HAITIAN AMERICAN LAWYERS ASSOCIATION OF NEW YORK, INC.

Dominican Republic Constitutional Court Ruling TC/0168/13

English Translation

This document is an unofficial English translation of the September 23, 2013, Dominican Republic Constitutional Court decision, TC/0168/13. This unofficial English translation is provided as a service to interested parties and is for informational purposes only. If any text of the original official document in Spanish is inconsistent with the text of this translation, the original official document in Spanish shall govern. Note that the original official document in Spanish is also available and can be found at this web address: http://tribunalconstitucional.gob.do/node/1764.

Acknowledgements

The Haitian American Lawyers Association of New York, Inc. expresses its gratitude and thanks to Hughes Hubbard & Reed LLP for sponsoring this translation.

We also extend our deepest thanks to Mr. Alberto Agraz Sánchez, Esq., Ms. Esther Stultz and Ius Lingua for their excellent work and tireless efforts in translating this document.

[Coat of Arms of the Dominican Republic]
Dominican Republic
CONSTITUTIONAL COURT

IN THE NAME OF THE REPUBLIC

RULING TC/0168/13

Reference: Record No. TC-05-2012-0077, concerning an appeal of a writ of *amparo* filed by Mrs. Juliana Dequis (or Deguis) Pierre, challenging Ruling No. 473/2012 rendered by the Civil, Commercial and Labor Branch of the Court of First Instance in the Judicial District of Monte Plata, on July ten (10), two thousand twelve (2012).

In the municipality of Santo Domingo Oeste, Santo Domingo Province, Dominican Republic, on the twenty-third (23rd) day of the month of September of two thousand thirteen (2013).

The Constitutional Court, consisting ordinarily of justices Milton Ray Guevara, Chief Justice; Leyda Margarita Piña Medrano, First Associate Justice; Lino Vásquez Sámuel, Second Associate Justice; justices: Hermógenes Acosta de los Santos; Ana Isabel Bonilla Hernández, Justo Pedro Castellanos Khoury, Victor Joaquín Castellanos Pizano, Jottin Cury David, Rafael Díaz Filpo, Víctor Gómez Bergés, Wilson S. Gómez Ramírez, Katia Miguelina Jiménez Martínez and Idelfonso Reyes, exercising their Constitutional and legal authority, and specifically those provided in Articles 185.4 of the Constitution and 9 and 64 of No. 137-11, Organic Law of the Constitutional Court and of the Constitutional

[Coat of Arms of the Dominican Republic]
Dominican Republic
CONSTITUTIONAL COURT

Procedures dated June thirteen (13), two thousand eleven (2011), renders the following judgment:

I. BACKGROUND

1. Description of the ruling under appeal

1.1. On July ten (10), two thousand twelve (2012), the Civil, Commercial and Labor Branch of the Court of First Instance in the Judicial District of Monte Plata rendered Ruling No. 473/2012, in exercise of its *amparo* authority. A default Ruling was rendered against the defendant, Central Electoral Board, for failing to appear at the June eighteen (18), two thousand twelve (2012) hearing, and the application for writ of *amparo* brought by the plaintiff, Mrs. Juliana Dequis (or Deguis) Pierre,[1] was rejected.

1.2. Under subparagraph number four of the aforementioned Ruling, government employee, Dionis Fermín Tejeda Pimentel (Bailiff of the National District Trial Court) was commissioned to serve notice of the court's decision. However, there is nothing in the record proving that such notice was ever provided to the defendant, Central Electoral Board.

[1] In the writ of *amparo* and the appeal, the petitioner is identified as **Juliana Deguis Pierre** and also as **Juliana Diguis Pierre;** in the *birth certificate affidavit* issued by the Officer of the Civil Registry Office of Yamasá, on October 4, 1993, for purposes of obtaining her identity and voter card (as shown below), petitioner is identified as **Juliana Deguis Pierre**, while in the *birth certificate issued for judicial purposes* by the Director of the Main Civil Registry Office on May 17, 2013 (also shown below), she is identified as the daughter of Mr. **Blanco Dequis** and Mrs. **Marie Pierra**, and according to this last document the name and surnames of the petitioner are **Juliana Dequis Pierra**. Moreover, with respect to her parents, it should be noted that, probably due to a material error on page 2 of the writ of *amparo,* it states that the petitioner is "the daughter of Messrs. *NELO DIESSEL AND LUCIA JEAN."* To avoid confusion and maintain uniformity amongst the writ of *amparo,* the appeal and the documents cited herein, petitioner will hereon be identified as **Juliana Dequis (or Deguis) Pierre.**

2. Grounds of the ruling under appeal

2.1. The Civil, Commercial and Labor Branch of the Court of First Instance of Monte Plata, in exercise of its *amparo* authority, rejected the action brought by Juliana Dequis (or Deguis) Pierre, based essentially upon the following reasons transcribed verbatim below:

> *WHEREAS, the plaintiff, JULIANA DEGUIS PIERRE, alleges that she was born in the Municipality of Yamasá, Monte Plata Province, on April 1, 1984, the daughter of Messrs. NELO DIESSEL AND LUCIA JEAN, both laborers of Haitian nationality pursuant to birth certificate No. 246, Registry 496, Page 108 of 1984, issued by the Civil Registry Office of Yamasá; that, in 2008, for the first time, Mrs. JULIANA DEGUIS PIERRE, appeared at the Identification and Documentation Center in the Municipality of Yamasá to apply for an identity and voter card, whereby her birth certificate was confiscated and she was informed that an identity card would not be issued to her because her surnames are Haitian.*
>
> *WHEREAS, no arguments were provided by the Central Electoral Board in support of its own defense.*
>
> *WHEREAS, (…), it is contingent upon the plaintiff to prove to the court the validity of her claims.*
>
> *WHEREAS, the plaintiff, Mr.* {sic} *JULIANA DEGUIS PIERRE, provided the following documents in support of her defense: 1- Photocopy of Act No. 250/2012, dated May 18, 2012, of Ramón Eduberto de la Cruz de la Rosa, Bailiff assigned to the Criminal Branch of the National District Court of Appeals; 2- Photocopy of*

Birth Certificate No. 496, Registry 246, Page 108 of 1984, issued by the Civil Registry Office of Yamasá.

WHEREAS, no documents were provided by the defendant, CENTRAL ELECTORAL BOARD, in support of its own defense.

WHEREAS, the Court notes that the documents presented by the plaintiff are photocopies, and in this regard, we have pointed out that uncontroverted photocopies may be of evidentiary value in cases where the party against whom they are presented is present, and in cases where the party against whom the photocopies are presented is absent, we have pointed out that we share, keep, and as a consequence, apply our own criteria and legal approach expressed in the Ruling issued by the Civil Branch of our Supreme Court of Justice on January 14, 1998; B.J. 1046, Page 118-120 (…); on the basis of which, we believe the plaintiff has failed to comply with the "actor incumbit probatio" rule, which is the reason why we believe it prudent, appropriate and just to REJECT this writ of amparo.

3. Filing of the appeal

3.1. The appeal for review of Ruling No. 473/2012 was filed by Mrs. Juliana Dequis (or Deguis) Pierre, pursuant to a complaint filed in the Office of the Clerk of the Civil, Commercial {and Labor} Branch of the Court of First Instance of the Judicial District of Monte Plata, on July thirty (30), two thousand twelve (2012). In this action, the petitioner alleges a violation of her fundamental rights, because Ruling No. 473/2012 has left her "in a state of uncertainty," given that the merits of the case were not decided.

3.2. The respondent, Central Electoral Board, was notified of the aforementioned appeal by the Office of the Clerk of the Constitutional Court by means of Notice SGCT-0547-2013, dated April eight (8), two thousand thirteen (2013).

4. Facts and legal arguments of the petitioner

4.1. The petitioner seeks to overturn Ruling No. 473/2012, which is the basis of the appeal, and, to justify such claims, in summary alleges:

a. THAT, by virtue of the principle of effectiveness contained in Article 7.4 of Law No. 137-11, *the Judge has not rendered an effective decision* […]*,"* because *"the plaintiff has been left in a state of uncertainty, not only by the actions of the Central Electoral Board, but also by the decision of the court that was supposed to defend her violated rights.*

b. THAT, *the decision by the Civil, Commercial {and Labor} Branch of the Court of First Instance of the Judicial District of Monte Plata to dismiss the complaint by rejecting the evidence presented by the plaintiff and refusing to accept the request made by the complainants* {sic} *that the documentation (birth certificate) presented as evidence, constituted proof, because the Central Electoral Board itself had not delivered the birth certificate, which is the basis of this amparo action, in principle, was the return of the birth certificate and delivery of the identity and voter card, documents which had been requested repeatedly of the defendant but had not been provided by that party.*

c. THAT, the lack of protection of the fundamental rights pledged in the Constitution, international treaties, the Civil Code, Law No. 659 regarding Civil Registry Records and Law No. 6125 regarding Personal

Identity Cards, as amended by Law No. 8/92 regarding Identity and Voter Cards persists and continues to compound these expressed violations.

d. THAT, the rights of which the {petitioner} is deprived are inherent to her person; and, therefore, it is incumbent upon the competent jurisdiction "to take all measures – even ex-officio – to verify the existence of violations;" and,

e. THAT, in the decision, which is the object of this appeal, *the plaintiff remains unprotected against the powers of the Central Electoral Board, and* [that] *violations of her fundamental rights have been extended and compounded due to the allegations of the judge that the documentation presented (birth certificate) on file are copies, and, therefore, deemed by the judge to be of no evidentiary value.*

5. Facts and legal arguments of the respondent

5.1. The respondent seeks the dismissal of the constitutional appeal and, in turn, seeks that Ruling No. 473/2012, which is the object of this appeal, be upheld, alleging in summary the following:

a. THAT, the petitioner, Juliana Deguis Pierre, was illegally registered in the Civil Registry Office of Yamasá "[…] where she appears as the daughter of HAITIAN NATIONALS."

b. THAT, the parents of the petitioner are foreigners "who unlawfully and illegally registered their children in the Registration books of the Civil Registry Office, in clear violation of the Constitution in effect at the time of the affidavit of birth."

c. THAT, nationality is an aspect of national sovereignty, a discretionary authority of the State, conceived as an attribute granted to its nationals; therefore, its scope cannot be defined solely by the will of an ordinary judge.

d. THAT, Dominican law is clear and precise, establishing "THAT NOT ALL CHILDREN BORN IN THE TERRITORY OF THE DOMINICAN REPUBLIC ARE DOMINICANS," because "[i]n such cases, if they are not permanent residents, they must first register with the diplomatic delegation of their country of origin."

e. THAT, since 1844, the Constitutional assembly has established who are considered Dominicans, a principle that has remained in effect since the amendment of nineteen ninety-nine {*sic*} (1929) without any modification to date.

f. THAT, "the determination of nationality is a matter of domestic law that corresponds to each State, as an expression of its national sovereignty […]."

g. THAT, in the judgment of the Court, which has been confirmed, the {petitioner} has sought, in filing a writ of *amparo* against the respondent, to acquire a *carte blanche ruling to validate the violation of the law and consequently claim so-called acquired rights […], grounded in a non-existent attribution that violation of the law is an absolute and unquestionable right."*

h. THAT, in this case, the judge *a quo* acted on the basis of the terms established in Article 6 of the Constitution, and that the {petitioner's} birth certificate *establishes clearly and accurately the nationality of the parents, which is detailed without any derogatory, discriminatory or humiliating*

language, except to say that if a person is not a national of the Dominican Republic, it is not grammatically and legally correct {sic} *to call him a foreigner […].*

i. *THAT, the law empowers the Central Electoral Board to take all actions aimed at controlling and purging applications for identification documents, in order to strengthen the process of purging the Electoral Register and, if we reason according to the maxim {'}the accessory follows its principal,' since the birth certificate is the main document giving rise to the identity and voter card, and the law allows the Central Electoral Board to investigate and take any action it deems pertinent to purge the Electoral Register, one would have to ask how else would purging occur if not by tossing* {*and*} *removing any element that is alien to all that is being purged, which, in no case, amounts to discrimination.*

j. THAT, with respect to the children of illegal foreign nationals, the Central Electoral Board has applied the legal criteria established by the Constitution of nineteen ninety-nine *{sic}* (1929), upheld by the Supreme Court of Justice in its ruling dated December fourteen (14), two thousand five (2005), concerning the constitutional challenge brought against General Migration Law No. 285-04, namely that (…) A CHILD IS NOT BORN DOMINICAN; {AND} EVEN MORE SO IF HE/SHE WAS BORN TO A FOREIGN MOTHER, WHO, AT THE TIME OF GIVING BIRTH, IS UNDER AN IRREGULAR STATUS, AND, THEREFORE, CANNOT PROVE HER ENTRY AND RESIDENCY *in the Dominican Republic […]*.

k. THAT, the case law has established that, *while accepting, in principle, that the certificates issued by the Civil Registry Office should be considered reliable sources, unless the registration can be proven to be false, such principle does not extend to the statements transcribed by civil*

registry offices at the time of exercising their ministerial duties, to which they cannot attest unless there is evidence to the contrary, because these officers cannot authenticate the intrinsic accuracy of such certificates (Cas. Civ. No. 23, 22 of October 2003, B.J. 1115, pages 340-347).

l. THAT, the {Central Electoral Board} reiterates its commitment to comply with and enforce the mandate of the Constitution and laws while offering assurances *that national identity will be zealously protected and preserved by this institution, and that we are implementing a bailout and clean-up program of the Civil Registry Office to shield it from the fraudulent and deceitful actions, forgeries and impersonations, that have long affected the Dominican Civil Records Registry system, so that we can provide efficient and reliable service with regard to the vital records that are the source and basis of our national identity.*

m. THAT, to provide legal documentation as a Dominican citizen to a person, in violation of Articles 31, 39 and 40 of Law No. 659, Articles 11 and 47 of the Constitution in effect on the date of the affidavit of birth, as well as Articles 6 and 18 of the current Constitution of two thousand ten (2010), *would be disruptive to the legal system, under which, the promoter or beneficiary of the violation should not be allowed to legally benefit from these unlawful acts.*

n. THAT, based on the foregoing reasons, the Central Electoral Board "has challenged the rights asserted by the *amparo* petitioner, regarding the decision by the competent court to invalidate the birth certificate, pursuant to the law on Civil Registry Records, whose issuance the *amparo* action pursues.

o. THAT, the delivery of the requested documents by the respondent violates the Constitution and the laws governing the matter; and that the

Central Electoral Board is not stripping anyone of his or her nationality or leaving anyone stateless, *because, as clearly and bluntly established by the Constitution of the Republic of Haiti: ARTICLE 11. Any individual born of a Haitian father or a Haitian mother who, in turn, were born as Haitians and have not waived their nationality at the time of birth possesses Haitian citizenship […].*

p. THAT, obtaining a registration illegally and in contravention of the Constitution *does not grant nationality rights or any other rights to amparo petitioners or any other person, since doing so would amount to no more than an improper, illegal and inappropriate use of such registration, whose non-conformance, annulment and challenge can be pursued using all legal channels […].*

q. THAT, through Resolution No. 12-2007, the Central Electoral Board *establishes the procedure to provisionally suspend the issuance of fraudulent or flawed registrations, entered and registered illegally and in violation of the Constitution of the Republic, thus instructing the Officers of the Civil Registry Office to thoroughly examine the birth certificates or other documents relating to a person's civil legal status.*

r. THAT, the Central Electoral Board *instructed the Officers of the Civil Registry Office to examine, in particular, the birth certificates received in violation of Article 11 of the Constitution of the Republic, because certificates of children born to foreigners who were in transit in the Dominican Republic had been received (as in the case in question), which made it necessary for the persons benefitting from such inconsistencies to prove their legal residency in the Dominican Republic, and that failure to provide evidence of legal residency or legal status in the country required that their cases be submitted to the Central Electoral Board to be examined and a determination made in accordance with the*

Law; thus, officials must refrain from issuing copies that are inconsistent with birth records.

s. THAT, the {American} Convention on Human Rights of November twenty-two (22), nineteen sixty-nine (1969) states in Article 20, that everyone has a right to a nationality, which could be the nationality of the State in whose territory they were born, "if not entitled to another;" and that international law establishes and recognizes that it is not mandatory for the State to grant nationality to anyone born in its territory if they have the right to acquire another one; a criterion historically emphasized in our Constitution.

t. THAT, the system used to acquire nationality in the Dominican Republic is not based on *jus soli* or *jus sanguinis*, but, rather, it is based *on a joint system that combines and complements each other* […], which *creates an easier path for people to take advantage of weaknesses in the system at any given time and obtain fraudulent registrations, rather than following the steps established by law for foreigners to obtain nationality,* pursuant to Article 3, paragraphs 1 and 2 of Law No. 1683 of April twenty-one (21), nineteen forty-eight (1948).

u. THAT, the "*mere fact that the registration - received by Officers of the Civil Registry Office of Yamasá, – illegally by all accounts – did not take into consideration that the Political Constitution of the Dominican Republic of nineteen sixty-six (1966), in effect at the time of the affidavit of birth, established in Article 11,"* that all persons born in the territory of the Dominican Republic, except for those in transit, *violate the Constitution and the laws by providing a fraudulent Affidavit of Birth, and as such, the petitioner cannot take advantage of her own violation and receive Dominican nationality by such unlawful action."* This provision was upheld by the 2002 and 2010 constitutional amendments.

v. THAT, *nationality is a matter of public policy whose preservation, amendment and safeguarding is a function of the registrar's office of each country, and that the legislature of the Dominican Republic granted such functions to the respondent; the importance of these functions later acquired constitutional status with the inclusion of Article 212 into the Political Constitution of the Dominican Republic, published on January twenty-six (26), two thousand ten (2010) […].*

w. THAT, the regulatory powers granted to the {respondent} *validate the actions taken with respect to the retention of birth certificates whose inconsistencies are obvious, and to demand from beneficiaries, thereof, the proof required by our legislature before they can appear before officers of the Civil Registry Office.*

x. THAT, the respondent issued Resolution No. 02-2007, regarding "Enactment of the Registry of Births of Children to NON-RESIDENT Foreign Mothers in the Dominican Republic" or "Registry of Foreigners," and that Article 1 of Law No. 8-92 stipulates that the Civil Registry Offices are dependent upon and under the directives of the Chairman of the Central Electoral Board."

y. That, the respondent is the public institution responsible for overseeing and managing all Civil Registry Offices and, therefore, is responsible for ensuring the proper management and transparency of the record books, so that they are consistent with established legal principles.

z. THAT, the case law of the Administrative High Court, affirmed by the Supreme Court of Justice, maintains that all official records issued by Civil Registry officers are subject to the scrutiny of superior or judicial agencies, and that ordering them to abstain from issuing these records in their care does not violate any legal or constitutional provisions.

aa. Also, that birth certificates not registered under the correct procedure can be challenged by all legal channels, so that *"regardless of any value the photocopies may have, the amparo action is inadmissible because of the unconstitutional nature of the registration of a child born to foreign nationals under illegal immigration status* […].

6. Exhibits filed

6.1. In the case of this appeal for review, the following documents, among others, are on file:

1. Photocopy of the *affidavit of birth* (Form O.C. No. 8) for Juliana Dequis {or Deguis} Pierre, Registration of Births-Book No. 246, page 109, marked with the number 496 of nineteen eighty-four (1984), issued by the Civil Registry Office of Yamasá, dated October four (4), nineteen ninety-three (1993).

2. Photocopy of the writ of *amparo* filed by Mrs. Juliana Dequis (or Deguis) Pierre before the Civil{, Commercial and Labor} Branch of the Court of First Instance in the Judicial District of Monte Plata against the Central Electoral Board, which was received on July six (6), two thousand twelve (2012).

3. Certificate No. 250/2012, dated May eighteen (18), two thousand twelve (2012), executed by government employee Ramón Eduberto de la Cruz de la Rosa (Bailiff of the Criminal Branch of the National District Court of Appeals), which contains the summons and notification of delayed processing for voluntary surrender of the birth certificate and the identity and voter card.

4. Photocopy of the certified and registered original of Ruling No. 473/2012 issued by the Civil, Commercial and Labor Branch of the Court of First Instance of the Judicial District of Monte Plata, on July ten (10), two thousand twelve (2012).

5. Photocopy of the constitutional appeal for review of the Ruling in the *amparo* action filed by Mrs. Juliana Dequis (or Deguis) Pierre before the Constitutional Court, on July twenty-two (22), two thousand twelve (2012).

6. Original defense brief of the Central Electoral Board, concerning the appeal, dated May twenty-seven (27), two thousand thirteen (2013).

7. Two (2) originals of the *birth certificate issued for judicial purposes* of Juliana Dequis (or Deguis) whose birth was registered before the Civil Registry Office in the First District of Yamasá, in Book No. 00246 of the Registry of Births, timely declaration, on page No. 0109, registration No. 00496, in nineteen eighty-four (1984), issued by the Director of the Main Civil Registry Office, on May seventeen (17), two thousand thirteen (2013).

7. Fact-finding measures requested by the Constitutional Court

7.1. In Notice SGCT-0548-2013, dated April eight (8), two thousand thirteen (2013), the Office of the Clerk of the Constitutional Court asked the respondent, Central Electoral Board, to provide two (2) certified copies of the birth certificate for the petitioner, Juliana Dequis (or Deguis) Pierre. In response to this request, the Central Electoral Board for the National District issued the two (2) originals of the birth certificate "for judicial purposes" as indicated above, which were received by the Office of the Clerk of the Constitutional Court on that same day.

II. DELIBERATIONS AND RATIONALE OF THE CONSTITUTIONAL COURT

8. Summary of the conflict

8.1. This case commenced because Mrs. Juliana Dequis (or Deguis) Pierre submitted the original of her birth certificate to the Identification and Documentation Center in the Municipality of Yamasá, Monte Plata province, and requested the issuance of her identity and voter card. The Central Electoral Board rejected the request on grounds that the applicant was registered illegally in the Civil Registry Office of Yamasá, being that she is the daughter of Haitian nationals.

8.2. Surmising that such refusal violated her fundamental rights, Mrs. Juliana Deguis (or Deguis) Pierre sought relief from the Civil, Commercial and Labor Branch of the Court of First Instance in the Judicial District of Monte Plata, in an action brought against the Central Electoral Board, demanding the issuance of said document. The Court of First Instance dismissed her claim, alleging that she had only submitted a photocopy of her birth certificate in support of the motion, as evidenced in Ruling No. 473-2012, which is now under review before the Constitutional Court.

9. Jurisdiction

9.1. The Constitutional Court has jurisdiction to review this appeal of the Ruling in the *amparo* action, pursuant to Articles 185.4 of the Dominican Constitution, and 9 and 94 of No. 137-11, Organic Law of the Constitutional Court and of the Constitutional Procedures.

10. Admissibility of this appeal

10.1. The Constitutional Court believes that this appeal of the Ruling in the *amparo* action is admissible for the following legal reasons:

10.1.1. Article 100 of Law 137-11 states that:

> *Admissibility of the appeal is subject to the special constitutional significance or relevance of the issue, and will be determined according to its importance to the interpretation, application and overall effectiveness of the Constitution, or for determining the content, scope and specific protection of fundamental rights*.

10.1.2. The concept of special constitutional significance or relevance was clarified by this Constitutional Court in Ruling TC/0007/12, issued on March twenty-two (22), twenty twelve (2012), which states that:

> *[…] this condition is only present, among other conditions, in cases where: 1) conflicts regarding fundamental rights are contemplated for which the Constitutional Court has not established any criteria for its clarification; 2) it is conducive to social or regulatory changes to certain previously established principles that affect the content of a fundamental right; 3) it allows the Constitutional Court to redirect or redefine judicial interpretations of the law or other laws that violate fundamental rights; 4) it introduces significant legal situations of social, political or economic importance, whose solution favors the preservation of the constitutional integrity.*

10.1.3. This Court finds the matter in question of special constitutional significance or relevance, and, therefore, considers it admissible, because it

raises a conflict with respect to the fundamental right to nationality and citizenship, the right to employment, the right to free movement and the right to vote, that the Court must clarify by establishing standards in view of the social and political importance of the issue.

11. Merits of the appeal of the ruling in the *amparo* action

11.1. The Constitutional Court will review, consecutively, the merits of the appeal taking into consideration the four fundamental aspects raised by the record, namely: {petitioner's} submission to the *amparo* court and the Ruling rendered thereof (11.1.1.); determining the authority to regulate the foreign nationality regime (11.1.2); petitioner's failure to comply with the legal requirements for obtaining the identity and voter card (11.1.3.); and the legal unpredictability of the Dominican migration policy and the institutional and bureaucratic deficiencies of the Civil Registry Office (11.1.4.).

11.1.1. Jurisdiction and ruling of the *amparo* court

11.1.1.1. On May twenty-two (22), two thousand twelve (2012), Mrs. Juliana Dequis (or Deguis) Pierre brought an *amparo* action before the Court of First Instance in the Judicial District of Monte Plata, which was rejected in Ruling No. 473-2012, dated July ten (10), two thousand twelve (2012).

11.1.1.2. In connection with the two items referenced in the preceding heading, the Constitutional Court considers that, in view of the elements making up this case, the Contentious Administrative Court had lawful jurisdiction to hear this case, and, therefore, it would be appropriate to repeal the Ruling in the action for *amparo* and refer the case to the latter court (§1); but, instead of opting for this solution, the Constitutional Court

decides to examine the merits of the *amparo* action to guarantee the principle of procedural economy (§2).

§1. Legal jurisdiction of the Contentious Administrative Court to hear the *amparo* action

§1.1 With respect to jurisdiction over the *amparo* action of the petitioner, the Constitutional Court holds as follows:

§1.1.1. In this case, the petitioner attributes the alleged violation or arbitrariness to an omission by the Central Electoral Board, a government institution. With respect to such cases, Article 75 of Law No. 137-11 provides that: "the *amparo* action against facts or omissions by government entities, where admissible, will be under the contentious administrative jurisdiction."

§1.1.2. As outlined in the preceding paragraph, the Contentious Administrative Court is the authority with jurisdiction over the current *amparo* action. Therefore, the Ruling should be repealed and the records returned to the office of the clerk of the corresponding court. However, in this case, the Constitutional Court has decided not to return the records to the jurisdiction indicated, and will instead decide the case in order to guarantee the principle of procedural economy.

§2. Decision of the Constitutional Court to hear the merits of the case

§2.1 The Constitutional Court chooses to hear the merits of the *amparo* action filed by Mrs. Juliana Dequis (or Deguis) Pierre, because it differs with the grounds of the aforementioned Ruling No. 473/2012, issued by the

Civil, Commercial and Labor Branch of the Court of First Instance in the Judicial District of Monte Plata, based upon the following arguments:

§2.1.1. Law No. 137-11 explicitly provides in Articles 7.2, 7.4 and 7.11, the principles of speed, effectiveness and diligence, among other governing rules of the constitutional justice system, described as follows:

> *7.2. Speed. The constitutional legal proceedings, in particular the protection of fundamental rights* (as is the amparo action)*, should be resolved within constitutional limits and legal grounds and without unnecessary delay.*
>
> *7.4. Effectiveness. A judge or court must guarantee the effective application of the constitutional rules and fundamental rights against obligors or debtors thereof, upholding the minimum guarantees of due process, and is required to use means which are most suitable and appropriate to the specific needs for protection against each issue raised, granting a distinct remedy due to its uniqueness, when the case warrants it.*
>
> *7.11. Diligence. A judge or court, as the guarantor of effective judicial protection, should officially adopt the measures required to ensure constitutional supremacy and the full implementation of fundamental rights, even if they have not been invoked by the parties or they have been used erroneously.*

§2.1.2. Pursuant to the above-mentioned principles, the *amparo* action seeks to fulfill its essential purpose, offering a "preferential, indexed, oral, public and free method, not subject to any formalities," as provided by Article 72 of the Constitution, since such action is a mechanism to protect

against any fact or omission which could, actually or potentially, and arbitrarily or illegally, harm, restrict, alter or threaten the fundamental rights pledged in the Constitution.

§2.1.3. In this case, the requirements for preference, summary procedures and speed that distinguish *amparo* actions, in the apparent restriction on the fundamental rights asserted by the petitioner, who alleges having been deprived of any personal identification documents to prove her national or foreign residency in the country, are verified with particular evidence.

§2.1.4. In connection with the merits of the case, *amparo* Ruling No. 473-2012, rendered by the Civil, Commercial {and Labor} Branch of the Court of First Instance in the Judicial District of Monte Plata, rejected the request by Mrs. Juliana Dequis (or Deguis) Pierre for the issuance of her identity and voting card, determining that the photocopy of the birth certificate she submitted as essential proof to her claim was of no probative value, but the {petitioner} alleges that she was only able to submit a mere photocopy because the original birth certificate had been withheld by the Identification and Documentation Office in the Municipality of Yamasá, Monte Plata province, where she submitted it in two thousand eight (2008) "to apply for the first time for her identity and voting card," as indicated in the writ of *amparo*.

§2.1.5. It should be noted that photocopies of documents presented without the supporting originals may not be a plausible reason to reject an *amparo* action, because the very nature of this action allows the facts or omissions which injure, restrict or threaten a fundamental right to be proven by any means, as provided in Article 80 of Law No. 137-11, Organic Law of the Constitutional Court and of the Constitutional Procedures:

> *Article 80. – Freedom of Proof. Facts or omissions that injure, restrict or threaten a fundamental right, can be proven by any means permitted by the national legislation, provided that such admission does not violate the right of the alleged offender to defend himself.*

§2.1.5.{*sic*} In addition, under Article 87 of Law No. 137-11, the judge handling the writ of *amparo* possesses ample authority to take the necessary measures to *motu proprio* instruct and collect evidence of the facts or alleged omissions*:*

> *Article 87. Authority of the Judge. The judge handling the writ of amparo has wide-ranging powers to implement fact-finding measures* ***and to collect data, information and documents for himself that serve as proof of the alleged facts and omissions****, and ensure that the evidence obtained is shared with the litigants to guarantee rebuttal.*[2]

§2.1.6. Accordingly, the court handling the *amparo* action should have officially requested from the {respondent}, Central Electoral Board, the issuance of an original birth certificate for Mrs. Juliana Dequis (or Deguis) Pierre, for judicial purposes, in order to determine the merits of this case.

§2.1.7. In connection with the Constitutional Court's decision-making authority in proceedings under its jurisdiction, the Court bases its criteria with respect to the meaning and scope of *amparo* appeals on ruling TC/0071/13, dated May seven (7), two thousand thirteen (2013), insofar as that ruling applies to the protection of fundamental rights. In that decision, the Court indicated that it could determine the merits of the *amparo* action

[2] Emphasis added by the Constitutional Court.

by applying the principles of procedural autonomy and *the necessary operational synergies that must occur between the amparo action pursuant to Article 72 of the Constitution, the principles governing constitutional courts under Article 7 of Law 137-11, and regulations relevant to the amparo action and to the appeal of the writ of amparo prescribed in the above-mentioned law in Articles 65 through 75 and 76 through 114, respectively.*

§2.1.8. Thus, by virtue of the arguments presented, the Constitutional Court, in view of the fact that it disagrees with the basis of the aforementioned Ruling No. 473-2012, which is the subject of the current appeal, decides to proceed to hear the merits of the *amparo* action by which Mrs. Juliana Dequis (or Deguis) Pierre requests that the Central Electoral Board issue her an identity and voter card.

11.1.2. Authority to regulate nationality

11.1.2.1. With regards to this aspect, which has sparked intense debate, the Constitutional Court wishes to consider the problem in the realm of domestic law (§1), before considering the solution provided by international public law (§2).

§1. Authority to regulate nationality under Domestic Law

§1.1. In terms of Dominican law, the Constitutional Court reasons as follows:

§1.1.1. There are large numbers of foreigners in the Dominican Republic who would like to obtain Dominican nationality; most of them are undocumented Haitian nationals. Indeed, in two thousand twelve (2012), the European Union, the United Nations Population Fund (UNFPA) and the

National Statistics Office (ONE) conducted the *First National Survey on Immigrants in the Dominican Republic (ENI-2012),* for the purpose of collecting data about immigrants and the children of immigrants born in the national territory.

§1.1.2. According to the results of this research, the total number of immigrants was five hundred twenty-four thousand six hundred and thirty-two (524,632) people, or 5.4% of the total national population, which in two thousand twelve (2012), was estimated at nine million seven hundred sixteen thousand nine hundred forty (9,716,940). Of these five hundred twenty-four thousand six hundred thirty-two (524,632) foreigners, four hundred fifty-eight thousand two hundred thirty-three (458,233) are Haitians and represent 87.3% of the total population of immigrants, while sixty-six thousand three hundred ninety-nine (66,399) people are from other countries, i.e., 12.7% of the total. These figures show an overwhelming prevalence of Haitian immigrants in relation to the totality of immigrants living in the Dominican Republic.

§1.1.3. The number of immigrants and their descendants make up the population of foreigners, and according to the survey, the magnitude extends to seven hundred sixty-eight thousand seven hundred eighty-three (768,783) persons, which represents 7.9% of the country's total population. Foreigners originating from other countries amounted to one hundred thousand six hundred thirty-eight (100,638) people, while those of Haitian origin equaled six hundred sixty-eight thousand one hundred forty-five (668,145).[3] The petitioner, Mrs. Juliana Dequis (or Deguis) Pierre, is just one of those six hundred sixty-eight thousand one hundred forty-five (668,145) people; so the problem that exists does not only concern her, but also a large number of Haitian immigrants and their descendants, who

[3] For the preceding data, see the summarized version ENI-2012, p. 17.

constitute 6.87% of the population living in the national territory. According to reports published in the Dominican press, only eleven thousand (11,000) Haitian immigrants are legally registered in the Dominican Republic National Migration Office, which represents a negligible 0.16% of the total.[4]

§1.1.4. Generally, nationality is considered a legal and political bond that binds an individual to a State, but in a more technical and accurate way, it is not only a legal bond, but also a sociological and political bond, whose conditions are defined by the State itself, because multiple rights and obligations of a social nature emerge from this legal bond; it is sociological, because, among other things, it involves the existence of a set of historical, linguistic, racial and geopolitical traits, that shape and sustain particular idiosyncrasies and collective aspirations; and political, because it essentially grants access to powers inherent to citizenship, that is, the ability to elect and be elected to hold public office in the State's government.

§1.1.5. The National Congress, in exercise of its legislative authority, is responsible for everything pertaining to the determination and regulation of migratory issues in the Dominican Republic. Article 37, paragraph 9, of the Dominican Constitution of November twenty-eight (28), nineteen sixty-six (1966), in effect on the date of birth of the petitioner, Mrs. Juliana Dequis (or Deguis) Pierre – who was born on April one (1), nineteen eighty-four (1984), states the following: "*The powers of Congress: […]* (9) *Regulate all matters relating to migration."* This authority was upheld in the constitutional amendments of nineteen ninety-four (1994) and two

[4] http://www.elcaribe.com.do/site/index.php?option=com_content&view=article&id=224748:migracion-haitiana-un-conflicto-sin-final&catid=104:nacionales&itemid=115.

thousand two (2002), as well as in the amendment of two thousand ten (2010).[5]

§1.1.6. In addition, Article 2 of the now-repealed Immigration Law No. 95 dated April fourteen (14), nineteen thirty-nine (1939), in effect on the date of birth of the petitioner, granted control of migratory flow and implementation of migration laws to the National Migration Office as follows:

> *Art. 2. Laws relating to the entry, residence and deportation of foreigners will be executed in the Republic by the National Migration Office, a department of the Ministry of the Interior and Police. The execution of these laws will be supervised and managed by the Ministry of the Interior and Police, and the head of the National Migration Office will be the National Migration Director.*[6]

§2. Authority to regulate nationality under International Public Law

§2.1. In terms of the solution provided in this general area by international public law, the Constitutional Court states the following arguments:

a. For almost a century, under international public law, the configuration of the conditions for granting citizenship has been recognized internationally as part of the reserved domain or exclusive national jurisdiction of the State. Accordingly, the Permanent Court of International

[5] Article 93, item ("g") of the above-mentioned law, concerning authority of the National Congress, states that "Congress has the authority to *establish migration rules and regulations governing foreign nationals' rights.*"

[6] Currently, under Migration Law No. 285-04, dated August 15, 2014, the *National Migration Office* continues to monitor foreigners' migration status in the country (Article 6.3).

Justice, in its Advisory Opinion on Nationality Decrees in Tunisia and Morocco, stated the following:

> *The determination of whether a matter falls solely within the jurisdiction of a State or not is relative; this depends on the conduct of international relations. Therefore, under the current state of international law, questions on nationality, according to the opinion of this Court, are, in principle, within the reserved domain.*[7]

b. Similarly, the International Court of Justice (successor to the Permanent Court of International Justice), in its Ruling on the *Nottebohm* case, not only stated that "nationality is a legal bond which is based on social attachment, effective solidarity of existence, of interests, of feelings, together with a reciprocity of rights and duties;" but, also, decided that nationality has "[…] its closest, most immediate range and, for a majority, its effect only within the legal system of the States conferring it.[8] Therefore, that high court considered it necessary to specify in their review of that case that:

> *It is up to Liechtenstein,* ***like all other sovereign States, to resolve through its own legislation the rules relating to acquiring citizenship and to grant nationality through naturalization authorized by its legislative bodies in accordance with such legislation.*** *It is not necessary to determine whether international law imposes any limitation on their freedom of choice in this domain […] Nationality serves mainly to determine that the person to whom these rights are awarded is bound by the obligations that the*

[7] Advisory Opinion on Nationality Decrees in Tunisia and Morocco. CPJI, Ser. B, No. 4, 1923, paragraph 24.

[8] Liechtenstein vs. Guatemala, Reports CIJ, 1955, paragraphs 20-21.

> *legislature of the State in question grants or imposes upon its nationals. This is implicit in the more comprehensive concept that nationality remains within the domestic jurisdiction of the State […].*[9]

c. Likewise, the Inter-American Court of Human Rights has held that the requirements and procedures for obtaining nationality are predominantly a matter of domestic law of each State. In *Castillo Petruzzi et al. vs. Perú*,[10] that Court upheld the position previously outlined in its January 19, 1984,[11] *Advisory Opinion regarding the Proposed Amendments to Costa Rica's Political Constitution*, as it relates to obtaining nationality through naturalization, ruling that:

> *99. This Court defines nationality as "the political and legal bond that ties a person to a particular State, through which the bonds of loyalty and allegiance are undertaken, and entitlement to diplomatic protection is granted."* ***A foreigner who attains this bond assumes that he has fulfilled the requirements established by the State for the purpose of ensuring that the applicant is effectively tied to the values and interests of the society it seeks to become a part of; the abovementioned assumes that the requirements and procedures for attaining citizenship [are] predominantly in the domestic law domain.***[12]

[9] Emphasis added by the Constitutional Court.

[10] *Castillo Petruzzi et al. vs. Perú,* Ser. C, No. 52, 1999.

[11] *Advisory Opinion Related to the Proposed Amendment to the Political Constitution of Costa Rica*, OC-4/84, Ser. A, No. 4, paragraphs 35-36.

[12] Emphasis added by the Constitutional Court.

d. For its part, the Court of Justice of the European Communities, in several cases,[13] has reaffirmed this criterion recognizing the States' total sovereignty, within their respective territories, to determine the rules for the acquisition or loss of nationality. In these rulings, that higher court has established that "[a]ccording to international law, taking into account the Community Law, each Member State has the right to establish the requirements for the acquisition and loss of nationality […]."

e. Similarly, international agreements adopted by the Dominican Republic view this as an authority belonging exclusively to the State. On the one hand, the International Private Law Code (Bustamante Code) approved in Havana, on February twenty (20), nineteen twenty-eight (1928), and affirmed by the Dominican Congress on December three (3), nineteen twenty-nine (1929), in Article 9 specifies the following:

> *Article 9.* ***Each contracting State shall apply its own law to determine the national origin of any individual or legal entity*** *and their acquisition, loss and subsequent reintegration, which may have been undertaken within or outside its territory, when any of the nationalities subject to controversy is that of the State. In other cases, the provisions provided in the remaining articles in this chapter shall govern.*[14]

[13] *See Mario Vicente Micheletti et al. vs. Government Delegation in Cantabria* (C-369/90, on July 7,1992, paragraph 10); *Belgian State vs. Fatna Mesbah* (C-179/98, of November 11, 1999, paragraph 29); *The Queen vs. Secretary of State for the Home Department, ex parte: Manjit Kaar, intervene: Justice* (C-192/99 on February 20, 2001, paragraph 19); *Kunqian Catherine Zhu and Man Lavette Chen vs. Secretary of State for the Home Department* (C-200/02, on October 19, 2004, paragraph 37); and, *Janko vs. Rothmann vs. Freistaat Bayern* (C-135/08 on March 2, 2010, paragraph 39).

[14] Emphasis added by the Constitutional Court.

f. This agreement was also signed and ratified by the Republic of Haiti; therefore, its provisions require compliance by both the Dominican State and the Haitian State.

g. Similarly, both countries agreed to the "Dominican Republic Modus Operandi with the Republic of Haiti" international treaty, signed in Port-au-Prince on November twenty-one (21), nineteen thirty-nine (1939), which regulates the migrant relations between the two States, and was in effect on the date of birth of the petitioner. Article 4 of this bilateral treaty states the following: "The meaning of the term *immigrant* **will be determined solely by each State** and in accordance with its laws, decrees and regulations.[15]

h. Having established that the granting of citizenship is a right reserved to the State, it is now up to the Constitutional Court to determine whether, in this case, a violation of the petitioner's fundamental rights occurred, in the event that she meets the legal requirements for the issuance of the identity and voter card, as she claims; and, therefore, where appropriate, to grant her petition to this Court and order the Central Electoral Board, as respondent, to issue the aforesaid document.

11.1.3. Failure of the petitioner to meet the legal requirements to obtain an identity and voting card

11.1.3.1. The Constitutional Court believes that Mrs. Juliana Dequis (or Deguis) Pierre does not meet the requirements for the issuance of an identity and voter card, because her birth certificate is under investigation (§1); and also because the petitioner does not satisfy the requirements to

[15] It is worth mentioning that our Supreme Court of Justice also has established that, based on the Constitution, matters relating to immigration and the regulation and control of movement of people entering and leaving the country, is reserved to the legal system, and that such prerogative is an unalienable and sovereign right of the Dominican State (Ruling No. 9 of December 14, 2005).

obtain Dominican nationality that apply to children born in the country to parents of foreigners in transit as set forth, as an exception, in the Constitution (§2); an exception that also appears in other Latin American Constitutions (§3).

§1. The petitioner's birth certificate is under investigation

§1.1. In connection with the investigation of the petitioner's birth certificate, this Court states the following:

a. In the defense brief on appeal, the Central Electoral Board bases its refusal to issue the identity and voter card on the fact that, being the daughter of Haitian nationals, Mrs. Juliana Dequis (or Deguis) Pierre was registered illegally in the Civil Registry Office of Yamasá.[16] It further alleges that the petitioner's parents are foreigners who "unlawfully and illegally registered their children in the Registration books of the Civil Registry Office, in clear violation of the Constitution in effect at the time of the affidavit of birth."[17]

b. Currently, the issuance of identity and voter cards is a process regulated by Law No. 6125 regarding Personal Identity Cards, dated December seven (7), nineteen sixty-two (1962), and Law No. 8-92 regarding Identity and Voter Cards dated March eighteen (18), nineteen ninety-two (1992). The latter replaced the previous law, to the extent it empowered the Central Electoral Board to merge the Personal Identity and Voter Registration, or Voter Inscription, identity cards, into one document called the "Identity and Voter Card." The objective of doing this is to comply with identification and voter registration objectives as required by

[16] Page 2, *in fine.*

[17] Page 4, *ab initio.*

amended Law No. 6125, and Article 4 of Law No. 55 regarding Voter Registration, dated November seventeen (17), nineteen seventy (1970).

c. The issuance of identity and voter cards is also impacted materially by Law No. 659 regarding Civil Registry Records, dated July seventeen (17), nineteen forty-four (1944). This law establishes the procedures and legal requirements for the documentation of the records of births of persons occurring throughout the country, as well as the preparation of their birth certificates and the issuance of statements, which serve as the basis and condition for issuing identity and voter cards. This law also regulates marriages, deaths, name and surname changes, corrections to the civil registry records, as well as registration and issuance of extracts, all of which affects identity and voter cards as well.

d. In this case, taking into consideration the above-mentioned issues, in terms of the alleged violation of fundamental rights by the Central Electoral Board's refusal to issue the identity and voter card to the petitioner, it is of particular importance to verify the legality of the birth certificate and the affidavit of birth supporting the request. In this regard, it is worth noting that Article 24 of Law No. 659 establishes the legal requirements concerning vital records and they include, *inter alia*, personal identity cards of the declarants and witnesses:

> *The records of the Civil Registry Office must indicate the year, month, day and time of their execution, the names and surnames, home addresses* ***and a mention of the number and seals of the Personal Identity Card of the witnesses and of the affiants.***[18]

[18] Emphasis added by the Constitutional Court.

m) {sic} With respect to the birth certificates, Article 46 of Law No. 659 specifically establishes the mandatory inclusion of the following information in the personal identity cards:

> *Art. 46. On the birth certificate should appear the date, time and place of birth, the gender of the child, the names given to the child; the names, surnames, age, profession, address,* ***number and seal of the Personal Identity Cards of the father and mother, if it's a legitimate child, and if a biological child, those of the mother; and of the father if he appeared in person to recognize the child; the names, surnames, age, profession and address of the affiant, if any.***[19]

e. Complementing the requirements of Law No. 659, Article 7 of Law No. 8-92 provides that to obtain the identity and voter card, it is necessary for the individual citizen to appear in person with the required documents as established by Law No. 6125 of nineteen sixty-two (1962):

> *Art. 7. To obtain the identity and voter card, it is an essential requirement for the citizen to appear in person. No one can have more than one existing registration. The documents required for the registration, the application form, the size of the picture, the data to be recorded on the card, the format and any other requirement it deems appropriate, will be established by the Central Electoral Board, in accordance with the provisions cited on the subject in Law Nos. 6125 and 55.*

[19] Emphasis added by the Constitutional Court.

f. Likewise, the above-cited Law No. 6125 in Articles 1 and 2 and 8, stipulates the following obligations upon every person, national or foreigner, living in the country:

> *Article 1. It is mandatory for all persons of either sex, whether a national or foreign resident in the Republic,* ***to obtain and carry a certificate of identification known as a "Personal Identity Card,"*** *from the age of 16 onwards.*
>
> *Paragraph I. –* ***Nonresident foreigners will only have to obtain the certificate of identification referred to in this Article after they have remained in the country for more than 60 days.***
>
> *Paragraph II. – To obtain the Personal Identity Card, foreigners must show their passports with valid visas properly stamped by consular officers or Dominican diplomats, their original or renewed residence permit or the corresponding exemption certificate."*
>
> *Article 2. The design, text and format of the Personal Identity Card will be determined by the Executive Branch, and it must include a picture of the applicant taken from the front, as well as the necessary information required by this law.*
>
> *Article 8. The offices issuing Personal Identity Cards will complete these in accordance with the contents of the sworn statements made on the application form provided free of charge by that office.*

> *Paragraph.* {sic} *However, when appropriate, these offices may demand the filing of birth certificates or taxpayers' records.*[20]

g. Note that, with respect to nonresident foreigners, paragraphs I and II of Article 1 of the aforementioned Law No. 6125 stipulate that they should obtain a personal identity card[21] after they have remained in the country for more than 60 days, and that this identification card would be obtained upon the presentation of "passports with valid visas properly stamped by consular officers or Dominican diplomats, their original or renewed residence permit, or the corresponding exemption certificate," in addition to other documents.

h. Similarly, Article 21 of Law No. 6125 of nineteen sixty-two (1962) also stipulates mandatory submission of the personal identity card for certain civilian life acts, particularly, for the granting of public documents, implementation of affidavits and requests to authorities and public offices, as well as to legally prove identity, actions which pertain to statements of birth.

> *Art. 21. The submission of a Personal Identity Card is mandatory when annotated and cited in documents:*
>
> ***2. To obtain public documents (…).***
>
> ***4. To process any type of claims, requests, applications, complaints or statements before authorities, officials and public offices (…).***

[20] Emphasis added by the Constitutional Court.

[21] Known currently as "non-voting identity card."

> ***5. To prove identity where necessary in any public or private activity.***[22]

i. However, emphasizing the need for compliance with this formality, specifically with respect to the Haitian foreign workers coming into the country and for the purpose of guaranteeing a regulated immigration, Article 40 of the aforementioned law No. 6125 establishes the following:

> *Art. 40.* ***The migrant laborers and workers imported by industrial, or agricultural companies must apply for and obtain their Personal Identity Cards*** *in the community of entry or landing in the country, and migration authorities may not allow them permanent residence in the Republic,* ***until they have been provided Personal Identity Cards.***[23]

j. Now, according to the birth certificate of Mrs. Juliana Dequis (or Deguis) Pierre, her parents, Blanco Dequis (or Deguis) and Marie Pierre, are Haitian nationals; he is identified by "record" or "document" No. 24253, and she is identified by "record" or "document" No. 14828. Therefore, presumably, the father of the petitioner and declarant of her birth, was a foreign worker of Haitian nationality, who was in the country to work as an industrial or agricultural laborer, and he had not obtained a personal identity card at the time he provided the affidavit of his daughter's birth to the Civil Registry Office in the Municipality of Yamasá.

[22] Emphasis added by the Constitutional Court.

[23] Emphasis added by the Constitutional Court.

k. The regulatory and factual account above shows that the birth record of Mrs. Juliana Dequis (or Deguis) Pierre, the petitioner in the constitutional appeal, was documented without the declarant father providing hard evidence as to his or the mother's identity to the officer of the Civil Registry Office; i.e., the persons who claimed to be her parents had not been supplied with personal identity cards required to prove their respective qualifications to register the affidavit of birth referred to in the aforementioned Articles 2, 24, 40 and 46 of Law No. 659 of nineteen forty-four (1944) and Articles 1, 2, 8 and 21 of Law No. 6125 of nineteen sixty-two (1962), both of which were in force at the time of the petitioner's birth, and still remain in force (with amendments).

l. The frequent irregularities involving birth records registered in the Civil Registry Offices around the country prompted the Central Electoral Board, beginning in the year two thousand six (2006), to implement a process enacted in Circular No. 17-2007, issued by the Administrative Branch of the Central Electoral Board of the Dominican Republic on March twenty (29) two thousand seven (2007), to recover the reliability of the Civil Registry Office by instructing the Civil Registry Offices to examine the records carefully when issuing copies of birth certificates or any other document related to a person's civil status.

m. Then Resolution No. 12-2007, dated December ten (10), two thousand seven (2007) was issued regarding the *Procedure for temporary suspension of the issuance of tainted or illegal civil records*, which was approved unanimously by the Plenary of the Central Electoral Board. This Resolution, which is based foremost on various provisions of Law No. 659 regarding Civil Registry Records, essentially stipulates the following:

WHEREAS: the CENTRAL ELECTORAL BOARD is responsible for overseeing the services provided by the Civil Registry Office, therefore, through its National Office, it continuously reviews the statuses of the certificates issued by the Civil Registry Office, which are filed in the archives of the Civil Registry Offices and of the Main Civil Registry Office.

WHEREAS: these reviews are usually done at the request of interested parties, accredited Consulates in the country, the Civil Registry Office and other departments of the Central Electoral Board.

WHEREAS: during the investigation process, often times it is determined that the records under review were not registered in accordance with the corresponding law, and that, in many cases, serious irregularities were found that made them vulnerable to cancellation or legal proceeding.

WHEREAS: the most common cases of irregularities include the following: inserted records, records written in different inks, records registered after the closing of books, records illegally modified with forged information such as registered names, dates, name of parents or of the declarant, etc., duplicate affidavits of birth, omission of formalities, among others.

WHEREAS: the legal provisions previously mentioned do not render void the records of the Civil Registry Office, although a competent court could issue such a ruling.

WHEREAS: whenever the abovementioned cases arise, it is customary to request that these records be canceled by the appropriate court.

RESOLVES:

ONE: To temporarily suspend the issuance of Civil Registry Records that contain irregularities or fraudulent information that preclude their issuance, and that these may only be issued for judiciary purposes. The Civil Registry Offices Commission will notify the Plenary of the Central Electoral Board of registrations containing serious fraudulent information or irregularities discovered by the appropriate administrative authority during their investigations.

TWO: For these purposes, the National Director of the Civil Records Office will be instructed in a letter signed by the Chairman of the Central Electoral Board, to obtain from the appropriate Civil Registry Office and the Main Civil Registry Office, the original books containing such records, if there were duplicates, in order to take appropriate actions (…).

FOUR: After this procedure, the National Director of the Civil Records Office will return the books to the Civil Registry Office, or to the Main Office, as appropriate, and both the officer of the Civil Registry Office and the Director of the Main Civil Registry Office will be barred from issuing copies or extracts of the affected records, unless prior authorization is granted by the Central Electoral Board or strictly for judicial purposes, and expressly

indicating that the issuance of such records is temporarily suspended.

TEN: Upon recommendation of the Civil Registry Offices Commission and determination by the Plenary of the Central Electoral Board that the irregularities found in the records of the Civil Registry Office justify a definite cancellation, it will immediately order the Office of Legal Counsel to request that the courts of the Republic judicially annul those Civil Registry records which have been temporarily suspended by the Central Electoral Board.

n. The frequency of irregularities found prior to the issuance of Resolution No. 12-2007, and the results of the implementation of the measures proposed by the latter, appear in the statistical tables of the Civil Registry Office provided by the Central Electoral Board listed below:

Civil Records Office - Statistical Data
Records processed by Resolution No. 12-2007

Records	2008	2009	2010	2011	2012	2013	Total
Forwarded to the Office of the Inspector General for investigation	3,278	3,934	1,968	3,829	3,140	796	16,945

Investigated and returned, per Resolution No. 12-2007	2,303	366	350	456	1,106	255	4,83628.54 %
	567	142	23	52	261	43	
Records temporarily suspended pursuant to Resolution 12-2007							1,088 6.42%

* The Central Electoral Board has submitted 1,822 claims for cancellation of birth certificates because of duplication, forgery and other irregularities.

Number of applications cancelled in proportion to number of persons applying for Dominican citizenship

Year	Number of applications cancelled	Cancelled for attempting to become Dominican	Percentage
2007	11,335	131	1.16%
2008	9,401	138	1.47%
2009	8,157	11	0.13%
2010	7,584	22	0.29%
2011	2,749	26	.95%
2013 {*sic*}	2,128	71	3.34%
2013	661	11	1.66%
Total	**42,015**	**410**	**0.98%**

o. With respect to the petitioner's birth record, the respondent, Central Electoral Board, in its defense brief states the following:

> *22. In this regard, the Central Electoral Board instructed the Civil Registry Officers to examine closely the birth records submitted in violation of Article 11 of the Constitution of the Republic, since there were affidavits submitted (as in the case in question) of children of foreigners who were in transit in the Dominican Republic, making it necessary for the persons benefitting from such inconsistencies to prove their legal residency in the Dominican Republic, and that failure to provide evidence of legal residency or legal status in the country required that their cases be submitted to the Central Electoral Board to be examined and a determination made in accordance with the Law; thus, refraining civil service officers from issuing copies that are inconsistent with birth records.*[24]

p. Accordingly, based upon the aforementioned Resolution No. 12-2007, the Central Electoral Board decided to temporarily suspend the petitioner's birth certificate, considering that her birth certificate, like many others, is affected by irregularities *which make it susceptible to cancellation or legal proceedings*,[25] such as *in the cases of records inserted into files, records written in different inks, records registered after the closing of books, records illegally modified with forged information such as registered names, dates, name of parents or of the declarant, etc., duplicate affidavit of birth, and omission of essential formalities, among others*.[26]

[24] Page 12 of the respondent's defense brief.

[25] Resolution No. 12-2007, page 3, third recital clause.

[26] *Ibid.,* fourth recital clause.

q. With regard to the issue at hand, the National Civil Registry Office of the Central Electoral Board also issued *Circular No. 32* on October nineteen (19), two thousand eleven (2011), with respect to the decision "regarding the issuance of birth certificates under investigation, relating to children of foreign citizens." This Circular instructed officers of the Civil Registry of the Republic to deliver the birth certificates[27] of all persons whose cases were being investigated or reviewed, until the Plenary of the Central Electoral Board ruled whether the birth certificates were valid or not, pursuant to Resolution No. 12-2007, with respect to the suspension of records registered irregularly:

> *Pursuant to the decision by the Commission of Offices of the Central Electoral Board, dated October 05, 2013, they were instructed, politely, to issue, without reservations, the birth certificates of foreign children whose records are under investigation, until the Plenary of the Central Electoral Board determines, pursuant to the results of the investigation, whether or not they are valid and temporarily suspends them, requests that the Court cancels them, or admits their irregularities.*[28]

r. It should be noted that in spite of the mandate contained in the aforementioned Resolution 32-2011, no evidence exists in the records establishing the return of the original *affidavit of birth* to Mrs. Juliana Dequis (or Deguis) Pierre. It should be noted, however, that, with regards to the retention of the birth certificate by the Identification and Documentation Office in Yamasá, when an applicant provides the birth certificate to any Identification and Documentation Office, at that time, the

[27] This text refers only to birth certificates, not identity cards.

[28] This Circular consists of that single paragraph.

applicant is given a receipt as confirmation that the applicant has petitioned for registration at that office. Thus, if the applicant needed to use the *affidavit of birth* to show proof of birth, the receipt issued by the Identification and Documentation Office could be used for that purpose.

s. Once the legal aspect of the petitioner's birth certificate, which is currently under investigation and which was retained by the Central Electoral Board, has been determined, it should be clarified pursuant to that document, whether or not she meets the requirements to acquire Dominican nationality by virtue of her being the daughter of foreigners in transit born in the country.

§2. The petitioner does not acquire Dominican nationality, as she is the daughter of foreigners in transit, unless she becomes stateless

§2.1 Regarding this aspect, the Constitutional Court will provide a brief summary of the facts of the case, as well as its legal basis (1) before addressing the principles and precedents of Dominican citizenship, (2) the exception provided by the Constitution of 1966 with respect to children born in the country to foreign parents in transit (3), and it will then consider the possibility of the petitioner being stateless (4).

1. Brief summary of facts and legal basis of the case

1.1. For the purposes of clarification, we offer a factual account of the case, as well as the constitutional and legal basis supporting the Constitutional Court arguments.

1.1.1. As indicated, on May twenty-two (22), two thousand twelve (2012), the petitioner under review brought an *amparo* action before the Civil, Commercial {and Labor} Branch of the Court of First Instance in the

Judicial District of Monte Plata, because "according to the petitioner," the Central Electoral Board refused to issue her an identity and voter card, based upon "her origin, birth and surname." She further alleges that the government's behavior infringed several of her fundamental rights (to possess an identity and voter card, have honorable employment, register her two children, move freely, and exercise her right to vote), for which she demanded that the Board issue the aforementioned document "immediately and without delay." To this end, the petitioner sent two prior notifications to the aforementioned entity identified by Bailiff Notices No. 705/2009 and No. 250/2012 dated September sixteen (16), two thousand nine (2009) and May eighteen (18), two thousand twelve (2012), requesting that the identity document be delivered within five (5) and three (3) days, respectively.

1.1.2. With respect to the request made by the petitioner to the Central Electoral Board, it should be noted that the identity and voter card is an essential document in the national legal system, since, within the framework of the civil status, it shows, *inter alia*, the bearer's identity, (names and surnames), gender, marital status (married or single), nationality (the State to which the bearer is legally bound), adulthood (established at the age of 18) and citizenship (the rights and duties of a Dominican citizen), which includes, specifically, the right to elect and be elected into public service with the national government.

1.1.3. As expressed in Ruling No. 473/2012, of July ten (10), two thousand twelve (2012), the *amparo* Court rejected the action for the reasons listed in the above-mentioned transcripts. Consequently, on July thirty (30), two thousand twelve (2012), Mrs. Juliana Dequis (or Deguis) appealed to this Constitutional Court for a review of the Ruling, requesting reversal of the Ruling and acceptance of the conclusions she presented to the aforementioned *amparo* court. To that effect, the petitioner contends that the violation of her fundamental rights continues to worsen *due to the*

failure to protect the fundamental rights pledged in the Constitution and international treaties, the Civil Code, Law No. 659 regarding Civil Registry Records and Identity Law No. 6125, amended by Law No. 8/92 regarding Identity and Voter Cards, dated April thirteen (13), nineteen ninety-two (1992).

1.1.4. As indicated, Mrs. Juliana Dequis (or Deguis) Pierre was born on April one (1), nineteen eighty-four (1984), pursuant to the original birth certificate issued for judicial purposes by the Director of the Main Civil Registry Office, on May seventeen (17), two thousand thirteen (2013).[29] Reflecting the absolute respect for the principle of non-retroactivity of the law granted under Article 47 of the Dominican Constitution of nineteen sixty-six (1966) (in effect on the date of petitioner's birth),[30] this court will essentially consider her request for issuance of an identity and voter card, in accordance with the constitutional and legal regulations stated below:

a. Constitutions of the Dominican Republic for the years 1844, 1854 (February 25 and December 16), 1858, 1865, 1866, 1868, 1872, 1874, 1875, 1877, 1878, 1879, 1880, 1881, 1887, 1896, 1907, 1908, 1924, 1927, 1929 (January 9 and June 20), 1934, 1942, 1947, 1959, 1960 (June 28 and December 2), 1962 (September 16 and April 29) and 1966.

[29] Pursuant to her statement in the writ of *amparo*, the {petitioner} requested her identity and voter card for the first time in the year two thousand eight (2008), i.e., when she was twenty-four years old.

[30] A*rticle 47. "The law stipulates and applies to the future. It has no retroactive effect unless it favors sub judice individuals or persons serving criminal sentences. Under no circumstances shall the law or public authorities encumber or alter the legal certainty derived from situations established under previous legislation." This article was not amended in the Constitutional revisions of 1994 and 2010. This provision also appears in the current revision of 2010, in the following terms: "Article 110.- Non-retroactivity of the law. The law stipulates and applies only to the future. It has no retroactive effect unless it favors sub judice individuals or persons serving criminal sentences. Under no circumstances shall public authorities or the law encumber or alter the legal certainty derived from situations established under previous legislation."*

b. Constitutions of the Republic of Haiti for the years 1801, 1805, 1806, 1807, 1811, 1816, 1816, {*sic*} 1843, 1846, 1849, 1852, 1867, 1874, 1879, 1888, 1889, 1918, 1932, 1935, 1939, 1944, 1946, 1950, 1957, 1964, 1971, 1983.

c. Dominican Immigration Law No. 95, dated April fourteen (14), nineteen thirty-nine (1939).[31]

d. Regulation No. 279 regarding the Application of Immigration Law No. 95, dated May twelve (12), nineteen thirty-nine (1939).[32]

e. *Modus Operandi Agreement signed by the Dominican Republic and the Republic of Haiti*, dated November twenty-one (21), nineteen thirty-nine (1939).[33]

f. Dominican Law No. 659 regarding Civil Registry Records, dated July seventeen (17), nineteen forty-four (1944), and amendments.[34]

g. Dominican Law No. 1683 regarding Naturalization, dated April sixteen (16), nineteen forty-eight (1948).[35]

h. Haitian Law dated September 14, 1958, regarding *Législation sur les Attributions du Consul.*[36]

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[31] Official Gazette No. 5299.

[32] Official Gazette No. 5313.

[33] Official Gazette No. 5395.

[34] Official Gazette No. 6114.

[35] Official Gazette No. 6782.

[36] Published in "Le Moniteur" No. 78-141, on December 29, 1958. This law amended the September 23, 1953 Act.

i. Dominican Law No. 6125 regarding Personal Identity Cards, dated December sixteen (16), nineteen sixty-two (1962).[37]

j. Agreement on Hiring Temporary Laborers in Haiti and Entry into the Dominican Republic (last revision: Resolution No. 83, dated December twenty-two (22), nineteen sixty-six (1966)).[38]

k. Dominican Law No. 55 regarding the Electoral Registry, dated November seventeen (17), nineteen seventy (1970).[39]

l. Haitian Law of August twenty (20), nineteen seventy-four (1974) regarding Civil Status, which created an agency known as the "Civil Registry Inspection and Review Service."[40]

m. Decree of the President of the Republic of Haiti regarding Haitian nationality, dated November six (6), nineteen eighty-four (1984).[41]

1.1.5. We will also take into consideration other Constitutions, as well as other statutes, laws and regulations, which, even though they are subsequent to the date of birth of the petitioner (April l, 1984), have an impact or are useful to the conflict at hand, but without affecting the principle of non-retroactivity of the law, among others, namely:

a. Constitutions of the Dominican Republic for the years 1994, 2002 and 2010.

[37] Official Gazette No. 8726.16.

[38] Official Gazette No. 9018.

[39] Official Gazette No. 9206.

[40] Published in "Le Moniteur" No. 78B dated September 30, 1974.

[41] Published in "Le Moniteur" No. 78 dated November 8, 1984.

b. Constitutions of the Republic of Haiti for the years 1987 and 2011.

c. Dominican Electoral Law No. 275-97, dated December twenty-one (21), nineteen ninety-seven (1997).[42]

d. Circular No. 17-2007, issued by the Administrative Branch of the Central Electoral Board of the Dominican Republic on March twenty-nine (29), two thousand seven (2007).

e. Resolution No. 12, issued by the Central Electoral Board of the Dominican Republic, establishing the procedures for temporary suspension of the issuance of flawed or illegally registered civil status certificates, dated December ten (10), two thousand seven (2007).

f. Circular No. 32 issued by the National Civil Registry Office of the Central Electoral Board of the Dominican Republic, on October nineteen (19), two thousand eleven (2011).

2. General principles and precedents on acquiring Dominican nationality

2.1 Considering it useful to better understand the legal arguments on this aspect of the case, this court will describe briefly the general principles and constitutional precedents of acquiring Dominican nationality:

2.1.1. In the Dominican Republic, a person can acquire nationality through that of his or her parents, i.e., through consanguinity or "right of blood" (*jus*

[42] Official Gazette No. 9970.

sanguinis);[43] and, also by the place of birth, i.e., by "right of soil" (*jus soli*).[44] Apart from these two forms there is a third, called "naturalization," whereby the sovereign State grants citizenship to foreigners who apply and meet the requirements and formalities applicable to each country.

2.1.2. The degree of impact of the admission of Dominican nationality by descent or by birth has fluctuated throughout our constitutional history. The origin of the system began, exclusively, with the acquisition of nationality by *jus sanguinis,* pursuant to Article 7.2 of the Constitution of November six (6), eighteen forty-four (1844). This provision effectively provided that Dominicans would be all those who are **"born in the territory of the Dominican Republic to Dominican parents**,[45] and having emigrated, returned to take up residence in it again."[46] The subsequent constitutional amendments from eighteen fifty-four (1854) to eighteen fifty-eight (1858) upheld the exclusive system of acquiring nationality by *jus sanguinis.*[47]

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[43] The term *jus sanguinis means: "allocation of citizenship under the right of blood, i.e., the legal requirement that a person acquires from a nation by virtue of their descent. Thus, the children of the inhabitants of a country can acquire status as a national of that country, even though they were born in a different territory." Hispanic-American Law Dictionary*, Volume 1 (a/k), Latin Group Editors, Bogotá, 2008, p. 1209 ("*jus sanguinis*" law).

[44] The term *jus soli* means: "Right of the soil. System of allocating nationality in which the criterion for granting it is based on the place where he or she was born, regardless of whether the parents are or are not from that territory; it is the opposite of *jus sanguinis.*" *Hispanic-American Law Dictionary*, Volume I (a/k), cited above, p. 1210 ("*jus soli"* law).

[45] Emphasis added by the Constitutional Court.

[46] As well as those who, at the moment of the publication of the Constitution shall enjoy this benefit (7.1), and all Dominican Spaniards and their descendants who, having emigrated in 1844 have not taken up arms against the nation and returned to take up residence in it (7.3). Emphasis added by the Constitutional Court.

[47] To illustrate, Article 5 of the constitutional amendment of 1854 preserved the provision of Article 7.2 and included, in addition, that "*all those born in the territory of the Republic of Dominican parents, and their children, are Dominicans."* The second constitutional amendment of that same year included, in Article 5, that those born in the Dominican Republic of Dominican parents, as well as the Hispanic-Dominicans and their descendants who, having emigrated for political reasons, have taken up residence in it again. The Constitution of 1858 also adopted these provisions of the first constitutional amendment of 1854.

2.1.3. However, the Constitutional Amendment of eighteen fifty-eight (1858) replaced the exclusive system of *jus sanguinis* with a blended system, which also allowed the acquisition of nationality by *jus soli*, providing that not only the children of Dominican parents would be considered Dominicans, but also 1) those who were born in the Dominican territory, "irrespective of their parents' nationality;" 2) those who were born in foreign countries to absent Dominican parents for or on behalf of the Republic, or those who have expressed their desire to settle in the Republic as Dominicans; 3) foreigners of friendly nations who wish to settle in the Dominican Republic and after one year of residence express their desire to become Dominican citizens; and 4) those who, during the battle for the independence, had taken up the Dominican nationality.

2.1.4. Other unusual methods of obtaining nationality, which could not be integrated within the hybrid system of *jus sanguinis* and *jus soli,* were introduced in the 1866 Amendment; and the Amendment of 1872 considered Dominicans the children of Dominican parents, as well as "*all persons born in the territory of foreign parents.*" The exclusive system for acquiring nationality by *jus soli* was preserved with an even broader interpretation in the Constitutional Amendment of 1874, as well as in the 1875, 1877, 1878 and 1879[48] Amendments. In the Amendment of 1880, these aforementioned provisions were preserved from the previous Constitutions, but it also recognized as Dominicans "all the children of the Hispanic-American Republics and the neighboring Spanish Antilles who wished to reside in the Republic and embrace this status." This same provision was included in the Amendments of 1881, 1887 and 1896, except that natives of the Spanish-American and neighboring Spanish Antilles Republics had to reside one year in the national territory before acquiring

[48] The Constitutions of 1875 (Article 5.4), 1877 (Article 7.4), 1878 (Article 7.4), and 1879 (Article 7.4), included the exception that the legitimate children of foreigners representing their homeland would not be considered born in the territory.

nationality (1881) and take the oath to defend the interests of the Republic (1887, 1896).

2.1.5. The Constitutional Amendment of 1907 returned to the hybrid system of *jus soli* and *jus sanguinis* without the exceptional methods of acquisition provided under the three previous Constitutions. Similar provisions were included in the 1908 Amendment.[49] However, the 1924 Amendment established that *children of Dominican parents or of foreign parents born in the territory, as well as those born of foreign parents would be considered Dominicans, provided that at the time of attaining adulthood they were living in the Republic*. Similar provisions are contained in the Constitutional Amendment of 1924, in the 1927 Amendment and in the first Amendment of 1929.

2.1.6. However, the most significant amendment to the regime for acquiring Dominican nationality by *jus soli* was introduced in the Constitution of June twenty (20), nineteen twenty-nine (1929), which is particularly important in the case at hand, given that it was the first to remove the children born in the country ***of foreign parents in transit*** from the general principle of acquiring nationality by birth. Indeed, Article 8.2 of the constitutional text states the following: *Dominicans are: (…) 2. All persons born in the territory of the Republic, with the exception of the legitimate children of foreigners residing in the Republic in a diplomatic capacity* ***or who are in transit.***[50] The reasons for this change are clearly explained by the reviewing assembly in its explanatory memorandum:

[49] The 1908 Constitution (Article 7) included an exception to nationality for children of diplomats born in Dominican territory.

[50] Emphasis added by the Constitutional Court.

> *This Commission estimates it to be more convenient for this country to implement the jus soli system into its Constitution, considering that our Republic is small and of sparse population and, therefore, it is a country of immigration, not emigration. The number of Dominicans residing or born abroad is low compared to that of foreigners residing in this country, and the implementation of this system has resulted in an increase of the number of Dominicans under the jus soli system over the number of Dominicans under the jus sanguinis system. The proposed rule implements the jus sanguinis system as a general rule, with the exception of the legitimate children of foreigners residing in the Republic in a diplomatic capacity or in transit.*

2.1.7. This category of ***foreigners in transit*** appear as an exception to the generic rule to the application of *jus soli* in all subsequent Dominican constitutions beginning with the Constitution of June 20, 1929 (i.e., nearly a century ago), namely, in Article 8.2 of the Constitutional Amendments of 1934, 1942 and 1947; in Article 12.2 of the Constitutions of 1955, 1959, 1960 (June and December), 1961 and 1962; in Article 89.2 of the Constitution of 1963; in Article 11.1 of the Constitutions of 1966, 1994 and 2001; and, finally, in Article 18.3 of the Constitutional Amendment of January 26, 2010.[51]

2.1.8. Finally, regarding naturalization, it should be noted that, since its inception, the Dominican State has adopted and has preserved

[51] The last Constitutional amendment of January 26, 2010, includes a more comprehensive and explanatory version of the in-transit exception, providing that persons born in Dominican territory that "*are in transit or residing illegally in Dominican territory will not be considered Dominicans. Dominican laws consider any foreigner it has defined as such as a person in transit*."

naturalization up until the Magna Carta of 2010.[52] It is currently governed by Law No. 1683, dated April sixteen (16), nineteen forty-eight (1948).

3. Exception of the nineteen sixty-six (1966) Constitution concerning children born in the country to foreign parents in transit

3.1 With respect to this issue, the Constitutional Court will address in general terms (1) the principles concerning this subject from a Dominican legal standpoint prior to (2) addressing the position of the Inter-American Court of Human Rights on this issue.

1. The general principles pursuant to Dominican Law

1.1 Regarding the Dominican law criteria with respect to the issue at hand, this court makes the following arguments:

1.1.1. As noted, the Constitution of nineteen sixty-six (1966) was in effect on the date of birth of the petitioner, i.e., April one (1), nineteen eighty-four (1984). Pursuant to Article 11.1 of the Constitution, Dominican citizenship could be acquired by "(…) 1. All persons born in the Republic, except the legitimate children of foreigners residing in the country in a diplomatic capacity, or persons in transit in the country."

1.1.2. This court finds that the case of the petitioner accurately conforms to the assumption established by the constitutional exception mentioned above, because not only was she born in Dominican territory, but, also, she is the daughter of foreign citizens (Haitians), who, at the time of birth, were in transit in the country. Note that, as previously demonstrated, Mr. Blanco

[52] Adopted for the first time in 1844, and then in the two Constitutions of 1854, 1058 {*sic*}, 1865, 1866, 1868, 1872, 1874, 1877, 1878, 1879, 1881, 1887, 1896, 1924, 1927, 1929 (in both Constitutions), 1934, 1942, 1947, 1955, 1959, 1969, 1961, 1962, 1963, 1966 and 2010.

Dequis (or Deguis), her father, who registered the birth, provided to the Officer of the Civil Registry in Yamasá "record" or "document" No. 24253, as identification; and the petitioner's mother, Mrs. Marie Pierre, was the bearer of "record" or "document" No. 14828.

1.1.3. Evidence of these circumstances is indicated immediately below:

1.1.3.1. In the case of the father of the petitioner, evidence consisted of the *affidavit of birth* issued by the Civil Registry Office of Yamasá, on October four (4), nineteen ninety-three (1993), which the petitioner presented to the Identification and Documentation Office in Yamasá to apply for her identity and voter card in two thousand eight (2008); and also by the *birth certificate for judicial purposes* issued by the Director of the Main Civil Registry Office, on May seventeen (17), two thousand thirteen (2013), provided by the Central {Electoral} Board to the Constitutional Court; and

1.1.3.2. In the case of the mother of the petitioner, evidence consisted of the *petitioner's birth certificate for judicial purposes* issued by the Director of the Main Civil Registry Office, on May seventeen (17), two thousand thirteen (2013), which was provided by the Central Electoral Board to the Constitutional Court on that same day.

1.1.4. Neither "records" or "documents" are part of the Dominican Republic identification processes, thus, suggesting that the father and the mother of the petitioner did not possess identity cards at the time the affidavit of birth was made, since no such evidence was provided during the registration of the petitioner's birth. Moreover, the type of identification document presented by the registering father shows that he was a Haitian laborer who lacked a personal identity card, as well as the mother, since the records also show no evidence that they had obtained legal residence in the country by obtaining identification cards.

1.1.5. Therefore, based on the foregoing, it is inferred that the parents of the petitioner should be considered as part of the **"seasonal workers and their families"** that make up the **fourth group** of **nonimmigrant foreign** workers, who, along with **foreign migrant** workers, fall under Immigration Law No. 95, dated April fourteen (14), nineteen thirty-nine (1939); Immigration Regulation No. 279, dated April twelve (12), nineteen thirty-nine (1939), and the *Modus Operandi Agreement with the Republic of Haiti*, dated December sixteen (16), nineteen thirty-nine (1939); statutes that were all in effect on the date of petitioner's birth.

1.1.6. Indeed, on one hand, with respect to foreign workers, Immigration Law No. 95 provides the following:

> *Art. 3. Foreigners wishing to be admitted into Dominican territory will be considered as* ***immigrants*** *or* ***non-immigrants****.*[53]
>
> *Foreigners wishing to be admitted will be considered* ***immigrants****, unless they are within one of the following* ***non-immigrant*** *classes:*
>
> *1. Visitors traveling on business, study, pleasure or curiosity;*
>
> *2. Persons traveling abroad who are in transit through the Republic;*
>
> *3. Persons working as maritime workers on ships or aircrafts;*

[53] Emphasis added by the Constitutional Court.

4. Seasonal laborers and their families.

Foreigners admitted as immigrants can reside indefinitely in the Republic. Non-immigrants will be granted temporary admission which will be governed by the requirements prescribed in Migration Regulation No. 279 of May 12, 1939, unless a foreigner admitted as a nonimmigrant fulfills the requirements for immigrants and can later be considered as an immigrant.

The seasonal workers will be admitted to Dominican territory only when they are requested by agricultural companies based on the quantity and under the conditions prescribed by the Ministry of Interior and Police, to meet the needs of these companies and to monitor their admission, length of temporary stay, and return to the country from which they came."[54]

1.1.7. Similarly, Immigration Regulation No. 279, following the terms of Law No. 95, stipulates in sections 2 and 10:

Section 2. Classification of foreigners.

a) The following classes of aliens seeking admission into the Republic are classified as ***non-immigrants.***[55]

[54] Emphasis added by the Constitutional Court. It should be noted also that according to Article 3 of Immigration Law No. 95, ***foreign immigrants*** "*may reside indefinitely in the Republic,*" and, that under Article 5, "*they will be issued a residence permit in accordance with existing regulations;*" Whereas, on the contrary, with regard to the ***non-immigrant*** foreigners, as defined in Article 3, "*they will be granted only temporary admission and it will be governed by the requirements of Migration Regulation No. 279, dated May 12, 1939*."

[55] Emphasis added by the Constitutional Court.

1. Visitors on business, study, pleasure or curiosity;

2. People who are traveling abroad who are in transit through the Republic;

3. Persons working as maritime workers on ships or aircrafts;

4. Seasonal laborers and their families.

b) All other foreigners will be considered ***immigrants****,*[56] *except for those who have diplomatic or consular status, as determined by Article 16 of the Immigration Law."*

Section {10}. Foreigners without legal residence as of June 1, 1939. Residence permits*.*

a) Any foreigner whose last entry into the Republic was prior to June 1, 1939, and who was not in possession of any immigration permit on that date, shall apply for a residence permit prior to September 1, 1939. The application must be made in person at any Immigration Office, on Form C-1, under oath.

b) Photographs for the application must be taken in accordance with the requirements provided by immigrants, as indicated in Section seven (e) of this Regulation.

(…)

[56] Emphasis added by the Constitutional Court.

> *e) Failure to request a residence permit within the time frame specified by law or the lack of annual renewal may result in* ***deportation****."*[57]

1.1.8. On the other hand, it is useful to mention that the necessity to normalize the stay of Haitian laborers in the Dominican Republic, so they not become illegal foreigners, has been in effect in the national legal system since the *Modus Operandi with the Republic of Haiti* Agreement was signed on November twenty-one (21), nineteen thirty-nine (1939) and published in the Official Gazette No. 5395 dated December twenty (20) of the same year; that is, eight (8) months before the enactment of Immigration Law No. 95 (of April 14, 1939) and seven (7) months prior to the enactment of the aforementioned Immigration Regulation No. 279 (of May 12, 1939).

1.1.9. In fact, the *Modus Operandi with the Republic of Haiti* acknowledges the application of Dominican law towards Haitian laborers who came to the country under the protection of this Agreement. To that end, Articles 10 and 11 provide, specifically, that the nationals of either of the two States that are in the territory of the other at the moment of the signature of the agreement may continue to stay in these States, provided that they adhere to the relevant immigration laws. However, exception is made for those who are in violation of the respective laws, who will have a period of three months from the signing of the Agreement, to rectify their situation.

> *Art. 10. The nationals of any of the two States, who on the date of signing this Agreement are in the territory of the other, may remain*

[57] Emphasis added by the Constitutional Court.

there, provided they adhere to the provisions of the immigration laws or any other provisions of the respective States, and agree to the payment of taxes, providing proper identification, etc., for the duration of the stay, as stipulated by the laws of each State.

As for those who, at the date of the signing of this Agreement remain illegally in either State, ***they will have a period of three months from the date of the signing of the agreement to legalize their status in accordance with the applicable laws of each State****. Therefore, the Embassies and Consulates of each country will make the necessary announcements, so that the nationals of their respective States may proceed to legalize their status within the stipulated time frame.*

*Pursuant to the provisions of Article 7, once this time frame has expired****, the nationals of either of the two States, who remain illegally in each other's territory, may be considered by the latter State to be guilty of illegal entry and in breach of its laws and treaties****.*[58]

Art. 11. The entry of seasonal laborers into either of the two countries will be done in accordance with the provisions established by the laws of each country with regard to seasonal laborers.[59]

1.1.10. It should be noted that ***foreigners in transit***, as defined in all Dominican constitutions, beginning with the Constitution of June twenty

[58] Emphasis added by the Constitutional Court.

[59] Emphasis added by the Constitutional Court.

(20), nineteen twenty-nine (1929), applies to the four groups[60] that were later generally categorized as **non-immigrant foreign workers** in Article 3 of Immigration Law No. 95 of 1939,[61] and in the aforementioned Section 2 of Immigration Regulation No. 279 of the same year.[62] In this regard, ***foreigners in transit*** should not be confused with ***transient foreigners***[63] also provided in the two statutes cited, and that in light of the latter, they are only the second of the aforementioned four groups of persons in the ***non-immigrant foreign laborers*** category, i.e., *foreigners in transit.* In fact, the term ***transient*** refers to a person "[t]hat is transiting or passing through to some place";[64] or who "is in a place where he does not normally reside."[65] Therefore, generically, it is a "***visitor, passenger, commuter or tourist.***"[66] That is the sense in which the aforementioned is defined in Article 3, subparagraph 2 of Immigration Law No. 95 (when it categorizes "persons transiting through the Republic en route abroad" as one of the four groups of ***non-immigrant foreigners***), just as in the cited Immigration Regulation No. 279 according to Section 5 of that statute:

[60] Of these four groups, the latter pertains to the "*seasonal laborers and their families*" (See aforementioned paragraph 1.1.5).

[61] See aforementioned paragraph 1.1.6.

[62] See aforementioned paragraph 1.1.7.

[63] Contrary to what was stated by the Inter-American Court of Human Rights, which misinterpreted the two concepts in its September eight (8), two thousand five (2005) decision of the *Yean and Bosico Children vs. Dominican Republic* (Ser. C., No. 130, paragraph 157), as will be demonstrated later.

[64] *Dictionary of the Spanish Language*, Spanish Royal Academy, Volume II Volume II *[sic]* (h/z), twenty-second edition, 2001, Madrid, 2001, p. 2210.

[65] *New Essential Dictionary of the Spanish Language*, Santillana, 2004, Madrid, page 1288.

[66] Ibidem.

Section 5. – Transient:

a) Foreigners seeking to enter the Republic ***with the main purpose of continuing through the country to a foreign destination***[67] *are granted transient privileges. These privileges shall be granted* ***even though the foreigner is inadmissible as an immigrant,*** *so long as such entry does not pose a threat to public health or to the foreigner's safety. The foreigner will be required to provide the destination, the choice of transportation and the date and place of departure from the Republic. A period of 10 days shall be considered ordinarily sufficient to pass through the Republic.*[68]

1.1.11. Obviously, the ***transient foreigner*** referred to in the two immigration statutes cited, is a passenger heading to another country and is briefly passing through our country,[69] has no legal domicile or residence in the Republic, just as the ***transient foreigner*** mentioned in Article 16 of the Civil Code,[70] which provides for a guarantee known as *judicatum solvi bond*, required, by law, of foreigners without domicile or legal residence in the country involved in legal proceedings[71] to appear as plaintiffs or

[67] Emphasis added by the Constitutional Court.

[68] Emphasis added by the Constitutional Court.

[69] Note that the cited provision of Immigration Regulation No. 279 allows for a maximum stay of ten days in the country, even in the case where the foreigner "*is inadmissible as an immigrant.*"

[70] *Article 16.- In all matters and all jurisdictions, transient foreigners who appear as a plaintiff or an intermediary defendant will be required to provide a bond to cover the costs, damages and losses resulting from litigation, unless they have properties in the Republic of sufficient value to secure payment."* This bond is also provided for in Article 166 of the Dominican Civil Procedure Code. *"The transient foreigner, who acts as principal applicant or an intermediary defendant before any court or tribunal other than a magistrate, must guarantee payment of the costs, damages and losses for which he otherwise may be sentenced, prior to the defendant proposing a different exception."*

[71] Except in labor cases, where it was dismissed.

intermediaries, but differing itself from the aforementioned,[72] the latter[73] ***transient foreigner*** implies the idea of a *temporary admission* into the country; i.e., a "person who is in a place or location that is not home or residence, and does not settle there permanently, only temporarily."[74] Therefore, in this sense, the term implies an intention to remain more or less for an extended period, which, although transitory (i.e., not permanent),[75] is not subject in any way to that brief period of ten days established by Regulation No. 279 for ***transient foreigners*** who are simply passing through the country en route to other destinations.

1.1.12. Likewise, it should be noted that, for over thirty years, our Supreme Court of Justice has also defined and reiterated the concept of ***foreigner in transit,*** referred to above, as more or less an extended temporary admission,[76] in the context of disputes related to the aforementioned *judicatum solvi bond*, both in terms of legal persons, as well as natural persons; and, in all these rulings the ***transience*** of the stay of the foreigner has always been linked to the non-existence of legal residency in the country or the lack of ownership of a residence permit issued by Dominican authorities; i.e., that the traditional Dominican law recognizes as ***foreigners in transit*** those without legal residence in the Republic (legal persons) or those without a legal residence permit (natural persons):

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[72] I.e., the "transient" referred to in Article 3 of Immigration Law No. 95 and Regulation No. 279.

[73] I.e., the "transient" referred to in Articles 16 of the Civil Code and 166 of the Dominican Civil Procedure Code.

[74] *Spanish-American Legal Dictionary*, Volume II (l/z), Latino Group Publishers, Bogota, 2008, p. 2340 (term: "transient").

[75] According to the aforementioned *Dictionary of the Spanish Language* (Vol. II, p. 2212), the adjective "transient," in its first definition, means "*temporary passenger*." Similarly, according to the *Current Spanish Dictionary* (Manuel *SECO et al.*, Volume II, Aguilar, Madrid, 1999, p. 4381), it means: "*Temporary (lasting only a determined time)*." As an illustration, this latter dictionary provides the following example: "*This inhumane situation, which could and should be* ***transient****, becomes permanent."*

[76] I.e., not the momentary or short stay of the foreigner passing through the country, subject to the maximum period of ten days, under Immigration Regulation No. 279.

(…) THAT, having requested that the petitioner, as a foreigner, both in the first instance as well as on appeal, post bond as established by law, and Lanman and Kemp. Barclay Co., ***not having presented evidence to determine whether the petitioner was authorized to establish residence*** *or whether she possessed any property in the Republic of sufficient value to secure payment of costs, damages and losses for which she may be sentenced in the event she loses the case; and that the Court {a quo}, by rejecting the motion by the petitioner and having ruled as it did, highlights the violation of the aforesaid law, and for that reason the Ruling is repealed (…);*[77]

(…) THAT, contrary to the decision of the Court {a quo}, the Trade Companies organized under foreign laws, […] are presumed to be domiciled in the country of their incorporation, unless there is evidence that they have been authorized by the Executive Branch to establish their domicile in the Dominican Republic, under the terms of Article 13[78] *of the Civil Code;*[79]

(…) THAT, therefore, being of a foreign nationality, domiciled abroad, ***with no permanent residence in the Dominican Republic****, and not having justified ownership of any real property in the country other than litigation, the petitioner and original applicant in this litigation, is subject to the aforementioned legal requirements;*[80]

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[77] Ruling of December 1, 1982, BJ 865, 2379 (Emphasis added by the Constitutional Court).

[78] "*Article 13.– A foreigner to whom the Government has granted domicile in the Republic shall be afforded all civil rights while residing in the country."*

[79] Ruling of March 16, 1983 BJ 867, 704 (Emphasis added by the Constitutional Court).

[80] Ruling of April 11, 1983, BJ 868, 882 (Emphasis added by the Constitutional Court).

(…) WHEREAS, pursuant to Article 16 of the Civil Code (…): In all matters and all jurisdictions, the ***transient foreigner***[81] ***or intermediary defendant*** *will be required to pay the costs, damages and losses resulting from the lawsuit (…); WHEREAS, the minutes of service into process, (…)* ***states that the petitioner, Maria Antonia Blanco Vilomar, a widow, is an American citizen domiciled in Santurce, Puerto Rico […], and, therefore, being a foreigner residing abroad, with no permanent residence in the Dominican Republic […], the petitioner, as the plaintiff in this litigation, is subject to the aforementioned legal requirements***;[82]

(…) THAT, the respondent, Bernard Malin, mentioned in the appeal presented by the petitioner, although a foreigner, does not fall within the scope of the quoted legal norm [Article 16 of the Civil Code, amended by Law 845 of July 15, 1978], *and, therefore, he shall not be required to pay the bond referred to, since the law only requires this payment from transient foreigners, which is not the case here,* ***given that the petitioner has a residence permit to be in the country*** (…).[83]

[81] In Civil Law, the notion of a ***transient foreigner*** is equivalent to that of a ***foreigner in transit*** in immigration law.

[82] Ruling No. 3, dated March 16, 1983, pages 888-889 (Emphasis added by the Constitutional Court).

[83] Ruling of February 4, 1998 (No. 4), BJ 1047, 267-275 (Emphasis added by the Constitutional Court).

1.1.13. Maintaining the same legal concept, recently, the highest authority of the Dominican Judicial Branch clearly specified in Ruling No. 9, dated December fourteen (14), two thousand five (2005), the meaning of ***foreigners in transit*** and the legal consequences it engenders for the children born in the country pursuant to Article 11.1 of the Dominican Constitution of nineteen sixty-six (1966):[84]

> *(…) when the Constitution, in paragraph 1 of Article 11, excludes the legitimate children of foreigners residing in the country as diplomats* ***or in transit*** *from acquiring Dominican nationality by jus soli, it assumes that these* ***people, the ones in transit, have somehow been allowed to enter and remain in the country for a certain period of time****;* {*and*} *that if under this evidently legitimate circumstance* ***a foreign mother gives birth*** *to a child* ***in the territory, under Constitutional law, her child is not considered Dominican.***[85]

1.1.14. Therefore, in accordance with the aforementioned regulations and legal decisions, as well as the deliberations performed, the Constitutional Court contemplates the following:

1.1.14.1. The ***foreigners in transit*** referred to in Article 11.1 of the Constitution of 1966,[86] correspond to the above-mentioned category of ***non-immigrant foreigners*** defined in Article 3 of the aforementioned Law 95 of nineteen thirty-nine (1939) and Regulation No. 279 of the same year, i.e., the following four groups of people: visitors ("*business, study, pleasure or*

[84] *"Article 11 - Dominicans are: 1) All persons born in the Republic, except the legitimate children of foreigners residing in the country as diplomats or in transit."*

[85] Emphasis added by the Constitutional Court.

[86] That, as indicated, appear in all the Dominican Constitutions from the June 20, 1929, up until the current Constitution of 2010.

curiosity"), transients, aerial and maritime workers, and seasonal workers and their families. Therefore, children born in the country of parents belonging to these four groups of people are excluded, as an exception, from the aforementioned constitutional standard of acquiring Dominican nationality under the application of *jus soli*.

1.1.14.2. ***Foreigners in transit*** who amend their immigration status and obtain a permanent legal residence in the country, become part of the ***foreign immigrants'*** category pursuant to applicable rules; thus, their children born in the territory shall acquire Dominican nationality under the *jus soli* principle.

1.1.14.3. In cases other than the above, foreigners remaining in the country without a legal residence permit or who have entered illegally are considered to be illegal immigrants, and, therefore, violators of national laws and international treaties signed by the Dominican State and ratified by the National Congress in this matter. Therefore, these people cannot rely on the birth of their children in the country to claim rights to Dominican nationality under Article 11.1 of the Constitution of 1966, since it would be legally inadmissible to establish a birthright based on an unlawful action.[87]

1.1.14.4. Incumbent upon the Dominican State is the inescapable obligation to ensure the granting of citizenship to persons born in the country, provided they meet the requirements established by the

[87] As indicated in the ruling rendered by the Supreme Court of Justice on December 14, 2005 (See *supra* paragraph 1.1.12): "*[…] when the Constitution, in paragraph 1 of Article 11 excluded the legitimate children of foreigners residing in the country as diplomats or in transit from acquiring Dominican nationality by jus soli, it is assumed that these people, the ones in transit, have somehow been allowed to enter and remain in the country for a certain period of time; that, if under this evidently legitimate circumstance a foreign mother gives birth to a child in the national territory, under Constitutional law, her child is not considered Dominican;* ***moreover, the child cannot be considered Dominican if, at the time of giving birth the mother is in an illegal situation****, and, therefore, unable to justify her entry and continued stay in the Dominican Republic […];*"

Constitution and national laws, to which both nationals and foreigners are subject, not only enforcing the rights afforded by those laws, but also the duties they impose.

1.1.14.5. Reaffirming the principle of mandatory compliance with the Constitution and the laws of the country for both nationals and foreigners, Article 9 of our Constitution of November twenty-nine (29), nineteen sixty-six (1966), current on the date of the petitioner's birth (April 1, 1984), provides the following:

> *Given that the prerogatives recognized and guaranteed by the preceding article of the Constitution assumes the existence of a sequential order of legal and moral responsibility which compels human's conduct in society, the following are determined to be fundamental duties: a) to abide by and comply with the Constitution and laws, and to respect and obey the authorities established by them.*[88]

1.1.14.6. In this case, Ms. Juliana Dequis (or Deguis) Pierre has not proven in any way that at least one of her parents had legal residency in the Dominican Republic at the time of the birth of their daughter (the petitioner under constitutional review) nor after her birth. Rather, the petitioner's affidavit of birth[89] shows that her father, Mr. Blanco Dequis (or Deguis), declarant of the birth, was a ***temporary laborer*** of Haitian nationality, i.e., a ***foreigner in transit***, as was her mother, Marie Pierre.[90] Therefore, the

[88] Emphasis added by the Constitutional Court.

[89] As well as her *birth certificate for judicial purposes* issued by the Director of the Civil Registry Office on May seventeen (17), two thousand thirteen (2013).

[90] As shown in her *birth certificate for judicial purposes* issued by the Director of the Civil Status Registry on May seventeen (17), two thousand thirteen (2013).

Constitutional Court considers that the petitioner has not complied with the dispositions in Article 11.1 of the Constitution of 1966, as has been demonstrated previously.

2. The position of the Inter-American Court of Human Rights (IACHR)

2.1. In the explanation that follows, we will discuss the issue based upon the analysis made in the case of the minor girls *Yean and Bosico vs. Dominican Republic,*[91] because, in that case, the Inter-American Court of Human Rights provides important defining and interpretive elements related to the ***foreigner in transit*** concept, in accordance with the opinion of that international high court; namely:

2.1.1. On July eleventh (11), two thousand three (2003), the Inter-American Commission on Human Rights[92] filed a lawsuit before the Inter-American Court of Human Rights[93] against the Dominican Republic. In that lawsuit, the Commission demanded that the Court declare the Dominican Republic internationally responsible for alleged violation{s} of the American Convention on Human Rights, in particular, Articles 3,[94] 8,[95] 19,[96] 20,[97] 24,[98] and 25,[99] in connection with Articles 1.1[100] and 2[101] of the Convention.

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[91] Yean and Bosico vs. Dominican Republic case, Ruling dated September 8, 2005, paragraph 3, IACHR Court 9.08.05.

[92] Hereinafter, "the Commission."

[93] Hereinafter, "the Court."

[94] Right to acknowledge the legal authority.

[95] Legal warranties.

[96] Rights of the Child.

[97] Rights to Nationality.

[98] Lawful equality rights.

2.1.2. The Commission alleged before the Court that the Dominican government refused to issue birth certificates to Dilcia Yean and Violeta Bosico, even though they were born in the Dominican Republic, and that the Dominican Constitution had established the principles of *jus soli* in order to determine those who are Dominican citizens. The Commission not only made the above allegations, but, in addition, it claimed that the country forced *"(…) the alleged victims to remain in a state of continued illegality and social vulnerability, a violation that acquires a more serious dimension when it involves minors, insofar as the Dominican Republic refused the Yean and Bosico girls their right to Dominican nationality and kept them stateless until September 25, 2001*."[102]

2.1.3. Based on the allegations and complaints made by the Commission, the Court concluded that the Dominican Republic had violated, to the detriment of the complainants, the legal right to citizenship and equality provided in Articles 20 and 24, respectively, of the American Convention.

2.1.4. Of the violations listed, we will discuss the one with respect to nationality, as the other violations derive from the latter. On this subject, in Nos. 151 to 158 of the aforementioned ruling, the Court analyzes Article 11 of the Constitution, in force at the time of the lawsuit, particularly, the exception related to the principle of *jus soli,* establishing that the children of ***foreigners in transit*** are not Dominicans.

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[99] Legal protection.

[100] Obligation to Respect the Law.

[101] Right to establish Domestic Legal Provisions.

[102] Ruling of September 8, 2005, paragraph 3.

2.2. With respect to the notion of ***foreigners in transit***, the Court has established the following:

> *In addition to the foregoing, the Court considers it appropriate to refer to Section V of the Dominican Republic Migration Regulation No. 279 of May 12, 1939, currently in effect […], which is clear in stating that a transient person's only purpose is to pass through the territory, for which a temporary ten-day limit has been set. The Court notes that for a person to be considered transient or in transit, regardless of the classification used, the State must respect a reasonable time limit and be consistent with the fact that a foreigner who develops ties to a State may not be compared to a transient person or a person in transit.*[103]

2.3. Note that in the first part of the transcribed paragraph, the Court creates confusion when considering the ten days granted to the ***transient foreigner*** as also applicable to the ***foreigner in transit***, which is a blatant error of interpretation, given the distinction between both categories of foreigners, as explained above. And, as for the last part of the paragraph, per the Court, the Dominican government is obliged to take into consideration two elements in order to determine when a foreigner is in transit in the country, namely, the time spent in the country, on one hand, and the development of ties to the Country, on the other hand. In the first element, the Court requires that the deadline established be reasonable; while in the second element, it limits itself to merely mentioning it.

[103] *Ibid.* paragraph 157.

2.4. In terms of the demands made by the Court in relation to the interpretation of the ***foreigners in transit*** concept, this Constitutional Court considers it important to note that each State has the power to determine which individuals meet the requirements to acquire citizenship, as recognized by the Court itself, which states that:

> *The determination of who is considered a national continues to be within the domestic jurisdiction of the States. However, its discretionary nature undergoes constant restrictions in accordance with changes to international laws in this respect, with a view to granting greater protection to individuals against arbitrariness of the States. Therefore, in the current stage of international human rights development, on one hand, the authority of the States is limited by its duty to provide individuals with equal and effective law and without discrimination; and, on the other hand, by its duty to prevent, avoid and reduce statelessness (94).*[104]

2.5. It is, therefore, up to each State to establish, define and interpret the requirements for the acquisition of nationality. The end result, in terms of nationality, would be that States should maintain an important level of discretion, with limitations, to be used rationally in preventing the clashing of national interests with community interests.

[104] *Ibid.* paragraph 140.

2.6 The question of recognizing the discretion available to States on certain issues, and particularly the issue under consideration, deserves special attention by the Court, since it is largely an element that could affect the effectiveness of the Inter-American system of the protection of fundamental rights incorporated into the Convention, with the understanding that, while it is true that the peoples of the signatory States to the Convention live the same realities, generally, it is equally true that there are peculiarities that, instead of being ignored, should rather be taken into consideration with respect to each case being investigated by the Commission and heard and decided by the Court.

2.7. Concerning this issue, the European Court of Human Rights has developed important case law to which we will refer in the following paragraphs, since we consider it very useful in our context. Certainly, the European system for the protection of human rights set forth the criterion for interpretation known as "*margin of appreciation*." It is a legal approach that the European Court of Human Rights first used in the Handyside vs. United Kingdom case, which was decided on December 7, 1976.[105] Proceedings were dismissed in the above-mentioned case where British citizen, Richard Handyside, brought an action against the United Kingdom and Northern Ireland alleging that his right to freedom of expression and dissemination of thought was violated while preventing the release of a book of his authorship because it was considered immoral.

2.8. The European Court of Human Rights cites the "*margin of appreciation"* theory in response to the complainant's allegation that the order by the British courts to ban the circulation of the book was largely unfounded, since the book circulated freely in Northern Ireland, the Isle of

[105] Pastor Ridruejo, José Antonio, former judge of the European Court of Human Rights. *The Recent Jurisprudence of the European Court of Human Rights: Topics Chosen.* (Madrid, 2007), p. 257 (Material used in "International Law and Vitoria-Gazteiz, 2007 International Relations Courses").

Man, as well as in the Channel Islands. The Court's response was as follows:

> *The Court recalls that the laws of 1959 and 1964, under the terms of Article 5.3, do not apply in Scotland or in Northern Ireland (paragraph 25 in fine). It is essential not to forget that the Convention, and in particular Article 60, never forced any of the organs of the Contracting States to limit any of their guaranteed rights and freedoms. Specifically, Article 10.2 does not require them in any case to impose sanctions or restrictions on freedom of expression; neither does it prevent them from enforcing these rights and freedoms (…). In view of the local situation, the competent authorities of Northern Ireland, the Isle of Man and the Channel Islands may have had reasonable motives for not acting against the book and the publisher, and the fiscal (Fiscal Procurator) in Scotland for not asking Mr. Handyside to appear in person in Edinburgh after rejecting the request made in accordance with Scottish law (…). Their absence, for which the Court does not give any reasons and which have not prevented the measures taken in England to proceed with the review of the Schoolbook, does not prove that the October 29, 1971 judgment, given the margin of appreciation afforded to the national authorities, has not responded to a real need.*[106]

2.9 The logic that emerges from the theory developed in the decision under analysis is that a country within the European community may have

[106] Handyside vs. United Kingdom of Great Britain and Northern Ireland. Ruling dated April 29, 1976. European Court of Human Rights.

particular reasons for establishing restrictions on certain rights without necessarily violating Community standards, even if other countries do not provide such restrictions. What is at issue is recognition of the existence of special situations and particular realities that require a tempering of the interpretation and application of community law.

2.10. The theory of the *"margin of appreciation"* was also invoked in other instances, such as on the partial repeal or suspension of certain rights in instances of war or hazards that threaten the life of the nation,[107] also regarding the ban imposed on homosexuals to adopt children.[108]

2.11. The European Court of Human Rights concluded that sensitive and delicate matters were discussed in the cases cited, and that it was convenient to grant a high margin of appreciation to local authorities, to the extent that they were in a better position to decide these cases in the most appropriate manner, given that they were in contact with the vital powers of the country.[109] It can be noted from the above that the "*margin of appreciation"* theory is applied in the context of particular cases. Accordingly, it states "(…) *that the Court has never applied this principle in the context of Article 20 of the Convention (right to life) or in Article 3 (the banning of torture and cruel inhumane or degrading treatment) or in paragraph 1 of Article 4 (the banning of hard labor)."*[110]

2.12. The Constitutional Court considers that in this case it is feasible to apply the "margin of appreciation" theory with regard to the meaning and scope of the ***foreigners in transit*** concept, since the question of nationality

[107] Ireland vs. The United Kingdom, dated January 18, 1978 (See, PASTOR RIDRUELO, José Antonio, *op. cit.*, p. 257).

[108] Fretté vs. France (*Ibidem*).

[109] *Ibidem*.

[110] Op. Cit. Pastor Ridruejo, José Antonio, P. 259.

is a particularly sensitive issue to all sectors of Dominican society. In this respect, it is understood, as discussed in previous pages, that foreigners lacking residence permit in the country must be comprehended similarly to the ***foreigners in transit*** category, which, as explained above, is an appropriate concept of Dominican constitutional and migratory rights, under which the children in that category do not acquire Dominican nationality, even though they were born in the national territory.

2.13. Considering foreigners who lack authorization to reside in a country as in transit is not a new theory or unique to the Dominican Republic, to the extent that, as discussed elsewhere in this Ruling, it has been applied by the Colombian State Council and the Constitutional Court of that country in cases similar to this case. It is important to note that to compare foreigners who lack residence permit with the ***foreigners in transit*** group does not, in any way, convey or transfer parents' immigration situation to their children, since the latter are not considered to be in an illegal situation, but rather lacking the right to Dominican nationality; and it should also be noted that the fact that the petitioner, Mrs. Juliana Dequis (or Deguis) does not have the right to Dominican nationality by *jus soli*, does not place her in a stateless situation, because, as discussed below, she is entitled to a Haitian nationality.

3. The petitioner is not at risk of becoming stateless

3.1. Under this aspect, the Constitutional Court has made the following observations:

3.1.1. In light of the foregoing, with respect to the status of ***foreigners in transit*** in Dominican law, people born in the Dominican Republic, whose parents are under that status can only acquire Dominican nationality when they are not entitled to another nationality, i.e., when they become stateless.

This rule is based on the provisions of Article 1 of the *Convention on the Reduction of Statelessness,*[111] Article 7 of the *Convention on the Rights of the Child*,[112] ratified by the Dominican Republic on June eleven (11), nineteen ninety-one (1991), and Article 24 of the *International Covenant on Civil and Political Rights,*[113] respectively, prescribing the following:

> Article 1 of the Convention on the Reduction of Statelessness: *All Contracting States shall grant its nationality to a person born in its territory* ***who would otherwise be stateless****. (...)*
>
> Article 7 of the Convention on the Rights of the Child: ***The child shall be registered immediately after birth and shall have the right at birth to a name, to acquire a nationality*** *and, to the extent possible, meet and be cared for by his/her parents. 2. The participating States shall ensure the implementation of these rights in accordance with their national legislation and the obligations undertaken under the relevant international legislations in this realm,* ***especially when the child would otherwise be stateless***.[114]
>
> Article 24.1. International Covenant on Civil and Political Rights: *Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, economic position or birth, the rights to the measures of protection that his status as a minor requires from his family, society and the State.* ***2. Every child***

[111] Signed (but not ratified) by the Dominican Republic on December 5, 1961.

[112] Ratified by the Dominican Republic on June 11, 1991.

[113] Ratified by the Dominican Republic on January 4, 1978.

[114] Emphasis added by the Constitutional Court.

will be registered immediately after birth and shall have a name. 3. Every child has the right to acquire a nationality.[115]

3.1.2. However, none of the above international mandates apply to the case that concerns us or any other similar case of the same nature. In fact, the refusal by the Dominican State to grant citizenship to children of ***foreigners in transit*** under no circumstance creates statelessness. In the particular case of children of ***Haitian parents in transit***, it is worth noting that Article 11.2 of the Haitian Constitution of 1983, which is applicable, expressly provides that Haitian nationality will be granted to all foreign individuals of Haitian father and mother born abroad:" *"They are of Haitian origin (...). 2 - Any person born abroad to a Haitian father or mother.{"}*[116]

3.1.3. Note, therefore, that the {Haitian} Constitution provides that the children of Haitian nationals are tied to the Haitian nationality in perpetuity; thus, the loss of nationality is impossible once it has been acquired by birth or later,[117] except in the case of naturalization in a foreign country. The Haitian nationality originated by *jus sanguinis* has traditionally been recognized in most Constitutions of the Republic of Haiti

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[115] Emphasis added by the Constitutional Court.

[116] *"Art 11 - Sont Haïtiens d'origine.* [...] . 2 - *Tout individu né à l'étranger de père et mère haïtien."*

[117] The original Haitian nationality by *jus sanguinis* was also included in Article 2.2 of the Decree on Haitian Nationality of November 6, 1984; in Article 11 of the Haitian Constitution of 1987, and in Article 11 of the Haitian constitutional amendment of 2011, namely:

- Article 2 of the Decree on Haitian Nationality of November 6, 1984: *"They are of Haitian origin [...] 2. Any individual born abroad to a Haitian father and mother."*
- Article 11 of the Haitian Constitution of 1987: "*Individuals born of a Haitian father or Haitian mother who, in turn, were born Haitian and have never waived their nationality since birth, have Haitian nationality by origin," and*
- Article 11 of the Haitian Constitution of 2011: "*Individuals born of a Haitian father or Haitian mother, who, in turn, were born Haitian and have never waived their nationality since birth, have Haitian nationality by origin."*

for nearly a century,[118] beginning with the Constitution of 1843,[119] and then the Constitutions of 1846,[120] 1849,[121] 1867,[122]1874,[123] 1879,[124] 1888,[125] 1889,[126] 1946,[127] 1957,[128] 1964,[129] 1971,[130] 1983,[131] 1987[132] and 2011.[133]

3.1.4. Therefore, the fact that the petitioner, Mrs. Juliana Dequis (or Deguis) Pierre, has full Haitian nationality as the daughter of Haitian parents, does not contravene in any way the scope of Article 20.2 of the American Convention on Human Rights. Especially when it states: *"Everyone has the right to nationality of the State in whose territory they*

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[118] Except the Constitutions of 1859, 1918, 1932, 1935 and 1957, which do not have any such provision.

[119] Article 6. "*Any individuals born in Haiti or descendants of Africans or Indians, and all those who are born in foreign countries of a Haitian father or Haitian mother […] are Haitians."*

[120] Article 5.

[121] Article 5.

[122] *Article 3. Any individuals born in Haiti or in a foreign country of a Haitian father or a Haitian mother are Haitians […]."*

[123] Article 4.

[124] Article 3.

[125] *Article 7. [...] 2. The legitimate or biological child of a Haitian father born in a foreign country is Haitian; 3. The child born of a marriage and registered only by the Haitian mother, even if in a foreign country, is Haitian […]."*

[126] Article 3, Paragraphs 1 and 2.

[127] Article 4 of both constitutional amendments of 1946 (August 12 and October 23).

[128] Article 4.

[129] Article 4.

[130] Article 4.

[131] Article 11. *They are Haitians by origin: 1) Any individual born in Haiti of a Haitian father or Haitian mother; 2) Any individual born in a foreign country to a Haitian father or Haitian mother."*

[132] Article 11. *"Individuals born of a Haitian father or Haitian mother, who, in turn, were born Haitian and have never waived their nationality since birth, have Haitian nationality by origin."*

[133] Article 11. *"Individuals born of a Haitian father or Haitian mother, who, in turn, were born Haitian and have never waived their nationality since birth, have Haitian nationality by origin."*

*were born, **if they are not entitled to another nationality**.*"[134] All this is in harmony with the position of the Permanent Court of International Justice in its Advisory Opinion on the acquisition of Polish nationality,[135] stating that:

> *Generally speaking, although it is true that a sovereign State has the right to decide which persons shall be considered as their nationals, the fact remains that this principle is applicable **subject only to the obligations of treaties** signed by the State.*[136]

3.1.5. Similar logic is implemented by the Spanish immigration authorities when they are unable to attribute Spanish nationality to children born of Dominican parents in Spain, without causing statelessness caused by origin, stating that:

> *On the merits of the case, there is no doubt that Spanish nationality is not granted to those born there, because, according to what this Directorate Center for Dominican legislation has learned, those children born to Dominican parents abroad are Dominicans jure sanguinis, unless they have acquired a nationality jure soli (cfr. Art.11 No. 3 of the Constitution of the Dominican Republic). Therefore, **given the subsidiary nature of the jure soli attribution of Spanish nationality and the Spanish lawmakers' preference for jus sanguinis over jure soli,** one must conclude that those born were Dominicans and that the above provision of the Civil Code does not*

[134] Emphasis added by the Constitutional Court.

[135] *Acquisition of Polish nationality (Interpretation of the 1919 Minorities Treaty between Poland and Its Allies),* CPJI, Ser. B, No. 7, September 15, 1923, Paragraph 27.

[136] Emphasis added by the Constitutional Court.

> *come into play,* ***since a situation of statelessness that originally justified the attribution of Spanish nationality has not occurred.***[137]

3.1.6. In the case of the Dominican Republic, the aforementioned regulations show that the limits on the discretion imposed on states by international law in connection with the regulation of nationality reaffirms the powers of the first in relation to the last, and show also, that there is no breach in the requirements for the full protection of human rights recognized by the Inter-American Court of Human Rights in the previously cited Advisory Opinion on Proposed Amendments to the Constitution of Costa Rica, regarding the naturalization of citizens,[138] as well as in the aforementioned case *Petruzzi et al. vs. Peru:*

> *101. The Court has stated that international law imposes certain limits on States' discretion and that, currently, when regulating nationality, not only the States' power enter into play, but also the requirements for the comprehensive protection of human rights must coincide, since "nationality is the inherent right of an individual," which not only has been captured at the regional level, but also in Article 15 of the Universal Declaration {of Human Rights}.*

3.1.7. Moreover, it should be noted that the right to nationality by origin is also guaranteed through consular birth registration mechanisms available in the Dominican Republic, which are available to the foreign population in their respective consulates to register births occurring in the national

[137] Emphasis added by the Constitutional Court. See decisions issued by the General Directorate of Registries and Notaries (DGRN) of the Ministry of Justice of Spain; DGRN Res. 4th of December 13, 2004 (BOE, 11-3-2008, pages 3878-3879; BIMJ No. 1985, 2005, pages 1308-1310 (Attachment III.3.II)); subsequently, DGRN Res. 1st of January 3, 2005 (BIMJ, No. 1986, 2005, pages 1553-1556).

[138] Paragraphs 32-33.

territory. In the case of Haitian nationals, in general, and of the petitioner under review, in particular, her parents should have registered her birth at a Haitian consulate in the Dominican Republic, according to the provisions of the Haitian Act of September fourteen (14), nineteen fifty-eight (1958) on *Législation sur les Attributions du Consul,*[139] in force on the date of the petitioner's birth (and even today),[140] which provides:

> *B. Civil Powers* [of consuls]
>
> *In carrying out his or her role as the Civil Registry Officer, the Consul shall:*
>
> *1) Issue, pursuant to the provisions of the Civil Code, for all intents and purposes, records of civil status related to* ***birth****,*[141] *marriage and death of Haitian nationals registered in their jurisdiction and report the issuance of such certificates at the end of each month to the Office of the Secretary of State.*

[139] Published in "*Le Moniteur*" No. 78-141, of December 29, 1958. This law amended the September 23, 1953 Act.

[140] Recently, the Haitian consular services reported to its nationals in Atlanta, Georgia, United States of America, via the internet, the following: "*Under the September 17, 1958 legislation, which amended the September 14, 1953 law regarding Consular Services, consular officers may issue, pursuant to the provisions prescribed in the Civil Code, for all purposes and intentions, civil status certificates pertaining to births, marriages and deaths of Haitian nationals residing within their jurisdiction. They may conduct marriages between Haitians and issue statements or certificates of Civil Status records received at the Consulate, as required. They may proceed with consular registrations of Haitian nationals in Georgia and other States in their jurisdiction. This process establishes a record that contains personal information of the interested party: identity, marital status, family situation, residence, profession […]. Consular officers are authorized to issue passports to Haitian nationals residing in Georgia and other states within their jurisdiction whose nationality has been clearly established. Consular officers exercise the same legal authority as those granted to other authorized Haitian authorities; they legalize signatures and issue certificates to Haitian nationals and to other States in their jurisdiction. They may also provide legal assistance, if necessary.*"

[141] Emphasis added by the Constitutional Court.

2) Manage the issuance by another Haitian consular officer of any Civil Registry records concerning him/her personally or concerning his/her spouse, parents or children, under penalty of nullity.

§3. The exception to children of foreign parents in transit also exists in other Latin American Constitutions

§3.1. In fact, with respect to the application of this exception in the acquisition of nationality by *jus soli*, the Constitutional Court makes the following comparative law observations:

§3.1.1. Regarding the acquisition of citizenship by birth, the Constitution of the Republic of Colombia, in its Article 96, published in 1991,[142] provides the following:

Article 96. They are Colombian nationals:

1. By birth:

a) The natives of Colombia with one of two conditions: that either parent is a native or Colombian national, or that, ***being the children of foreigners, at least one parent is domiciled in the Republic at the time of birth,[143] and;***

[142] This article is still valid since there has not been any modification in any of the Colombian constitutional amendments to date.

[143] Emphasis added by the Constitutional Court.

> *b) The children of a Colombian father or mother who were born abroad and then domiciled in Colombian territory or registered at a consular office of the Republic. (...).*

§3.1.2. Note, therefore, that the Colombian Constitution (like the Dominican Constitution of 1966),[144] links the granting of citizenship to the issue of being born in Colombia, being the child of a Colombian father or mother, and, for children of foreign citizens, that at least one parent "*is domiciled in the Republic at the time of birth.*"

§3.1.3. The definition of domicile and the legal impact of the specified rule are explained in the opinion issued by the State Council of Colombia, on June thirty (30), two thousand five (2005),[145] pursuant to a consultation requested by the Ministry of Foreign Affairs of Colombia,[146] *regarding* ***children of foreigners born in Colombia who are in the country on a temporary visa or illegally***:[147]

> *On the above, it should be emphasized that the concept of domicile is, within the Constitution and the law, a determining factor for*

[144] And, as we have seen, all of the Dominican constitutions since June 20, 1929 until 2010.

[145] Relates to *filing* No. 1653.

[146] The Ministry of Foreign Affairs of Colombia, on its Website (Section: Homepage - >Community Service> Frequently asked questions. Available at: http://www.migracioncolombia.gov.co/index.php/servicios-al-ciudadano/preguntas-frecuentes/ministerio-de-relaciones-exteriores.html, last accessed: 09/07/2013), offers the following information: ***When is it understood that a foreigner is domiciled in Colombia for the purpose of acquiring Colombian nationality?*** *It is understood that a foreigner is domiciled in Colombia, when he/she has obtained a resident visa, so that the period of residence is counted from the date on which the visa was granted.*
Non-Hispanic foreigners must be domiciled in Colombia for five (5) consecutive years prior to the filing date of the application with resident visa.
Latin American and Caribbean foreigners must be domiciled in Colombia for one (1) consecutive year immediately preceding the filing date of the application with resident visa.
Foreigners (non-Hispanic) married to Colombians or in a de facto marital union, or with Colombian children must be domiciled in Colombia for two (2) consecutive years, immediately preceding the date of filing the application with resident visa.
Spaniards must be domiciled in Colombia for two (2) consecutive years.

[147] Emphasis added by the Constitutional Court.

nationality and the effects that are derived from it; (...) To which should be added that, being the duty of foreigners to comply with Colombian law regarding entering and remaining in the country, ***they can only be recognized as residents when they have been granted a resident visa****, given the direct relationship that this type of visa has with residence, pursuant to the provisions of Articles 13 and 48 of Decree 4000 of 2004.*

The Court notes that only resident visas require a declaration of intent to remain in the country; for other visas, the reason provided by the foreigner for entering the country may infer that there is no intention of settling in the country and, therefore, a different visa is granted. ***Therefore, foreigners holding visas different than that of a resident are transients under Article 75 of the Civil Code****.*[148] *(...)*

It may happen that a foreigner who entered first as a transient decides to reside in the country, for which he/she shall apply for a change of visa and regularization of his/her status, ***since he/she cannot, without violating migration rules, omit that information and withhold its factual situation from the State with the expectation of acquiring a right under such fact****.*[149]

§ 3.1.3.1. There are four important consequences derived from the opinion issued by the Council of the State of Colombia:

[148] Article 73 of the Colombian Civil Code provides that persons are natural and legal, while Article 75 provides "In fact, p*eople are divided into domiciles and transients."*

[149] Paragraph 2.4 of the consultation (Emphasis added by the Constitutional Court).

a. That, according to the law and the Colombian Constitution, the children of foreigners are only entitled to citizenship by *jus soli* when at least one parent has a resident visa in Colombia.

b. That a resident visa is the only legal mechanism that can attribute residence to a foreigner in that country.

c. That foreigners who do not hold a resident visa are deemed ***transients***, which is equivalent to the Dominican constitutional concept of ***foreigners in transit***.

d. That a ***transient*** foreigner cannot legally invoke a temporary migration status to claim Colombian nationality for their children born in Colombia, since that factual irregular situation (lack of immigrant visa) cannot originate rights.[150]

§ 3.1.3.2. The principles contained in the advisory opinion of the Council of the State of Colombia were ratified by the Constitutional Court of that country in Ruling T-1060/10 of December 16, 2010,[151] issued in the case of Mrs. Frida Victoria Pucce Marapara, to whom the Special Registry of the State of Leticia refused to issue the identity card for failing to provide proof

[150] Except when there is the possibility of statelessness, as we shall see later.

[151] The facts of the case cited are of interest because the Special Registry of the State of Leticia took into consideration the identity card, which was issued on December 29, 2006, although the legal residence of the parents in Colombia had not been established at the time of birth; c) at age 18, the claimant applied to the Special Registry of the State of Leticia for an identity card (equivalent to the Dominican identity and voter card), for which she provided the pertinent documentation; d) the application was rejected by the Registry on the grounds that the parents of the *amparo* petitioner had not provided proof that they were legal residents in Colombia at the time of the appellants' birth; e) the legal representative for Mrs. Pucce Marapara filed an *amparo* action alleging that the Registry "*made a mistake because it had issued Mrs. Victoria Pucce Marapara's birth certificate and the respective identification card, even though she had not established that her Peruvian parents were legal residents in Colombia at the time of her birth,* ***however, at this stage, that error cannot be blamed on Mrs. Pucce" (***Emphasis added by the Constitutional Court***) (Frida Victoria Pucce Marapara vs. Special Registrar of the State of Leticia- Amazones),*** Ruling T-1060/10 of December 16, 2010, paragraph No. 2.6). See, also, Ruling T-965 rendered by the same Constitutional Court on October 7, 2008, which was taken into consideration as precedent for the above Ruling T-1060/10.

of residence in Colombia for her parents, who were of Peruvian nationality at the time of the birth of their daughter. In that ruling, the Court ruled as follows:

> *In the case of Mrs. Victoria Pucce Marapara, this Court finds that the evidence demonstrates that she does not meet the requirements to be a national of Colombia by birth because, as reported by the Immigration Branch of the Department of Administrative Security (DAS) and the Office of the Coordinator of Visas and Immigration of the Ministry of Foreign Affairs of the Republic of Colombia, Mr. and Mrs. [...], the plaintiff's parents, were never residents in the country, which is essential for eligibility to this right.*
>
> *As a result, and given that it has not been proven otherwise, it is not feasible for Mrs. Victoria Pucce Marapara to acquire an identity card without having obtained first the Colombian nationality.*
>
> *(...)*
>
> *Regarding the issuance of the identity card to Mrs. Victoria Pucce Marapara by the Special Registry Office of the Civil Registry of Leticia, without having demanded the fulfillment of all requirements as the child of foreign parents, this Court has noted*[152] *'that that error is not a constitutionally admissible reason to order the issuance of the claimed identity card, and incidentally conferring Colombian nationality.{'}*

[152] The Court refers to the precedent set forth in Ruling T-965 rendered in 2008.

§3.1.4. Moreover, it is noteworthy that Article 10 of the Constitution of the Republic of Chile also prescribes an exclusion from the right to acquire nationality by *jus soli*, on behalf of ***the children of transient foreigners***, similar to those in the above provisions of the Constitutions of Colombia and the Dominican Republic.[153]

§3.1.5. In conclusion, based upon the foregoing, the Constitutional Court reiterates that Mrs. Juliana Dequis (or Deguis) Pierre, as proven, is the daughter of Haitian nationals who were ***in transit*** in our country at the moment of birth, has no right to Dominican nationality according to Article 11.1 of the Constitution of 1966 in effect on the date of her birth.

§3.1.6. Therefore, the refusal by the Central Electoral Board to issue an identity and voting card to the petitioner based on the fact that she is the daughter of ***foreign nationals in transit*** at the time of her birth is a correct and legally well-founded decision in light of the constitutional and legal standards of the Dominican Republic. In that sense, such refusal does not constitute any violation of the petitioner's fundamental rights, unless she runs the risk of becoming stateless, which is not the case.

11.1.4. The lack of legal foresight of Dominican migration policy and institutional and bureaucratic deficiencies of the Civil Registry

11.1.4.1. The Constitutional Court will briefly allude to the lack of legal foresight of Dominican migration policy, and to the institutional and bureaucratic deficiencies of the Civil Registry service of the country, as evidenced in this case (§1), before issuing any opinions regarding the solutions to be adopted (§2).

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[153] "*Article 10,- Chileans are: I. Anyone born in Chilean territory, except the children of foreigners who are in the country serving their Government, and the children of transient foreigners* […]." (Emphasis added by the Constitutional Court).

§1. Institutional and bureaucratic deficiencies of the Civil Registry

§1.1. These deficiencies are not attributable to the current migratory authorities or the Central Electoral Board, but have burdened the Civil Registry for a long time, as explained below:

§1.1.1 The National Household Survey for Multiple Purposes (ENHOGAR-2011), developed by the National Statistics Office (ONE) in 2011, which is specialized research that seeks to collect data periodically on social, economic and environmental issues in the Dominican Republic, determined that:

> *(...)* ***95.6% of the Dominican population has a birth certificate*** *(see Table 5.11). The proportion of people is higher in urban areas (96.6%) than in rural areas (93.7%). The geographic strata having the highest proportion of people with birth certificates are in the larger municipalities and other urban areas (97.5% and 97.2%, respectively). Moreover, the Enriquillo region has the lowest proportion of people having this document with 91.1%. By age groups, it is noted that as the age increases the proportion of people with a birth certificate also increases, suggesting the existence of late registrations.*[154]

§1.1.2. Reading these figures gives the impression that the Dominican Civil Registry is better than a lot of developing countries, which is undoubtedly true. But, behind this achievement lies a reality that shows a system that has been affected by erratic registrations, forgeries,

[154] National Statistics Office (ONE). General Report of the National Household Survey for Multiple Purposes (ENHOGAR 2011) on "Household Access to Information and Communications Technology, citizens' security, agricultural production, migration and remittances." Dominican Republic. October 2012.

impersonations and tampering with vital records, and also by deficiencies in the maintenance of books, records (although there is currently an advanced scanning process taking place), and the increased underreporting of births and deaths.

§1.1.3. In the case at hand, the refusal to grant Dominican nationality to children of foreign parents in transit or to their own parents did not constitute an arbitrary deprivation of the right to nationality; on the contrary, it is a legitimate act of sovereignty based on applicable constitutional law on this matter. However, the many years of delay to legally resolve irregularities that foreigners' identity documents may have is worrisome, since it could potentially undermine the fundamental rights of foreigners, even if they are living in the country illegally. It should be noted, however, that this delay also affects legal processes for many Dominicans under the same circumstances, so it is not a discriminatory policy, but, instead, deficiencies in the system.

§1.1.4. Accordingly, the system for registering and identifying people and other legal acts (marriage, divorce, name and surname changes, deaths, issuance of records and statements, etc.) in the Dominican Republic is done by the Civil Registry. The birth certificate, which is the first identification document, and then the identity and voter card (conditional on the existence and regularity of the latter), are issued through this entity, which documents are proof of nationality for both nationals and foreigners.[155] Article 5 of Law No. 659 regarding Civil Registry Records provides that the General Directorate of the Main Civil Registry Office relies upon the Central Electoral Board. Similarly, Article 1 of Law No. 8-92 regarding the Identity and Voter Card provides that the General Directorate of Personal Identity Office and the offices and agencies issuing identity cards, the Main

[155] As noted, for the latter, only an identity card is issued (not voting card).

Civil Registry Office and the Civil Registry Offices also rely on the Central Electoral Board. Similarly, Article 9 of Law No. 659 provides that Civil Registry officers must comply with the instructions given by the Central Electoral Board and the Main Civil Registry Office.

§1.1.5. Similarly, as noted above, among the instructions issued by the Central Electoral Board to officers of the Civil Registry officers are those contained in Circular No. 17-2007, issued by that administrative branch of that entity on March twenty-nine (29), two thousand seven (2007). This document instructed the Civil Registry offices to thoroughly examine birth certificates before issuing copies or any document related to the civil status of persons due to complaints received alleging that some offices had issued birth certificates irregularly, to foreign parents who had not established residency or legal status in the Dominican Republic.[156]

§1.1.6. Circular No. 17 was replaced in December of the same year by Decision No. 12-2007, which, as previously noted, establishes the provisional suspension of the issuance of flawed or irregularly registered vital records *until such time as the Plenary of the Central Electoral Board determines whether they are valid or not, subject to the appropriate investigation, and proceeds to provisionally suspend them, request their cancellation before a Court or acknowledge their legality.*

§ 1.1.7. Subsequently, it has also been reported that, in response to the difficulties caused by the implementation of Decision No. 12-2007, the National Civil Registry Office of the Central Electoral Board issued Circular No. 32-2011, instructing the officers of the Civil Registry to issue, without hesitation, the birth certificates for the children of foreign nationals under investigation, until the competent courts rule on their validity or

[156] See the Supreme Court of Justice's ruling of November 2, 2011, BJ No. 1212.

invalidity. This allowed framing of the actions of the Civil Registry Offices within the most convenient and respectful legal regulations of the population's fundamental rights; but, it did not resolve the complex problems that hang like a serious threat to the future of the country.

a.{*sic*} But, while these and other regulations issued by the Central Electoral Board have played a positive role in the reorganization of the Dominican Civil Registry, by no means have they ceased to be late, as they were issued with many decades of delay, which has led to vulnerability to the commission of irregularities in the system. In fact, the lack of foresight of the Dominican government's legal immigration policy dates back to the time immediately after the proclamation of the Constitution of June twenty (20), nineteen twenty-nine (1929), because, although an exceptional mechanism was then introduced to control the indiscriminate granting of Dominican nationality to children born in the country of foreign parents in transit, the laws and regulations necessary to properly register these births were not adopted; neither were any subsequent effective control mechanisms introduced in a timely matter to prevent the increasing multiple and diverse abnormalities constantly affecting the country's Civil Registry.

§2. Considerations regarding solutions to be adopted

§2.1. Regarding measures to be adopted, the Constitutional Court considers the following:

§2.1.{*sic*} Immigration Law No. 285 was enacted on August fifteen (15), two thousand four (2004), towards the middle of the last decade, and Migration Regulation No. 631 of October nineteen (19), two thousand eleven (2011) was enacted at the beginning of this decade. Both statutes replaced Law No. 95 of nineteen thirty-nine (1939) and Regulation No. 279

of the same year, which were in effect for a period of close to seventy years; a lengthy period during which the lack of legislative foresight led to the creation of conditions that have adversely affected the Dominican Civil Registry. However, gladly, the country now has these two important legal instruments that grant policy solutions to the current migration issues and whose legislations will allow restoring reliability to our registration system. In this regard, the motivation behind Law No. 285-04 is very revealing:

> *WHEREAS: International migration is one of the most important social processes of the Dominican nation at the beginning of the XXIst Century, the consequences of which significantly influences the economic, political and cultural life of the country{;}*
>
> *WHEREAS: The country should give a functional and modern answer to the challenges of a changing, interdependent, and global world, of which one of its main expressions is the international migration phenomenon;*
>
> *WHEREAS: Migration is a population, economic and social phenomenon, whose determinations and consequences require a significant planning level that contributes to its regulation, control and orientation towards the demands of qualified human resources, workforce and overall requirements for development;*
>
> *WHEREAS: The regulation and control of the movement of people entering and leaving the country is an inalienable and sovereign right of the Dominican State;*

WHEREAS: The Dominican State gives high priority to migration problems, in recognition of the Constitution, laws and international agreements that it has contracted in this matter;

WHEREAS: The migratory movement must be aligned with the needs of national development.

§2.2. The scope of the law is clearly stated in Article 1, which provides that it "*organizes and regulates migration flows in the national territory, in terms of entry, duration of stay and departure, such as immigration, emigration and the return of nationals.*" Also, its purpose is expressed in Article 2, which reads as follows:

Article 2: The presence of foreigners in the national territory is regulated so that everyone is in the country legally, provided they qualify to enter or remain in it, for which the competent authority shall issue a document to prove such status under an immigration category defined in this Law, whose bearing is mandatory. Illegal foreigners will be excluded from the national territory under the rules of this Law.

§2.3. Article 7 of Law No. 285-04 establishes the National Immigration Council, for the purpose of serving "*as a coordinating body to the institutions responsible for the implementation of the national policy on migration and will serve as an advisory body to the State.*" The advisory function is reinforced by Article 9.1 of the Law, which also recommends that the State take "special measures on migration, when exceptional situations arise" (Article 9.4).

§2.4. The rule in Article 28, conceived with respect to non-resident foreign women giving birth inside the country, should also be mentioned:

> *Article 28: Foreign non-resident mothers, who give birth to a child during their stay in the country, should go to the Consulate of their nationality in order to register the child there. In cases where the child's father is Dominican, the parents may register the child before the corresponding Dominican civil registry office pursuant to the laws governing such matter. 1. All health centers providing delivery assistance to a foreign woman who does not have documentation confirming her status as legal resident, shall issue a pink certificate of birth, different from the birth record for the child of all foreign mothers, which will be recorded in a book for foreigners, if Dominican nationality does not apply. The Ministry of Foreign Affairs shall notify the occurrence to the Embassy of the country that corresponds to the foreign woman for all legal purposes. 3. All Offices are required to notify the National Migration Office of the birth of any child whose mother is a foreigner and does not have the required documentation.*

§2.5. On the other hand, Decision No. 02-2007 of the Central Electoral Board, dated eighteen April eighteen (18), two thousand seven (2007), implements the *Registry of Births of Children to Non-Resident Foreign Mothers in the Dominican Republic*.[157] This Resolution authorizes civil registry officials to register in the aforementioned Registry-Book, all

[157] The standards prescribed by this Resolution refer to the obligation placed on foreigners under Article 25 of the Constitution of 2010, which regulation concerning the status of foreigners states as follows*: "Article 25.- Regulation on the status of foreigners. Foreigners in the Dominican Republic have the same rights and duties as nationals, with the exceptions and limitations established by the Constitution and [Dominican] laws; therefore, [...] 2) they are obliged to register themselves in the Foreigners Status Registry Book, pursuant to the law."*

children born in the country of foreign mothers that are not residents in the country; it also instructs them to issue two (2) birth certificates, one for the parents and the second one to be sent to the corresponding Embassy of the nationality of the parents through the Ministry of Foreign Affairs:

> *THREE. Empower Civil Registry Officers to enter into the "Registry of Births of Children to Non-Resident Foreign Mothers in the Dominican Republic," all children of foreign mothers not resident in the country who were born in the country from the date this Resolution went into effect, after presentation of the Certificate of Birth issued by the health center.*
>
> *FOUR. Instruct Civil Registry Officers in the jurisdiction of the place of birth that, upon receipt of the pink Certificate of Birth under Migration Law No. 285-04, to register the birth in the Registry of Births of Children to Non-Resident Foreign Mother in the Dominican Republic and, then immediately issue two (2) Birth Certificates, one (1) of which shall be delivered to the parents, and the other will be sent to the relevant Embassy through the Ministry of Foreign Affairs.*

§2.6. Therefore, even if the child of foreign parents is born in Dominican territory, and registered in any of the Civil Registry Offices in the Dominican Republic, its birth certificate can still be transcribed and legalized by the consulate of the country of the parents' nationality, following the applicable procedure for registration at the consulate in question. By implementing the Registration Book, the Dominican Republic is fulfilling its obligation to register the birth of every child born in the Dominican Republic, pursuant to the provisions of Article 7.1 of the

{U.N.}Convention on the Rights of the Child and Article 24 of the International Covenant on Civil and Political Rights.

§2.7. Article 151 of Law No. 285-04 is of just as much, or even more, relevance in stating that the Dominican government shall prepare a national plan for regularization of illegal foreigners residing in the country, subject to prior preparation of the plan by the National Migration Office. The fact that almost ten years have passed since the enactment of Law No. 285-04 without any implementation of a new managing model for the regularization of illegal foreigners, has created this lack of foresight, the amendment of which should not be postponed. Article 151 states as follows:

> *Article 151. The Dominican Government will prepare a National Reorganization Plan for illegal aliens living in the country: 1. For this purpose, the National Immigration Council must prepare the National Regularization Plan. The National Regularization Plan must include at least the following criteria: time of residence of the foreigner in the country, ties to society, business and economic conditions, regularization of these persons individually or by family - not in bulk. It should also establish a record of these foreigners, the plan implementation procedures and conditions of institutional and logistical support. The National Immigration Council shall submit a report to the Executive within 90 days of their appointment. Based on the report from the National Immigration Council, the Dominican government, by decree, shall establish the procedure for regularization of foreigners mentioned in this article. The National Immigration Council will support the Executive throughout the regularization process, having therein a monitoring function.*

§2.8. It should be noted that implementation of the stated *National Regularization Plan for illegal foreign nationals living in the country* will impact positively on the lives of hundreds of thousands of foreigners, since it will lead to the legalization of their migratory status, contributing effectively to promoting and encouraging respect for their dignity and the protection of fundamental rights inherent in a social and democratic state governed by the rule of law. The regularization plan will impact an important sector of the population of the Dominican Republic, regarding the preservation of the right to equality, the right to development of an identity, the right to a nationality, the right to health, the right to a family, the right to free movement, the right to work and the right to education, among others.

§2.9. Therefore, it should be noted that the elements in this case obligate the Constitutional Court to take measures that go beyond the particular situation of Mrs. Juliana Dequis (or Deguis) Pierre, giving the Ruling *inter comuni{s}* effects, since it tends to protect the fundamental rights of a vast group of people immersed in situations that from a factual and legal point of view are similar to that of the petitioner. In this regard, the Court considers that, in cases like this, the *amparo* action goes beyond the scope of the particular violation claimed by the {petitioner}, and that its protective mechanisms should include expansive and binding powers for extending protection of fundamental rights to others outside the process who are in similar situations.[158]

[158] In that same sense, see Colombian Constitutional Court Ruling A-207, of June 30, 2010.

This decision, signed by the justices of the Court, was adopted by the required majority. It also includes the dissenting opinions of justices Ana Isabel Bonilla and Katia Miguelina Jiménez Hernández Martínez.

For the factual and legal reasons set forth above, the Constitutional Court:

DECIDES:

ONE: ACCEPT, as to form, the appeal of the writ of *amparo* filed by Mrs. Juliana Dequis (or Deguis) Pierre against Ruling No. 473/2012, issued by the Civil, Commercial and Labor {Branch of the} Court of First Instance of the Judicial District of Monte Plata, in exercise of its authority under the writ of *amparo* on July 10, 2012.

TWO: REJECT, in substance, the appeal for review and, therefore, **REVOKE** the aforementioned Ruling No. 473/2012, since the petitioner Mrs. Juliana Dequis (or Deguis) Pierre, even though she was born in the country, is the daughter of foreign citizens in transit, which deprives her of the right to be granted Dominican nationality pursuant to Article 11.1 of the Constitution issued on November twenty-nine (29), nineteen sixty-six (1966), which was in effect on the date of her birth.

THREE: ORDER the Central Electoral Board, pursuant to Circular No. 32, issued by the Civil Registry Office on October nineteen (19), two thousand eleven (2011), to adopt the following measures: (i) return within ten (10) working days, counted as from the notification date of this Ruling, the original birth certificate statement of Mrs. Juliana Dequis (or Deguis) Pierre, (ii) submit such document to the competent court, as soon as possible, to determine its validity or invalidity, and (iii) proceed in the same manner with respect to all similar cases, while respecting the peculiarities of each one of them, by extending the aforementioned ten (10) day term when circumstances so require.

FOUR: ORDER that the National Migration Office, within the established period of ten (10) days, grant a special permit for temporary stay in the country to Mrs. Juliana Dequis (or Deguis) Pierre, until the *National Plan for Regularization of Foreign Nationals Residing Illegally in the Country*, provided in Article 151 of Migration Law No. 285-04, determines the legalization of the conditions of these types of cases.

FIVE: ORDER, also, that the Central Electoral Board execute the following actions: (i) perform a thorough audit of the Dominican Republic Civil Registry's record books of births from June twenty-one (21), nineteen twenty-nine (1929) to date, within one year of notification of this Ruling (and renewable for a further year at the discretion of the Central Electoral Board), to identify and integrate into a list and/or digital format all foreigners registered in the Dominican Republic Civil Registry record books of births; (ii) include in a second list all foreigners who are illegally registered due to the lack of qualifications required by the Constitution of the Republic to be granted Dominican nationality by *jus soli*, which shall be named *List of Foreigners Illegally Registered in the Civil Registry of the Dominican Republic*; (iii) create a special annual registry book of foreigners' births since June twenty-one (21), nineteen twenty-nine (1929) to April eighteen (18), two thousand seven (2007), the time frame in which the Central Electoral Board put into effect the *Registry of Births of Children to Non-Resident Foreign Mothers in the Dominican Republic* under Resolution 02-2007; and then, administratively transfer the births from the *List of Foreigners Illegally Registered in the Civil Registry of the Dominican Republic* to the new record books of foreigners' births, according to the corresponding year for each; (iv) report all births transferred under the preceding paragraph to the Ministry of Foreign Affairs, and they, in turn, shall notify all concerned parties, as well as the consulates and/or embassies or diplomatic missions, as appropriate, for applicable legal purposes.

SIX: ORDER, also, that the Central Electoral Board forward the *List of Foreigners Illegally Registered in the Civil Registry of the Dominican Republic* to the Minister of the Interior and Police, who chairs the National Immigration Council, so that, that institution, in accordance with the mandate conferred by Article 151 of Migration Law No. 285-04, does the following: (i) Develop, in accordance with the first paragraph of Article 151, within ninety (90) days from the notification of this Ruling, the *National Plan for Regularization of Foreign Nationals Residing Illegally in the Country*, (ii) Render to the Executive branch, according to the second paragraph of Article 151, a general report on the indicated *National Plan for Regularization of Foreign Nationals Residing Illegally in the Country*, with its recommendations, within the same term mentioned in the preceding paragraph a) {*sic*}.

SEVEN: URGE the Executive to implement the *National Plan for Regularization of Foreign Nationals Residing Illegally in the Country*.

EIGHT: ORDER the communication of this Ruling by the Office of the Clerk, for information and any other purposes, to the petitioner Mrs. Juliana Dequis (or Deguis) Pierre, to the respondent, Central Electoral Board, as well as the Executive Branch, the Ministry of the Interior and Police, the Ministry of Foreign Affairs, the National Migration Board and the National Migration Office.

NINE: DECLARE this appeal free of costs, in accordance with Article 72 of the Constitution and Articles 7.6 and 66 of No. 137-11, Organic Law of the Constitutional Court and of the Constitutional Procedures, dated June thirteen (13), two thousand eleven (2011).

TEN: ORDER the publication of this Ruling in the Constitutional Court Bulletin.

Signed by: Milton Ray Guevara, Chief Justice, Leyda Margarita Piña Medrano, First Associate Justice; Lino Vásquez Sámuel, Second Associate Justice; Hermógenes Acosta de los Santos, Justice; Ana Isabel Bonilla Hernández, Justice; Justo Pedro Castellanos Khoury, Justice; Víctor Joaquín Castellanos Pizano, Justice; Jottin Cury David, Justice; Rafael Díaz Filpo, Justice; Víctor Gómez Bergés, Justice; Wilson S. Gómez Ramírez, Justice; Katia Miguelina Jiménez Martínez, Justice; Idelfonso Reyes, Justice; Julio José Rojas Báez, Clerk.

DISSENTING OPINION OF JUSTICE ISABEL BONILLA HERNANDEZ

In exercise of the authority granted under Article 186 of the Dominican Constitution and Article 30 of No. 137-11, Organic Law of the Constitutional Court and of the Constitutional Procedures.

With all due respect to the majority's views expressed in this decision and pursuant to the position adopted in the deliberations, we issue a dissenting opinion based upon the discrepancy with the *ratio decidendi* of the Ruling (restrictive and retroactive interpretation of Article 11 of the 1966 Constitution).

1. Background

1.1. This decision refers to the constitutional appeal of the Ruling in the *amparo* action filed by Mrs. Juliana Dequis (or Deguis) Pierre against Ruling No. 473-2012, issued by the Civil, Commercial and Labor Branch of the Judicial District of Monte Plata, on July ten (10), two thousand twelve (2012), alleging the violation of fundamental rights such as the right to legal identity, a name, right to work and family rights, as that Ruling left her "*in a state of uncertainty*" because the judge assigned to the *amparo*

action did not rule on the merits of the case: her demand that the Central Electoral Board issue her an Identity and Voting Card.

1.2. In responding to this honorable Constitutional Court majority's decision, we believe it pertinent to consider the following aspects:

1.2.1. Social and Democratic State governed by the Rule of Law

1.2.1.1. Article 7 of the Constitution states: *The Dominican Republic is a social and democratic state governed by the rule of law, organized as a unitary republic, based on respect for human dignity, fundamental rights, labor, popular sovereignty and separation and independence of public powers.*

1.2.1.2. Within this context, the center of the State is the human person and the respect for his or her dignity, and the State is required to guarantee, equally, the full exercise of the fundamental rights of those living in its territory, whether citizens or foreigners. Thus, the essential function of the State is to provide the means to enable people to develop equally, equitably and progressively, within a framework of individual liberty and social justice compatible with public order, general welfare and the rights of all, protected by justice. The paradigm of a Social and Democratic State governed by the Rule of Law supposes that the only way to prevent the arbitrary exercise of power is if governments and the governed are subject to the rule of law.

1.2.2. Human Dignity

1.2.2.1. This concept is defined in Article 1 of the Universal Declaration of Human Rights which provides:

"All human beings are born free and equal in dignity and rights (...)."

Article 2 provides that: {"}*Every person has all the rights and freedoms set forth in this Declaration, without distinction of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (...)."*

Article 5 of the Dominican Constitution states: {"}*The Constitution is based on respect for human dignity and on the indissoluble unity of the nation, the common homeland of all Dominicans."* Similarly, Article 38 states: *The State is founded on respect for the dignity of the person and is organized to offer real and effective protection of the person's inherent fundamental rights. The dignity of a human being is sacred, innate and cannot be violated; their respect and protection is an essential responsibility of the public authorities*, and particularly, the Constitutional Court, as expressly mandated in Article 184 of the Constitution.

1.2.3. Sovereignty, International Law and the Constitutional Block

1.2.3.1. The Dominican Constitution in Articles 2 and 3 states:

Article 2: *Sovereignty resides exclusively with the people from whom all powers emanate and are exercised through their representatives or directly within the terms established by this Constitution and the laws*.

> Article 3: *The sovereignty of the Dominican Nation, a Free State independent from any foreign power, is inviolate. None of the public authorities organized by this Constitution may carry out or allow acts which constitute a direct or indirect intervention in the internal or external affairs of the Dominican Republic, or any interference that undermines the character and integrity of the state and any of the attributes recognized and pledged in the Constitution. The principle of non-intervention is an invariable rule of Dominican international policy.*

1.2.3.2. In the exercise of its sovereignty, the Dominican State, within its internal jurisdiction, determines through its Constitution and laws to which people it grants nationality and the ways in which it may be revoked.

1.2.3.3. When the State participates as an entity in the international community, it commits itself to protecting human rights. The agreements, conventions and treaties, which are ratified by the Dominican State, become part of its domestic legal system, as provided in Article 74, paragraph 3 of the Constitution: *Treaties, agreements and conventions on human rights signed and ratified by the Dominican Republic, have constitutional status and are applied directly and immediately by the courts and other state agencies.*

1.2.3.4. The set of international legal documents on human rights is known as the Constitutional Block, as established by the honorable Supreme Court of Justice during the Court's constitutional hearing in Resolution No. 1920 dated November 13, 2003, in issuing its criterion on the principle of constitutionality: *The constitutional system of the Dominican Republic is comprised of provisions of equal hierarchy arising from two fundamental legal sources: a) the national law, shaped by the Constitution and local*

constitutional jurisprudence, as dictated both by attenuated as well as consolidated authority, and b) the international law, consisting of covenants and conventions, advisory opinions and decisions of the Inter-American Court of Human Rights; legal sources that together, according to the best doctrine, form what is known as the Constitutional Block, to which the formal and substantive validity of all procedural or subordinate legislation are subject.

1.2.3.5. On the binding nature of the rulings of the Inter-American Court of Human Rights (IACHR) and the compliance review.

1.2.3.5.1. The rulings of the Inter-American Court of Human Rights (IACHR) are binding on all states that have ratified the American Convention on Human Rights and have also recognized the jurisdiction of the Court. The Dominican State, on March twenty-five (25), nineteen ninety-nine (1999), recognized the jurisdiction of the Court under Article 62 of the aforementioned Convention.

1.2.3.5.2. Under international law, it is a fundamental principle that states that have signed treaties commit to fulfill their obligations in good faith, in accordance with the international jurisprudence *"pacta sunt servanda,"* the treaty obligations of Signatory States bind all powers and state agencies, i.e., they bind not only the Executive, Legislative and Judicial Branches, but also other branches of government and their officials to enforce them in good faith.

1.2.3.5.3. In accordance with Articles 67 and 68.1 of the American Convention on Human Rights, signatory states recognize that the rulings of the Inter-American Court of Human Rights are final and binding and cannot be challenged or reviewed internally. In this regard, the IACHR has established that: *all state authorities are obliged to exercise compliance*

reviews, ex officio, between internal standards and the American Convention, in the framework of their respective powers and the corresponding procedural regulations.[159]

1.2.3.5.4. Meanwhile, Law No. 137-11, Title I, on Constitutional Justice and its Principles, in Article 7 paragraph 5, "The Principle of Favorability," states: *The Constitution and fundamental rights must be interpreted and applied so that maximum effectiveness is optimized in promoting the person's fundamental rights. Where there is a conflict between component laws of the constitutional block, the more favorable approach to the individual whose rights were violated shall prevail. If a sub-constitutional rule is more favorable to the bearer of the fundamental right than the constitutional block rules, the former shall be applied in a complementary manner, so that the maximum level of protection is ensured. None of the provisions of this law shall be interpreted in the sense of limiting or suppressing the enjoyment or exercise of rights and guarantees*, i.e., the Constitutional jurisdiction cannot further aggravate the legal status of the person alleging violation of their fundamental rights; the objective is to ensure that the bearer of the rights can optimally and effectively exercise those rights. This Court, rather than remedy the state of uncertainty in which the petitioner was found at the time of her application, has aggravated the situation by declaring in its Ruling that she is a foreigner and disavowing her nationality, which frankly disregards the principle of favorability.

1.2.3.5.5. The Constitutional Court rulings are committed to observing strict adherence to international human rights standards, such as the American Convention on Human Rights or the San José Pact, the

[159] Ruling of the Inter-American Court of Human Rights, March 20, 2013, Gelman vs. Uruguay. Supervising Compliance with the Ruling.

Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the rulings of the Inter-American Court of Human Rights and any other international organization whose jurisdiction it has recognized, to ensure the exercise of fundamental rights of persons within its territory pursuant to the provisions of Article 3 of Law No. 137-11, which expressly states: *In the performance of duties within its constitutional jurisdiction, the Constitutional Court is subject only to the Constitution, the rules that make up the constitutional block, the Organic Law and its regulations.*

2. Basis for the dissenting opinion

2.1. Whereas, the Constitutional Court understands that, in this appeal for review, there is the underlying interest of Mrs. Juliana Dequis (or Deguis) Pierre to be recognized as a Dominican national. Although the petitioner's claim did not mention it, the Court proceeded to consider whether or not to recognize her as a Dominican national.

2.2. In its analysis, the Constitutional Court interpreted Article 11 of the Constitution of nineteen sixty-six (1966), in effect at the time of the petitioner's affidavit of birth, concluding that she is not Dominican based upon the second exception contained in paragraph 1 of that Article with regards to foreigners in transit, determining that this rule applied to her parents.

> *Article 11. Dominicans are:*
>
> Number 1. *All persons born in the Republic, with the exception of the legitimate children of foreigners residing in the country in a diplomatic capacity or those who are in transit.*

2.3. The Manual Dictionary of the Spanish Language defines "*in transit*" as *a person traveling from one point to another, who is waiting to transfer at an intermediate airport from the city of departure to the city of arrival,* i.e., passengers who stay for a short time before reaching their final destination. It can be inferred from this definition that a transient person is one who is transiting through the country, for a short period of time.

2.4. We disagree with the majority's decision in this case, because we understand that the provision that should have been applied to the petitioner is the main provision in Article 11 of the Constitution of 1966: "all persons who were born in the Republic" which is the principle on which *Jus Soli* is based upon, and not the second exception in paragraph 1, because the prolonged presence of the parents in the country, although illegal, does not meet the condition of foreigners in transit. The fact that the petitioner was born in Dominican Republic territory, essentially granted her rights to Dominican nationality.

2.5. Regulation No. 279 of May twelve (12), nineteen thirty-nine (1939), for the application of Immigration Law No. 95 of nineteen thirty-nine (1939), in Section V, entitled, Transients, at paragraph (a), defines foreigners in transit as: "persons whose main purpose for entering into the Republic is to pass through the country en route to another destination (…)."

2.6. Law No. 95/39, pursuant to the Constitution of nineteen sixty-six (1966), and the *Jus Soli* system, provides in Article 10, Section 10, paragraph two that: "*people born in the Dominican Republic are considered nationals of the Dominican Republic, whether or not they are nationals or from other countries, therefore, they should carry the same documents required of nationals of the Dominican Republic.* Therefore, when the petitioner's parents appeared before the Officers of the Civil

Registry Office in the Municipality of Yamasá to register their daughter, they did so based on the ties that linked her to the soil on which she was born. The submission of these documents (records identifying them as farm workers) is main proof of her parentage, since, as foreigners, they do not have to prove their linkage to the country, because what is important in the *jus soli* system is that the child was born in the State's territory.

2.7. In this regard, the Inter-American Court of Human Rights (IACHR) established that: *(…) Section V of Dominican Republic Migration Regulation No. 279 dated May 12, 1939, in effect at the time of the request for late registration of the petitioner's birth, clearly states that the sole purpose of a transient foreigner is to enter the country for a limited time, which is set at no more than ten days. The Court notes that, to consider a person transient or in transit, regardless of the classification used, the State must comply with a reasonable time limit, and be consistent with the fact that a foreigner who develops ties with the State cannot be equated to a transient foreigner or a person in transit.*

2.8. The Constitutional Court has described the petitioner's parents as foreigners in transit based upon the Constitution of nineteen sixty-six (1966) and Law No. 95 of nineteen thirty-nine (1939), which, thus, disqualifies them as Dominican nationals. The honorable justices did not take into account that the influx of people of Haitian descent in the country originated largely from their ancestors being hired sometimes by the State and sometimes by private companies, to come to the Dominican Republic to work in the sugar cane plantations as farm workers. Therefore, these are people who, once their contract ended they did not return to Haiti, but, instead, settled in the Dominican Republic and remained in the country illegally for many years, and, thus, cannot be considered foreigners in transit.

2.9. Persons born in Dominican Republic territory during the effective period of the Constitution of nineteen sixty-six (1966), the children of Haitian parents residing illegally in the country, as in the case of the petitioner, are protected by *Jus Soli*, through birth and also by the various ties they have developed in the country. Therefore, in the Yean and Bosico decision, dated September eight (8), two thousand five (2005), the Inter-American Court of Human Rights (IACHR) determined that: *In a jus soli system, the child only needs to be born in the State's territory, and granting them nationality cannot be conditioned to their parents' immigration status. To demand such proof constitutes discrimination.*

2.10. The responsibility for matters related to nationality has fallen within the realm of domestic jurisdiction; however, and in accordance with international law principles, this responsibility has been subjected to limitations in the interest of preventing abuses of legal identity rights, which are essential to the benefit and exercise of other fundamental rights.

2.11. With regard to this issue, the International Court of Justice declares nationality as a legal bond that is based upon a social construct of cohesion, adhesion, i.e., an effective union between subsistence, interests and emotions, where factors such as history, language and culture play a major role. These ties are tested through acts or actions by the individual or by the State that proves the existence of a relationship between the two.

2.12. The importance of nationality is that, as a legal and political bond that ties an individual to a particular state, it allows the individual to acquire and exercise the rights and responsibilities of membership in a political community. Thus, nationality becomes a prerequisite for the exercise of certain rights.

2.13. In conclusion, in terms of nationality, we believe that the majority opinion has erroneously interpreted Article 11 of the Dominican Constitution of nineteen sixty-six (1966), and has focused on the immigration status of the petitioner's parents as opposed to the petitioner's request that the Central Electoral Board issue her identity and voter documents, or to the state of uncertainty that has deprived her from exercising her civil and political rights, in violation of the provisions of Article 3 of the American Convention on Human Rights, which states: "Everyone has the right to the acknowledgment of a legal identity."

2.14. The Convention provides in Article 18 that states are obliged not only to protect the right to a name, but also to provide the necessary measures to facilitate the registration of the person, immediately after birth. Meaning that, the states must guarantee that the person is registered with the name chosen by his/her parents. The first and last names are essential to formally establish the ties between the individual, the society and the state.

2.15. Restricting the right to the name and registration of the person injures the human dignity, as in the case of the petitioner, who, after having been registered in the Civil Registry, has been stripped of her identification documents by an administrative authority, without the benefit of an authoritative *res judicata* determination regarding its validity or nullity, in violation of the legal protection afforded and due process contemplated in Articles 68 and 69 of the Constitution.

2.16. These fundamental guarantees have been endorsed by the Constitutional Court in its Ruling TC-0010-12, stating that an officer in the performance of his duties, even those exercising discretion, must offer reasonable written justification. This Court's Ruling attempts to eliminate

the possibilities of dispensing an arbitrary administration of public law, irreconcilable in a constitutional state.

3. The retroactivity of the decision taken

3.1 The principle of non-retroactivity of the law means that it operates towards the future and may not affect legal processes prior to its implementation, i.e., the law takes effect immediately and towards the future, it cannot be applied to actions, acts, or have legal effects derived from previous laws, unless the new law benefits anyone under legal deliberations or serving criminal sentences.

3.2. The main objective of the non-retroactivity of the law is to protect the legal safety of consolidated situations previously secured that strengthens citizens' confidence in the legal system, avoiding the fear of sudden change in legislation that would create uncertainty and instability, which is why non-retroactivity is geared toward preventing new laws from placing values on prior actions, modifying the effects of the existing laws, and canceling prior rights recognized under those laws.

3.3. The Colombian Constitutional Court in its Ruling C-549/93, in assessing the principle of non-retroactivity of the law and its importance to the legal security, states that: "*The legal nature of the principle of non-retroactivity is the premise by which, in most circumstances, based upon the preservation of law and order and the embodiment of legal security and stability, it is prohibited for a law to become effective prior to its implementation.*"

3.4. In the appeal, the respondent invokes the principle of non-retroactivity to justify its refusal to issue the identity and voter card to the petitioner, alleging that doing so would be in violation of Articles 11 and 47

of the Constitution of 1966, which were in effect at the time of the petitioner's affidavit of birth, and of Articles 6 and 18 of the Constitution of 2010.

3.5. Article 47 of the Constitution of 1966 (Article 110 of the 2010 Constitution) provides that: *the Law provides for and applies only to the future. It has no retroactive effect, except in cases where it is favorable to persons under legal deliberations or those serving criminal sentences. In no case may the law or public authority restrict or alter the legal security originating from situations established by previous legislation.*

3.6. To the contrary, we believe that a violation of the non-retroactivity principle of the law, as stated in Article 47 of the Constitution of nineteen sixty-six (1966) and Article 110 of the Constitution of two thousand ten (2010), would occur if the criteria established by the honorable Supreme Court of Justice in its December fourteen (14), two thousand five (2005) ruling, whereby it declares Legislation No. 285-04 to be unconstitutional, were to be applied to this case, further underlining the argument that equates foreigners in transit with illegal foreign residents.

3.7. In this context, to equate the requirement of a foreigner in transit with that of an illegal foreign resident is a violation of the principle of non-retroactivity of the law, because the Dominican Constitution, up until the amendment of two thousand ten (2010), remained silent regarding the issue of the nationality of illegal foreign residents. Article 18, paragraph 2, provides that Dominicans are considered "anyone who is a Dominican national prior to the implementation of the Constitution," which is the reason why the right to Dominican nationality granted to the petitioner by the Constitution of nineteen sixty-six (1966), is acknowledged by the Constitution of two thousand ten (2010).

3.8. Paragraph 3 of the aforementioned Article 18 of the Constitution states that Dominicans are: *Persons who were born on national soil, except for the children of members of foreign diplomatic and consular missions, and foreigners who are in transit or residing illegally in the Dominican territory. Any foreigner defined as such under Dominican legislation is considered in transit.* To that end, General Migration Law No. 285 dated July twenty-one (21), two thousand four (2004), in Article 36, paragraph 10 states: "Non-residents are considered to be persons in transit for purposes of applying Article 11 of the Constitution" (Article 11, of the Constitution of 1966, was replaced by Article 18 in the Constitution of 2010).

3.9. The majority opinion applies these rules to the petitioner's case retroactively to the date of her birth, April 1, 1984, which is tantamount to a violation of the principle of non-retroactivity of the law stipulated in Article 2 of the Dominican Civil Code which states that: "The law provides only for the future{;} it has no retroactive effect."

4. Final Thoughts

4.1. With the utmost respect to the majority position in this decision, we wish to state the following thoughts:

4.1.1. The fundamental premise of the decision (*ratio decidendi*) that considers persons who have lived in the country illegally for an extended period of time as foreigners in transit or transient foreigners, is an erroneous interpretation, since, in our opinion, people in transit or transient foreigners are those who stay for a short time in a country that is not their final destination, which is not the case of the petitioner's parents, as their extended stay in the country, although illegally, does not classify them as transients or foreigners in transit.

4.1.2. As a result of this restrictive interpretation and retroactive characterization, this ruling defines the petitioner as a foreigner in the country in which she was born, waiving the binding precedent previously established by the Inter-American Court of Human Rights and the Constitutional Block.

4.1.3. Subparagraph Four of this Ruling, on which we base this dissenting opinion, instructs the National Migration Office to grant the petitioner a special permit for temporary stay in the country, until such time as her situation is determined, ignoring her right to reside in her country of origin in which she has developed social and cultural permanent ties, this measure resulting in a penalty due to the migratory status of her parents.

4.1.4. From our viewpoint, this decision contradicts the mission of the Constitutional Court, to preserve the supremacy of the Constitution, respect for human dignity and the full enjoyment of fundamental rights on the basis of equality and in accordance with the Constitutional Block.

5. Proposed solution of this dissenting judge

5.1. We believe, contrary to what has been decided, that the decision of the Constitutional Court should have been to:

5.1.1. Instruct the Central Electoral Board to issue, straightforward, without any conditions, the documents requested by Mrs. Juliana Dequis (or Deguis) Pierre. (The focus of the dispute and the basis for this relief).

5.1.2. Protect and recognize the petitioner's right to Dominican nationality, having been born in Dominican territory, {on} the basis that the Court chose to address an "underlying claim" to the petitioner's complaint.

Signed: Justice Ana Isabel Hernández.

DISSENTING OPINION OF JUSTICE KATIA MIGUELINA JIMÉNEZ MARTÍNEZ

With all due respect to the majority's opinion reflected in the Ruling and pursuant to the opinions we maintained during deliberations, we feel the need to exercise the powers granted to us under Article 186 of the Constitution, in order to be consistent with our position.

I. Brief summary of the case

1.1. This appeal of the Ruling originates from Mrs. Juliana Dequis (or Deguis) Pierre delivering her original birth certificate to the Civil Registry Center in the Municipality of Yamasá, Monte Plata Province, and requesting the issuance of her identity and voter card. Given the refusal of the Central Electoral Board to issue her that document, the petitioner sent two reminders to the respondent through Bailiff Notice Nos. 705/2009 and 250/2012 dated September sixteen (16), two thousand nine (2009) and May eighteen (18), two thousand twelve (2012), giving them five (5) and three (3) business days, respectively, to deliver the above-mentioned document.

1.2. Since two thousand seven (2007), the Central Electoral Board has issued administrative rulings, first by Circular No. 017, dated March twenty-nine (29), two thousand seven (2007), signed by the then-presiding justice of the Contentious Court, instructing the officers of the Civil Registry to "examine carefully" the applications for certificates of citizenship, alleging that "in the past, birth certificates were issued illegally to foreign parents who had not provided proof of legal residence in the Dominican Republic." This was endorsed by the Plenary of the Central

Electoral Board through Resolution No. 12-07 dated December ten (10) of that same year.

1.3. Juliana Deguis was informed that the Central Electoral Board had rejected her request on the ground that she was registered illegally in the Civil Registry Office in Yamasá, under the premise that she is the daughter of Haitian nationals with an illegal migratory status.

1.4. It is noteworthy to acknowledge firsthand that, until two thousand ten (2010), the Dominican Constitution recognized as Dominican citizens those who were born in Dominican territory based on the *jus-soli* principle, except for the children of diplomats and foreigners in transit,[160] and Immigration Law No. 95 of nineteen thirty-nine (1939) which limited to ten (10) days the period of time defined as in transit. The {petitioner's} parents were foreign laborers that arrived in the country under the Modus Operandi Agreement with the Republic of Haiti, dated December sixteen (16), nineteen thirty-nine (1939) and Resolution No. 3200, issued by the National Congress, which approved the Agreement between the Dominican Republic and the Republic of Haiti on Temporary Haitian laborers, Official Gazette NQ 7391 of February 23, 1952.

1.5. In two thousand four (2004), General Migration Law No. 285-04 was approved; it denies citizenship to all illegal residents and acquired constitutional status in the Constitution of January 26, 2010. The petitioner, Juliana Dequis (or Deguis) Pierre, was born on April one (1), nineteen eighty-four (1984), that is, before the implementation of the migration law of two thousand four (2004) and the new Constitution of two thousand ten (2010).

[160] Dominican Republic Constitution of 1966.

1.6. On May twenty-two (22), two thousand twelve (2012), the petitioner, brought an *amparo* action before the Civil, Commercial {and Labor} Branch of the Court of First Instance in the Judicial District of Monte Plata at the refusal to issue her an identity and voter card, alleging that this situation violated several of her fundamental rights, such as the right to carry an identity and voter card, have worthy employment, register her two children, travel freely and exercise her voting rights; thus, demanding that the Central Electoral Board issue the document in question, but this jurisdiction rejected her request, alleging that she had only presented a *photocopy* of her birth certificate in support of her request, and thereby issuing Ruling No. 473-2012, which was reviewed on appeal before the Constitutional Court.

1.7. Accordingly, Mrs. Juliana Dequis (or Deguis) Pierre challenged the Ruling in an appeal filed before the Constitutional Court on July thirty (30), two-thousand twelve (2012), requesting reversal of the aforementioned Ruling and approval of the conclusions presented by the *amparo* court, alleging that the violations of her fundamental rights persist and continue to worsen.

II. Procedural Issues

We have divided our dissent into two parts. First, we will refer to the procedural aspects of the case, which have not been analyzed by the majority of this Court. Then, we will discuss the reasons that lead us to depart from the majority's approach, also in terms of substantive law.

2. The Constitutional Court does not declare itself lacking jurisdiction, but neither does it explain the special or particular circumstance of this case to justify a change in the case law

2.1. The ruling of the majority of this Constitutional Court departs from previous precedents regarding jurisdiction of the Administrative High Court to hear *amparo* cases challenging actions or omissions of public administration {agencies}.

2.2. With regard to the issue under discussion, this Constitutional Court had the opportunity to rule, establishing a precedent from its previous Rulings No. TC 0085-12, of 2012, and Ruling Nos. TC 0004-12, TC 0036-13 and No. TC 0082-13 of 2013, whereby it declared its lack of jurisdictional authority to hear these types of actions, pursuant to Article 75 of Legislation No. 137-11; therefore, it deferred to the contentious administrative jurisdiction. By not doing so in this case, it revokes the rules of jurisdiction, which is a matter of public order.

2.3. Indeed, this case is about the refusal of the Central Electoral Board to issue the petitioner's identity and voter card, to which the Court, in the issue of admissibility, should have declined to hear the case and remanded it back to the administrative court, as this authority holds greater affinity with the issue. The majority of this Court itself recognizes this point in its Ruling to which we dissent, stating "that in view of the elements that make up this case, the legal competence to hear the case corresponded to the Contentious Administrative Court, which is why there should be a repeal of the Ruling and the case remanded to the latter Court."[161]

[161] Page 17 of this Ruling.

2.4. Therefore, as clearly indicated in Ruling No. TC/0004/13 "if the case relates to an action for *amparo* against acts or omissions of public administrative entities, Article 75 of the aforementioned law states that jurisdiction falls within the purview of the contentious administrative court."[162]

2.5. However, in the Ruling, the majority invokes procedural economy as a reason for the Court to hear the merits of the case, which is why it is worth asking why this principle should apply in this case and not in cases mentioned by the dissenting judge.

2.6. Hence, not having indicated any peculiarity in this case to reasonably justify the change in precedent, the Constitutional Court modifies the previous precedent set in Ruling No. 0094/13, which states that "the value of the continuity of the legal approach is that the amendment thereof, without proper justification, is a violation of the principles of equality and legal certainty."[163] However, as indicated by the aforementioned Ruling, this does not imply that the legal criteria cannot change, but when the change occurs, it must be properly motivated, which involves exposing the reasons for the new criteria."[164] Accordingly, it was imperative for the Constitutional Court to indicate the reasons that have caused the changes in precedent in this case.

2.7. It is necessary to emphasize that, as a result, the principle of procedural economy may hereinafter be relied upon by any citizen wanting to bring its case before the Constitutional Court, even if the legal mandate is to refer the matter to the Administrative High Court or any other court.

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[162] Paragraph d on page 5 of Ruling No. TC/0004/12.

[163] Paragraph 1 on page 12 of Ruling No. TC/0094/13.

[164] Paragraph q on page 14 of Ruling No. TC/0094/13 (Emphasis added).

3. Factual issues are not to be resolved in cases under *amparo* review, and in this case, the majority of this Court has proceeded to analyze issues of ordinary law

3.1. The majority of this Court devotes all 50 pages of Section III, related to the petitioner's non-compliance with legal requirements for obtaining the identity and voter card, to address an issue which should not have been heard by this Court in the first place, as this issue was under the jurisdiction of the Administrative High Court; and secondly, though empowered to hear *amparo* cases, this Court becomes involved in situations where both Legislation No. 659 on Civil Registry Records[165] and the Civil Procedure Code[166] provide the proper procedure for reporting irregularities of certificates issued, particularly when the situation relates to general matters.

3.2. Indeed, the Ruling itself states that the Central Electoral Board has submitted one thousand eight hundred twenty-two (1822) requests for cancellation of invalid and duplicate[167] birth certificates, which, at the time of the issuance of this Ruling, the Court had no knowledge of whether or not those certificates, including that of Juliana Deguis, had been seen by the competent trial judge in order to determine their validity. Accordingly, this Constitutional Court moved forward in determining the irregularity of the certificate, although this decision is out of its purview.

3.3. For example, it is worth mentioning Ruling No. TC0016-13 in which this Constitutional Court establishes that *both the doctrine as well as the comparative constitutional case law, have stated that the determination of facts, {and} the interpretation and enforcement of the law, are in the*

[165] Article 31 of Law No. 659 of 1944 regarding Civil Registry Records.

[166] Article 214-251 of the Civil Procedure Code.

[167] Page 39 of this Ruling.

purview of the regular judge; therefore, the scope of the constitutional judges' actions are limited to the confirmation that, in applying the law, there has not been a violation of constitutional rights. This Court believes that the nature of the amparo appeal prevents raising before a constitutional agency ordinary legal issues, whose interpretation is not a function of this Court.[168] Similarly, we can also mention the precedents set forth in Ruling Nos. TC/0017/13 and TC/0086/13 of 2013.

3.4. Therefore, in deciding upon the legal requirements necessary to obtain a birth certificate, the majority opinion of this Court ignores previous precedents related to jurisdiction, since both Article 31 of Law No. 659 of nineteen forty-four (1944) and Articles 214 to 251 of the Civil Procedure Code grant jurisdiction to hear cases of falsified birth certificates to the Judge of First Instance. This, in addition to other reasons, has provided us a firm determination to issue this dissenting opinion.

III. Substantive issues

Although we do not divert from our position stated in sections 2 and 3 of this opinion, we will discuss the substantive aspects of the case addressed by the majority opinion, since as the decisions of this Constitutional Court are final, irrevocable and binding, we would be remiss if we did not mention the legal grounds which lead us to also differ substantively from the Ruling, particularly, in terms of the fundamental issues such as the concept of nationality, the acquisition of Dominican nationality, the binding nature of the decisions of the Inter-American Court of Human Rights, the principle of transit, the legal concept of "margin of appreciation," {and} the state or condition of "statelessness," among others.

[168] Page 14 and 15 of Ruling TC/0017/13 (Emphasis added).

The development of the second part of this dissenting opinion contains the following points: 4. A case of denationalization; 5. The acquisition of Dominican nationality; 6. Review of compliance controls which should have been exercised by the Constitutional Court. Effects of our domestic law of the ruling in the September 8, 2005 case of the Yean and Bosico Girls vs. Dominican Republic, rendered by the Inter-American Court of Human Rights; 7. The application of the national margin of appreciation; 8. The petitioner, Juliana Deguis, becoming stateless by being divested of her Dominican nationality; 9. Contradictory measures of the fundamental principles and holding of the Ruling; and 10. The application of the *inter comunis* effects of the Ruling.

4. A case of denationalization

4.1. It is worth noting that, in this Ruling by the majority of the Court, there is an obvious confusion regarding migration issues as it applies to denationalization, which, as stated earlier, falls within the purview of the Administrative High Court, under whose administrative authority the omission was made.

4.2 The undersigned has always maintained that this appeal of the ruling in the *amparo* action does not merely involve migratory issues related to the rights of an undocumented person, but of divesting that person of the nationality based upon the registration by an officer of the Civil Registry Office, who registered her as a Dominican based upon the Constitution in effect at the time of birth and the law in effect up until two thousand four (2004).

4.3. Paragraph 11.1.2 of the Ruling discusses the authority charged with regulating nationality, both domestically and internationally. However, this dissenting judge realizes that this was unnecessary, because, in this case,

the argument was not whether the Dominican government had the authority to stipulate the rules for obtaining Dominican nationality, but rather, whether the procedures used to withhold the original birth certificate and deny issuance of the identity and voter card violated the petitioner's fundamental rights.

4.4. Indeed, the fact that the determination of how nationality is obtained is, in principle, a discretional issue for each State, consideration should have also been given to the fact that international law, incorporated by the Constitution, under Articles 26 and 74 of the Constitution, in accordance with the comprehensive protection of fundamental rights, imposes certain discretionary limitations on the State. Moreover, the Inter-American Court of Human Rights ruling against the government of the Dominican Republic in the case of the Dominican-Haitian Yean and Bosico Girls, which we will refer to later, reinforced the notion that nationality has become more than a simple attribute granted by the State to its citizens; it is, rather, a fundamental right in itself.[169] It is salient that, once these regulations have been created, they must be applied equally to all situations without discrimination, for which it is necessary to refer back to the effective date of the Law, including the Constitution.

4.5. In this regard, without diverting from our position explained in sections 2 and 3 of this opinion, as indicated, in this instance, contrary to the assertions of the majority justices in the Ruling, the analysis should not have been whether the petitioner is entitled to the Dominican nationality, since she already has it, but, again, whether or not the mechanisms used by the Central Electoral Board in this case violated her fundamental rights. The Ruling by the majority of this Court asserts that the birth certificate of the petitioner is under investigation by the Central Electoral Board, and

[169] See Eduardo Jorge Prats. The Right to Nationality. Hoy Newspaper. October 14, 2005.

with respect to this issue states that "once the legal situation regarding the petitioner's birth certificate, which is under investigation and currently held by the Central Electoral Board, has been resolved, it should determine whether she meets the conditions for acquiring Dominican nationality under that document, in her status as the child of foreign immigrants in transit born in the country."[170]

4.6. To illustrate, we transcribe Article 31 of Law No. 659 of July seventeen (17), nineteen forty-four (1944), regarding Civil Registry Records:

> *Article 31. Any person may request copy of records held in the Civil Registry Office. These copies, issued in accordance with registrations authenticated by the Presiding Justice of the Court of First Instance or by an appointee in that jurisdiction, will be considered valid, so long as they have not been determined to be false, and provided that the originals were drafted within the statutory deadlines. The proceedings regarding late registrations which did not follow proper procedures may be challenged by all legal means, and the justices will determine the truthfulness of these cases.*[171]

4.7. Regarding the validity of these records and the procedure to be implemented in pursuing their cancellation, the Supreme Court of Justice has ruled as follows: *WHEREAS, as a result, it is imperative to infer that the affidavits of birth made by the father of a child within the legal time*

[170] Page 41, paragraph s of this Ruling.

[171] Cfr. Art. 45, Civil Code of the Dominican Republic. See also Art. 6.c) of Law No. 659 dated July 17, 1944 regarding Civil Registry Records establishing the provisions regarding records and death certificates.

frame, properly registered in the corresponding registry by competent officers of the Civil Registry Office, and the copies issued pursuant to those authenticated records, as in the present case, are irrefutable records, unless they are proven to be false, which, as already noted, are evident from the legal provisions governing their validity.[172]

5. Acquiring Dominican nationality

5.1. Regarding the acquisition of Dominican nationality, the Constitutional Court's Ruling, the contents of which we reject completely, states the following: *a) In the Dominican Republic, a person can acquire Dominican nationality through parentage, i.e., by consanguinity or "right of blood" (jus sanguinis); and, also by place of birth, i.e., by "right of soil" (jus soli). In addition to these two forms, there is a third called "naturalization," whereby the State grants sovereign citizenship to foreigners who request it and meet the requirements and formalities of each country … .*[173]

5.2. Accordingly, the majority opinion of the Constitutional Court itself on page 41*{sic}* provides a concept of *jus soli* stating: "*the following is meant by jus soli:* "Right of Soil. A system allocating nationality whereby the criterion for granting nationality is based upon the place of birth, regardless of whether or not the ancestors were from that place; it is contrasted by *jus sanguini*." Spanish-American Legal Dictionary, Volume I (a/k), cited above, p. 1210 (word "jus soli")."[174]

[172] Supreme Court of Justice Civil Branch ruling dated July 10, 2002, No. 7.

[173] Paragraph 2.1.1. on page 47 of this Ruling.

[174] Footnote No. 44 on Page 47 of this Ruling (Emphasis added).

5.3. In fact, the prior concept of *jus soli* is in tune with various regulatory provisions in effect at the time, such as the Civil Code, which, in its Article 9, provides that *Dominicans are*: First – *All persons who are born or were born in the Republic, regardless of the parents' nationality. For purposes of this provision, the legitimate children of foreigners residing in the Republic during service or representation of their country of origin will not be considered born in the Republic's territory.*

5.4. In addition, Immigration Law No. 95 of April fourteen (14), nineteen thirty-nine (1939), in the paragraph of Article 10, provided that "People born in the Dominican Republic are considered nationals of the Dominican Republic, regardless of whether or not they are nationals of other countries. As a result, they are required to possess the same documentation as nationals of the Dominican Republic."

5.5. Likewise, the Constitution of nineteen sixty-six (1966), in effect on the day of the petitioner's birth, i.e., April first (1), nineteen eighty-four (1984), states in Article 11.1 of such Magna Carta, that Dominican nationality can be acquired by "[…] 1. Persons born in the territory of the Republic, except the legitimate children of foreign diplomats residing in the country or in transit."

5.6. However, the series of arguments presented in the above Ruling determines that *the petitioner fits exactly within the aforementioned constitutional exception, not only because she was born in the country, but also, because she is the child of foreign citizens (Haitians) who, at the time of her birth, were in transit in the country. Note that, in fact, as previously demonstrated, her father, Mr. Blanco Dequis (or Deguis), declarant of the birth, identified himself before the Officer of the Civil Registry Office of Yamasá using "record" or "document" 24253; and the mother, Mrs. Marie*

Pierre, was the owner of "record" or "document" 14828.[175] *Therefore, it can be concluded that the petitioner's father and declarant of her birth was a Haitian migrant laborer, who was in the country to perform industrial or agricultural work, and had not been issued a personal identity card at the time he made the affidavit of birth of his daughter before the Civil Registry Office in the Municipality of Yamasá.*[176]

5.7. With regard to the allegation that her parents had no Dominican identity cards, it is necessary to note that in the Yean and Bosico case the Court had already determined that: *"this Court considers that the State, in establishing the requirements for late registrations of birth, shall take into account the particularly vulnerable situation of Dominican children of Haitian descent. The requirements should not be an obstacle to obtaining Dominican nationality and should consist only of what is indispensable to establish that the birth occurred in the Dominican Republic. In this regard, identity of the child's father or mother should not be limited to their identity and voter cards, and, for this purpose, the State must accept other suitable public documentation, since the identity and voter card is an exclusive right of Dominican citizens. In addition, the requirements must be impartial and clearly identified, and its application should not be left to the discretion of state officials, so as to guarantee the legal rights of the people using this process, and also to effectively guarantee the rights invoked by the American Convention pursuant to Article 1.1. of the Convention.*[177]

[175] As of September 17, 2003, these are to be considered documented migrant laborers or in regular status pursuant to the concept published in Advisory Opinion OC-10/03, regarding Legal Status and Rights of Undocumented Migrants. U.N.O., International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families dated December 18, 1990, Article 5.a.

[176] Emphasis added.

[177] The Yean and Bosico Girls Case. Ruling of the Inter-American Court of Human Rights dated September 8, 2005. Paragraph 240. (Emphasis added).

5.8. In fact, under the law in effect at that time, Juliana Deguis's parents were or are foreigners, specifically Haitians, who were allowed to enter into the country to work within the framework of a bilateral agreement between the two countries, so that it is absurd to define them as foreigners in transit, particularly when they were holding documents that credited them as seasonal laborers. Keep in mind, also, that Immigration Law No. 95 of nineteen thirty-nine (1939) had implemented a ten (10) day limit for foreigners "in transit."[178]

5.9. In addition, the undersigned does not share the view that such illegal situation is transferable to their offspring as such requirement was not included until the Constitution of two thousand ten (2010), when the Court broadened the spectrum of the exception to the principle of *jus soli*, by including foreigners residing illegally in Dominican territory. This extension shows that, in the Constitution of nineteen sixty-six (1966), the term "transit" did not include illegal aliens, as argued in the Ruling by the majority of this Court, an argument that filters the retroactive application of the Constitution of two thousand ten (2010) to a citizen born on April one (1), nineteen eighty-four (1984).

5.10. The current case deprives the petitioner of the Dominican nationality she had acquired based on the principle of *jus soli*, by relying upon the immigration status of the parents; this Court devoted many pages of its Ruling to explaining their immigration status, which was unnecessary, because, according to Juliana Deguis's birth certificate, which was withheld "for investigative purposes," she was born on Dominican soil and, pursuant

[178] See the Yean and Bosico Girls case. Inter-American Court of Human Rights Ruling dated September 8, 2005, paragraph 157: "*The Court notes that, to consider a person transient or in transit, regardless of the classification used, the State must observe a reasonable time limit, and be consistent with the fact that a foreigner who develops ties within a State cannot be equated to a transient person or a person in transit.*"

to the Constitution in effect at that time, was entitled to Dominican nationality by *jus soli*.

5.11. Therefore, the Court concludes that: *17) In this case, Mrs. Juliana Dequis (or Deguis) Pierre has not proven in any way that at least one of her parents had legal residency in the Dominican Republic at the time of her birth (currently under constitutional appeal) or subsequently. In fact, the petitioner's affidavit of birth document evidences that her father, Mr. Blanco Dequis (or Deguis), declarant of her birth, was a Haitian seasonal laborer, i.e., a foreign national in transit, as was her mother, Ms. Marie Pierre. Therefore, according to this Constitutional Court, the petitioner has not met the requirements prescribed in Article 11.1 of the Constitution of 1966, as previously demonstrated.*[179]

5.12. The above is evidence that this Court has disassociated itself from the ruling issued by the Inter-American Court of Human Rights on September 8, 2005, in which it established, among other things, the following: *The Court considers it necessary to note that the legal duty to respect and guarantee the principle of equality, without discrimination, is irrespective of the immigration status of any person in any State. In other words, the States have an obligation to ensure this fundamental principle to its citizens and to any foreign person in its territory, without discrimination because of regular or irregular length of stay, nationality, race, gender, or any other cause.*[180]

5.13. It is well known that the issue of migrant children's right to citizenship in the Dominican Republic was judged by the Inter-American

[179] Paragraph 1.1.14.6. on page No. 66 of this Ruling.

[180] Paragraph 155 in the Yean and Bosico Girls case. Ruling of the Inter-American Court of Human Rights dated September 8, 2005, paragraph 157.

Court of Human Rights, whose jurisdiction was recognized by the Dominican Republic on March twenty-five (25), nineteen ninety-nine (1999). And, among other things, stated the following on the subject:

> *As stated, and in accordance with the right of migrant children to nationality in the Dominican Republic with respect to the relevant constitutional principles and international standards of protection to migrants, the Court finds that:*
>
> *a) the migratory status of a person cannot be a condition for States to grant nationality, since their migratory status cannot constitute, in any way, a justification for depriving them of the right to nationality or the enjoyment and exercise of their rights;*
>
> *b) the migratory status of a person is not transferable to the children, and*
>
> *c) the only requirement necessary to demonstrate the acquisition of nationality for persons who would, otherwise, have no right to any other nationality, if they had not acquired the nationality of the State in which they were born, is that the birth occurred in the State's territory.*[181]

5.14. Organic Law of the Constitutional Court and of the Constitutional Procedures No. 137-11 provides that one of the guiding principles of the constitutional justice system is, precisely, its binding nature. Hence, "the interpretations adopted or made by international courts on the subject of

[181] Ibidem. Paragraph 157. (Emphasis added by the author of this opinion).

human rights are binding precedents for all public authorities and State agencies," from which the Constitutional Court cannot be excluded. To the contrary, this Court would be the one most subjected to observing the "international *res judicata*" in its role as supreme and ultimate interpreter of the Constitution, defender of the constitutional order, and the effective and adequate interpretation and protection of fundamental rights.

6. Compliance review that should have been exercised by the Constitutional Court. Effects on our domestic law in the ruling of the Yean and Bosico Girls vs. Dominican Republic case of September 8, 2005, rendered by the Inter-American Court of Human Rights

6.1. As previously indicated, the Ruling by the majority of this Court ignores the binding nature of rulings issued by the Inter-American Court of Human Rights, particularly in a case similar to this case, that addresses the same issues for which the Dominican Republic was previously adjudged to have violated, to their detriment, the legal rights to nationality and equality of the (Yean and Bosico Girls), in contravention of the American Convention provisions in Articles 20 and 24, respectively.

6.2. Therefore, all State authorities are obliged to exercise, ex officio, "a review of compliance" between domestic law and the American Convention, in the framework of their respective competences and relevant procedural regulations. This entails taking into consideration not only the treaty, but also the interpretation made by the Inter-American Court, and the ultimate interpretation made by the American Convention.[182]

[182] Cfr. Alonacid Arellano et. al vs. Chile, Par. 124; Gomes Lund et al. (Guerrilha do Araguaia) vs. Brasil, Par. 176, and Cabrera García and Montiel Flores vs. México. Preliminary Objection, Merits, Reparations and Costs. Ruling of November 26, 2010, Series C No. 220, Par. 225. See also Gelman vs. Uruguay, Par. 193, and Furlan and Family vs. Argentina Case, Par. 303.

6.3. Under Inter-American case law, the doctrine of compliance review was conceived as an institution to apply international law, namely, international human rights law and specifically, the American Convention and its sources, including the laws of that Court.

6.4. The obligation to comply with the decisions of the Inter-American Court of Human Rights follows a basic principle of law on the State's international responsibility, supported by international case law, by which the State, in good faith, must abide by the international treaty (*pacta sunt servanda*), and in accordance with the provisions of Article 27 of the Vienna Convention on the Law of Treaties of nineteen sixty-nine (1969), governments cannot, for domestic reasons, fail to take responsibility for internationally established laws.[183] The obligations of the participating states in the treaty is binding on all governmental authorities and agencies, i.e., all branches of the government (Executive, Legislative, Judicial, and other branches of governmental authority) and other public and state governmental authorities, at all levels, including the highest courts, having the duty to comply with international laws in good faith, including the Constitutional Court of the Dominican Republic.[184]

6.5. Certainly, the conventional mechanism requiring judges and judicial agencies to prevent potential human rights violations makes sense, and must be addressed internally taking into account the Inter-American Court's interpretations, and only if in opposition, can it be considered by this Court, in which case a supplementary compliance review shall govern.

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[183] Cfr. Case of Garcia Asto and Ramirez Rojas. Supervising Compliance with the Ruling. Decision of the Inter-American Court of Human Rights of July 2007. Sixth Recital Clause; Molina Theissen Case. Supervising Compliance with the Ruling. The Inter-American Court of Human Rights Decision of July 10, 2007. Third Recital Clause; Bámaca Velásquez Case. Supervising Compliance with the Ruling. The Inter-American Court of Human Rights decision of July 10, 2007 Third Recital Clause.

[184] See paragraph 59 of Gelman vs. Uruguay of the Inter-American Court of Human Rights dated March 20, 2013.

6.6. Furthermore, in terms of compliance review, it is possible to distinguish two different interpretations of the government's obligation to exercise such control, depending upon whether the ruling was issued in a case in which the government was a party or not. This is because the interpretation and application of the standard rule acquires a different linkage, depending on whether or not the government was a material participant in the international process. Note, that in this dissenting opinion, we have emphasized a ruling by the referenced Court in which the Dominican Republic had participated and a decision was made with respect to the fundamental rights to nationality, which is the matter under discussion.

6.7. With respect to the first interpretation, i.e., *when there has been an international "res judicata" determination with respect to any government that participated in a case under the jurisdiction of the Inter-American Court, all of its agencies, including judges and other organisms linked to the administration of law, are also subject to the treaty and the Court's ruling, which requires them to ensure that the provisions of the Convention, and, therefore, the decisions of the Inter-American Court, are not being undermined by the application of rules contrary to its objective and purpose or by legal or administrative decisions that make illusory the total or partial compliance of the ruling.*[185] *Thus, in this case, one is faced with international res judicata, and, therefore, the government is required to abide by and enforce the ruling.* Note, then, that in certain cases, the Inter-American Court will have jurisdiction to review the actions of national judges, including the proper exercise of "compliance review," inasmuch as the Inter-American Court has the authority to consider whether the governments' actions under the structure of the American Convention on

[185] See Paragraph 68 Gelman vs. Uruguay of the Inter-American Court of Human Rights. The Inter-American Court of Human Rights Decision dated March 20, 2013. Gelman vs. Uruguay (Emphasis added).

Human Rights, its additional protocols and the Inter-American Court's legislations, are compatible, because that would determine whether it has complied with the commitments made by the state in question.

6.8. Therefore, "60. The duty to comply with treaty laws is an obligation of all authorities and domestic agencies, regardless of their affiliation with the legislative, executive or judicial branches, so long as the government responds as a whole and acquires international responsibility for failure to enforce the international legislations it has undertaken …"[186] The purpose is to prevent the State, to which they belong, from becoming internationally responsible for violating international human rights commitments.

7. Application of domestic margin of appreciation

7.1. Margin of appreciation refers to an interpretive criterion that defers to the signatory states of an international treaty the ability to decide certain difficult issues, particularly those related to controversial moral issues. It is a doctrine created by the European Court of Human Rights, which is frequently used by its magistrates. Not so in the Inter-American human rights system. Quite the opposite; the Inter-American Court's case law suggests an increased distancing from any application of the margin of appreciation.[187]

7.2. To ignore the binding nature to which we have referred, the Constitutional Court relies on the proposition of "domestic margin of appreciation." In fact, the majority of *this Constitutional Court considers*

[186] Separate Opinion of Ad Hoc Justice Eduardo Ferrer Mac-Gregor Poisot in connection with the Ruling of the Inter-American Court of Human Rights in Cabrera García and Montiel Flores vs. México dated November 26, 2010.

[187] Artavia Murillo et al. ("in vitro fertilization") vs. Costa Riva, Ruling on Preliminary objections, merits, reparations and costs, of November 28, 2012.

that it is feasible to apply the theory of "margin of appreciation" to the present case, with respect to the meaning and scope of the concept of ***foreigners in transit***, because the question of nationality is a particularly sensitive topic for all sectors of Dominican society. In this respect, it is understood, as discussed in previous pages, that foreigners lacking residential authority must be assimilated into the category of ***foreigners in transit,*** *which, as explained above, is a distinctive opinion of Dominican constitutional and migratory rights, under which the children in this category do not acquire Dominican nationality, even though they were born in the country.*[188]

7.3. Now, can one speak of margin of appreciation when the legal matter of (in transit) was already determined by the Inter-American Court of Human Rights? In this instance, a few doctrinaires have expressed their opinion stating that *when the Court requires the exercise of the compliance review not only with regard to domestic law vs. treaty law, a matter that clearly falls under the responsibility of the legislative branch, but, also, as it relates to the interpretation by the court issuing the legislation, which is already part of its jurisdiction, the exercise of the margin of appreciation by domestic bodies becomes minimal.*[189] To this we add that one cannot speak of margin of appreciation when there has already been a finding by the Inter-American Court on an issue that has been decided by this Court in the Ruling to which we object.

7.4. Also, the doctrine is challenged in the sense that allowing governments a margin of appreciation upon implementation and, therefore,

[188] Paragraph 2.12 on pages 72 and 73 of this Ruling.

[189] Delpiano Lira, Cristián y Quindimil López, Jorge Antonio. "**The Protection of Human Rights in Chile and the Domestic Margin of Appreciation: Legal Basis Since the Democratic Consolidation."** Virtual Law Library Legal Research Institute of the UNAM. P. 21.

interpretation of the law, conflicts with the effective protection of human rights, since the Court applying the margin of appreciation is a member of the structure that is currently one of the most effective in protecting those rights,[190] so that, contrary to the decision by the majority of this Court, it is not possible to assert the margin of appreciation standard in this case.

8. The petitioner, Juliana Deguis, devoid of her nationality, is stateless

8.1. As noted by the majority of this Court, under Article 1 of the Convention to Reduce Statelessness, "each participating State shall grant nationality to a person born in its territory who would otherwise be stateless."

8.2. Furthermore, Article 7 of the Convention on the Rights of the Child provides that *the Child shall be registered immediately after birth and have the right to a name, to a nationality and, to the extent possible, to know the parents and be cared for by them. 2. The Signatory States shall ensure the implementation of these rights pursuant to their domestic legislations and the obligations assumed under the scope of relevant international agreements, particularly, when the child would otherwise be stateless.*

8.3. Likewise, the 1948 Universal Declaration of the Rights of Man, in its Article 15, states that "everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality or be denied the right to change his nationality."

[190] Benavides Casals, Maria Angelica. **"Consensus and the Margin of Appreciation for the Protection of Human Rights."** *Ius et Praxis Magazine*, 15(1): 295-310, 2009.

8.4. However, the Constitutional Court alleges that *none of the international laws cited applies to the case under review or any other similar cases or of the same nature. In fact, such refusal by the Dominican State to grant nationality to the children of* ***foreigners in transit*** *under no circumstance generates a condition of statelessness. In the particular case of the children of* ***Haitian parents in transit****, it is worth noting that Article 11.2 of the Haitian Constitution of 1983, which applies in this case, expressly states that any individuals born abroad of Haitian father and mother shall be entitled to Haitian nationality.*[191]

8.5. Thus, with respect to the right to nationality of the children of Haitians in the Dominican Republic, the inapplicability of *jus soli* is based upon the *jus sanguini* principle provided under the Haitian Constitution, by virtue of which the children of Haitian nationals "are tied to the Haitian nationality in perpetuity, thus, the loss of nationality is impossible once it has been acquired by birth or later."

8.6. It is necessary to transcend the erroneous belief that the *Jus Sanguinis* excludes the *Jus Soli*, i.e., if the Constitution of the country of the ancestors of the child born in another territory provides for the possibility of the child acquiring the nationality of his or her ancestors, the child loses the right to nationality from his or her place of birth. Generally, both criteria (*jus soli and jus sanguinis)* are not mutually exclusive; rather, they are combined by the laws of the majority of countries. However, when it comes to acquiring a nationality that was not acquired by birth, usually the ways to acquire it are by marriage, naturalization, or by choice. None of these cases automatically confer citizenship. However, the position of the majority of this Court is: to exclude the right to Dominican nationality by *jus sanguinis* in the Haitian Constitution, which sets an

[191] Paragraph 3.1.2. on page 75 of this Ruling.

exception that is not contained in either the Dominican Constitution of 1966 or the current one of 2010.[192]

8.7 In addition, it should be noted, as a doctrinaire of the Dominican constitutional law has done, that *natural citizenship (whether by jus soli or by jus sanguinis) arises directly and operationally from the Constitution in favor of those born in Dominican territory; whereas, it infers that the law regulating nationality has a duty to assign such nationality and in so doing, shall not adjust it to suppress certain category of individuals. The territorial nationality (jus soli) depends on an involuntary fact which affects a human being, who, at the time of birth, has no initial nationality other than the one granted by the Constitution. This constitutional mandate is granted to those individuals, who are not included in any of the situations limited by the Constitution, exceptional situations which must be interpreted in a restrictive sense.*[193]

8.8. In addition, neither Article 11 of the Constitution of nineteen sixty-six (1966), nor Article 18 of the Constitution of 2010, exclude Dominican nationality if nationality is acquired through affiliation with descendants (*jus sanguinis).* The exceptions have been the children of diplomats and those who were in transit, and illegal residents in Dominican territory, which exception was added in two thousand ten (2010), making applicable the legal interpretation of the term "where the rule does not distinguish, it is not up to the interpreter to make the distinction. Therefore, it is not legally feasible to conclude by these means, any implied constitutional regulations that conflicts with the text of the Constitution itself."[194]

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[192] See paragraph 8.8 of this dissenting opinion.

[193] Eduardo Jorge Prats. The Right to Nationality. Hoy Newspaper. October 14, 2005.

[194] Ruling 317/12 of the Colombian Constitutional Court.

8.9. In addition to the above, it is worth remembering the provisions of Article 19 of the American Declaration of the Rights and Duties of Man, which states that "*every individual has the right to the nationality to which he is legally entitled, and the right to change it, if desired, for that of any other country that is willing to grant it.*"

8.10. Therefore, the refusal by the Dominican Republic to apply the *jus soli* based on the Haitian Constitutions *jus sanguinis* places the petitioner, Juliana Deguis, in a stateless condition, since she would have to undergo a process whose duration would render her devoid of any legal identity and vulnerable, a situation exacerbated by the fact that the petitioner has no ties to Haiti, and is not just stateless, but is also being forced to become Haitian.

8.11. The undersigned understands that the measures adopted by the Central Electoral Board, as well as those contemplated by the Court's Ruling, which gave rise to Ms. Juliana Deguis' situation, if continued during an extended period of time could leave the petitioner and thousands of other people also affected by this Ruling in a state of legal uncertainty, remaining stateless while their cases are resolved; as it would serve them no purpose to have their birth certificates returned to them, if the Ruling considers them to be irregulars. And, pursuant to the criterion of the majority of this court, *Ms. Juliana Dequis (or Deguis) Pierre, while she was born in Dominican Republic, is the daughter of foreigners in transit, which deprives her of the right to be granted Dominican citizenship in accordance with the provisions of Article 11.1 of the Dominican Constitution, enacted on November twenty-nine (29), nineteen sixty-six (1966), and in effect on the date of her birth.*[195]

[195] Subparagraph two of the Court's holding. Page 96.

8.12. In fact, denationalization produces statelessness. Being aware of this, the majority of this Court proposes fleeting alternatives with useless effects by asking the National Migration Office to issue a special permit to Ms. Juliana Dequis (or Deguis) for temporary stay in the country, until such time as the domestic plan for legalizing the status of illegal foreigners residing in the country, as provided in Article 151 of General Migration Law No. 285-04, determines the requirements necessary to formalize these types of cases.

8.13. Thus, in the Yean and Bosico Girls ruling, the Inter-American Court of Human Rights case law states that "a stateless person has no recognizable legal identity, as he/she has not established any legal or political link with the State; therefore, identity and nationality are prerequisites to the recognition of a legal identity.[196]

8.14. Similarly, the Inter-American Court of Human Rights has indicated that "the lack of recognition of legal identity injures the human dignity, as it absolutely denies their fundamental rights and makes them vulnerable to non-enforcement of their rights by the State or by private persons." [197]

8.15. Accordingly, the Court ordered the Dominican government to take legislative and administrative measures and resources to issue birth certificates, particularly to people of Haitian descent born in the Dominican Republic, who would otherwise be stateless;[198] therefore, after nine years of the ruling being issued, our country is in violation of its international obligation to comply with the supranational Court's decision.

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[196] Paragraph 178. Inter-American Court of Human Rights. The Yean and Bosico Girls vs. Dominican Republic.

[197] Paragraph 179. Idem.

[198] Paragraph 239. Idem.

8.16. And, furthermore, in its November 23, 2006 ruling, the Inter-American Court of Human Rights dismissed the request for interpretation of the ruling on preliminary objections, merits, reparations and costs filed by the Dominican State in connection with the Yean and Bosico Girls case. It specified that:

> 21. *In its request for interpretation, the Dominican State divided the claims into four paragraphs …. In paragraph c) regarding statelessness,*[199] *it indicated that the girls were never stateless, since they could have acquired Haitian nationality*[200] *from their grandparents…22. From the foregoing, the Court notes that in the above-mentioned paragraphs the State seeks to contest the provisions of the ruling which argues first, that Dilcia Yean and Violeta Bosico were born in the Dominican Republic and are, therefore, Dominicans under the jus soli principle, as evidenced in paragraphs 109.6, 109.7, 109.12, 144 and 158 of the aforementioned ruling. Second, the Dominican State rejected the provisions established in paragraphs 173 and 174 of the Ruling, which provide that the State is internationally responsible for breaching its obligation to guarantee the fundamental rights pledged in the American Convention," by engaging, to the detriment of Dilcia Yean and Violeta Bosico, in the "arbitrary deprivation of their nationality, leaving them stateless for over four years and four months, in violation of Articles 20 and 24 of the American Convention, in connection with Article 19 thereof."*

[199] Emphasis added.

[200] Emphasis added.

8.17. From the above we see that, first, this Constitutional Court, based on exactly the same criteria as that of the Dominican State's claim that was dismissed, has decided the case against Juliana Deguis, with the aggravating factor that it seeks the adoption of retroactive measures which would denationalize Dominicans of Haitian descent who are not parties to this appeal. Second, this Ruling threatens another international sanction of the Dominican State.

9. The Ruling contains contradictory measures in its legal grounds and holding

9.1. The Ruling from which we dissent shows a verifiable contradiction, because, although throughout its development the Court supports the theory that Ms. Juliana Deguis's birth certificate was illegal, in its decision the Court adopts the following measures: *THIRD: TO STIPULATE, that in return, the Central Electoral Board, in connection with Notice No. 32, issued by the Civil Registry Office on October nineteen (19), two thousand eleven (2011), take the following steps: a) to restore within ten (10) working days from the notification of this decision, the original birth certificate of Mrs. Juliana Dequis (or Deguis) Pierre.* Hence, it is worth asking what good will it serve the petitioner to have a birth certificate that the Constitutional Court has stated is not only illegal, but does not grant her Dominican nationality.[201]

9.2. Furthermore, there are obvious inconsistencies in the Ruling, as evidenced by the statement that the petitioner's birth certificate is illegal

[201] *SECOND, REJECT, the appeal on the merits, and, therefore, REVOKE the aforementioned Ruling No. 473/2012, since the petitioner, Ms. Juliana Dequis (or Deguis) Pierre, while she was born in Dominican Republic, she is the daughter of foreigners in transit, which deprives her of the right to be granted Dominican nationality, pursuant to the provisions of Article 11.1 of the Dominican Constitution, enacted on November twenty-nine (29), nineteen sixty-six (1966), in effect on the date of her birth. Page 96 of the Ruling.*

and does not grant her Dominican nationality, while on the other hand, "the Board is ordered to submit this document to the appropriate court, as soon as possible, to determine its validity or nullity." Among the reasons for such inconsistencies is the fact that the Constitutional Court, as noted in the development of Article 3 of this dissenting opinion, has chosen to resolve issues of general law, while empowered to hear an appeal of the ruling in the *amparo* action.

10. The *inter comunis* effect on the application of the Ruling

10.1. First, it should be emphasized that when point (c) in the third paragraph of the Ruling that stipulates "to proceed in the same manner with respect to all similar cases to this case, showing due respect to the peculiarities of each one and extending the aforementioned ten (10) day limit as required under the circumstances," violates the principle of relativity in constitutional relief cases, creating ex-parte effects that benefit or harm only those who were part of the appeal. Note, that this Court is empowered to hear the appeal of the Ruling in the *amparo* action in which the petitioner is Juliana Deguis and the Central Electoral Board, a state entity, is named as the respondent.

10.2. From the above, it can be concluded that the *amparo* action is wedged between the person or persons reporting a violation of their fundamental rights and the person or persons to whom such violation is imputed. However, this ruling adopts measures which effects are beyond the scope of those who have been part of the process, using as justification the effects of the application of the *inter comunis* principle, which has been used previously by the Colombian Constitutional Court.

10.3. In this case, the majority of this Court states that *it should be noted that the elements making up this case compel the Constitutional Court to*

adopt measures that go beyond the particular situation of Mrs. Juliana Dequis (or Deguis) Pierre, granting the ruling inter comunis effects, which tends to protect the fundamental rights of a vast group of people immersed in situations which are factually and legally similar to that of the petitioner. In this regard, the Court considers that, in cases like the one under review, the amparo action goes beyond the scope of the particular violation claimed by the plaintiff, and that the mechanism used should enjoy expansive and binding powers for extending the protection of fundamental rights to others outside of the process who are in similar situations.

10.4. In fact, the Colombian Constitutional Court has ruled that *in exceptional cases, where the protection of petitioners' fundamental rights attacks fundamental rights of the unprotected, the Constitutional Court has recognized that the effects of rulings handed down in cases on appeal extend to people who have not filed the appropriate action, on the grounds that granting the amparo protection exclusively to the protected, without considering the effects such action might have on those who have not brought an amparo action, may imply the violation of other fundamental rights.*[202]

10.5. The Colombian Constitutional Court, in Order 244 of July twenty-three (23), two thousand nine (2009), justifies the application of the *inter comunis* effect on the existence of an unconstitutional state of affairs, which is defined through the following criteria:

> *(i) the massive widespread violation of several constitutional rights affecting a significant number of people; (ii) prolonged omission of the authorities in fulfilling their obligations to guarantee rights; (iii)*

[202] Cfr. Ruling No. 698/10 of September 6, 2010 by the Colombian Constitutional Court.

> *the adoption of unconstitutional practices, such as the incorporation of the procedure for ensuring the violated right; (iv) the existence of a social problem whose solution compromises the intervention of several authorities and the adoption of a complex and coordinated set of measures; (vi) judicial congestion that it creates or would create if all those affected availed themselves of an appeal for amparo action to safeguard their rights for the same identical reason.*

10.6. However, in this case, the *inter comunis* effect was not granted in the ruling, because as clearly stated, the purpose of the *inter comunis* effect is to duly protect the fundamental rights, guaranteeing the integrity and supremacy of the Constitution, which, as we have addressed during the development of this dissenting opinion, does not apply to this case in that the measures taken by the majority of this Board do not effectively safeguard the fundamental rights of the petitioner, leaving her lacking of the Dominican nationality, and, therefore, stateless.

10.7. Therefore, there is no justification or legitimacy to allow modification of the rule according to which *amparo* rulings have an *inter partes* effect as, in this case, there is no reason to grant *inter comunis* effects to the Ruling, since it only provides limited provisional measures that do not benefit the {petitioner} or others in similar situation, as to the effective protection of their fundamental rights. Quite the contrary; the majority of this Court has determined that Mrs. Juliana Dequis (or Deguis) Pierre, although born in the country, is the daughter of foreign nationals in transit, which deprives her of the right to be granted Dominican citizenship pursuant to the provisions of Article 11.1 of the Constitution of the Republic, issued on November twenty-nine (29), nineteen sixty-six (1966), in effect on the date of birth of the petitioner, worsening her situation by stripping her of Dominican nationality, leaving her stateless, and forcing

her to apply for Haitian nationality. Hence, with regard to the *inter comunis* effect embraced by the majority of this Court, thousands of people who were born on Dominican soil of Haitian parents, even though they were registered in the Civil Registry, as was Juliana Deguis, shall also be denationalized, particularly when the measures contained in this ruling are retroactive to June twenty-one (21), nineteen twenty-nine (1929).

Finally, and for the reasons stated in the contents of this dissenting opinion, we reiterate our strong disagreement with the ruling reached by the favorable votes of a majority of the Constitutional Court justices.

Signed: Justice Katia Miguelina Jiménez Martínez

I hereby certify that this Ruling was issued and signed by the foregoing justices of the Constitutional Court, during the Plenary Session held on the day, month and year expressed above, and published by me, the Clerk of the Constitutional Court.

Julio José Rojas Báez
Clerk

APPENDIX

DOMINICAN REPUBLIC
CONSTITUTIONAL COURT RULING TC/0168/13
TRANSLATORS' NOTES & GLOSSARY

In the official Constitutional Court (the "Court") Ruling, TC 0168/13, we observed omissions of quotation marks, parentheses, punctuation and errors in dates. Additionally, we noticed instances where the Court, in footnotes, indicated emphases were added, but the actual quoted text had no such emphasis. For better reading comprehension, we inserted words where we thought necessary, and where we were able to identify omissions and proper place of insertion, we inserted the omission or additional text with curly brackets { }. These brackets should signify a translator insertion as opposed to alterations made or found in the original decision by the Court. Otherwise, we translated the text as written. We declined to make any emphases that were not originally done by the Court.

SPANISH	ENGLISH	USAGE/COMMENTS	SOURCE
accionada	defendant	Central Electoral Board	
accionante	plaintiff	Mrs. Juliana Dequis (or Deguis)	
amparista	*amparo* petitioner	Mrs. Juliana Dequis (or Deguis)	
amparo	*amparo*	Most Latin American countries, including the Dominican Republic, have adopted the institution of the *amparo* proceeding, which is an extraordinary legal remedy against violations of constitutional rights and/or human rights by public officials, government agencies or private individuals.	For general background information on the action for *amparo* in Latin America, please see Hector Fix Zamudio, *The Writ of Amparo in Latin America*, 13 Law. Am. 361 (1981) or visit: http://www.servat.unibe.ch/jurisprudentia/lit/Amparo_SSRN.pdf
amparo en revisión/acción de amparo	writ of *amparo*/*amparo* action		For a brief background on the *amparo* proceeding in the Dominican Republic, See generally, Stephanie Leventhal, *A Gap Between Ideals and Reality: The Right to Health and the Inaccessibility of Healthcare for Haitian Migrant Workers in the Dominican Republic*, 27 Emory Int'l L. Rev. 1249, 1279-1283 (2013).
comunal	community	In the context of the European Union or European Community	
corte/juez *a quo*	court/judge *a quo*	The court/judge from which an appeal has been taken.	http://legal-dictionary.thefreedictionary.com/A+quo
Corte Suprema de	Supreme Court of Justice	The Supreme Court has original jurisdiction over	For more information regarding the structure of the Dominican

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SPANISH	ENGLISH	USAGE/COMMENTS	SOURCE
Justicia		any cause of action brought against the President, the Vice President, or other public officials, as designated in the Constitution. It hears appeals of cassation and ordinary appeals from matters arising in the Courts of Appeals.	Republic judicial system, please visit: http://www.nyulawglobal.org/globalex/dominican_republic1.htm#SUPREMECOURTOFJ
Cortes de Apelación	Courts of Appeals	The Courts of Appeals function primarily as an appellate body and hear appeals from decisions issued by Courts of First Instance. Five judges sit on each of the courts, with the exception of the Courts of Appeals for Minors and the Contentious Administrative Court where a minimum of 3 judges sit. The Courts of Appeals have original jurisdiction in accusations against lower court judges, government attorneys, and provinces.	For more information regarding the structure of the Dominican Republic judicial system, please visit: http://www.nyulawglobal.org/globalex/dominican_republic1.htm#SUPREMECOURTOFJ
inter comunis	*inter comunis*	Ways of distinguishing persons to whom a ruling may apply: • *erga omnes* (includes everyone, general application) • *inter partes* (among the parties to a proceeding) • *inter pares* (among similar proceedings) • *inter comunis* (benefits third parties not part of a proceeding)	See Sentencia T-493/05, http://corteconstitucional.gov.co/relatoria/2005/T-493-05.htm See Repertorio constitucional 2008-2011, http://www.corteconstitucional.gob.ec/images/stories/corte/pdfs/repertorio_constitucional.pdf For a discussion of the application of rulings under each of these principles, please visit: http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1256&context=globalstudies
ius sanguinis /iure sanguinis	jus sanguinis/jure sanguinis	Means "right of blood." The Court uses both terms. Where the ruling uses "ius sanguinis," we use "jus sanguinis" and where it uses "iure sanguinis," we use "jure sanguinis."	
ius soli/ iure soli	jus soli/jure soli	Means "right of the soil." The Court uses both terms. Where the ruling uses "ius soli," we use "jus soli" and where it uses "iure soli," we use	

SPANISH	ENGLISH	USAGE/COMMENTS	SOURCE
		"jure soli."	
Junta Central Electoral	Central Electoral Board		
Juzgados de Primera Instancia	Courts of First Instance	The Courts of First Instance are divided into: (a) Courts of First Instance with complete plenitude of jurisdiction which hear all matters; (b) ordinary courts of first instance which are divided into branches to hear criminal, and civil and commercial matters; and (c) specialized courts of first instance which include: Minors and Juvenile Courts; Labor Courts; Land Courts of Original Jurisdiction; Judges for Execution of Sentences; Courts of Control of Juvenile Sanctions and the Courts of Instruction which have jurisdiction to resolve issues during the preparatory procedures, conduct preliminary hearings, and deliver judgment under the rules of summary proceedings.	For more information regarding the structure of the Dominican Republic judicial system, please visit: http://www.nyulawglobal.org/globalex/dominican_republic1.htm#SUPREMECOURTOFJ
Ley de Inmigración núm 95	Immigration Law No. 95		
Ley General de Migración núm 285-04	General Migration Law No. 285-04		
Ley Num. 8/92 sobre Cédula de Identidad y Electoral	Law No. 8/92 regarding Identity and Voter Cards		
Ley Num. 137-11 Orgánica del Tribunal Constitucional y de los Procedimientos	Law No. 137-11, Organic Law of the Constitutional Court and of the Constitutional Procedures		

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SPANISH	ENGLISH	USAGE/COMMENTS	SOURCE
Ley Num. 285-04 Ley General de Migración	Law No. 285-04, General Immigration Law		
Ley Num. 659 sobre Actos del Estado Civil	Law No. 659 regarding Civil Registry Records		
Ley Num. 6125 de Cédula de Identificación Personal	Law No. 6125 regarding Personal Identity Cards		
libros de Registros	Registration books		
Libro Registro del Nacimiento de Niño (a) de Madre Extranjera No Residente en la Republica Dominicana	Registry of Births of Children to Non-Resident Foreign Mothers in the Dominican Republic		
Lista de Extranjeros irregularmente inscritos en el Registro Civil	List of Foreigners Illegally-Registered in the Civil Registry		
margen de apreciación	margin of appreciation		For more information, please visit, http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57499#{%22itemid%22:[%22001-57499%22]}
Oficialía del Estado Civil	Civil Registry Office		
Oficina Central del Estado Civil	Main Civil Registry Office		
Oficina Nacional de Estadísticas	National Statistics Office		
Pacto internacional sobre derechos civiles y	International Agreement on Civil and Political Rights		

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CONSTITUTIONAL COURT RULING TC/0168/13
TRANSLATORS' NOTES & GLOSSARY

SPANISH	ENGLISH	USAGE/COMMENTS	SOURCE
políticos			
peticionario	petitioner	Mrs. Juliana Dequis (or Deguis)	
Plan Nacional de Regularización	National Regularization Plan		
Plan Nacional de Regularización de los extranjeros ilegales radicados en el país	National Plan for Regularization of Foreign Nationals Residing Illegally in the Country		
Primera Encuesta Nacional de Inmigrantes en la Republica Dominicana	First National Survey on Immigrants in the Dominican Republic		
recurrente	petitioner	Mrs. Juliana Dequis (or Deguis). The Court uses the terms "plaintiff" and "petitioner" interchangeably. In certain areas where the Court uses the term "plaintiff," we inserted "petitioner" for consistency and comprehension.	
recurrida	respondent	Central Electoral Board. The Court uses the terms "defendant" and "respondent" interchangeably. In certain areas where the Court uses the term "defendant," we inserted "respondent" for consistency and comprehension.	
Tribunal Constitucional	Constitutional Court	The Constitutional Court was established by the 2010 constitutional reform, to defend fundamental rights and protect the constitutional order. Its decisions are final and irrevocable and constitute binding precedent for all public authorities and all State agencies. The Court hears direct actions of unconstitutionality of laws, decrees, regulations,	For more information regarding the structure of the Dominican Republic judicial system, please visit: http://www.nyulawglobal.org/globalex/dominican_republic1.htm#SUPREMECOURTOFJ

SPANISH	ENGLISH	USAGE/COMMENTS	SOURCE
		resolutions and ordinances; the preventive control of international treaties before their ratification by Congress, and jurisdictional disputes between the public authorities. Thirteen judges sit at the Constitutional Court elected by the National Council of the Judiciary for a 9-year term.	
Tribunales Contenciosos Administrativos	Contentious Administrative Courts	The Contentious Administrative Courts are integrated by higher administrative courts and contentious administrative courts of first instance. These courts have jurisdiction over disputes filed against decisions, actions and provisions of the central government including administrative, tax, financial and municipal issues. They hear and determine in first instance or on appeal the contentious administrative actions that arise from conflicts between the public administration and its officers and civilian employees.	For more information regarding the structure of the Dominican Republic judicial system, please visit: http://www.nyulawglobal.org/globalex/dominican_republic1.htm#SUPREMECOURTOFJ
Tribunales Superiores Administrativos	Administrative High Courts	See Contentious Administrative Courts	For more information regarding the structure of the Dominican Republic judicial system, please visit: http://www.nyulawglobal.org/globalex/dominican_republic1.htm#SUPREMECOURTOFJ
Fn 167		The quoted and/or referenced text can be found on page 40 of the Court's Ruling.	
Fn 170		The quoted and/or referenced text can be found on page 43 of the Court's Ruling.	
Fn 173		The quoted and/or referenced text can be found on pages 48-49 of the Court's Ruling.	
Fn 174		The quoted and/or referenced text can be found on page 49 of the Court's Ruling.	
Fn 179		The quoted and/or referenced text can be found on page 67 of the Court's Ruling.	
Fn 188		The quoted and/or referenced text can be found on	

SPANISH	ENGLISH	USAGE/COMMENTS	SOURCE
		pages 74-75 of the Court's Ruling.	
Fn 191		The quoted and/or referenced text can be found on page 77 of the Court's Ruling.	
Fn 195		The quoted and/or referenced text can be found on page 98 of the Court's Ruling.	
Fn 201		The quoted and/or referenced text can be found on page 98 of the Court's Ruling.	