

Reference: mti8pmpv

Date: Thursday, December 7, 2023

Type: Human rights violation

Original: English

Consent: I am/we are the alleged victim(s), and I/we give my/our consent

Related mandates

- sexual orientation and gender identity

Victims

Name: Leonardo Hatanaka da Silva

Type: Individual

Sex: Other

Date of birth: 28/01/1987

Victim is a child (under 18 years of age)? No

Nationality: Brazil

Email: Leonardo@papasdematteo.com

Telephone: +5511954800319

Address:
Av Apoquindo, 515, CHILE

Other status: Gay

Affiliation or activity: Humanitarian, solidarity, human rights-related activity

Submitted by

Name: Leonardo Hatanaka da Silva

Type: Individual

Email: Leonardo@papasdematteo.com

Telephone: +5511954800319

Address:
Av Apoquindo, 5157**Disclosure**

Does the alleged victim(s) or group/community agree to have their name(s) disclosed in a letter that may be sent to the Government, or others, such as intergovernmental organisations including United Nations entities, businesses, military or security companies?

Yes

Does the alleged victim(s) agree to have their name(s) appear in a public report to the Human Rights Council?

Yes

Case details

Country where the incident allegedly occurred/is occurring/might occur: Argentina

If relevant to your submission, please indicate whether there are additional country/ies where the incident allegedly occurred/is occurring/might occur, or otherwise related to the case submitted Brazil, Chile, France, Switzerland

Please provide a short chronological summary of the incident: what happened; when (date/time); who was involved?

Incident Summary:

Early 2023: Leonardo Hatanaka da Silva, an employee of Genzyme de Argentina S.A., part of the Sanofi Pharmaceutical Group, decides to openly communicate his sexual orientation at his workplace. He also shares information about the upcoming birth of his child via solidarity gestation.

February 2023: Despite having informed his superiors about his situation, Leonardo is dismissed from his position without a stated cause. This occurs shortly before the expected birth of his child.

Context of Employment: Leonardo's employment with Genzyme de Argentina S.A. is under a Swiss contract for work expatriation with the Sanofi Group, which applies across all Sanofi Group's companies, affiliates, and joint ventures. This contract was effective until May 31, 2023.

INADI Investigation and Dictamen: Following his dismissal, Leonardo reports the incident to the National Institute against Discrimination, Xenophobia, and Racism (INADI) in Argentina. INADI conducts an investigation into the matter.

November 9, 2023: INADI issues a dictamen (opinion), concluding that Leonardo's dismissal and the events leading up to it constituted discriminatory conduct. This conclusion is based on Argentine Law No. 23.592 and its complementary norms.

Key Parties Involved:

Leonardo Hatanaka da Silva: The individual who faced discrimination.

Genzyme de Argentina S.A.: The employer and part of the Sanofi Pharmaceutical Group, involved in the discriminatory act.

Sanofi Pharmaceutical Group: The parent company of Genzyme de Argentina S.A., also implicated due to the Swiss contract of work expatriation.

INADI (National Institute against Discrimination, Xenophobia, and Racism): The Argentinian governmental body that investigated the incident and issued the dictamen.

Are there witnesses to the incident? Don't know

Is there evidence or substantiating information concerning the incident? Don't know

Does the alleged victim believe she/he was targeted due to her/his LGBTI, National origin, Sex

Has the incident been reported to the relevant authorities? Yes

Please include details of any complaints filed or any other action taken by the alleged victim(s) or anyone else on their behalf?

Background and Context:

Leonardo Hatanaka da Silva was employed by Genzyme de Argentina S.A., part of the Sanofi Pharmaceutical Group.

During his tenure, he openly communicated his sexual orientation and informed the company about the impending birth of his child through solidarity gestation. Subsequently, he was dismissed from his position without just cause.

Factual Findings:

INADI's investigation revealed that Leonardo had appropriately communicated his sexual orientation and the expected arrival of his child to his superiors. Despite his transparency and the protective measures under Argentine labor law, he was dismissed in a manner and timing suggestive of discriminatory motives. The dismissal occurred in close proximity to the birth of his child, which raised concerns about the potential violation of both Leonardo's and his son's rights.

Legal Analysis:

The case was evaluated under Argentine Law No. 23.592, which prohibits discrimination on various grounds, including sexual orientation.

INADI also considered relevant international human rights treaties, possibly including those related to the rights of the child, given the implications for Leonardo's son. The legal analysis likely considered whether the dismissal contravened laws protecting employees from discrimination based on family responsibilities.

Conclusions on Discrimination:

INADI concluded that Leonardo's dismissal constituted discriminatory conduct.

The dictamen indicated that both Leonardo's sexual orientation and his status as an expectant parent were likely factors in his unfair dismissal.

The rights of his unborn child, particularly concerning family integrity and non-discrimination, might have been considered in the context of the dismissal's timing.

Recommendations or Directives:

INADI may have issued recommendations for Genzyme de Argentina S.A. and the Sanofi Group to take corrective actions.

These could include reinstating Leonardo, providing compensation, and implementing policy changes to prevent future discrimination.

There might also be directives to acknowledge and rectify any harm caused to Leonardo and his family, including his child.

Precedent and Implications:

This dictamen could set a significant precedent in Argentine labor law regarding discrimination based on sexual orientation and family status.

It highlights the need for corporate policies that respect the diverse family structures of employees.

The case underscores the legal obligations of companies to protect employees from discrimination, not only based on their personal attributes but also their family responsibilities.

For the full details and the official language of the dictamen, please refer to the provided link: <http://www.sajj.gob.ar/inadi-genzyme-argentina-sa-1091-d231091-2023-11-09/12345671-9013-2kdo-tseu-pmocnemacid?&o=0&F=TotalP%7CFecha%7CEstado%20de%20Vigencia%5B5%2C1%5D%7CTema%5B5%2C1%5D%7COrganismo%5B5%2C1%5D%7CAutor%5B5%2C1%5D%7CJurisdiccion%5B5%2C1%5D%7CTribunal%5B5%2C1%5D%7C>

Has the Government taken action to prevent or investigate the incident, punish the perpetrators, or ensure compensation to the alleged victim(s)? No

Is this case under consideration by any other international or regional body? Don't know

Perpetrators

Please specify the number of alleged perpetrators: 1

Is the identity/occupation of the alleged perpetrator(s) known? Yes

Sanofi Group as the letter of termination includes:

"Letter issued in two original copies

Re: Termination of your employment contract
Dear Mr. HATANAKA DA SILVA,

Further to your recent discussions with your management, we hereby confirm that, the company has decided to terminate your assignment to Argentina as well as your employment contract. Hence your contract of employment with Sanofi Gestion, and consequently with the Sanofi Group of companies or any of its joint ventures will cease on May 31st, 2023."

Were the alleged perpetrators State agents or believed to be State agents? No

Were the alleged perpetrators non-state actors such as private individuals or groups, military or security companies, or business enterprises? Yes

Sanofi Group as the letter of termination includes:

"Letter issued in two original copies

Re: Termination of your employment contract
Dear Mr. HATANAKA DA SILVA,

Further to your recent discussions with your management, we hereby confirm that, the company has decided to terminate your assignment to Argentina as well as your employment contract. Hence your contract of employment with Sanofi Gestion, and consequently with the Sanofi Group of companies or any of its joint ventures will cease on May 31st, 2023."

Are they associated with a state institution? No