

**Ruling T-450A/13
(Bogotá D.C., July 16)**

**RIGHT TO LEGAL PERSONALITY
OF THE CHILD**—Disregard due to non-registration
in the civil registry due to genital ambiguity

**RIGHT TO RECOGNITION OF NAME AS AN
ATTRIBUTE OF LEGAL PERSONALITY AND
FREE DEVELOPMENT OF PERSONALITY**

The attributes of personality are inalienable, irrevocable, imprescriptible, lifelong, personal, and absolute characteristics of individuals, and include name, marital status, nationality, citizenship, domicile, capacity to enjoy rights, patrimony, and filiation. It is important to note that since the right to legal personality is inherent to human beings, "the State, through the legal system, merely recognizes it without determining requirements for its exercise." Thus, it is clear that from birth, individuals are entitled to rights, but registration facilitates their exercise before the State. Therefore, registration is considered proof of personality.

RIGHT TO LEGAL PERSONALITY-
Purpose

Within the framework of the social rule of law, the right to legal personality aims to recognize all persons as free and equal human beings and acts as a limit on state power. This legal category expresses the capacity of the human person to be the holder of rights and duties "in the sphere of regulated behavior and human relations." The right to legal personality is therefore the status that underpins all the rights relationships established between individuals and, although it is inherent to human beings, it also implies a commitment on the part of the State and the Constitution to promote its respect and effective exercise.

**CIVIL STATUS AS AN ATTRIBUTE OF LEGAL
PERSONALITY-** Concept and
purpose

Marital status, as an attribute of legal personality,



has been defined as a status or legal situation that expresses the quality of an individual in relation to their family and society. In other words, "marital status is the legal position of a person in view of their dual condition: as an individual and as a social element." It is a universal, indivisible institution of public order, inherent to human beings, unavailable, inalienable, irrevocable, unseizable, imprescriptible, which cannot be established by confession, provides stability, and has erga omnes effects. The function of civil status is to demonstrate a person's capacity to be the holder of rights and obligations. The sources of civil status are facts, such as birth, acts, such as marriage, and provisions, such as judicial interdiction. The elements that make up civil status are individuality, age, sex, place of birth, and filiation. The Court has indicated that civil status information is essential for the recognition of legal personality and is closely related to the rights to free development of personality and personal identity, as it legally places the person within their family and social nucleus. The constitution and proof of a person's civil status are carried out through registration in the civil registry.

**REGISTRATION CIVIL-Importance/CIVIL
BIRTH REGISTRATION-Duty to register minors**

Registration is a procedure carried out by the State through officials competent for this task and is regulated by public policy rules. It has been established that the functions of the registry are to publicize civil status facts, to prove facts, acts, and decisions related to civil status, and to provide auxiliary support for statistical purposes. In addition to the above, the importance of registration lies in the State's knowledge of a person's physical existence in order to guarantee their rights. For this reason, it is essential to register minors immediately after their birth, as established in Article 48 of Decree 1260 of 1979, which stipulates that registration must be carried out within one month of the minor's birth.

**PRINCIPLE OF THE BEST INTERESTS OF THE
CHILD AND CIVIL CIVIL
REGISTRATION**



BIRTH—Fundamental rights such as health cannot be denied to minors who are not registered in the civil registry.

REGISTRATION OF INTERSEX PEOPLE IN PUBLIC DOCUMENTS

SEX-Definition/GENDER-Definition/SEXUAL ORIENTATION-Definition

Sex has been defined as "the set of physical, biological, anatomical, and physiological characteristics of human beings that define them as male or female. Sex is determined by nature; it is a natural construct with which one is born." On the other hand, gender refers to the stereotypes, social roles, acquired status and position, behaviors, activities, and appropriate attributes that each particular society constructs and assigns to men and women. Sexual orientation is defined as sexual, emotional, and romantic attraction to others, and has been defined as "the specific organization of eroticism and/or emotional bonding of an individual in relation to the gender of the partner involved in sexual activity."

STATUS	INTERSEX	A
AMBIGUITY	GENITAL-Rules	N
		D

jurisprudential

PRINCIPLE	OF	AUTONOMY	A
			N
			D

BENEFICENCE IN THE FACE OF INTERSEXUAL STATES AND GENITAL AMBIGUITY

INFORMED CONSENT OF THE MINOR HERMAPHRODITE PATIENT-Medical team called upon to determine sex assignment, provided that the minor and parents are informed about the diagnosis and the best options

RIGHT TO LEGAL PERSONALITY OF THE MINOR-Ignorance due to indeterminate sex of minors with genital ambiguity

Sex indeterminacy cannot be an obstacle to the exercise of the right to legal personality, which is inherent to human beings by the mere fact of their existence and is closely related to the principle of human dignity and equality. Thus, there



there is any constitutional reason to justify that babies and children whose sex cannot be identified at birth are not registered and remain hidden from the State and society.

**RIGHT TO LEGAL PERSONALITY OF MINORS
BORN WITHOUT A DETERMINED SEX AND
LACKING REGISTRATION**

CIVIL-Duty of authorities to guarantee the right to health and life

INTEREST SUPERIOR OF MINOR-

Legal characterization as a subject of special constitutional protection

The Constitution and case law recognize the best interests of the child in all areas, from priority allocations aimed at addressing children's rights to benefits, the punishment of violators of children's rights, and the application of the pro infans rule in situations involving minors.

**FUNDAMENTAL RIGHT TO HEALTH OF
CHILDREN**—Must be addressed immediately and as a priority

**FUNDAMENTAL RIGHT TO HEALTH OF
CHILDREN**—Violation by denying care to an intersex minor who does not have a civil birth certificate

RIGHT TO HEALTH HEALTH OF] RS
INTERSEXUALS-Constitutional jurisprudence

Constitutional jurisprudence, in addition to highlighting the fundamental and prevailing nature of children's right to health, has indicated that it is not possible to justify the denial of this benefit in the absence of a contract with health service providers or because the minor does not have a civil birth certificate. In addition to pointing out the tensions that arise in cases of intersex children, which were briefly outlined above, case law has indicated other rules that should serve as a reference in matters of the right to health for these children. Minors are subjects of special constitutional protection who must be guaranteed the right to health as a fundamental and prevailing right. In the case of intersex



, the care provided by doctors must be efficient and timely. Under no circumstances should access to health services for minors depend on paperwork and formalities, including the requirement of a civil birth certificate to begin the medical treatment that their health condition requires.

**RIGHT TO HEALTH OF INTERSEX MINORS
OR WITH AMBIGUITY**

GENITAL AMBIGUITY—From birth, they must receive urgent and priority care from an interdisciplinary team that informs their parents about their condition and issues a recommendation for the assignment of the baby's sex.

**RIGHT TO HEALTH OF INTERSEX MINORS
OR WITH AMBIGUITY**

GENITAL AMBIGUITY—They must be treated comprehensively in the health system without delay and without the need to present a civil birth certificate as a prerequisite.

The Court considers that indeterminate sex can in no way become an obstacle to the exercise of the right to legal personality, which is inherent to human beings by virtue of their very existence. In accordance with the principle of human dignity and the right to equality, there is no reason to justify that babies and children whose sex cannot be identified at birth are not registered and remain hidden from the State and society. Consequently, the authorities are obliged to register intersex minors or those with ambiguous genitalia. The decision on the assignment of sex in the civil birth registry depends on the decision of the interdisciplinary team of medical experts. The options for assigning sex in the civil registry for intersex individuals include female, male, or a separate entry in accordance with the reasoning section of this ruling. The legislature shall regulate all matters concerning the registration of intersex minors.

**RIGHT TO LEGAL PERSONALITY OF
INTERSEX MINORS OR WITH**

GENITAL AMBIGUITY—Order to the National Civil Registry Directorate to implement changes regarding the registration of intersex minors or



with ambiguous genitalia

RIGHT TO LEGAL PERSONALITY OF MINORS INTERSEXUALS OR WITH AMBIGUOUS GENITALS—Urge Congress to urgently and prioritise the regulation of rules that will allow the registration and identification of intersex persons or persons with ambiguous genitalia

Reference: File T-3.253.036.

Constitutional ruling under review: September 2011 ruling by the Civil Cassation Chamber of the Supreme Court of Justice, which upheld the decision of the Superior Court of the Judicial District of RR, Family Division, dated August 3, 2011.

Plaintiff: Municipal Attorney General's Office of FF.

Respondents: Ministry of Protection
Protection National Institute of
Legal Medicine, Administrative Department
National of Statistics –D
National Civil Registry Office. Ade Territorial
Health Directorate of Department YY, and
Cafesalud EPSS for involvement in the first
instance.

Magistrates of the Second Chamber of Rev
Mauricio González Cuervo, Luis Guillermo G
Pérez, and Gabriel Eduardo Mendoza Martelo.

Presiding Judge: MAURICIO GONZÁLEZ
CUERVO.

I. BACKGROUND

1. Petition for protection.

1.1. Elements of the petition.

1.1.1. *Fundamental rights invoked:* right to an adequate standard of living, right to life in connection



with health, to personal and family privacy, to social security, to legal personality, and the rights of children.

1.1.2. *Conduct causing the violation:* the fact that the sex of baby NN was not specified on the live birth certificate and that, for this reason, officials at the Civil Registry Office of the Municipality of FF refused to register the baby, thereby hindering the child's access to health services and, in general, to the guarantee of his rights as a Colombian citizen.

1.1.3. *Claims:* (i) Order the National Civil Registry Office to authorize the registration of the baby NN, son of XX in cases of suspected hermaphroditism or intersexuality to be determined, making the necessary adjustments to the Civil Birth Registry format; (ii) Order the National Civil Registry Office, within the peremptory term set by the judge, to proceed with regulating the registration of a hermaphrodite or intersex baby to guarantee their right to legal personality and access to the other benefits granted by being recognized as a Colombian citizen; (iii) Order the National Civil Registry Directorate, within the aforementioned term for the regulations it must adopt, to take into account the modification it must make to the current Civil Registry format, which extends to the Civil Registry of Deaths based on the death certificate, in the event of the death of this intersex baby, whose health status and sex cannot be chosen by its parents due to an express prohibition by the Constitutional Court (ruling SU-337 of 1999); (iv) Order the DANE to proceed within the peremptory term set by the judge to regulate the registration in the "Certificate of Live Birth" of the birth of a hermaphrodite or intersex baby, in order to guarantee their right to legal personality and access to other benefits by being recognized as a Colombian citizen; (v) Order DANE to take into account, within the regulations it must assume, the modification of the current "live birth" format, which extends to the "death certificate" due to the condition in which this baby was born and whose sex cannot be chosen by its parents due to the express prohibition of the Constitutional Court (ruling SU-337 of 1999); (vi) Order



the National Institute of Legal Medicine to proceed, at all costs, with the tests that are essential and necessary to determine the intersex condition of the baby NN, son of mother XX; (vii) ORDER the Ministry of Social Protection to regulate, within a peremptory period, the form of access to comprehensive social security for this minor NN, son of XX, in the city of ZZ, initially, and through the Territorial Health Directorate of YY, which will issue the corresponding authorizations in accordance with the medical orders issued by the treating physicians at the Children's Hospital or wherever they may be referred, with the Ministry of Social Protection assuming all transportation, accommodation, and maintenance costs incurred by the baby NN, son of XX, with a companion from his place of residence to any part of the country where he must be guaranteed effective and efficient access to health care for his family group; (viii) Warn the defendants that under no circumstances should they repeat the actions that gave rise to this guardianship and that if they do so, they will be punished as provided for in Article 52 of Decree 2591 of 1991.

1.2. Grounds for the claim.

1.2.1. On June 12, 2011, a live baby of presumed female sex was born at FF Hospital, according to the medical record, to mother XX, to whom the baby was immediately handed over.

1.2.2. On page 11 of the medical records of the FF Hospital where the delivery took place, it is noted that under the item "Newborn Data," the gender was listed as "male"; however, further on, a note refers to the delivery as "*FEMALE product with spontaneous adaptation... NORMOCONFIGURED FEMALE GENITALS.*"

According to the plaintiff, the rural doctor who attended the birth was unable to determine or specify in the medical record that the baby was intersex or ambiguous, and informed the mother that a girl had been born, although the mother later noticed that the baby had ambiguous genitals.

1.2.3. The lawsuit considers that the Institute of Legal Medicine is responsible for the insufficient experience, knowledge, and expertise of the rural doctor who attended the



birth of the mother of baby NN, who did not leave any written observations regarding the baby's condition. In fact, the mother was given the Certificate of Live Birth with the logos of the Ministry of Social Protection and the DANE, without filling in the box for "*sex of the live birth*," without any marginal notes or observations.

1.2.4. When presenting the live birth certificate to the Civil Registry Office of Municipality FF, the father was informed that baby NN could not be registered because civil birth registration protocols are based on live birth certificates that indicate female or male sex. As this was not defined, it was not possible to complete the civil birth registration. When the baby's father asked the registry official to enter female in the corresponding space, she refused to do so, arguing that the rules did not allow it.

1.2.5. Due to some health problems, the baby was taken to Cafesalud EPSS in the city of FF to be enrolled in the Subsidized Social Security System, but was initially denied access because he did not have a civil birth certificate. As a result, the case was referred to the Municipal Family Commissioner, who immediately ordered the restoration of the baby's rights and instructed the FF Hospital to attend to the baby's needs in accordance with Article 59 of the Constitution and Article 27 of Law 1098 of 2006. Therefore, the plaintiff considers that the then Ministry of Social Protection is responsible for preventing the baby's access to health care due to purely administrative issues beyond the control of the child's parents.

1.2.6. The baby's mother was not registered for subsidized social security at the time of delivery. This procedure was formalized the day before the writ of protection was filed with Cafesalud EPSS, and the baby will be treated on a provisional basis with the mother's card. Thus, the day before the writ of protection was filed, the baby was privately examined by a pediatrician at the Hospital in the city of ZZ and had to be hospitalized immediately due to certain abnormalities resulting from being an intersex baby.



1.2.7. The plaintiff warns that in the event of the death of baby NN, his parents will surely have problems obtaining the death certificate from DANE, which is the basis for issuing the civil death certificate, as there is no space or box indicating the minor's intersexuality.

2. Responses from the entities named in the lawsuit.

2.1. *The National Institute of Legal Medicine and Forensic Sciences*: ruled on the writ of protection, arguing that it is not within the competence of that entity to establish the procedure to be followed by the rural doctor who attended the plaintiff's delivery, a professional who, moreover, has no employment relationship with that Institute. It clarified that the activities of doctors are subject to the control of that entity only in relation to medical-legal procedures carried out as a result of requests from the competent authorities, insofar as the Institute's function is to provide technical and scientific support to the administration of justice by providing the medical-legal and forensic science services requested by those authorities. For this reason, the Institute requested to be removed from the proceedings.

2.2. *The DANE* considered that it has not violated any of the rights alleged by the plaintiff, since its competence is limited to producing vital birth statistics, and not to certifying whether a baby is born alive or dead, or whether it is female or male. In this regard, it does not have the power to modify, correct, adjust, or amend such certificates, a matter that corresponds exclusively to the IPS and the physician who attended the birth within the framework of their professional medical knowledge and who can determine the sex of the newborn. It emphasizes that "*the DANE is a purely statistical entity and processes the data entered on the form by the physician who certifies the birth or death,*" and that it is not responsible for providing health services or enrolling the unnamed baby in the health system. It adds that under Colombian law there are two sexes, female and male, determined by human nature and certified by the doctor who attends the birth, so that until



Decree 1260 of 1970 is not repealed, the form cannot be modified as requested by the plaintiff.

2.3. *The Secretary of Health of WW*: submitted a brief stating that baby NN is affiliated with Cafesalud EPSS and that with the issuance of Agreement 004 of 2009, 80 of 2009, and Order 342 of 2009, the intention is for the EPSs in the subsidized regime to assume comprehensive health care for minors, given their vulnerability and defenselessness. Therefore, he warns that the Ministry of Health has at no time violated the rights of the plaintiffs and requests that no responsibility be attributed to this entity.

2.4. *The Territorial Directorate of YY*: pointed out that reporting changes, such as withdrawal, admission, or transfer, is not within its jurisdiction and argues that the mother's EPS is obliged to provide comprehensive care for the child during its first month of life. It adds that, in accordance with Resolution 2042 of 2010, the less privileged must be able to join the subsidized regime, while those who have the ability to pay must remain in the contributory regime. In accordance with the above, it requests that the Territorial Directorate of YY be absolved of responsibility in the present constitutional action.

2.5. *The National Civil Registry*: argued that it has not violated the plaintiff's rights and requested that the judge declare the action inadmissible or deny the writ of protection. In its response to the writ of protection, it cites Articles 49 and 52 of Decree Law 1260 of 1970 and subsequently points out that the copy of the live birth certificate did not indicate the sex of the newborn, which means that, given the failure to comply with the aforementioned articles, the official in charge of registration does not have the necessary information to carry out the registration. Consequently, it warns that it is necessary for the DANE to rule on the live birth certificate of baby NN and proceed with the registration in accordance with that entity's ruling. It indicates that at the time of registration and while there is a medical opinion related to the determination of the child's sex, a note may be made in the notes section stating that the box referring to sex is left blank because the sex is undetermined at this time, so that the page number can be replaced when certainty about the sex is obtained.



2.6. *The Ministry of Social Protection:* responded to the writ of protection by stating that, in accordance with the provisions of Decree 205 of 2003, its powers are limited to setting policies and guidelines on social protection, and that it does not act as a health service provider, a function that falls to public hospitals, health insurance companies, and departmental or district health directorates, as the case may be. It indicates that under the terms of Article 50 of the Constitution and Article 166 of Law 100 of 1993, care for children under one year of age is free of charge and is considered a fundamental right in the case of newborns, who must therefore be cared for free of charge by health institutions, even if they are not covered by social security. That said, it points out that in this case, the parents of baby NN are not affiliated with the Contributory Regime of EPS Cafesalud. Therefore, the territorial entity must request affiliation with the Social Security Health System and, while they are affiliated, they must be cared for at the expense of the subsidy. In view of the foregoing, the Ministry requests that the writ of protection against it be declared inadmissible.

3. Judicial decisions subject to review.

3.1. *The Superior Court of the Judicial District of RR, Civil Family Chamber,* ruled in the first instance on the writ of protection in question on August 3, 2011. In its considerations, it begins by extensively citing ruling SU-337 of 1999 and the precedent in this matter. Based on the foregoing, it concludes that constitutional jurisprudence referring to intersex individuals has to do with the possibility of surgically and/or hormonally remodeling the genitals of a minor, but there is no case related to the impossibility of registering a birth certificate in cases of genital ambiguity. Based on the jurisprudence, the Court warns that the plaintiff's claims are not the alternatives that best fit the constitutional principles. In fact, it has been considered that it is best for the minor to be assigned a sex as soon as possible, which is why it would be unnecessary to add a box for the



intersexuality or make a note in the civil registry, a document that, when displayed at all times, would expose the family and the child to discrimination and social rejection. However, the absence of a protocol regulating how to proceed in cases of sexual ambiguity is acknowledged. Based on the evidence provided in the case file, it is established that, to date, the minor and his family have been cared for by an interdisciplinary team of doctors, psychologists, and social workers, which is in line with the approach taken in some of the Court's rulings on this issue. Considering that the assignment of sex, without the need for surgery, depends on the opinion of a team of different specialists, the Chamber considers that the most reasonable measure to avert the violation resulting from not registering the birth in the civil registry is to assemble, as soon as possible, an interdisciplinary team to assign the sex of the minor and, subsequently, based on that opinion, have the civil registry official proceed to register the birth. The Court concludes that Cafesalud EPSS, of which the baby's mother is a beneficiary, as evidenced by the evidence, should assume responsibility for the minor's medical services as established by the ruling, as well as the transportation costs for accessing health services outside her municipality, recognizing that entity's authority to recover the cost of those non-POS services it must provide from the Department of Health.

3.2. *The Civil Cassation Chamber of the Supreme Court of Justice*, in a ruling issued on September 2, 2011, upheld the lower court's decision. It referred only to the issues raised in the challenge by the Municipal Registrar of FF. The Court considers that, if prior to the constitutional protection, Cafesalud EPSS had been providing partial health services, then after the first instance ruling, the situation was completely resolved because comprehensive service was ordered, POS or non-POS, and coverage of travel expenses with all that that implies. Additionally, the order is clear in the sense that after the interdisciplinary team assigns the sex, the Civil Registry will be prepared with an indication of the sex of the minor, and it does not follow from the ruling, as the Municipal Ombudsman erroneously argues, that said public document will



will be issued without registering the sex of the baby. On the other hand, the Chamber considers that the civil, criminal, ethical, or disciplinary responsibility that may have been incurred by the rural doctor who attended the birth should be brought before the ordinary courts, as this is not within the jurisdiction of the guardianship judge. Finally, the Chamber rejects the arguments of the Municipal Registry, noting that the mandate issued in the ruling against that authority *"is not arbitrary, subjective, or capricious,"* as it is based on both the Constitution and case law.

4. Proceedings before the Constitutional Court and evidence requested.

4.1. By order of February 16, 2012, the Second Review Chamber of the Constitutional Court decided to suspend the proceedings until the following evidence had been obtained:

- To the Office of the Ombudsman of FF, so that within five business days, counted from the notification of the order, it would send this Office information on:

- The current health status of baby NN, the status of his registration process, and the parents' position on the assignment of his sex.
- The comprehensive care to be provided by the EPSS Cafesalud, and the opinion issued by the interdisciplinary group of specialists ordered by the trial judge regarding the assignment of the baby's sex.
- The response of the Municipal Civil Registry of FF and its actions regarding the opinion issued by the interdisciplinary group of specialists.

-Cafesalud EPSS, so that within a non-extendable period of five business days, counted from the notification of this order, it may send the Office a copy of the opinion issued by the interdisciplinary group of specialists ordered by the trial judge regarding the assignment of the baby's sex.

4.2. In a letter sent to the Constitutional Court by the Municipal Ombudsman of FF, and registered with the General Secretariat on March 2, 2012, this Corporation was informed that *"to date it has not been possible*



register the birth of baby NN, because although the EPS CAFESALUD has issued orders for genetic testing, these have been ineffective due to the lack of contracts with geneticists, as reported yesterday by the father of baby NN (...) Therefore, to date, there is no opinion from the interdisciplinary group as ordered by the judge of first instance."

A series of emails sent by the Municipal Ombudsman of FF to an official of Cafesalud and the Saludcoop Group were also attached, stating that although the guardianship was resolved on August 3, 2011, to date these entities have not complied with the genetic testing to proceed with the registration of the minor. An email was also attached warning that there is a delay in the delivery of the baby's medication, especially the 0.1% frudocortisone base for his treatment.

4.3. To date, no response has been received from Cafesalud.

4.4. On July 11, 2012, the father of baby NN sent the results of the karyotype to the Office of the Presiding Magistrate as evidence of progress in determining his son's identity. He also stated that his entire family had moved to Bogotá to facilitate the baby's treatment, without the EPS providing them with accommodation, maintenance, or transportation. He pointed out that the baby is waiting to receive medication and priority care from pediatric endocrinology, pediatric urology, genetics, and other specialists, *"but despite the priority notes, the EPS is not providing timely care for our baby's health. We encounter constant obstacles from the EPS because we are in Bogotá attending to the girl's case and she has an XXX card, and for that reason they have denied us services and will suspend them if we do not permanently transfer the card to Bogotá."* He pointed out that he already owes more than 6 million pesos in loans to different people and that he is emotionally affected. In that communication, he indicated that the family has returned to FF to register the baby, supported by the karyotype test.

4.5. In a telephone conversation with the mother of baby NN



on the same date that the karyotype test results were received, she stated that they had been able to register the baby but were still having problems with the EPS due to delays in the delivery of medication and in the experts' assessment. She also promised to send a copy of the baby's civil registry.

4.6. In order 178 of July 27, 2012, the Second Review Chamber decreed provisional measures upon finding that the life, health, and integrity of baby NN were in serious danger and ordered Cafesalud to, within a non-extendable period of forty-eight hours from the notification of the order, to begin all examinations and carry out a complete assessment by specialists for the study, management, and treatment of the sexual differentiation disorder suffered by baby NN, keeping the parents informed of their rights, powers, and alternatives, in accordance with the jurisprudence of the Court. Likewise, the entity was ordered to send the Office, as soon as possible, a copy of the opinion issued by the interdisciplinary group of specialists regarding the assignment of the baby's sex.

In the same order, the Superintendency of Health and the Ombudsman's Office were instructed to supervise Cafesalud's actions in relation to baby NN, verifying and guiding the Health Promotion Entity on the jurisprudential rules applied by the Constitutional Court in these cases.

To date, Cafesalud has not sent the interdisciplinary study requested by the Court.

4.7. On September 11, 2012, a copy of the baby's civil registry, identifying the baby as female, was sent to the Office.

4.8. By order of September 20, 2012, the Presiding Judge ordered the National Academy of Medicine, the Colombian Society of Urology, the Colombian Society of Psychology, the Colombian Society of Psychiatry, the Faculties of Medicine of the Pontificia Universidad Javeriana, the Universidad de los Andes, the Universidad del Rosario, and the Universidad Nacional; the Faculties of Psychology of the Universidad Javeriana, the Universidad de los



Andes, the Universidad del Rosario, the Universidad Nacional; the anthropology departments of the Universidad Javeriana, the Universidad de los Andes, the Universidad Nacional, and the School of Human Sciences of the Universidad del Rosario; the sociology department of the Universidad Nacional; the sociology department of the Pontificia Universidad Javeriana; Bernardo Ochoa Arismendy; the Intersex Society of North America (ISNA) (currently AIC – Advocates for Informed Choice); The Lawson Wilkins Pediatric Endocrine Society (LWPES); The European Society for Pediatric Endocrinology (ESPE); Dr. Milton Diamond of the Pacific Center for Sex and Society (PCSS); so that within five business days of notification of the order, they may respond to the following questions:

- 1) Does your discipline recognize or accept the existence of people who cannot be classified as female or male?
- 2) If so, what are the criteria that define a person who does not fit into these categories, and what is or should be their designation?
- 3) What are the effects of recognizing this category from a medical, psychological, family, and social point of view?
- 4) Who is in the best position to decide the category in which a person is classified (the individual themselves, the family, the medical community, the State)?
- 5) Should the State recognize the existence of a category other than female and male for the purpose of identifying an individual in society?

4.8.1. Below is a summary of the multidisciplinary interventions received by the Review Chamber.

From a medical standpoint, it is recognized that there are individuals who fall within a wide range of conditions, referred to as disorders of sexual development, which include genital ambiguity and intersexuality. In order to understand these conditions, it is necessary to take into account the criteria that define sex, which are set forth below: 1)



genetic or chromosomal –XX or XY–; 2) gonadal –testicles or ovaries–; 3) phenotypic, determined by the appearance of the external genitalia; 4) hormonal –androgens or estrogens–; 5) legal, according to the sex indicated on the person's identity documents; 6) psychological. In most cases, the factors outlined above are consistent, but for intersex individuals, some of these criteria may vary, either due to ambiguity in one or more of them, or due to inconsistency between different factors. In this vein, multiple sexual differences can be identified that give rise to intersexuality. Hermaphroditism, in particular, is defined as a form of ambiguity among the factors described, and specifically as an anomaly of the external organs. It is divided into three categories: 1) true hermaphroditism, which occurs when the same individual has both female and male gonads;

2) female pseudohermaphroditism in people with a female karyotype and female gonads but with a certain degree of virilization before birth; 3) male pseudohermaphroditism in subjects with male gonads but with chromosomal abnormalities, not normally virilized.

Thus, the criteria that define a person who does not fit into the categories of female or male are biological in nature and result in congenital sexual disorders or disorders of sexual development. However, doctors consulted, such as Milton Diamond, do not consider intersex individuals to suffer from a disorder, but rather from a series of variations in development. He points out that it is not a rare condition, as it affects 1% of the population, with some of its characteristics being hidden and others obvious from birth. In his view, gender is social rather than medical and depends on the sex of the brain: "female" and "male" are biological and medical terms, while "man" and "woman" are social terms. It is noted that brain sex cannot be known in childhood, so if an intersex individual is assigned a particular sex in childhood, they should be allowed to re-register later with the gender they prefer .

The humanities and social sciences faculties also maintain that the existence of people who do not fit into the categories of female and male is accepted .



Some interventions highlight the currents that oppose the definition of criteria for defining sex by experts, as this constitutes an exercise of power that regulates bodies without taking into account the dimensions emotional and of self-identification of the subjects, as well as [6] possible recognition as broader collectives. Although research has long focused on the binary logic of "biology-culture," as well as on psycho-social aspects based on bodily evidence and assigned by society as *"social scripts"* that determine roles related to male-female identity constructions, this trend has changed since the last decade of the 20th century. In fact, new studies from social constructionism and postmodern psychologies suggest a shift in the understanding of sexuality, linked to the recognition of different concepts such as [7] sexual identity, and gender roles . From a sociological perspective, accepts the existence of individuals [8 d] of male, female, or male and female sex. The relationships and hierarchies between sexual subjects are a social construct, and *"the male-female binary does not necessarily encompass all identities, to [d9 o] s bodies, and all forms of subjectivization."* In fact, intersex individuals [1 o0] are not identifiable in either of these two categories. Notwithstanding the above, concepts such as those of AIC (Advocates for Informed Choice, formerly ISNA) argue that classifying a child in a category other than the traditional ones could lead to stigmatization.

4.8.2. Most interventions highlight the benefits of state recognition of the existence of a category other than female and male for the purposes of identifying an individual in society. In effect, *"the State, in its position as guarantor of the construction of a democratic culture, must start from [1r1e] knowledge and respect for differences"* , which leads to the need to expand gender categories and overcome binary forms of thinking. Sex is a political category, an expression *"of the binary logic that establishes and legitimizes hierarchical orders by opposing man [and 12 m] woman, body and spirit or psyche, reason and emotion, etc."*

From a medical standpoint, it is estimated that such



recognition [1 to 3] would benefit a this type of "patients." In effect, considering "an indeterminate category would allow for the protection of these individuals' autonomy in the construction of sexual identity and the expression of sexuality, with legal instruments," and would also serve to recognize them as subjects of rights with *te* capacity to decide and not as "creatures

. Therefore, they require "personal and public actions that enable them to obtain civil identity as a guarantee for the exercise of their rights [s15] and the attainment of an adequate social position" . This would facilitate the prompt intervention of a multidisciplinary team for immediate care and follow-up of the person, and counseling for the family, making possible [1 u6 n] adequate, non-traumatic integration into the social environment . In addition to access to confidential health services, education for socialization, and justice to enable respect for diversity and difference.

In the same vein, the AIC believes that it is positive to recognize a new category distinct from female and male to define a person's sex, provided that the decision is made by the individual themselves, as this ensures access to appropriate medical and psychological services. In fact, intersex people do not always receive the best care because professionals are not trained to do so or to respond to their specific needs. Thus, recognition by the state encourages the medical community to respond to the particular requirements of this population. It should be noted that families also do not know the best way to meet the needs of these individuals. Therefore, recognition would help parents raise their children in such a way that it is not assumed that a person with an intersex condition will be forced to remain forever in an arbitrary category. However, other concepts point out that the effects of recognizing a category other than the traditional ones would be "catastrophic" and could manifest themselves in a way anxiety disorders, depression, personality disorders, addictions, among others .

From a psychological point of view, it is clear that the recognition of a new category can have negative effects if sexual diversity is not accepted in



public, academic, and social spaces that promote inclusive practices, in order to avoid stigmatization based on binary logic and "*identity fundamentalism*". Even so, other interventions indicate that the recognition of this category would be positive, since the acceptance of different categories of sexual and gender identity would make society stronger, more open, and more equitable, as it facilitates integration and respects the differentiation produced by processes of social change, which translates into the expansion of democracy and the deepening of fundamental rights.

4.8.3. Regarding the problem of determining who is best placed to decide the category in which a person is classified, in cases of intersexuality or genital ambiguity, opinions differ slightly. On the one hand, the doctors consulted believe that the decision should be made by an interdisciplinary group of doctors, with the participation of the family and the patient, taking into account biological, ethical, psychological, and sociocultural considerations. In the case of newborn children, the participation of the parents is always required for initial decision-making and to establish the individual's parenting roles until they can exercise self-determination. However, sociologists and psychologists tend to consider that it is the individual themselves who should make the decision, although the views of the family, the medical community, and the state are not ruled out. If the state intends to classify its citizens into sexual categories, it should at least allow individuals to decide which category they prefer to be in. In this sense, the AIC takes an intermediate position by arguing that if the person is a minor, the family should decide for them; otherwise, adults should decide for themselves which category they belong to: female, male, or another, as is the case in [2 p2 a] countries such as Australia, New Zealand, Pakistan, and Nepal.

II. CONSIDERATIONS.

1. Competence.

This Chamber has jurisdiction to review the aforementioned writ of protection, based on the provisions of the Constitution, Articles 86 and 241(9); Decree 2591 of 1991, Articles 33 to 36; and the order of



October 20, 2011, of the Tenth Selection Chamber for Tutela of the Constitutional Court.

2. Legal issues.

In accordance with the factual situation presented, it is incumbent upon this Review Chamber to respond to the following legal issues:

2.1. Does the failure to register a child whose live birth certificate does not specify sex violate the right to registration and legal personality?

2.2. Does the right to legal personality of a child born without a specified sex violate the right to legal personality due to the lack of a registration option other than female or male?

2.3. Does the failure of health authorities to provide special care to a child born without a specified sex, due to the fact that the child is not registered, violate the child's right to health and life?

However, before responding to the issues raised, the Court must verify the admissibility of the writ of protection in order to assess whether a substantive ruling on this matter is appropriate. If the writ of protection is deemed admissible, the Chamber will decide on the specific case after analyzing the following issues: 1) The right to registration and legal personality; and 2) The right to health of children.

3. Admissibility of the writ of protection.

3.1. Allegation of infringement of a fundamental right.

It is alleged that the rights to life, health in connection with life, personal and family privacy, social security, legal personality, and the rights of children have been violated.

3.2. Standing to sue.

The petition for protection is filed by the Office of the Municipal Ombudsman of FF.



acting on behalf of baby NN .

3.3. Passive legitimacy.

3.3.1. The Ministry of Social Protection, the National Institute of Legal Medicine, the National Administrative Department of Statistics (DANE), the National Civil Registry, and the Territorial Health Directorate of the Department of WW and YY are national, departmental, and municipal authorities against which the writ of protection is filed .

3.3.2. Cafesalud is a public health service provider; therefore, the filing of a writ of protection is also applicable against it .

3.4. Immediacy.

The minor was born on June 12, 2011, and the writ of protection was filed on July 19, 2011. Therefore, the requirements for the writ of protection to be admissible are considered to have been met.

3.5. Subsidiarity.

3.5.1. The Court has reiterated in its jurisprudence that, in accordance with Article 86 of the Constitution, the writ of tutela is a residual and subsidiary remedy residual and subsidiary protection mechanism that can be used in the event of the violation or threat of fundamental rights, when there is no other suitable means for the protection of the rights invoked, or when, even if other means of judicial defense exist, it is necessary to resort to constitutional protection as a transitional mechanism to avoid irreparable harm .

3.5.2. In the present case, the action for protection is considered the appropriate mechanism to protect the fundamental rights of baby NN. Indeed, this is a minor, subject to special constitutional protection, who has health problems and who needed to be registered quickly by the authorities in order to access health services. Although the child was able to be registered one year after his birth, his situation and the fact that not all the relevant tests to determine the baby's sex have been carried out yet warrant



a substantive ruling by the Constitutional Court.

4. The right to registration and legal personality. Denial of the right to legal personality due to lack of registration because of indeterminate sex – Response to legal issues 1 and 2.

4.1. The right to legal personality and the attributes of personality.

4.1.1. Article 14 of the Constitution establishes that every person has the right to recognition of their legal personality. In turn, Articles 33 and 74 of the Civil Code define a person as any "*individual of the human species*," without distinction of sex, lineage, or condition, evidencing the relationship of this notion of [or 2 n8] to the principles of dignity and equality. According to doctrine, the legal concept of a person is the cornerstone of law and must be differentiated from the notion of man and subject of law.

4.1.2. The right to legal personality is also guaranteed in numerous international treaties such as ([2 and 9 n]) the Universal Declaration of Human Rights, the [a3c0to] International of Rights and Political [31]the American American Convention on Human Rights, the [C32o]nvention on the Rights of the Child, signed in 1989.

The enshrinement of the right to legal personality in international human rights treaties and instruments reveals the recognition of the individual as a rights holder at both the national and international levels and determines the responsibility of the States for [a3c3c]ions or omissions that compromise this right.

4.1.3. In accordance with the aforementioned provisions, the Constitutional Court has recognized since its earliest rulings that the fundamental right to legal personality implies not only considering the individual as the holder of rights and obligations, but also that, by the mere fact of existing, they are guaranteed the([s35 a]) that constitute the essence of personality.



"8- Modern doctrine considers that the right to legal personality is not limited solely to the capacity of the human person to enter into legal transactions and be the holder of rights and obligations, but also includes the possibility that every human being possesses, by the mere fact of existing and regardless of their condition, certain attributes that constitute the essence of their legal personality and individuality as a subject of law. These are the so-called attributes of personality. Therefore, when the Constitution enshrines the right of every natural person to be recognized as a legal person (CP art. 14), it is implicitly establishing that every human being has the right to all the attributes of legal personality. Thus, in the Report-Presentation for the first debate in Plenary on rights, duties, guarantees, and freedoms, constituent Diego Uribe Vargas refers to legal personality as:

"recognition of the individual as the principal subject of law, whose attributes have imminent value.

The attributes that doctrine recognizes for a person are: name, domicile, marital status, patrimony, nationality, and capacity. No person can be denied legal personality, as this would be equivalent to depriving them of [36] to exercise rights and assume obligations."

4.1.4. Personality attributes are inalienable, irrevocable, imprescriptible, lifelong, personal, and absolute characteristics of individuals, and include name, marital status, nationality, citizenship, domicile [or 3 , 7] legal capacity, patrimony, and filiation . It is important to note that since the right to legal personality is inherent to human beings, *"the State, through the legal system, merely limits itself to its recognition [3 or 8 n] without determining requirements for its exercise."* Thus, it is clear that from birth, individuals are holders of rights, but registration facilitates their exercise before the State. Therefore



reason, registration is considered proof of legal personality.

Among personality attributes, name and marital status are fundamental rights. The name—which includes the first name, last name, and pseudonym—allows individuals to be identified in society and indicates their connection to a family. Marital status, as will be seen below, places the individual within the family and before society so that they can exercise their rights and assume obligations . The Court's jurisprudence has recognized that the name is an element of marital status .

4.1.5. From the above, it is clear that there is a close relationship between the recognition of legal personality and the fundamental and highly personal right to identity. As the doctrine points out, personality "*is the dynamic aspect of identity,*" which is expressed in the world, making it possible to individualize the subject. In other words, it is a right that "*safeguards the person themselves and their social projection, defending their very essence, the core of which prevents a specific human being from ~~pe~~ing themselves with attributes that are not characteristic of their personality*" .

In this sense, identity goes beyond the simple concept of identification, which refers to information about date of birth, first name, last name, and marital status. Identity is the set of characteristics that make individuals unique, that place them as individual and social beings. In its dynamic aspect, identity places the subject as a relational and changing being; from a static point of view, identity is defined on the basis of biological and physical characteristics and attributes of identification. Both elements constitute subjective rights of individuals. As constitutional jurisprudence on this matter points out,

The right to personal identity is a broad right that encompasses other rights. The right to identity involves a set of attributes and qualities, both biological and personality-related, that enable the individualization of a person in society. These attributes make it possible to say that each person is who they are and not someone else. The right to identity, in



insofar as it determines the individual as an individual, carries with it a meaning of human dignity and, to that extent, is a right to freedom; such recognition allows for the possibility of developing one's life, of achieving fulfillment, that is, the free development of one's personality"

Thus, the right to legal personality and the right to identity are closely related to the principle of human dignity, since they are based on the recognition of the individual as a subject. The right to legal personality has been described in these terms by the Inter-American Court of Human Rights in case law cited by the Constitutional Court.

In this case, they would be treated as an object—the subject of a legal relationship, not a party to it—or reduced to the status of a slave. From all that has been said, it follows that the right to recognition of legal personality has its own substance or entity and cannot be seen as a reflection of a factual situation that deprives the individual of the possibility of exercising rights of which, however, he has not been denied ownership. This would entail a legal situation—disregard for personality of this nature—insofar as it constitutes a fact, as deplorable or limiting as one might wish, but not necessarily derogatory, in itself, of the legal personality of the human being who suffers it.

4.1.6. It should be noted that legal personality should not be confused with legal capacity, since the former relates to the *"ability to be the holder of rights and duties"*^[4] [6], while the latter has to do with the possibility of exercising them. In effect, a newborn or young child, or a person with mental disabilities, by the mere fact of existing as human beings, have legal personality, even though they do not have full legal capacity.

4.1.7. In short, within the framework of the social rule of law, the right to legal personality aims to recognize all persons as free and equal human beings and acts as a limit on state power. This legal category expresses the capacity of the human person to be the holder of rights and duties *"in*



the sphere of regulated behavior and human relations" .

The right to legal personality is therefore the status that underpins all the rights relationships established between individuals and, although it is inherent to human beings, it also implies a commitment on the part of the State and the Constitution to promote its respect and effective exercise

4.2. The right to legal personality, civil status, and civil registration.

4.2.1. The last paragraph of Article 42 above establishes that the law shall determine matters relating to the civil status of persons and the resulting rights and duties. Decree 1260 of 1970, *"Issuing the Statute of the Civil Registry of Persons,"* provides in Article 1 that the civil status of a person is their legal situation in the family and society, determined by their capacity to exercise certain rights and assume certain obligations, and that it is characterized by being indivisible, unavailable, and imprescriptible, and its assignment corresponds to the law.

4.2.2. Thus, civil status, as an attribute of legal personality, has been defined as a status or legal situation that expresses the condition of an individual in relation to their family and society , in other words, *"civil status is the legal position of the person in their dual condition: individual and social element"* . It is a universal, indivisible institution of public order, inherent to human beings, unavailable, inalienable, irrevocable, unseizable, imprescriptible, which cannot be established by profession, provides stability, and has erga omnes effects .

The function of civil status is to demonstrate a person's capacity to be the holder of rights and obligations. The sources of civil status are facts, such as birth, acts, such as marriage, and provisions, such as legal interdiction. The elements that make up civil status are individuality, age, sex, place of birth, and filiation.

[53]

The Court has pointed out that civil status information is essential for the recognition of legal personality and is closely related to the



rights to free development of personality and personal identity, since it legally places the person within their family and social nucleus. The constitution and proof of the civil qualities of persons are carried out through registration in the civil registry.

"Now, one of the legal attributes or qualities of persons, which allows them to be identified and differentiated in the social conglomerate, is civil status. Through it, human beings define certain fundamental facts of their personality and achieve a legal place in their family and social nucleus. Thus, with regard to personality, it can be established whether a person is male or female, whether they are a minor or of legal age, and whether they are alive or deceased. On the family and social side, it is determined whether they are a legitimate or extramarital child and whether they are married or single.

Given the importance of civil status, its establishment and proof are carried out through registration in the civil registry, with birth registration being the ideal way to ensure that human beings can effectively exercise their rights. Immediate registration is therefore a right of the child, essential for the recognition of their legal personality.

"The importance of registration is immense when one considers that through it another of the essential attributes of personality is officially acquired: the name."

4.2.3. Registration is a procedure carried out by the State through officials competent for this task and is regulated by public policy rules. It has been established that the functions of the registry are to publicize civil status facts, to provide proof of facts, acts, and decisions [55] thereof, and to perform an auxiliary function for statistical purposes .

In addition to the above, the importance of registration lies in the fact that the State is aware of the physical existence of a person in order to guarantee their rights. For this reason, it is essential to register minors immediately after their birth, as established in Article 48 of Decree 1260 of 1979, which



stipulating that registration must take place within one month of the child's birth. This is in line with international standards and, in particular, with Article 24-2 from [Par 5c\(6\)](#) International of Human and and , Article 3 of the 1969 Pact of San José, Costa Rica, and Article 7-1 of the Convention on the Rights of the Child .

Likewise, through registration, the person acquires another of the essential attributes of personality, the name , enshrined in Article 44 of the Charter as one of the fundamental rights of children.

"The Constitution itself places special emphasis on the right of children to have a name, as this is the age at which it is normally acquired. It is clear that the legal system recognizes and protects the right of the child to a name, precisely so that they may have a name throughout their life."

4.3.4. In accordance with Decree 1260 of 1970, births are registered in the civil registry. Births are recorded on pages marked with a code; entries relating to the civil status and legal capacity of the person are made in this registry. Title VI of the Decree regulates all matters concerning civil birth registration. Article 49 stipulates that the birth shall be certified before the official in charge of keeping the civil status register by means of a certificate from the doctor or nurse who attended the mother during childbirth, and in the absence of such a certificate, by means of a sworn statement from two competent witnesses. Article 52, for its part, specifies the content of the birth registration, which consists of a generic section and a specific section. The first section shall include the name of the person registered, their sex, the municipality and date of birth, the office where they were registered, and the folio and general numbers of the central office. The second section shall include the time and place of birth, the name of the mother, the name of the father, if possible, the identity of both parents, their profession or occupation, their nationality, their marital status, and the code of their birth and marriage records; the name of the professional who certified the birth and their license number. It should be noted that the information in the general section is an essential requirement for registration.



4.3.5. Although it is essential to register children immediately after birth, the Court has established that the fact that a minor is not registered does not mean that they can be denied their fundamental rights, such as the right to health, because this would unjustifiably endanger the child, giving priority to formalities in situations involving individuals who are already vulnerable.

In this regard, it should be reiterated that the rights of minors take precedence over all others, as the Court has pointed out by recognizing children *as having "a specific legal characterization based on their prevailing interests and on treating them in a manner equivalent to that prevalence, which protects them in a special way, safeguards them from abuse and arbitrariness, and guarantees the 'normal and healthy development' of minors from a physical, psychological, intellectual, and moral standpoint and the proper development of their personality."* [6 c 11] *al and moral points of view and the proper development of their personality"* .

4.3. The registration of intersex persons in public documents.

4.3.1. Before addressing the issue of the registration and legal recognition of intersex persons in public documents, it is important to clarify some concepts that must be differentiated in order to understand the issue under consideration in this case.

On the one hand, *sex* has been defined *as the set of physical, biological, anatomical, and physiological characteristics of human beings that define them as male or female. Sex is determined by nature [62] and is a natural construct with which one is born.* On the other hand, *gender* refers to the stereotypes, social roles, acquired status and position, behaviors, activities, and appropriate attributes that each society [63] in particular constructs and assigns to men and women. *Sexual orientation* is defined as sexual, emotional, and romantic attraction to others. As such, it has been defined as *"the specific organization of eroticism and/or emotional attachment of an individual in relation to the gender of the partner involved in sexual activity."*

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Although there is consensus on these concepts, authoritative experts in the field have considered that the



difference between sex and gender is not real, since sex—and not just gender—also depends on cultural and social factors .

4.3.2. However, legally determined sex, that is, the sex indicated on personal identification documents, is almost always based on the external morphology [e67] of the genitals at birth. Thus, in general, legal systems identify two biological sexes, so that individuals can identify as male or female, which can be problematic for children born with ambiguous genitalia and for intersex individuals in general.

4.3.3. In many countries, legal loopholes regarding the definition of legal sex have led to the intervention of judges in matters relating to the lack of regulation of certain issues of interest to intersex or transgender people, and sometimes also of the administration through acts of a general and abstract nature. Judicial decisions in these matters have made it possible to establish trends in different countries regarding the inclusion of people who do not fall into the sexual categories of male or female, particularly with regard to marriage, name and sex changes on official documents, and issues of harassment and discrimination in the workplace.

With regard to official documents, and especially birth certificates that determine sex for other documents such as passports and driver's licenses, among others, according to studies conducted in the United States, for example, when a transgender or intersex person changes sex or undergoes surgery, it is possible to correct the official document or issue a new one, requiring, depending on the state, a court order or medical order. Most of these cases are settled in court and are denied when there is substantial interest justifying the rejection of the sex change, or when an attempt at fraud is detected. In the United Kingdom, in the decision of *Goodwin v. United Kingdom* (2012), the Court ordered the State to recognize the rights of individuals with a gender other than female or male, and specifically ordered the change of sex on the identification documents of a transgender person who had undergone surgery.



which had been denied by the competent authorities of that country. In Nepal, the Supreme Court of Nepal examined the case known as *Pant v. Nepal* and ordered the government to issue identity documents that included the option of "third gender" or "other" to include people who do not identify as male or female, or who act with a gender different from that assigned at birth . Since 2005, India has also recognized the registration in passports of persons who do not classify themselves as female or male but as unisex and denoted by the letter "E"; In 2010, it extended this recognition to documents for voting in elections—as is the case in Bangladesh—and subsequently to censuses, so that in 2011, the Single Identification Authority of this country established a new identification system, recognizing "transgender" as a third gender option. Australia and New Zealand added another option for the identification of their citizens in addition to "male" or "female" on documents and passports: in Australia, a change of sex on documents is possible with a medical certificate and the applicant is not required to have undergone sex reassignment surgery, but it is also possible to request that the document not contain any specification regarding the person's sex ; in New Zealand, a court order is required to make changes to a birth certificate. Similarly, in a decision dated April 25, 2011, the Supreme Court of Pakistan in the case of *Khaki v. Rawalpindi*, ordered the director of the National Registration Authority to issue identity documents to the transgender population—known as Hijira—with a gender category called "*khwaja sira*"; the ruling also ordered the police to stop discriminating against this population and ordered the government to ensure the inclusion [76] "third sex" in the census and official surveys .

4.4. Case law rules relating to intersex and genital ambiguity: the principle of beneficence and the principle of autonomy.

4.4.1. The Constitutional Court has had the opportunity to review, on several occasions, cases relating to individuals with sexual ambiguity or intersex conditions.

A relevant ruling in this area is SU-337 of



1999, which examined the scope and limits of informed consent in surgical treatments for minors and whose precedent has since been reiterated by the Court in similar situations . The complexity of the case lay not only in the potential physical and psychological harm to a minor with sexual ambiguity, but also in the possible infringement of their right to autonomy. In other words, the ruling sought to resolve the tensions between the principle of autonomy and the principle of beneficence, taking into account the urgency of the treatment, the risks inherent in it, and the age of the patient.

Although the matter examined by the Court on that occasion is not comparable to the situation under consideration in the present case, that ruling is of fundamental importance because it reflects the state of the debate on sexual ambiguity and intersexuality. In this vein, numerous studies were cited, such as those by Dr. Money, who since the 1950s had argued that sexual ambiguity was a physical condition that required urgent treatment for psychosocial reasons, as well as more recent studies that question these positions. Despite the differences, the prevailing thesis, according to the aforementioned ruling, is that minors must be assigned a sex, either female or male, at birth . Notwithstanding the above, the door is left open for future legal developments and regulatory changes in this area.

In the following rulings relating to cases of intersex minors or minors with ambiguous genitalia, the rules established in ruling SU-337 of 1999 were reiterated. These rules were applied taking into account each specific case and, therefore, sometimes giving precedence to the principle of beneficence and, in other situations, to the principle of autonomy. Rulings T-551 of 1999 and T-692 of 1999 emphasized the need to safeguard informed, qualified, and persistent substitute consent. Judgment T-1390 of 2000 insisted on the medical obligation to safeguard the elements of substitute consent. For its part, judgment T-1025 of 2002, in addition to confirming the precedent of SU-337 of 1999, reiterated the need for minors to be quickly assigned a gender, since leaving them in a state of



indefiniteness would condemn them to social rejection and cause psychological trauma:

"Therefore, denying a minor the identification of their gender or indefinitely postponing the assignment of their sex until puberty contravenes the estimative and temporal attributes of the being, a reflection of their own autonomy and freedom, and which guarantee them a space within the community for the projection of their personality and the constitution of their own life plan.

On the other hand, subjecting the minor to social rejection and psychological trauma due to the unusual appearance of their genitals would be to ignore the scope of the fundamental right to health (Article 44 of the Constitution), which encompasses not only the physical care and attention of the patient but also the safeguarding of their mental health. For this reason, the individual's *psychological and physical well-being* would be disturbed if they were deprived of recognition of their real sexual or gender identity.

In accordance with the aforementioned precedent, it follows that the Court's position, based on ruling SU-337 of 1999, is that minors must be assigned a sex as early as possible and subsequently undergo surgery. In this vein, the Court has endorsed the position that these conditions must be corrected and must conform to the recognized binary system .

4.4.2. Thus, the precedent set by the Court more than 17 years ago continues to be an important reference point in relation to the informed consent of patients, especially minors. However, it is not entirely applicable to the situation under consideration on this occasion for two fundamental reasons. First, because in the present case, the issue is not the performance of a surgical operation to reassign the baby's sex, but rather the failure to register a minor because no sex was assigned at birth due to a problem of sexual ambiguity. Second, because within the framework of the 1991 Constitution and the evolution of case law on the scope of the



fundamental rights, the Court must consider the realization of the right to dignity, identity, and equality in the context of pluralism as a principle of constitutional rank .

4.5. Specific case: response to the legal problem of disregard for the right to legal personality due to the indeterminacy of a minor's sex.

4.5.1. Taking into account the above considerations, we will examine whether, in the specific case, the rights to registration and legal personality have been disregarded due to the non-registration of a baby whose live birth certificate does not specify sex because at the time of birth it could not be determined whether the baby was a boy or a girl.

4.5.2. The Chamber finds that the situation it is called upon to examine raises the difficult confrontation between (i) the State's interest in identifying citizens and registering them for the purposes of locating them in society and the family, and guaranteeing them all the rights enshrined in the Constitution and in the legal system in general; and, on the other hand, (ii) the right to identity and sexual identity, which in turn are related to another set of constitutional rights and principles of fundamental importance, such as human dignity.

4.5.3. The requirement to indicate the male or female sex of the newborn in the gender section of the birth certificate is legitimate and necessary to achieve the purposes set forth in the Constitution. In other words, sex is a valid criterion for identification that serves to define marriage and promote the inclusion and special protection of women and mothers.

However, based on the evidence gathered and the studies analyzed in this ruling, it is clear that there are intersex individuals who cannot be classified as male or female from birth due to medical and biological reasons, which does not equate to a denial of their fundamental rights. An individual's sex does not determine their status as a citizen or their humanity, and cannot in any way become a criterion for excluding or nullifying the rights of any person or citizen, such as the right to legal personality. In other words, denying an intersex person their rights for this reason



would mean degrading them and denying their status as human beings.

4.5.4. Taking into account the duty of the authorities not to hinder the recognition of the rights of the intersex population and considering the need for the process of capturing information on these individuals to recognize them as subjects of law, it is necessary to establish the specific effects of these considerations.

In this regard, the Chamber believes that it should be the legislator who is called upon to regulate all legal situations that may pose an obstacle to the recognition and exercise of the rights of intersex persons. However, until that happens, the constitutional judge could establish guidelines for determining how to identify persons who, at birth, cannot be classified as female or male.

4.5.5. The Court considers that in order to resolve this specific case and others with the same factual circumstances, until such time as the legislature regulates the matter, in order to avoid a lack of protection for the intersex population or those with genital ambiguity to the detriment of their fundamental rights and the best interests of the child, children who cannot be identified at birth as male or female, while their sex is being assigned, may be registered without filling in either of the two boxes on the live birth certificate and in the civil birth registry. In the event that the minor is not classified as male or female, an annotation may be made on a separate page, which may be deleted once the sex is assigned. Obviously, in these situations, the data on sex will be kept confidential. In fact, it is understood that this type of information, especially when it refers to minors under the age of (18 and 17), is part of the sensitive data that the Court has included in the essential core of the right to privacy and that is also recognized in Law 1581 of 2012. Although in most cases the minor will certainly be classified in one of the two categories of male and female, in cases where the decision is different and the sex is not readily assignable, the same confidentiality measures will apply to the other documents required by the child.

When a decision is made a final decision on the



sex assignment, and it is necessary to modify the data relating to the name and sex initially recorded in the official document, the procedure shall be confidential and expeditious.

These rules not only guarantee the individual's right to legal personality but also form the basis for their personal development and life project. As the Court has held, *"the establishment of a person's individuality before society and the State requires the individual's agreement with the identity they project, so that they will always have the legitimate power to determine the externalization of their mode of [s8e3r] of agreement withtheir innermost convictions"* .

4.5.6. Now that the above criterion has been established, it must be determined who is called upon to decide the sex that will appear on the child's birth certificate. The individuals involved in making this important decision are primarily the parents, the person concerned, and the interdisciplinary team of doctors, psychologists, and social workers.

Although in these cases there is no surgical operation involved, which by its nature entails risks and is also irreversible, the decision on the assignment of sex is also of paramount importance, not only for the purposes of establishing the legal sex of a person, but also for determining parenting guidelines, and because it is decisive for future medical interventions.

Therefore, the decision on sex assignment in the document must be made in principle by the medical team, which is best placed to determine the child's development.

4.5.7. At all times, minors and parents must be kept informed by the group of doctors about the diagnosis and the best options for sex assignment. They may file guardianship actions when they feel that their rights are being ignored and will enjoy the advice and constant support of the relevant state authorities—the Ministry of Health, the Superintendency of Health, the Public Ministry, and the responsible municipal and departmental authorities.



In any case, the State shall accept the sex determined by the medical team in identification certificates and records. The data shall be kept confidential, and the legislature shall regulate an expedited procedure to facilitate the change of sex and name in the event that it is decided to modify [84] the sex assignment initially adopted. When the minor is identified as intersex, and he or she or his or her parents accept this classification, this characterization shall appear on a separate page that shall remain confidential until a final decision is made on the assignment of sex.

4.5.8. Thus, in the case *under review*, the Chamber will order the interdisciplinary team of doctors at the EPS where baby N.N. is registered to perform all the relevant tests to establish the best options for sex assignment and to duly inform the parents of their findings.

At this point, the Court must draw attention to the fact that despite the Court's requests and the orders contained in the precautionary measures sent to Cafesalud in July 2012 to initiate, within a non-extendable period of forty-eight hours counted from the notification of the order, Cafesalud had not yet sent the Court the requested interdisciplinary opinion. Cafesalud's delay in sending the Court the ordered interdisciplinary opinion is regrettable and reprehensible. Consequently, the competent authorities will be asked to investigate the conduct of this health promotion entity and impose the appropriate sanctions if necessary.

In addition, the court of first instance, the Superintendency of Health, the National Institute of Health, the Ombudsman, the Health User Advocate, and the municipal and departmental authorities where the baby currently resides will be ordered to follow up on the case and accompany the parents and the minor in this process, and the municipal and departmental authorities where the baby currently resides to follow up on the case and accompany the parents and the minor in this process.



Insofar as the minor has already been registered, his registration in the birth registry will not be ordered. However, the authorities in charge of registration will be urged to comply with the instructions issued by the Court in the considerations section of this ruling, and in particular in points 4.4.8. and 4.4.12., until the legislature issues a regulation that facilitates the registration of intersex minors.

4.6. Conclusion regarding the alleged disregard of the right to legal personality of the minor NN.

4.6.1. The indeterminacy of sex cannot be an obstacle to the exercise of the right to legal personality, which is inherent to human beings by the mere fact of their existence and is closely related to the principle of human dignity and equality. Thus, there is no constitutional reason to justify that babies and children whose sex cannot be identified at birth are not registered and remain hidden from the State and society.

4.6.2. The tension between the State's interest in identifying and registering citizens for the purpose of locating them in society and the family and guaranteeing them all their rights, and, on the other hand, the right to identity and sexual identity of intersex persons or persons with ambiguous genitalia who are not classified at birth as male or female, must be resolved by the legislature without losing sight of the best interests of the child.

4.6.3. While the matter is being regulated, the way to guarantee the best interests of the child, dignity, equality, free development of personality, the right to identity, legal personality, and privacy of intersex persons or persons with ambiguous genitalia who cannot be classified as male or female is to have a special protocol that allows an interdisciplinary team of medical experts to assign sex, which may be female, male, or intersex. In the event that the decision is to classify the minor as intersex, this shall be communicated in writing to the competent authorities together with the diagnosis of intersexuality or



genital ambiguity of the minor. The data will be kept strictly confidential and will be deleted once a final decision has been made, with expedited mechanisms in place to make the respective changes to sex and name, if applicable.

5. The duty of the authorities with regard to the right to health and life of minors born without a determined sex and without a civil birth registration – legal issue 3.

5.1. The best interests of the child and their recognition as subjects of special constitutional protection.

5.1.1. Article 44 of the Constitution establishes that the rights of children prevail over all others, and therefore it is the duty of the family, society, and the State to assist and protect them in order to guarantee their harmonious and comprehensive development and the full enjoyment of their rights.

5.1.2. Since its earliest rulings, the Court has considered that children's rights are fundamental rights of immediate application, which ensure greater guarantees for minors and a special responsibility [[d8_e7_1](#)] State in the care and protection of their rights .

According to ruling C-041 of 1994, the rights of the child and the corresponding duties of the family, society, and the State receive a notable institutional reinforcement in the Constitution. In particular, it is noted that minors are elevated to the category of "*fundamental subjects deserving of special and priority treatment by the family, society, and the State. [...] In granting this very special status to minors, consideration has undoubtedly been given to their specific protection needs arising from their lack of physical and mental maturity—their vulnerability—and the importance of actively promoting their growth, well-being, and full development of their personality. [...] The consideration of children as privileged **members** of society has effects at different levels. The physical and mental condition of minors calls for special protection by the State and validates actions and measures ordered to mitigate their situation of weakness, which would otherwise violate the principle of equality (C.P. art. 13).*



5.1.3. Thus, the Constitution and case law recognize the best interests of the child in all areas, from priority allocations aimed at addressing children's rights to benefits, to the punishment of violators of children's rights, and the application of the *pro infans* rule [§ 81] situations involving a minor .

5.2. Right to health for minors.

5.2.1. The Constitution and constitutional jurisprudence have recognized the right to health

as a fundamental, autonomous, prevailing right, immediate application and as a public service provided by the State, which must be carried out ~~in accordance~~ with the principles of efficiency, universality, and solidarity .

5.2.2. For its part, Article 47 provides that persons who are in a situation of manifest weakness deserve specialized care. Thus, it is the responsibility of the State to advance public policies aimed at "*provision, rehabilitation, and social integration for the physically, sensorially, and mentally disabled, who shall be provided with the specialized care they require.*"

5.2.3. Article 27 of the Code on Children and Adolescents provides that children and adolescents have the right to comprehensive health care and that no hospital, clinic, health center, or other entity dedicated to the provision of health services, whether public or private, may refuse to treat a child who requires health care, under penalty of a fine of up to 50 salaries. Even when minors are not listed as beneficiaries in the contributory or subsidized system, the cost of such services shall be borne by the Nation.

5.2.4. According to international treaties ratified by Colombia, such as the Additional Protocol to the Inter-American Convention on Human Rights [§ 92 e] on economic, social, and cultural rights and the International Covenant on Economic, Social, and Cultural Rights , which form part of the constitutional framework, the State has the obligation to guarantee



necessary medical care, establishing the essential elements of the right to health, such as availability, accessibility, acceptability, quality, and the prohibition of discrimination in health goods and services.

The Convention on the Rights of the Child establishes the obligation of States Parties to respect the rights of minors, without distinction based on race, language, ethnic origin, or "*physical impediments*" (Article 2), while also imposing on all public and private institutions the duty to guarantee the well-being and rights of children (Articles 3 and 4) .

5.2.5. Both the regulations and case law on the fundamental right to health of minors stipulate that children must have access to the health services they require to safeguard their integrity, even when such care is excluded from the Mandatory Health Plan . s

5.3. Intersex minors and the right to health in the Court's jurisprudence.

5.3.1. Constitutional jurisprudence, in addition to highlighting the fundamental and prevailing nature of children's right to health, has indicated that it is not possible to justify the denial of this benefit in the absence of a contract with health service providers or because the minor does not have a civil birth certificate. In addition to pointing out the tensions that arise in cases of intersex children, which were briefly outlined above, case law has indicated other rules that should serve as a reference in matters of the right to health for these children.

5.3.2. As some of the interventions warned, when minors have ambiguous genitalia, it is necessary, first of all, to resolve the immediate problems affecting their overall health. Subsequently, relevant evaluations are carried out in order to complete the diagnostic approach, and then gender is assigned. For these purposes, various variables are taken into account, such as chromosomal characteristics, the gonads present, body habitus, external physical features with the degree of masculinization or feminization of the genitals,



internal genitals, the possibility of fertility and sexuality, the risk of future tumors arising from the gonads, and the influence of prenatal hormones on tissues, including the brain. The final step is surgery, which seeks to achieve a more stable gender identity and better psychosocial and psychosexual outcomes. The delicate work of the medical team in these early stages is therefore evident.

In this vein, in ruling T-1025 of 2002, concerning the case of a hermaphrodite minor who had not undergone the relevant examinations and had not been authorized to undergo surgery due to the absence of a contract with Social Security, the Court considered that it was unacceptable for the provision of the service to be denied on these grounds in a diligent and efficient manner. In this vein, it was indicated that "health institutions and, especially, treating physicians, in application of the principle of beneficence, must be required to comply with their clinical duty to proceed with diligence and professionalism in the provision of diagnostic, therapeutic, and rehabilitation services related to the medical treatment of 'intersex' or 'hermaphroditism' conditions, precisely to balance the enormously traumatic dimension that these conditions represent for individuals and their families" (SIC).

The above includes: (i) the prompt diagnosis of such conditions, (ii) the timely formulation of therapies or medical alternatives available for their treatment, (iii) the monitoring, constant assessment, and protection of the sensitive and defenseless human component, and, peremptorily, (iv) the provision of psychological support
psychologic [therapeutic necessary to rehabilitation
al and
]

rehabilitation . This is closely related to the principle of efficiency, which requires health institutions to provide timely and efficient care, and to the principle of integrity, which requires the guarantee of adequate service coverage. Taking these principles into account, case law has established that in the case of intersex persons and their families, an interdisciplinary support team is necessary to comprehensively address any medical, psychological, and legal issues that may arise, in order to ensure these individuals' rights to life, integrity, and personal identity.



5.3.3. In addition to the principles that should guide health services, particularly for intersex minors, it is important to reiterate that when the patient's life is at risk, delays in authorizing surgery, tests, or treatment are unacceptable.

5.3.4. The denial of health services or unjustified delays by the health system in meeting the needs of minors, especially intersex minors, is also reprehensible when based on the patient's lack of a birth certificate. In ruling T-885 of 2005, the case of a minor in serious health condition who was not being treated by institutions on the grounds that he had to be re-examined because he was a foreigner and did not have a Colombian civil registry was examined. On that occasion, it was considered that "**No health institution in the subsidized system may therefore refuse to provide care to the minor on the grounds that he or she does not have a valid identity document, because such discrimination would violate his or her prevailing right to health**" (emphasis added). It added that in such cases, formalities could not take precedence when they prevented the full exercise of minors' fundamental rights.

5.3.5. It is therefore concluded that minors are subjects of special constitutional protection who must be guaranteed the fundamental and prevailing right to health. In the case of intersex minors, the care provided by doctors must be efficient and timely. Under no circumstances can minors' access to health services depend on paperwork and formalities, including the requirement of a civil birth certificate to begin the medical treatment that their health condition requires.

5.4. Analysis of the specific case

In the present case, it has been proven that the baby NN, born on June 12, 2011, has a live birth certificate which, apart from some contradictory notes, does not specify the sex



of the minor in the corresponding boxes on the form.

As a result, the Civil Registry Office of the Municipality of FF informed the father that the minor NN could not be registered because the civil birth registration protocols are based on a live birth certificate that indicates female or male sex.

Due to health problems related to the baby's intersex condition, he was taken to FF Hospital, but was initially denied access because he did not have a civil birth certificate. Only the timely intervention of the Municipal Family Commissioner managed to restore the baby's rights and obtain care at FF Hospital.

According to the evidence provided in the case file, the mother and child are currently registered with Cafesalud EPS.

From the evidence received by the Chamber, sent by the Municipal Ombudsman of FF, and based on conversations held with the mother on July 11, 2012, it can be inferred that Cafesalud has not acted with the promptness and urgency that the case requires, unjustifiably delaying the interdisciplinary opinion, which has not even been referred to the Constitutional Court. Likewise, the care required by the baby has not been prompt, timely, or comprehensive. In this way, the baby's fundamental rights to health, life, and personal integrity have been violated, completely disregarding the best interests of the child enshrined in the Constitution.

It was only in mid-2012, when the baby was already one year old, that the registration could be carried out based on the results of a chromosome test, which in these situations represents only one of the many tests that must be performed on intersex minors or those with genital ambiguity.

As noted above, the denial of health services or the unjustified delay by the system in meeting the needs of minors, especially intersex minors, is reprehensible, disregards their fundamental rights and and is



absolutely unconstitutional when based on the patient's lack of birth registration.

In this case, both the FF Hospital, which initially refused to treat the minor, and Cafesalud violated all the rules applicable to the diagnosis and treatment of intersex babies or those with genital ambiguity, since, according to the evidence provided in the file, they did not make an early diagnosis of this condition, nor did they provide the required medical treatment in a timely manner. They did not assess the patient in accordance with his status as a subject of special constitutional protection, nor did they provide the psychological and therapeutic support necessary for rehabilitation.

For these reasons, the Chamber will order the Superintendency of Health to investigate the conduct of the FF Hospital and Cafesalud, imposing the sanctions proven for the omissions and faults committed to the detriment of the fundamental rights of the minor NN.

5.4. Conclusion regarding the legal issue of the alleged violation of the right to life and health of minor NN.

5.4.1. Intersex minors or minors with ambiguous genitalia must receive urgent and priority care from birth by an interdisciplinary team that informs the parents about their condition and issues an opinion on the assignment of the baby's sex.

5.4.2. Likewise, intersex minors or minors with ambiguous genitalia shall receive comprehensive care in the health system without delay and without the need to present a civil birth certificate as a prerequisite.

6. Reason for the decision.

6.1. In the present case, a minor whose sex was not identified at birth was not registered by officials of the Civil Registry of the Municipality of FF because the live birth certificate did not indicate his sex. Without a civil birth certificate, the Hospital of FF initially refused to treat him until the intervention of the authorities was necessary. To date, the health promotion entity with which the minor is registered



has not conducted a complete study or sent the Court the opinion of the interdisciplinary medical team to establish the best options for the minor. Based on a partial study of the minor's sex, he was finally able to be registered by his parents one year after his birth. The care provided to the baby to date has not been timely or comprehensive.

6.2. Taking into account the facts of the case, the Chamber considers that the indeterminacy of sex can in no way become an obstacle to the exercise of the right to legal personality, which is inherent to human beings by the mere fact of their existence. In accordance with the principle of human dignity and the right to equality, there is no reason to justify that babies and children whose sex cannot be identified at birth are not registered and remain hidden from the State and society.

6.3. Consequently, the authorities are obliged to register intersex minors or those with ambiguous genitalia. The decision on the assignment of sex in the civil birth registry depends on the decision of the interdisciplinary team of medical experts. The options for assigning sex in the civil registry for intersex individuals include female, male, or a separate entry in accordance with the reasoning section of this ruling. The legislature shall regulate all matters concerning the registration of intersex minors.

6.4. Notwithstanding the above, we reiterate the need to provide urgent and priority care to intersex minors or those with ambiguous genitalia from birth by an interdisciplinary medical team, without this being dependent on the presentation of a birth certificate. Parents must be kept informed at all times so that they can make a decision in the best interests of the child and take an autonomous decision on the assignment of their sex.

III. DECISION

In view of the foregoing, the Sixth Review Chamber of the Constitutional Court, administering justice on behalf of the people and by mandate of the Constitution



RESOLVES

FIRST.- TO PROTECT the right to privacy of the petitioners and the minor NN, for which purpose their names may not be disclosed, and this file shall remain strictly confidential and may only be consulted by those directly involved, in accordance with the legal basis of this ruling. The Secretary General of the Constitutional Court and the Secretary of the Superior Court of the Judicial District of RR, which decided the case in the first instance, shall guarantee this strict confidentiality.

SECOND.- TO CONFIRM the judgment of September 2, 2011, of the Civil Cassation Chamber of the Supreme Court of Justice, which upheld the decision of the Superior Court of the Judicial District of RR, Civil Family Chamber, of August 3, 2011, regarding the protection of the rights to personal and sexual identity, free development of personality, and health, but with the scope provided for in this ruling.

THIRD.- ORDER Cafesalud to send the Superior Court of the Judicial District of RR, within 48 hours of notification of this ruling, the opinion of the interdisciplinary team of doctors on the assignment of sex to the minor NN and the report to the parents on the best options for their child.

FOURTH.- ORDER the Superintendency of Health to closely monitor compliance with the orders of this ruling and to investigate the conduct of Cafesalud and FF Hospital. The National Institute of Health, the Ombudsman, the Health User Ombudsman, and the municipal and departmental authorities shall also be ordered to monitor compliance with the orders of this ruling.

FIFTH.- ORDER the National Civil Registry Directorate:

a) Implement the changes ordered in this ruling regarding the registration of intersex minors or minors with



ambiguous genitalia when the sex assignment does not correspond to the categories of female or male, providing for their registration on a separate page that will be deleted when the sex is definitively assigned. This will require a medical diagnosis of intersexuality or genital ambiguity and written authorization from the minor or parents.

b) Provide an expedited mechanism for changing the sex and name of the minor when a final decision on sex is made.

c) Maintain strict confidentiality regarding information relating to the minor's sex, which is considered sensitive data.

d) Extend the aforementioned modifications to the civil registry of death and to all other required documents.

SIXTH.- ORDER the Superior Court of the Judicial District of RR to follow up on the orders issued in this ruling.

SEVENTH.- URGE the Congress of the Republic to urgently and prioritise the regulation of the matter addressed in this ruling in order to establish rules that will allow the registration and identification of intersex persons or persons with ambiguous genitalia for the purpose of guaranteeing their right to legal personality, taking into account the best interests of the minor.

EIGHTH.- Issue the communications referred to in Article 36 of Decree 2591 of 1991, for the purposes contemplated therein.

Copy, notify, insert in the gazette of the Constitutional Court, and comply.

MAURICIO GONZÁLEZ CUERVO
Magistrate

LUIS GUILLERMO GUERRERO PÉREZ



Justice

GABRIEL EDUARDO MENDOZA MARTELO.
Judge
With dissenting opinion

MARTHA VICTORIA SÁCHICA MENDEZ
Secretary General



**DISSENTING OPINION OF MAGISTRATE GABRIEL
EDUARDO MENDOZA MARTELO
To Judgment T-450A/13**

**RIGHT TO LEGAL PERSONALITY OF MINORS
WITH INTERSEXUALS OR WITH
GENITAL AMBIGUITY**—The current lack of subject
matter should have been declared, as the registration in
the civil registry had already been completed (dissenting
opinion).

Reference:

File T-
3.253.036

Action of ~~legation~~
brought by the
Municipal
Ombudsman FF
against
the Ministry
of Social
Protection, the
National Institute of
Legal Medicine ,
the National
Administrative
Department of
Statistics DANE,
National Registry
of Civil
Registration . In
addition of
the Territorial
Directorate of Health
and the
WW and YY
Department and
Cafesalud
EPSS for
affiliation in the
first instance.

Presiding Judge:

MAURICIO
GONZALEZ



CUERVO.

The complexity of the legal issues raised in the decision, in my opinion, requires legislative development in light of the lack of regulations governing situations arising from intersexuality or sexual ambiguity, issues that give rise to a diversity of scientific, ethical, legal, and social opinions. In fact, the Constitutional Court has adopted decisions that not only focus on the study of violated fundamental rights, but have also established criteria that open up new horizons and offer a space for equality and pluralism, but which in any case are aimed at ending the violation of a fundamental right or preventing irreparable harm in each specific case.

The legal challenges currently facing the constitutional judge constitutional and the administrative officials in the absence of protocols or regulations governing the recognition and registration of intersex minors. However, in order to protect rights such as health, life, sexual identity, and the free development of personality, the Constitutional Court intervenes with the purpose eliminate barriers and formalities that in some events violate fundamental rights fundamental rights. No However the above, I consider that in the case *under review* there are not sufficient objective elements of judgment to grant jurisdiction to a Review Chamber to adopt measures regulating aspects such as the registration of intersex minors in the civil registry, mechanisms for sex change, or other events subject to registration, which must be regulated through legal procedures and with regulated jurisdiction, the foregoing in consideration of the fact that on September 11, 2012, the civil registry was completed and the sex of baby NN was registered as female, as evidenced in this instance. The failure to issue said act gave rise to the filing of the writ of protection. Therefore, in my opinion, compliance with said action constitutes a settled matter, on the understanding that the jurisprudence of this Court has held that in the processing of the writ of protection, this occurs when, due to the action or omission of the obligated party, the infringement of the fundamental right ceases, to the point that a ruling of the judge oriented to grant protection that is no longer required.



The event that gave rise to the legal dispute between the various administrative entities was the refusal by the Civil Registry Office of Municipality FF to register the civil registry, which prevented the minor from accessing health services, an act that had already been issued by the competent authority and which I consider, as I have already stated, to be a matter that has been resolved. For this reason, the Review Chamber should not have issued the orders referred to in the fifth paragraph of the judgment, as none of them contemplate the warnings or precautions that the jurisprudence

[99]
constitutional _____ has indicated is appropriate in these cases.

Finally, I believe that given the complexity of the issue and the social, ethical, legal, and biological debates surrounding it, it cannot be the task of the constitutional judge to homogenize the different situations that may arise from a specific case in order to advance or deepen the respective issue, since only when legislative measures are adopted by the Congress of the Republic can the circumstances and conditions evident in each specific case determine the decisions that the Corporation may adopt in the amparo action, which are aimed at ceasing or preventing the violation of fundamental rights, without prejudice to the use of the mechanisms currently provided for by law to resolve this type of situation or administrative irregularities.

Based on the foregoing, I dissent from this decision.

Date as above,

GABRIEL EDUARDO MENDOZA MARTELO
Magistrate





[1]

Genital ambiguity is characterized by *"the sex Chromosomal, gonadal, or anatomical variations from the norm, which may be inconsistent with each other, require medical science not only to make a specific diagnosis but also to assign a gender. These two elements require time and the participation of a trained multidisciplinary team to avoid hasty conclusions that are inconsistent with the primary diagnosis.* Intervention by the Faculty of Medicine of the Javeriana University Folio 123 of [C2u]main document.

Medical doctrine defines intersexuality as a pathology or disorder, manifested in an abnormality of the external and internal genitalia, which makes it impossible to establish whether the individual is male or female (Violeta Hernández Guanche. University of La Laguna. Faculty of Philosophy. Intersexuality and scientific practices: science or fiction? RIPS. Journal of Sociological Research Políticas and . ISSN 1577-239X. Vol. 8, no. 1, 2009, 89-102. University of Santiago de Compostela, Spain). The birth of an intersex person triggers a medical emergency that must be handled by an interdisciplinary group of doctors and concludes with the assignment of a sex and subsequent surgery. This is because, according to some authors (cited by Hernández Guanche: Esther Ortega, Carmen Romero Bachiller, and Silvia García Dauder: Technoscientific transformations of bodies, sexes, and genders, paper presented at the VI Ibero-American Congress on Science, Technology, and Gender. University of Zaragoza. September 2006), medical protocols are based on four well-defined assumptions: (1) sexual duality—there are only two sexes; (2) monosexuality—each person can only have one sex; (3) the need for sex-gender consistency and heterosexual desire; (4) the existence of a single gender identity, the success of which depends on a functional, visually acceptable external anatomy that resembles ~~wa~~ is considered "natural sex."

According to scientific studies, the ruling SU-337 of 1997 defined sexual ambiguity or intersexuality as follows: *"Based on the*



above, the medical concepts presented define sexual ambiguity or intersexuality as "disorders of sexual differentiation and development" that result in "alterations in biological processes." Therefore, a human embryo with XY genetic sex does not have male external and internal genitalia, while a human embryo with XX genetic sex does not have female external and internal genitalia. In other words, intersexuality arises when "male and female genital anatomical structures are present simultaneously in the same subject," and especially in those cases where there are "different types of defects that manifest themselves at the level of the external genitalia, in particular when it is not possible to establish clinically to which sex the child belongs [r4] i en born."

Statement by Dr. Milton Diamond of the Pacific Center for Sex and Society, pages 87 to 90 of the main notebook [p5 r].

— In particular, the Faculty of Sociology of the Javeriana University pointed out that male and female sexes were assigned gender roles, status, and meanings, and that biological sexual configurations were associated with symbolic dimensions, which led to a symbolic division between men and women. Pages 74 to 76 of the Notebook [P6 r] main.

Intervention by the Faculty of Anthropology of the Javeriana University. Pages 71 to 72 of Notebook [P7 r] Main.

— Intervention by the Faculty of Psychology of the Javeriana University. Pages 94 to 104 of the Main Notebook [P8 r].

Intervention by the Faculty of Sociology of the Javeriana University. Pages 74 to 76 of the Main File [P9 r].

Contribution from the Faculty of Anthropology at Javeriana University. Pages 71 to 72 of the Main Notebook [P1 r0].

Intervention by the Faculty of Anthropology of the Javeriana University. Pages 71 to 72 of the Main Notebook [P1 r1].

Intervention by the Faculty of Psychology of the Javeriana University. Pages 94 to 104 of the Main Notebook.



[13] Ibidem

Although the University of the Andes and the Academy National Medicine indicate that in most cases these are temporary situations, so these disorders generally lead to the reassignment of sex and identity to male or female.

Intervention by the Faculty of Medicine of the Javeriana University. Pages 122 to 124 of the main notebook.

[16] Ibid.

Intervention by the Faculty of Medicine of the Javeriana University and the Colombian Society of Urology. Pages 66 and 67, and 122 to 124 of the main notebook.

Intervention by the Faculty of Medicine of the University of the Andes and the National Academy of Medicine. Pages 54 to 55, 68 to 70 of the Main Notebook.

Intervention from Faculty from Psychology from the Javeriana University. Pages 94 to 104 of the Main Notebook.

Intervention by the Faculties of Sociology and Anthropology at Javeriana University. Pages 71 to 72 to 76 of the Main Notebook.

However, Dr. Milton Diamond believes that only the person concerned can decide how to classify themselves, and in that case, both the family and doctors must abide by their wishes. The state may intervene and designate a sex for practical reasons in situations that require it, such as for placement in prisons or for military service. However, for everything else, the person should be registered as they choose and reveal their status only when necessary (for example in medical).

Contribution from the Faculty of Sociology at Javeriana University. Pages 74 to 76 of the Notebook [21].

The AIC indicated that there are intersex individuals who have female or male gender identity, but others lack identity; therefore, in these cases, the State should not identify them as either male or female. If these individuals are classified in another category, it could be called "others," "third sex," "intersex," or another term appropriate for the intersex community in Colombia. Pages 85 to 86 of the Main File.



[24] Decree 2591 of 1991, paragraph 3 of Article 10

[25] Article 1 of Decree Law 2591 of 1991

[26] Paragraph 2, Art. 42 of Decree Law 2591 of 1991

[27] Constitutional Court. Ruling T-827 of 2003.

On the admissibility of the writ of protection as a transitional mechanism to prevent irreparable harm, judgments C-1225 of 2004; SU-1070 of 2003; SU-544 of 2001; T-1670 of 2000, and T-225 of 1993, which established the first guidelines on the the which have ~~been~~ by subsequent case law. See also ruling T-698 of 2004 and ruling T-827 of 2003.

Parra Benítez, Jorge and Álvarez, Luz Elena. The civil and its registration in Colombia. Legal Legal ~~Books~~ Books. Colombia, 2008

Article 6: Every human being has the right, in all parts, to the recognition of its legal personality.

Adopted by Law 74 of 1968, Article 16:

Every human being has the right, everywhere, to recognition of their legal personality.

Article 24:

1. Every child has the right, without discrimination on the basis of race, color, sex, language, religion, national or social origin, economic status, or birth, to the measures of protection that his or her condition as a minor requires, both from his or her family and from society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. 1 T] Every child has the right to acquire a nationality

Adopted by Law 16 of 1973, Article 3:

ARTICLE 3. RIGHT TO RECOGNITION OF LEGAL PERSONALITY. Every person has the right to recognition of their legal personality.

Article 7-1: The child shall be registered immediately after birth and shall have the right from birth to a name, to acquire a nationality and, as far as possible, to know his or her parents and be cared for by them.



Article 8: States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name, and family relations as recognized by law, without unlawful interference. It adds that "when a child is illegally deprived of any or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection [c303n] with a view to reestablishing his or her identity as quickly as possible."

Examples ~~in~~ the cases of "Yean and Bosico v. Dominican Republic" and "Street Children" (Villagrán Morales et al. v. Guatemala), in which the Inter-American Court of Human Rights protected the rights to legal personality of children who had not been registered, denying them their right to civil status. In these cases, the Court warned that the denial of legal personality placed children in a situation of greater vulnerability that violated their human dignity by denying ~~in~~ the possibility of being recognized as subjects of rights.

[35] C-109 of 1995, T-979 of 2001, T-721 of 2010

Ruling C-109 of 1995 cites the following parts of the Report-Presentation for the first debate in Plenary on rights, duties, guarantees, and freedoms, in which the constituent Diego Uribe Vargas refers to legal personality as: "*recognition of the individual as the principal subject of law, whose attributes have imminent value. The attributes that doctrine recognizes in a person are: name, domicile, marital status, assets, nationality, and capacity. No person can be denied legal personality, as this would be equivalent to depriving them of the capacity to exercise rights and enter into obligations.*"

[37] C-109 of 1995

Serrano Gómez, Rocío. Civil Law Persons.

[38] *Exigencias Doctrine and Law*, Bogotá D.C., 2011

[39] T-476 of 1992

[40] Op. Cit., Serrano Gómez

C-152 of 1994, C-495 of 1994, T-168 of 2005



Op. Cit., Parra Benítez, citing Fernández
Fernández [42] sarego

[43] Ibid., citing Mauricio Luis Mizrahi

[44] Ibid

[45] T-477 of 1995

Inter-American Court of Human Rights (Case
Bámaca Velásquez v. Guatemala, judgment of November 25,
2000, paragraphs 11, 12, and 15), cited by the judgment
[46] 21 of 2010

Concurring opinion of Judge A.A. Cancado Trindade to
Advisory Opinion No. 17 on the "Legal Status and Human
Rights of the Child." Inter-American Court of Human Rights,
August 2002

[48] Op.cit., A.A. Cancado Trindade,
Xavier Bioy. Le droit á la personnalité juridique.

<http://webu2.upmf-grenoble.fr>

[50] Op. Cit., Parra Benitez

[51] T-504 of 1994

[52] Op. Cit., Parra Benitez

The aforementioned author Parra Benítez clarifies that *"the source of civil status is the title—cause—of acquisition of that civil status, which is proven with a title of legitimation, to [53a3b] er, the title in the formal sense."*

[54] T-277 of 2002 and T-168 of 2005

[55] T-168 of 2005

[56] Op. Cit Parra Benítez

"Every child shall be registered immediately after birth
[57] birth and shall be given a name."

"The child shall be registered immediately after birth
birth and shall have the right from birth to a name, to acquire a
nationality and, as far as possible, to [58n] know his or her
parents and be cared for by them."

In this regard, ruling T-594 of 1993 specified that:

"[...] among the attributes of personality is the name, which has a plural nature in that it is

(i) a fundamental right inherent to all persons by the mere fact of their existence, (ii) a distinctive sign that reveals the personality of the individual, and (iii) a police institution that allows identification and prevents confusion of personalities.

The name allows the identity of a person to be established in the context of social relations and in dealings with the State [59]

and in dealings with the State ,

such that the power that derives from the constitutional right to determine the attributes of



legal personality, in the sense of defining them freely and autonomously, satisfies one of the primary needs of the person, which is to be recognized as a distinct and distinguishable entity within the conglomerate [509c]ia."

[60] T-090 of 1995, T-277 of 2002

T-979 of 2001, T-885 of 2005: "Formalities cannot take precedence when they prevent the full exercise of the fundamental rights of minors, as this would place them in a situation of weakness manifests that the makes vulnerable.

[60]n] additionality, in these cases, is prohibited.

Among the most recent rulings of the Constitutional Court

Constitutional Court regarding the fundamental and prevailing nature of children's rights are as follows: SU-819/99, T-093/00, T-153/00, T-395/00, T-582/00, T-610/00, T-622/00, T-623/00, T-748/00, T-945/00, T-974/00, C-1064/00, T-1331/00, T-1346/00, T-1430/00, [62] 462/00, T-1480/00, T-188/01, and T-231/01.

[63] <http://www.fao.org/>

[64] <http://www.who.int/topics/gender/en/>

[65] <http://www.apa.org/centrodeapoyo/sexual.aspx>

Definition of the *Pan American Health Organization*

[66] *d*, 2002

This was precisely Anne Fauste's criticism.

[67] Sterling, in her book *Sexed Bodies*.

Julie A. Greenberg. Defining Male and Female:

Intersexuality and the collision between law and biology. *Arizona Law Review* [Vol. 41:265] (1999). According to the author, although it is the external appearance of the genitals that defines a person's legal sex, there are other criteria that can be used later for certain purposes. For example, the Olympic Games Organizing Committee has carried out chromosome tests. In 1985, athlete María Patiño, who planned to participate in the World University Games, underwent a test of this nature, the results of which indicated that she was chromosomally male, even though morphologically, phenotypically, and psychologically she was female, which is why she was prevented from participating in the games. See also Anne Fausto Sterling. *Sexed Bodies: Gender Politics and the Construction of Sexuality*. Ed. Melusina.



With regard to this issue, there have been legislative advances as well as judicial ones. See, for example, in Argentina (2012), the gender identity law regulated the possibility of change of sex and name in identity documents through an expedited process, and without going to the justice, prior submission of a form requesting recognition of identity and a certified copy certified of the birth of birth and the national national identity identity -DNI, establishing that, except in the case of a court order or legitimate interest, the data modified shall be kept confidential. Law 26,743. Enacted: May 9, 2012, and Enacted: May 23 of 2012. <http://www.leydeidentidad.org/>.

[70] Op.cit. Greenberg Nepal's Third Gender and the Recognition of Gender Identity. <http://jurist.org>. See also the document by Michael Boechenek and Kyle Knight, "Establishing a third gender category in Nepal: Process and Prognosis," which can also be consulted at <http://jurist.org>.

[72] Ibid. In New Zealand passports, there are three options for the time to indicate the gender: F, M or X. <http://www.passports.govt.nz/Transgender-applicants#birth>

[73] Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013. <https://www.humanrights.gov.au/new-protection>.

[74] <http://dawn.com/2011/05/06/justice-for-eunuchs-a-just-for-dignity/>

Equally relevant are the recommendations of the International Civil Aviation Organization, which establishes immigration procedures in different countries and states that when identifying the sex of the passenger, the passport must indicate in capital letters "F" if female, "M" if male, or "X" for unspecified sex. See Convention on International Civil Aviation. Standards for machine-readable passports.

legal systems (through administrative acts administrative acts of a general nature) that contemplate the possibility of registering a minor as indeterminate, including French. However, these provisions



warn against the inappropriateness of registering a child as indeterminate. See Instruction générale de l'état civil (1977) (C-11-05-1999).

On this same legal issue, see also judgments T-477 of 1995, T-551 of 1999, T-692 of 1999, T-1390 of 2000, and T-1025 of 2002, T-912 of 2008.

In this regard, see the document "PRINCIPLES AND RIGHTS INVOLVED IN THE LEGAL ANALYSIS OF INTERSEX STATES IN MINORS IN COLOMBIA,"

Catalina Velásquez Acevedo, Patricia González Sánchez, Isabel Cristina Sarmiento Echeverri, Article Research article resulting from the research project "Legal Approach

Legal of the States in in Colombia: the case of hermaphroditism," registered with the Committee for Research Development (CODI) of the University of Antioquia (2007). The following was highlighted in the thesis:

"In the constitutional jurisprudence consulted on cases of intersexual states in minors, the interpretation of the principle of dignity prevails in decision-making, and it is proposed to analyze it from the position of the minor in the cultural context

Colombian, due that that social conditions are not conducive to recognizing that they can be different options for the intersex child;

therefore, the tendency is to try to identify the child as one of two sexes, male or female, which are mutually exclusive. In other words, the Court considers that culture does not recognize individuals who do not meet the standards created for sexual differentiation and role in cases of indefiniteness.

To this extent, the decision adopted by the Court favors a dignity that is expressed in the possibility of such an individual being placed in one of the two genders.

<http://aprendeenlinea.udea.edu.co/revistas/index.php/red/article/viewFile/2533/2066>

This position open and pluralistic of the Constitutional Court

Constitutional Court, is reiterated in ruling T-551 of 1999, which highlights the following: *"Similarly, and as indicated in the aforementioned ruling SU-337 of 1999, this regulatory and cultural transition that our societies may be experiencing in this field indicates that in the near future certain adjustments will be necessary and inevitable.*



regulations to best address the challenges that intersex individuals pose to our pluralistic societies. This has important consequences, both for the scope of these decisions by the Constitutional Court and for the responsibility of the various state bodies and Colombian society itself in this field. On the one hand, this Corporation considers that the criteria established in these rulings are those that best preserve fundamental rights and constitutional values at this moment in history; however, due to the complexity of the issue, it is possible that more refined scientific knowledge or new cultural changes may require a review of some of the results of the present analysis, and medical procedures that are still legitimate today [p8 u0 e] may become unconstitutional.

Op. Cit. Velásquez Acevedo, González Sánchez, Sarmiento Echeverri. "(...) Acceptance of different types of population without discrimination is therefore the responsibility of the State to recognize that sexual differences exist in cases where an intersex condition is present, as in the case of hermaphroditic minors. This situation obliges the State to create legal tools and possibilities for the protection of rights that are threatened or violated by the legal need to assign the minor to one of the two sexes. In this way, it is thought that the legal, medical, and psychological problems for that minor are reduced, ultimately disregarding the rights to plurality and equality (...) If the Colombian State defines itself as pluralistic, and the above argument is defended that not all individuals should be equal in terms of male or female sex based on human dignity, then the possibility that the subject may not be included in one of these two sexes should be admitted, which implies that the appropriate social and legal means for this type of problem must be available in advance, allowing the patient to make decisions regarding their intersex status.

[82] C-692 of 2003, C-748 of 2011

Law 581 of 2012. **Article 5. Sensitive data.** For the purposes of this law, sensitive data is understood to be data that affects the privacy of the data subject or whose misuse may lead to discrimination, such as data that reveals racial or ethnic origin,



political orientation, religious or philosophical beliefs, membership in unions, social organizations, human rights organizations, or that promote the interests of any political party or guarantee the rights and guarantees of opposition political parties, as well as data relating to health, sex life, and data

[86] biometric data.

[87] T-594 of 1993, M.P. Vladimiro Naranjo Mesa, reiterated in [88] T-1033 of 2008 and T-977 of 2012

Currently, a change in marital status requires a public deed or court ruling, as provided for in Decree 1260 of 1970, Article 95:

<MODIFICATION OF A REGISTRATION>. *Any modification of a civil status registration involving a change of status requires a public deed or final court decision ordering it or [e8x5j] a, according to the law.*

In accordance with the powers established in the [89] Title VII, Articles 35 and 40 of Law 1122 of 2007. Art. 42 Law 1122 of 2007

[87]

[88] T-283 of 1994

C-041 of 1994, T-075 of 1996, SU- 225 of 1998, T-236 of 1998, T-286 of 1998, T-453 of 1998, T-514 of 1998, T-556 of 1998, T-784 of 1998, T-796 of 1998, T-046 of 1999, T-117 of 1999, T-119 of 1999, T-093 of 2000, T-153 of 2000, T-610 of 2000, T-622 of 2000, T-1430 of 2000, T-421 of 2001, T-801 of 2004, T-569 of 2005, T-540 of 2006, T-799 of 2006, T-564 of 2007, [89] T-97 of 2008, and T-091 of 2009.

[90] T-872 of 2011,

— T-640 of 1997. See also judgment T-1220 of 2001, which stated: “(...) *the right to health in the case of children, as a necessary derivative of the right to life and to guarantee their dignity, is a fundamental right that prevails and is therefore unconditional and subject to immediate protection when its essential core is threatened or violated. Consequently, the State has, in the exercise of its essential protective function within the limits of its capacity, the inalienable and unconditional duty to protect the health of children.*”

— See, among many others, C-041 of 1994, T-283 of

[91] T-094 of 2004

[93] Which came into force in Colombia in 1968.

The Committee on Economic, Social, and



Cultural Rights in General Comment No. 14 on the enjoyment of the highest standard of health, interpreted Article 12 of the International Covenant on Economic, Social and Cultural Rights, which establishes the right to health as a [9d4e] fundamental human right” (Paragraph 1).

[95] T-872 of 2011

T-640 of 1997, T-134 of 2002, and T-760 of 2008. in this final ruling was highlighted that:

“Constitutional jurisprudence has repeatedly stated that children's right to health, as a 'fundamental' right, must be immediately protected by the constitutional judge in cases where it is threatened or violated. In the case of children, the action of tutela proceeds directly to defend their fundamental right to health; therefore, it has not been necessary to establish a connection with another right, such as the right to life or integrity. Case law has indicated that the health services that a child requires are justiciable, even in cases involving services not included in mandatory health plans (of the contributory regime and the [sub]subsidized [regime]).”

[97] T-1025 of 2002

[98] Ibid.

[99] T-692 of 1999

“In this scenario, constitutional jurisprudence has indicated that although it is not feasible to issue the protection order requested in the writ of protection, it is imperative that both the trial judge and the

Constitutional Court in review proceedings^[17]:

(i) *rule on the merits of the case in the grounds for the judgment on the presence of actual harm and on whether or not there was a violation of the rights invoked in the complaint, which includes, in the case of the judge of second instance and the Constitutional Court, a review of previous rulings to determine whether el amparo ha debido ser concedido o denied*^[18].



(ii) Issue a warning "to the public authority that under no circumstances should it repeat the actions or omissions that gave rise to the granting of the guardianship (...)", to the the ^{of} Article 24 of the decree 2591 of 1991^[19].

(iii) Inform the plaintiff or their family about the legal actions of any kind that they they take to obtain damage² repair of

^{0]}
(iv) If applicable, they should obtain copies of the authorities that considered obliged to investigate the conduct of the defendants whose action or omission caused the mentioned damage^[21]. (T-200-2013).



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