

Colombian Constitutional Court
Decision C-029 of 2009
January 28th, 2009

Civil unions under one name or another (civil partnership, domestic partnerships or registered partnerships) have been established by law in many developed countries in order to provide same-sex couples rights, benefits, and responsibilities similar to opposite-sex civil marriage. In 2009, the Constitutional Court ruled that same-sex couples must be extended all of the rights offered to cohabitating heterosexual couples. Couples can claim these rights after living together for two years and by registering their partnership.

The Constitutional Court repeated its jurisprudential line according to which:

(i) the Constitution has outlawed all forms of discrimination based on sexual orientation; (ii) there are clear differences between homosexual and heterosexual couples and therefore there is no constitutional requirement to give them equal treatment; (iii) the Congress has the responsibility to define the necessary measures to address the protection and care of different social groups and of those who are in marginal situations; (iv) any difference in treatment is constitutionally permissible only if it obeys the principle of sufficient reason. Therefore, in each case, one must examine if the situation between heterosexual and homosexual couples is equivalent, and then come to define whether the different treatment provided by a specific rule is discriminatory or not.

According to previous decisions, the Court found that all of the legal regulations¹ -subject of this lawsuit- involved discrimination toward same-sex couples, concerning its life in common, mutual assistance and solidarity among its members. Regardless of it is a same-sex couple or not, their members enjoy the same rights and benefits and have the same burden of responsibilities. As established in a previous decision (C-075/2007), while there may be some differences between heterosexual and same-sex couples, both represent the same value and equal dignity, therefore results in similar protection mechanisms.

Taking into account that the legal regulations -subject of this lawsuit- addressed heterosexual couples, and don't include those of the same sex, the Court proceeded to exclude the interpretation that violates the fundamental right to equal treatment and therefore declared their constitutionality conditioned in the sense that all of those legal regulations now include same-sex couples, on an equal basis as to heterosexual couples. This means that civil and political rights such as nationality, residency, housing protection and state benefits will now be granted to same-sex partners.

The Constitutional Court decisions can be summarized as in equal rights to the same-sex couples in the following areas:

- Real estate (residence only) of the same-sex couple can be declared "Family dwelling" and can't be seized
- Civil obligation to pay maintenance
- Legal guardianship
- Migration rights to acquire Colombian nationality
- Right to not incriminate the same-sex partner
- Aggravating circumstances when the victim is the same-sex partner

¹ Art 2 y 3 del Decreto 2762 de 1991; Art 24 - literales a, b y d del Decreto 1795 de 2000; Art 411 y 457 del Código Civil; Art 4 de la Ley 70 de 1931; Art 1 y 27 de la Ley 21 de 1982; Art 7 de la Ley 3 de 1991; Art 283 - numeral 2 y 286 de la Ley 5 de 1992; Art 5 de la Ley 43 de 1993; Art 8 - numeral 1 literal g y numeral 2 literales c y d de la Ley 80 de 1993; Art 244 de la Ley 100 de 1993; Art 14 - numerales 2 y 8, y 52 de la Ley 190 de 1995; Art 1 y 12 de la Ley 258 de 1996; Art 2 de la Ley 294 de 1996; Art 2 de la Ley 387 de 1997; Art 222, 431 y 495 de la Ley 522 de 1999; Art 10 y 11 de la Ley 589 de 2000; Art 34, 104 - numeral 1, 170 - numeral 4, 179 - numerales 1 y 4, 188 b - numeral 3, 229, 233, 236, 245 - numeral 1 y 454 a de la Ley 599 de 2000; Art 40, 71 y 84 - numerales 1, 2, 3, 6, 7, y 9 de la Ley 734 de 2002; Art 8 - literal b, 282, 303, y 385 de la Ley 906 de 2004; Art 3 - numerales 3.7.1 y 3.7.2 de la Ley 923 de 2004; Art 14 y 15 de la Ley 971 de 2005; Art 5, 7, 15, 47, 48 y 58 de la Ley 975 de 2005; Art 2 y 26 de la Ley 986 de 2005; Art 1 de la Ley 1148 de 2007; Art 61, 62, 80, 159, 161 y 172 - numerales 2, 4, 6, 7, 8 y 9 de la Ley 1152 de 2007; Art 18 de la Ley 1153 de 2007.

- Got included as possible perpetrators of the crimes of embezzlement and squandering of family property, domestic violence and threats to witnesses, when the victim is the same-sex partner
- Rights to justice and reparation for victims of heinous crimes: The definition of *victim* now includes same-sex couples. Right to claim and receive the dead body. Right to know the measures taken to search for the missing person. Right to family reunification of displaced persons
- Civil protection measures for victims of heinous crimes
- Benefits in the retirement and health plan for members of the Armed Forces and National Police
- Being eligible for government benefits in health and educational programs
- Being eligible for government benefits for family housing
- Access to land ownership, it can be made on behalf of both same-sex partners
- Beneficiaries of death compensation in a traffic accident
- Got included in the limitations by conflict of interest for the exercise of public functions and to subscribe state contracts