96. *Id.* ¶ 230.

97. *Id.* "Operative Paragraphs" ¶ 4.

98. *Id.* ¶ 168.

99. *Id.* ¶ 169.

100. *Id.* ¶ 176.

101. Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, ¶ 177.

102. *Id.* ¶ 178.

103. *Id.* "Operative Paragraphs" ¶ 5.

104. *Id.* ¶ 196.

Committee on the Rights of the Child clarified the following on children's right to be heard: (1) parties cannot start by assuming children cannot express their views; (2) children do not need to comprehensively understand the situations that affect them, as long as there is sufficient knowledge to form original interpretations of the issue; (3) children should not be pressured to offer their view, and the right to be heard should be their choice; (4) children must be informed by the judicial officers and their parent or guardian on the options, issues, and potential decisions and consequences of their testimony; (5) children's capacity must be determined to assess the weight of their testimony; and (vi) knowledge is not necessarily connected to age, so capacity must be independently and reasonably assessed.¹⁰⁵ This Committee also noted that it is not enough to just hear the child's views; the court must consider the child's views when assessing a case.¹⁰⁶ While Ms. Atala Riffo's daughters were given the opportunity to voice their views, the Supreme Court "did not explain in its judgment how it assessed" or considered their statements.¹⁰⁷ Instead, the State went against the girls' expressed wishes and constructed its own idea of what met their best interests without providing any reason, thus violation Article 8(1) (Right to a Hearing Within a Reasonable Time by a Competent and Independent Tribunal).¹⁰⁸

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Article 1(1) of the Convention, to the detriment of Ms. Atala Riffo,¹⁰⁹ because:

Generally, the Court will assume that judges are impartial unless there is contrary evidence like hostility or ill will.¹¹⁰ The Court noted the individuals that prepared and approved the report from the visit to Ms. Atala Riffo's workplace were not objective since the reports included stereotypes and expressed prejudice.¹¹¹ Those individuals actually expressed their personal position regarding Ms. Atala Riffo's sexual orientation, which was not something she could be judicially reprimanded for.¹¹² Therefore, the Court found the investigation and the visit were clearly not

105. *Id.* ¶ 198.

106. *Id.* ¶ 200.

107. *Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs*, ¶ 208.

108. *Id.*

109. *Id.* "Operative Paragraphs" ¶ 6.

110. *Id.* ¶ 234.

111. *Id.* ¶ 237.

112. *Id.*

*impartial and violated Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal).*¹¹³

The Court finds by five to one that Chile had not violated:

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to the decisions of the Supreme Court of Justice and the Juvenile Court, to the detriment of Ms. Atala Riffo,¹¹⁴ because:

*The Court decided that there was not enough evidence to conclude that the judges were externally pressured when considering the case ruling against Ms. Atala Riffo.*¹¹⁵ *Since there was not specific evidence against the presumption that the judges conducted the case with subjective impartiality, and there also was not any evidence to question the objective impartiality of the Juvenile Court's decision regarding the custody provision or the Supreme Court's judgment, the Court decided that the State did not violate the judicial guarantees regarding Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) of the Convention.*¹¹⁶

C. Dissenting and Concurring Opinions

1. Partially Dissenting Opinion of Judge Alberto Pérez Pérez

In a separate opinion, Judge Pérez Pérez disagreed with the court's finding of a violation of Article 17(1) (Family's Right to Be Protected).¹¹⁷ He stated that family is "entitled to protection by society and the State."¹¹⁸ Since several provisions interpret family based on a heterosexual marriage or de facto union, he felt it would not be appropriate to invoke Article 17(1) here.¹¹⁹ While he noted that the Convention is a living instrument that should be interpreted by present-day circumstances, and that there are many concepts of what makes up a family, he felt this did not

113. Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, ¶ 237.

114. *Id.* "Operative Paragraphs" ¶ 7.

115. *Id.* ¶ 187.

116. *Id.* ¶¶ 191-92.

117. Atala Riffo and Daughters v. Chile, Dissenting Opinion of Judge Alberto Perez Perez, Inter-Am. Ct. H.R. (ser. C) No. 254, ¶ 1 (Feb. 24, 2012).

118. *Id.* ¶ 18.

119. *Id.*

mean that the Convention must recognize all interpretations.¹²⁰ Therefore, the State did not need to recognize all of the concepts either.¹²¹

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Judgment as a *Per Se* Reparation

The Court determined that the Judgment was a reparation itself.¹²²

2. Provide Medical, Psychological, and Psychiatric Care

The Court ordered the State provide free medical, psychological, and psychiatric care appropriately and effectively to the victims at their request.¹²³ This should include transportation, medication, and any other related expenses, and should be as convenient as possible.¹²⁴

3. Publication of the Judgment

The Court determined the State must publish an official summary of the Judgment once in the Official Gazette, once in a widely circulated newspaper, and on a government website for a year within six months of publication.¹²⁵

4. Public Acknowledgment

The Court ordered the State to publicly acknowledge international responsibility and specifically reference the human rights violated.¹²⁶ The victims should be present as well as the organizations that represented them, and the judicial branch should also be represented.¹²⁷

120. *Id.* ¶¶ 20- 21.

121. *Id.* ¶ 21.

122. *Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, "And Orders"* ¶ 1.

123. *Id.* "And Orders" ¶ 2.

124. *Id.* ¶¶ 254-55.

125. *Id.* "And Orders" ¶ 3, ¶ 259.

126. *Id.* ¶¶ 263-64.

127. *Id.*

5. Education and Training Programs

Finally, the Court decided that training programs and courses for public officials on the protection of LGBTI rights and non-discrimination should be implemented.¹²⁸

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court awarded \$10,000 to Ms. Atala Riffo for the costs incurred for medical and psychological care.¹²⁹

2. Non-Pecuniary Damages

The Court awarded \$20,000 to Ms. Atala Riffo and \$10,000 to each daughter as compensation for damages in their daily lives, including public humiliation, reputation, disturbances in their professional and social lives, and psychological damage.¹³⁰

3. Costs and Expenses

Despite probative evidence to back up the costs, the Court ordered the State to pay the Ms. Atala Riffo \$12,000 for costs and expenses.¹³¹ Ms. Atala Riffo must use this money to pay her representatives an appropriate amount.¹³²

4. Total Compensation (including Costs and Expenses ordered):

\$72,000

C. Deadlines

Ms. Atala Riffo and her daughters must inform the State within six

128. *Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs*, ¶¶ 271-72.

129. *Id.* “And Orders” ¶ 6; *Id.* ¶ 294.

130. *Id.* “And Orders” ¶ 6; *Id.* ¶ 299.

131. *Id.* “And Orders” ¶ 6; *Id.* ¶ 306.

132. *Id.* ¶ 306.

months of the Judgment if they would like to utilize the medical and psychological care made available.¹³³

The State must publish an official summary the Judgment in the Official Gazette, in a nationally circulated newspaper, and on a government website for one year within six months of receiving notice of the Judgment.¹³⁴

The State must acknowledge international responsibility in a public ceremony within one year of notification of the Judgment.¹³⁵

The State must implement the training programs and courses on LGBTI rights for the judiciary within a reasonable time.¹³⁶ 71-72

The amount for pecuniary and non-pecuniary damages, as well as costs and expenses must be paid within one year of the notice of the Judgment.¹³⁷

The State must submit a report on the measures it has adopted within one year from notification of the Judgment.¹³⁸

V. INTERPRETATION AND REVISION OF JUDGMENT

June 5, 2012: Ms. Atala Riffo's representatives submit a brief requesting interpretation of the Judgment.¹³⁹ It requests specifically that the Court: (1) determine the circumstances under which daughter V. can be interviewed to determine her desire for medical or psychological services and compensation; (2) how to comply with the six-month deadline to request medical or psychological services while allowing the daughters to reach an appropriate age to make their own medical decisions; and (3) add to costs for expert fees.¹⁴⁰

November 21, 2012: The Court issued its Interpretation of the Judgment.¹⁴¹

133. *Id.* ¶¶ 254-55.

134. Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, "And Orders" ¶ 3; *Id.* ¶ 259.

135. *Id.* ¶¶ 263-64.

136. *Id.* "And Orders" ¶ 5, ¶¶ 271-72.

137. *Id.* ¶ 306.

138. *Id.* "And Orders" ¶ 7.

139. Atala Riffo and Daughters v. Chile, Request for Interpretation of Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 254, ¶ 2 (Nov. 21, 2012).

140. *Id.*

141. *Id.*

A. Merits

The Court found unanimously that the request for interpretation regarding compliance with compensation for Ms. Atala Riffo's daughters is admissible, and determine that their non-pecuniary damages should be deposited in a financial institution without daughter V.'s independent opinion.¹⁴² However, it finds inadmissible the request for interpretation regarding medical and psychological assistance, along with the amount for costs and expenses, because it is not within the scope of interpretation and the judgment is clear regarding the amounts.¹⁴³

VI. COMPLIANCE AND FOLLOW-UP

November 26, 2013: The Court found the State fully complied with the publication orders, the carrying out of a public act acknowledging responsibility, and the payment of pecuniary and non-pecuniary damages, and costs and expenses.¹⁴⁴

The Court kept the case open to continue monitoring the State's compliance with its orders to provide free medical, psychological or psychiatric care to the victims who requested it, and to implement permanent education programs and training courses for public officials.¹⁴⁵

The Court ordered the State to provide the Court with a compliance report no later than June 26, 2014.¹⁴⁶

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Atala Riffo and Daughters v. Chile, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 254 \(Feb. 24, 2012\).](#)

142. *Id.* ¶ 21, "Operative Paragraphs" ¶ 1.

143. *Id.* ¶¶ 26-28, 32-34, "Operative Paragraphs" ¶¶ 3-4.

144. Atala Riffo and Daughters v. Chile, Monitoring of Compliance with Judgment, Order of the Court, Inter-Am.Ct. H.R., "Decides That" ¶ 1 (Nov. 26, 2013).

145. *Id.* "Decides That" ¶ 2.

146. *Id.* "Decides That" ¶ 4.

[Atala Riffo and Daughters v. Chile, Dissenting Opinion of Judge Alberto Perez Perez, Inter-Am. Ct. H.R. \(ser. C\) No. 254 \(Feb. 24, 2012\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Atala Riffo and Daughters v. Chile, Monitoring of Compliance with Judgment, Order of the Court, Inter-Am.Ct. H.R. \(Nov. 26, 2013\).](#)

5. Review and Interpretation of Judgment

[Atala Riffo and Daughters v. Chile, Request for Interpretation of Judgment on Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 254 \(Nov. 21, 2012\).](#)

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Atala Riffo and Daughters v. Chile, Admissibility Report, Report No. 42/08, Inter-Am. Comm'n H.R., Case No. 12.502 \(Jul. 23, 2008\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[Atala Riffo and Daughters v. Chile, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.502 \(Sep. 17, 2010\).](#)

VIII. BIBLIOGRAPHY

[Hunter T. Carter, *Same-Sex Marriage in Chile*, \(June 7, 2012\), <http://www.americasquarterly.org/same-sex-marriage-in-chile>.](http://www.americasquarterly.org/same-sex-marriage-in-chile)

[Diogo Ximenes, *Chile Approves gay unions: President pushes for gay 'marriage,'* \(April 21, 2015\), <https://www.lifesitenews.com/news/chile-approves-gay-unions-president-pushes-for-gay-marriage>.](https://www.lifesitenews.com/news/chile-approves-gay-unions-president-pushes-for-gay-marriage)

[Hundreds of Chilean Same-Sex Couples Eagerly Await Legalization of Civil Unions](https://www.theguardian.com/world/2015/oct/21/chile-same-sex-civil-unions-legal), (October 21, 2015), <https://www.theguardian.com/world/2015/oct/21/chile-same-sex-civil-unions-legal>.