

## **Dominican Nationality and Inter-American Court of Human Rights**

There is no statelessness and discrimination in the Dominican Republic. What we have is the sovereign right of all States to decide who its nationals are

The Inter-American Court of Human Rights, in its decision of August, 28 2014, ordered the Dominican Republic to reform its constitution and its laws in order to grant Dominican nationality to anyone born on its territory, regardless of the migration situation of their parents. Such decision of the Inter-American Court of Human Rights would not have been possible to apply in Spain, Italy, France, Belgium, and Germany and in none of the member states of the European Union.

The reason is because none of these countries provide in their constitutions the right to nationality by the mere fact of being born in its territory, i.e. the automatic *jus soli*. Such right neither exists in the Dominican Republic. The Dominican Constitution provides that persons born on its territory are Dominican, except the children of foreign diplomats, as well as people who are in transit.

In a judgment of 2005 the Supreme Court of the Dominican Republic established the criteria that the term person in transit is one that has no permanent residence in the Dominican territory. Like Spain, the other members of the European Union, the Dominican Republic and 164 of the 194 Member states of the United Nations does not have a system of granting nationality by the mere fact of being born in its territory.

So, where does the criterion of the Inter-American Court of Human Rights to order the Dominican State to amend its Substantive Law and other regulations, for the purposes of granting nationality by way of automatic *jus soli*, comes from?

It is obviously a misunderstanding. Like in any system of protection of human rights, what should motivate the Court is first; to ensure that no one is in a state of statelessness; and second, that no standards or criteria of exclusion or discrimination may apply in granting nationality.

That is precisely what the Spanish law provides, the one from other European nations and the laws of the Dominican Republic. In none of these countries, citizenship is granted by way of automatic *jus soli*, and yet statelessness does not exist in none of them.

In Spain, for example, the law provides that Spaniards are those born in Spanish territory whose parents lack of nationality, if the law does not grant them citizenship to children, or if they were children of unknown parents.

Similarly, in the Dominican Republic, the law provides the mechanism so that any child born of non-resident alien parents in the Dominican Republic can be declared before the Consulate of the country of the mother, which in this case acts as Officer of Civil Status.

Thus, neither in Spain nor in the Dominican Republic, there is a possibility that a person might be without the right to a nationality or statelessness status. Neither one could speak of a situation of discrimination, since the same rule would apply to Americans, Chinese, Russians, Germans, Japanese, Brazilian, Venezuelan and Haitians.

The power that the states have to determine who its nationals are is a basic principle and a sovereign right of international law embodied in the Hague Convention of 1930.

We are aware that the International Law of Human Rights is a significant development in international law, by granting individuals the status of non-state subjects of international standards, in order to ensure the protection of their fundamental rights. The Inter-American Human Rights System won a deserved reputation in the fight against arbitrary detentions, torture and physical disappearances that arose in Latin America during the dictatorship.

It has been more difficult for the American Commission and Court of Human Rights to be more efficient, credible and legitimate in their decisions when it came to the analysis and interpretation of the human rights of second and third generation. However, what happened to the Dominican Republic is more serious because it has committed a wrong application of rules of first generation of human rights, such as the right to a nationality.

The Inter-American Court of Human Rights would have been right if they had observed, in the legislation or the practice in the Dominican Republic, the existence of statelessness or discriminatory application of the rules. But that was not the case. In the Dominican Republic there is neither statelessness nor discrimination. What you have is the sovereign right of all States to decide who its nationals are.

Therefore, the Court committed a serious mistake. They ordered the amendment of the Constitution and the laws of the Dominican Republic to grant nationality by way of automatic *jus soli*. In doing so, the Court overstepped its decision.

Simply put, they went beyond; and, to an affair of this nature, the Dominican government has no other choice but to ignore the ruling by its erroneous legal interpretation; its unreasonable professional judgment; and the fact that it creates obligations that go beyond those available to the International Law.

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