

6-24-2015

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Recommended Citation

Navarro, Carlos. "Supreme Court Paper Represents de Facto Legalization of Gay Marriage in Mexico." (2015).
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Supreme Court Paper Represents de Facto Legalization of Gay Marriage in Mexico

by Carlos Navarro

Category/Department: Mexico

Published: 2015-06-24

In a move that amounts to legalizing same-sex marriage throughout Mexico, the country's high court (Suprema Corte de Justicia de la Nación, SCJN) published an opinion paper indicating that any definition of marriage as a union between only a man and a woman is discriminatory and in violation of the Mexican Constitution.

The ruling, issued June 13, does not explicitly say that same-sex marriage is legal, but the decision weakens efforts in some states to block homosexual unions. The court's opinion paper—known as jurisprudential thesis 43/2015—does not automatically strike down the state marriage laws. However, the legal opinion allows gay couples who are denied marriage rights in their states to seek injunctions from district judges, who are now obligated to grant them.

"As the purpose of matrimony is not procreation, there is no justified reason that the matrimonial union be heterosexual, nor that it be stated as between only a man and only a woman," the SCJN opinion piece said. "Such a statement turns out to be discriminatory in its mere expression."

"Under no circumstances can anyone deny or prevent a right of an individual based on sexual orientation," said the court.

The justices added that homosexual couples should be treated in the same manner as heterosexual couples, so "any exclusion from marriage is not justified."

Decision offers uniform interpretation of marriage rights

The publication of jurisprudential thesis 43/2015 follows a series of decisions in which the court ruled that the laws of several states prohibiting gay marriage violated the Constitution. The decisions were based on legal challenges brought by couples who were denied the right to marry.

Leticia Bonifaz, director of the SCJN's human rights division, said the significance of court's paper is that it offers a statement of policy that applies across the board. This means that the court will not have to reissue that same opinion every time a challenge to a state law comes before the SCJN. "There is now a clear set of criteria on the question of constitutional protections," said Bonifaz.

Other legal experts said the court's legal opinion also took into account international decisions and anti-discrimination treaties that Mexico has signed.

"Without a doubt, gay marriage is legal everywhere," said Estefanía Vela Barba, associate law professor at the Centro de Investigación y Docencia Económicas (CIDE), told The New York Times. "If a same-sex couple comes along and the code says marriage is between a man and a woman and for the purposes of reproduction, the court says, 'Ignore it, marriage is for two people.'"

The de facto legalization of gay marriage for all of Mexico reinforces a decision made by the center-left government in Mexico City in 2010 to allow same-sex unions ([SourceMex, Feb. 17, 2010](#)). The

high court later issued a ruling upholding the legality of the Mexico City law, including the right of gay couples in the capital to adopt children ([SourceMex, Aug. 25, 2010](#)). While there was initially strong resistance to gay marriage in other areas of Mexico, same-sex unions gradually gained wider acceptance ([SourceMex, March 18, 2015](#)).

The SCJN's decision also puts Mexico on par with a handful of countries in South America, including Argentina, Uruguay, and Brazil, which already allow gay marriages ([NotiSur, Aug. 27, 2010](#), and [Sept. 5, 2014](#)). Additionally, Chile plans to recognize same-sex civil unions this year ([NotiSur, Feb. 13, 2015](#)); Ecuador approved civil unions in April; and Colombia grants same-sex couples many of the same rights extended to heterosexual married couples ([NotiSur, June 29, 2007](#)).

Catholic Church opposes court

As is the case almost everywhere in Latin America, the Mexican Catholic Church has come out in opposition to same-sex marriage ([SourceMex, Feb. 17, 2010](#)). Using the argument that the SCJN was violating the sovereignty of states, church officials denounced jurisprudential thesis 43/2015.

"The Catholic Church maintains that marriage can occur only between a man and a woman. The church will defend this principle for the good of all people and members of society," said a statement from Mexico's Catholic bishops' conference (Conferencia del Episcopado Mexicano, CEM).

"Therefore, the court's decision—besides breaking with this solid juridical tradition and social good that it promotes—violates the principles of federalism and the civil codes of each state, which are applicable to the reality within each federal entity," added the CEM. "This [principle] should be reflected in the actions of the judges."

However, critics called the position of the Catholic Church hypocritical. "There are certain issues in which the Catholic Church has been inconsistent, and marriage is one of those issues," Luis M. Arellano wrote in the online news site *La Otra Opinión*. "Church leaders promote marriage as the basis for society, but they keep quiet when it fails. And it fails frequently."

"At no time has the SCJN told Catholic priests who they can and cannot marry, nor does it instruct them to perform marriages for gay, lesbian, or transgender couples," added Arellano. "The court's instructions are directed to civil judges."

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