

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Dilcia Yean and Violeta Bosico v. Dominican Republic
Doc. Type:	Judgement (Interpretation of the Judgment of Preliminary Objections, Merits, Reparations and Costs)
Decided by:	President: Sergio Garcia-Ramirez; Vice President: Alirio Abreu-Burelli; Judges: Antonio A. Cancado-Trindade; Cecilia Medina-Quiroga; Manuel E. Ventura-Robles; Diego Garcia-Sayan
Dated:	Judge Oliver Jackman did not participate in the deliberations and signature of this Judgment and informed the Court that he would be unable to take part in the 73 <sup>o</sup> Regular Session of the Court due to force majeure reasons. 23 November 2006
Citation:	Yean v. Dominican Republic, Judgement (IACtHR, 23 Nov. 2006 )
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In the Case of Yean and Bosico Girls,

The Inter-American Court of Human Rights (hereinafter “the Inter-American Court”, “the Court” or “the Tribunal”), pursuant to Article 67 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) and Article 59 of its Rules of Procedure (hereinafter “the Rules of Procedure”), resolves on the request for interpretation of the Judgment on the Merits, Reparations and Costs delivered by the Court on September 8, 2005 in the case of Yean and Bosico Girls (hereinafter “the request for interpretation”), filed by the Dominican Republic (hereinafter “the State” or “the Dominican Republic”) on January 5, 2006.

## I. INTRODUCTION OF THE REQUEST FOR INTERPRETATION AND ITS PURPOSE

1. On September 8, 2005, the Court delivered its Judgment on Preliminary Comments, Merits, Reparations and Costs in the instant case (hereinafter, “the Judgment”). Said Judgment was notified to the parties on October 7, 2005.

2. On January 5, 2006, the State filed a request for interpretation of the Judgment under Article 67 of the Convention and Article 59 of the Rules of Procedure.

3. The State’s request for interpretation was divided into four sections. In its two first sections, inter alia, the request stated (a) that it has not been established whether the girl Violeta Bosico was born in the Dominican Republic, and (b) that there are doubts whether the girl Dilcia Yean Leonidas Oliven-Yean’s daughter. Therefore, the State asserted that the girls cannot be said to be Dominican. In section (c) dealing with statelessness, the request stated that the girls

were never stateless, since they could have acquired Haitian nationality like their grandparents'. Further, the request also said that "the State deems itself to have performed its duty to extend the birth certificates [arising from] a friendly settlement[,] and considers that, even though the applicants have possession of their certificates, they will have to comply with the legal formalities [...] to acquire the birth certificates as prescribed by law". In Section (d), dealing with the State's liability, the State purports to "know the content and scope of the liability arising from the acts of the officers who took part in the case [...] in the understanding that the mitigation of or exemption from [such officers'] liability will result in the reduction of or exemption from the State's liability".

## II. JURISDICTION OF THE COURT

4. Under Article 67 of the American Convention, the Court has competent jurisdiction to interpret its own judgments.

## III. PROCEEDINGS BEFORE THE COURT

5. On February 8, 2006, pursuant to Article 59(2) of the Rules of Procedure, and following instructions from the President of the Court, the Secretariat of the Court forwarded a copy of the request for interpretation to the Inter-American Commission of Human Rights (hereinafter "the Commission") and to the victim's representatives (hereinafter "the representatives"), inviting them to submit the written arguments they deemed fit no later than April 10, 2006. In addition, the State was reminded that, under Article 59(4) of the Rules of Procedure, "[the] request for interpretation shall not suspend the effect of the judgment."

6. On April 7, 2006, the Commission requested a ten-day time extension from the termination date, in order to submit the requisite written arguments. On that same day, the Secretariat of the Court, following instructions from the Court's President, granted the extension requested by the Commission until April 19, 2006. In addition, the representatives were informed that they had been granted the extension to submit their arguments.

7. On April 19, 2006, the Commission presented its arguments concerning the request for interpretation, wherein it asserted that the State does not expect the Court to interpret the meaning and scope of its judgment pursuant to Article 67 of the Convention and Article 58 (sic) of the Rules of Procedure but, instead, it seeks a review and a reconsideration of the final judgment not subject to appeal entered by the Court, since it takes issue with the content thereof. As the State itself pointed out, it relies on such remedy in the absence of a remedy for the review of judgments issued by the Court. As a result, the Commission considered that the request for interpretation filed by the State does not comply with the requisite formalities to be properly deemed as a request for interpretation and that it should therefore be dismissed.

8. On April 19, 2006, the representatives asserted that the pleading filed by the State does not constitute a request for interpretation under Article 67 of the Convention and Article 59(1) of the Rules of Procedure, nor does it conform to the doctrine consistently followed by the Court, but it is rather an effort aimed at re-litigating issues already addressed in the Judgment. As a

result, the representatives prayed the Court to dismiss such request, for what the State seeks is to challenge the Judgment.

#### IV. ADMISSIBILITY

9. The Court must now verify whether the terms of the request for interpretation comply with the applicable rules.

10. Under Article 67 of the Convention,

[t]he judgment of the Court shall be final and not subject to appeal. In the event of disagreement as to the meaning or scope of the judgment, the Court shall interpret it at the request of any of the parties, provided the request is made within ninety days from the date of notification of the judgment.

11. The relevant provisions of Article 59 of the Rules of Procedure establish as follows:

1. The request for interpretation, referred to in Article 67 of the Convention, may be made in connection with judgments on the merits or on reparations and shall be filed with the Secretariat. It shall state with precision the issues relating to the meaning or scope of the judgment of which the interpretation is requested.

[...]

4. A request for interpretation shall not suspend the effect of the judgment.

5. The Court shall determine the procedure to be followed and shall render its decision in the form of a judgment.

12. Under Article 29(3) of the Rules of Procedure, “Judgments and orders of the Court may not be contested in any way.”

13. The Court has found that the State filed the request for interpretation on January 5, 2006, within the time limit prescribed in Article 67 of the Convention (*supra* para. 2), as the State was notified of the Judgment on October 7, 2006.

14. As this Court has previously stated, a petition for the interpretation of a judgment should not be used as a means to appeal but rather it should have the only purpose to clarify the meaning of a ruling when one of the parties maintains that the text in its operative parts or in its considerations lacks clarity or precision, provided that such considerations have a bearing on the operative parts and, therefore, modification or annulment of the respective judgment cannot be petitioned through a request for interpretation. [FN1]

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[FN1] Cf. *Case of the Moiwana Community v. Suriname Request for Interpretation of the Judgment on the Merits, Reparations and Costs*. (Art. 67(1) American Convention on Human Rights). Judgment of February 8, 2006. Series C No. 145, para. 14; *Case of Raxcacó Reyes v. Guatemala Request for Interpretation of the Judgment on the Merits, Reparations and Costs*. (Art. 67 American Convention on Human Rights). Judgment of February 6, 2006. Series C No.

143, para. Case of the Indigenous Community Yakye Axa. Request for Interpretation of the Judgment on the Merits, Reparations and Costs. (art. 67 American Convention on Human Rights). Judgment of February 6, 2006. Series C No. 142, para. 15.

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15. In addition, the Court has held that the request for interpretation of a judgment may not involve raising issues of fact or of law already asserted at the appropriate stage of the proceedings and upon which the Court has entered a decision. [FN2]

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[FN2] Cf. Case of the Moiwana Community v. Suriname Request for Interpretation of the Judgment on the Merits, Reparations and Costs, supra note 1, para. 15; Case of Raxcacó Reyes v. Guatemala Request for Interpretation of the Judgment on the Merits, Reparations and Costs, supra note 1, para. 16; and Case of the Indigenous Community Yakye Axa. Request for Interpretation of the Judgment on the Merits, Reparations and Costs, supra note 1, para. 16.

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16. In order to assess the admissibility of the request for interpretation and, if appropriate, clarify the meaning and scope of the Judgment delivered by the Court on September 8, 2005, the Court will now analyze the State's arguments.

## V. ARGUMENTS OF THE PARTIES AND CONSIDERATIONS OF THE COURT REGARDING THE REQUEST FOR INTERPRETATION

### Arguments of the State

17. The State argued, inter alia, that:

- a) the place of birth of the girl Violeta Bosico must still be established, inasmuch as the State "completely disagrees with [the Court's] finding, since it has been established that [the] Charcas house and the Sabana Grande de Boyá hospital are located in the Dominican Republic";
- b) there are doubts as to whether the girl Dilcia Yean is the daughter of Leonidas Oliven-Yean;
- c) the girls Dilcia Yean and Violeta Bosico were never stateless, since their grandparents' Haitian nationality has been established and the Haitian Constitution provides that "every Haitian born to a Haitian father or mother is a Haitian national [...]" and, under the 1954 Convention relating to the Status of Stateless Persons a stateless person is "a person who is not considered as a national by any State under the operation of its law";
- d) it purports to know "the content and scope of the liability arising from the acts of the officers who took part in the case [...] in the understanding that the reduction of or exemption from liability of Thelma Bienvenida Reyes and Dr. Julio César Castro, officers whose acts have been proved to the State] will result in the reduction of or exemption from the State's liability". Likewise, the State alleged that the acts of these officers conformed to the law, and thus "[their] conduct cannot be reproached, and so the State [...] is completely innocent of the charges brought against it for the acts of such officers";

- e) “it did not recognize anything; instead, it extended the birth certificates based on a friendly settlement rather than on the recognition of a preexisting right.” Therefore, since the Court held in the Judgment that the parties failed to reach a friendly settlement, the State asserted that “it deems itself to have performed its duty to extend the birth certificates [arising from] a friendly settlement[,] and considers that, even though the applicants have possession of their certificates, they will have to comply with the legal formalities [...] to acquire the birth certificates as prescribed by law”; and
- f) “the [J]udgment does not bar the competent authorities from adopting decisions concerning the liability of persons for the wrongful acts attributed to them.”

#### Argument by the Commission

18. The Commission stated, *inter alia*, that:

- a) the request for interpretation filed by the State does not comply with the requisite formalities to be properly deemed as a request for interpretation and that it should therefore be dismissed, inasmuch as the State “the State does not seek for [the Court] to interpret the meaning and scope of its judgment pursuant to [...] the Convention and [...] the Rules of Procedure but, instead, it pursues a review and a reconsideration of the final [J]udgment not subject to appeal entered by the Court, since it takes issue with the content thereof [...]”; and
- b) the State’s assertion that it deems itself to have performed its duty to extend the certificates runs counter to the Judgment, and represents a menace to the binding effect of the Court’s decisions and to its authority. The State seeks to alter the Court’s Judgment, ignore the reparations, and establish an additional burden upon the victims by imposing requirements for them to enjoy a right that is lawfully theirs. Therefore, even though the Commission will address the compliance with the Judgment in the appropriate opportunity, it deems it fit to follow up on the compliance with the reparations challenged by the State.

#### Argument by the representatives

19. The representatives argued, *inter alia*, that:

- a) the Court must dismiss the State’s motion because it does not constitute a request for interpretation, inasmuch as “rather than requesting that the meaning or the scope of the provisions set forth in the Inter-American Court’s Judgment, [...] the State has sought to challenge and ‘alter ... aspects [of the Judgment] that are binding’”. The foregoing is so because the State’s pleading “only deals with issues of fact and of law that have already been addressed by the Court’s final judgment”;
- b) the State’s pleading is part of a government strategy aimed at delegitimizing the Court’s Judgment and avoid compliance therewith; and
- c) the State threatens to adopt measures in retaliation against the victims and their relatives. Firstly, to “revoke the girls’ birth certificates”, drawing a distinction between “granting” and “recognizing” Yean and Bosico’s right to nationality, based on an erroneous account of the facts. This is invalid under the estoppel doctrine embodied in Inter-American law. Secondly, to “prosecute the victims and their next of kin” for actively participating in the litigation of the case before the Inter-American organs, which runs counter to the right to petition such organs without

suffering threats or retaliation set forth in the American Convention and the Rules of Procedure and affirmed by the Court in past decisions. In view of such threats, the Court must “restate the State’s duty to fully comply with the reparation measures [...] and to protect and respect the human rights of victims and their next of kin”.

#### Considerations by the Court

20. The Court will now analyze whether the State’s allegations seek for the Court to interpret the meaning or scope of the Judgment, i.e., if they conform to the nature of a request for interpretation of a judgment, and will then issue a decision.

21. The State’s request for interpretation was divided into four sections. In its two first sections, inter alia, the request stated (a) that it has not been established whether the girl Violeta Bosico was born in the Dominican Republic, and (b) that there are doubts whether the girl Dilcia Yean is daughter to Leonidas Oliven-Yean. Therefore, the State asserted that the girls cannot be said to be Dominican. In section (c) dealing with statelessness, the request stated that the girls were never stateless, since they could have acquired Haitian nationality like their grandparents’. Further, the request also said that “the State deems itself to have performed its duty to deliver the birth certificates [arising from] a friendly settlement[,] and considers that, even though the applicants have possession of their certificates, they will have to comply with the legal formalities [...] to acquire the birth certificates as prescribed by law”. Section (d), dealing with the State’s liability, purports to “know the content and scope of the liability arising from the acts of the officers who took part in the case [...] in the understanding that the mitigation of or exemption from [such officers’] liability will bring about the mitigation of or exemption from the State’s liability”.

22. Based on the foregoing, the Court notes that in the above-mentioned sections the State attempts to challenge the findings of the Judgment that Dilcia Yean and Violeta Bosico were born in the Dominican Republic and are thus Dominican under the *ius soli* principle, as stated in paragraphs 109(6), 109(7), 109(12), 144 and 158 of said Judgment. Secondly, the State contested paragraphs 173 and 174 of the Judgment providing that the State is internationally liable inasmuch as it “failed to comply with its duty to safeguard the rights set forth in the American Convention”, since it committed “an arbitrary deprivation of nationality” against the girls Dilcia Yean and Violeta Bosico, “leaving them stateless for more than four years and four months, in violation of Articles 20 and 24 of the American Convention in relation with Article 19 thereof”.

23. The Court finds that the State’s assertions seek to challenge the Court's findings based on the body of evidence submitted to it during the contentious proceedings, since the Dominican Republic submits before the Court issues of fact and of law that were already raised at the proper stage in the proceedings, upon which the Court has already made a decision, and which may not be addressed at this Judgment interpretation stage.

24. Based on the foregoing considerations, the Court decides to dismiss the request for interpretation filed by the State because it fails to conform to the provisions of Article 67 of the Convention and Articles 29(3) and 59 of the Rules of Procedure.

VI. OPERATIVE PARAGRAPHS

25. Therefore,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS

pursuant to Article 67 of the American Convention on Human Rights and Articles 29(3) and 59 of the Rules of Procedure,

DECIDES:

Unanimously

1. To dismiss, on the grounds of its not being in order, the request for interpretation of the Judgment on preliminary comments, merits, reparations and costs in the Case of Yean and Bosico Girls filed by the State, since it does not conform to Article 67 of the American Convention on Human Rights and Articles 29(3) and 59 of the Court's Rules of Procedure under paragraphs 20 to 24 hereof.

Done in Spanish and English, the Spanish deserving full faith, in San Jose, Costa Rica, on November 23, 2006.

Sergio García-Ramírez  
President

Alirio Abreu-Burelli  
Antônio A. Cançado Trindade  
Cecilia Medina-Quiroga  
Manuel E. Ventura-Robles  
Diego García-Sayán

Pablo Saavedra-Alessandri  
Secretary

So ordered,

Sergio García-Ramírez  
President

Pablo Saavedra-Alessandri  
Secretary