



EUDO CITIZENSHIP OBSERVATORY

REPORT ON CITIZENSHIP LAW: CHILE

Gabriel Echeverría

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European University Institute, Florence
Robert Schuman Centre for Advanced Studies
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Report on Citizenship Law

Chile

Gabriel Echeverría

1. Introduction

Citizenship is the legal status through which every state establishes who are its members. On the basis of citizenship, a clear division is established between members, the citizens, and non-members, the foreigners. As pointed by Rogers Brubaker, the two are “correlative, mutually exclusive, exhaustive categories” (Brubaker 1992: 46). The status of citizen not only binds its holder to a particular state, but entitles him or her to a set of rights and imposes a number of duties. Accordingly, each state has historically developed its own conception of citizenship and, on that basis, has established particular mechanisms to maintain “the intergenerational continuity of the state” (Vink and Bauböck 2013). These mechanisms regulate both the transmission of the membership status to the new generations and the admission of new members in the case of international migration.

The particular mechanisms in each country are usually the result of a long process of subsequent modifications. The analysis of such process offers a particular perspective on the history of every state, one that allows a better understanding of the different difficulties, challenges and priorities that have involved the management of its population. The adoption and emphasis given to a particular citizenship acquisition principle, the height of the barriers for naturalisation, or the degree of toleration for dual citizenship reveal either the general tendencies that have been prevalent in a specific region during a given historical phase or the peculiar traits of a particular case.

The case of Chile, when it comes to the evolution of its citizenship regime, displays both similarities with and differences from the other countries of Latin America. Concerning similarities, Chile had a colonial past under the rule of Spain and emerged as an independent country at the beginning of the 19th century. These premises had an important impact on the early conceptualisation of citizenship. On the one hand, the influence of Spain and of its juridical tradition was decisive. Chile inherited from the first Spanish Constitution of 1812, the so-called Cadíz Constitution, the distinction between the concepts of ‘national’ and ‘citizen’ that has remained central until this day. While all individuals who are born in Chile or who are naturalised Chileans are considered nationals, a number of additional requirements need to be met in order to be considered a citizen and therefore to have access to

political rights¹. Although the nature, scope and extent of the requirements needed in order to be considered both a national and a citizen have undergone a process of continuous evolution during the prolific history of Chilean constitutionalism, the two concepts and their juridical effects have remained strictly separate. This conceptual peculiarity of the Chilean regime may produce confusion when compared with other regimes where no distinction is made between nationality and citizenship. Although the term employed in Chile for the central issue of this report, i.e. the legal status that binds an individual to a sovereign state, is *nacionalidad*, I will from this point on use the term “citizenship” as a synonym in order to maintain the terminological homogeneity of EUDO Citizenship project.

Another element of similarity with most other Latin American countries is the adoption in Chile of *ius soli* as the initial and fundamental mode of citizenship acquisition. This characteristic, together with a fairly open naturalisation policy, can be related to both ideological and pragmatic reasons. On the one hand, liberal ideas and the values of the French Revolution had a strong influence on the urban elites who led the independence processes. On the other hand, the continuous inflows of new immigrants from the “Old World” and the necessity to build a new nation demanded an inclusive mechanism that allowed rapidly transforming foreigners into citizens. The arrival of European migrants was not only welcome but often actively encouraged because it allowed the occupation of the territories taken from the indigenous populations and the attainment of the “white population” ideal (Gaune 2009; Fitzgerald and Cook-Martin 2014). Finally, also Chile has displayed a tendency to increasingly incorporate elements of *ius sanguinis* and tolerate dual citizenship over the years. This trend that appears to have accelerated in the last decade, can be related to the migratory trends and the development of a community of Chileans living abroad. The process culminated in the constitutional reform of 2005 adopting *ius sanguinis* as the other main form of citizenship acquisition.

As regards its peculiarities, the Chilean case presents three elements that deserve to be highlighted. The first concerns the institutional/legal treatment of citizenship matters. All along the history of Chile, the regulation of citizenship has always been dealt with by the Constitution, with ordinary law playing a relatively marginal and derivative role. Although this is not uncommon in Latin America, it sharply differs from what occurs in Spain and in most European countries. A second aspect is the relative stability of the citizenship regime, which has displayed a gradual and continuous evolution from a *ius soli* based model towards a mixed *ius soli/ius sanguinis* system over the course of two centuries. Finally, also the particular causes that have determined Chilean emigration and prompted the most recent modifications of the citizenship regime can be considered special. If in other countries of the region the outflow of citizens has usually been determined by a multiplicity of causes, in Chile the political factor played a fundamental role. Although Chileans had been leaving the country before, it was after the coup d’état of 1973 and during the sixteen

¹ Constitución Política de la República del Chile – 1980. Articles 10, 11 y 13. Article 13, in particular, states: “*Citizens are those Chileans who have become eighteen years of age and who have not been sentenced to afflictive punishment. The status of citizen grants the rights of suffrage, of opting for positions subject to popular election, and the other rights that the Constitution or the law confer*”. See Echeverría G. (2015), Access to Electoral Rights Chile, RSCAS/EUDO-CIT-ER 2015/20.

years of military regime that the outflows reached massive numbers. Political refugees and exiles left the country towards other Latin American countries and Europe out of fear of being persecuted by the regime.

At present, the citizenship regime of Chile is regulated by the second chapter the Constitution of 1980, entitled “Nationality and Citizenship” (*Nacionalidad y Ciudadanía*). The Constitution has been substantially amended in 2005. The constitutional provisions are further specified and developed by a number of ordinary laws the most important of which is Decree 175 of 1973 that regulates naturalisation. The regime includes four modes of citizenship acquisition and four modes of citizenship loss. The former modes are: *ius soli*, *ius sanguinis*, regular naturalisation and special grant of naturalisation. Each mode has a number of limitations and specific procedures. The difference between regular naturalisation and special grant of naturalisation is that the first is conceded to all foreigners who present a formal request and fulfil a number of requirements and the second is conceded by Congress, on discretionary basis, to selected individuals for their high merits and contributions to the Chilean society. The modes of loss are: voluntary renunciation, a supreme decree withdrawing citizenship in case the affected individual has helped an enemy of Chile during a war; the cancellation of a naturalisation certificate, and revocation of a special naturalisation grant. Concerning dual citizenship, the actual regulation allows Chilean citizens who acquire another citizenship to maintain the Chilean.

2. Historical Background

The first embryonic constitutional text approved in Chile, the Provisional Constitutional Regulation (*Reglamento Constitucional Provisorio*) of 1812, established, for the first time in the history of Chile, a distinction between citizens and foreigners. Art. 24 distinguished between: “the free inhabitant of Chile” and “the Spaniard who is our brother” (Ribera Neumann 2012). Over the next two decades, the country experienced a period of great political instability, which generated a proliferation of constitutional texts. Between 1812 and 1833, eight subsequent Charters were approved, in 1812, 1814, 1818, 1822, 1823, 1826, 1828 and 1833. Of these, the first that can be considered a thorough Constitution and had the adjective “provisional” erased from its name, was the one of 1822. Regarding the regulation of citizenship, this Charter, notwithstanding its very short life, represents an interesting exception in the history of Chile. As mentioned, all along its history the awarding of Chilean citizenship, following a widespread tradition in Latin America, has been based on the principle of *ius soli*. Yet the Constitution of 1822, after affirming the *ius soli* principle in Article 4 N°1, added in N°2: “*the children of Chileans, although born outside the State will be Chileans*”². This form of unconditional *ius sanguinis* has been linked to the lasting influence on the Chilean legislators of the Spanish Constitution of 1812 in which the *ius sanguinis* principle had been of fundamental importance. In the case of Spain, this principle was functional to the reproduction of citizenship bonds for a multi-continental empire.

² Constitución Política del Estado de Chile 1822, Art. 4.

An important issue that concerned the first legislators of Chile was the status of the indigenous populations that, during the Spanish colony, had been excluded from citizenship. In 1819, a Supreme Decree promoted by Bernardo O'Higgins, one of Chile's founding fathers and the second Supreme Director (the provisional President), stated: the members of the indigenous populations *"from now on must be called Chilean citizens and must be free as all the other inhabitants of the State, they will have equal representation, will be able, on their own, to sign contracts, to defend themselves in trials, to get married, to engage in commerce, to choose an occupation, to get employed in the public administration or in the army, according to their abilities"*³. Although this type of official recognition to the indigenous populations, typical of the liberal regimes of the time throughout the region, legally embraced the indigenous population as part of the nation, this by no means implied the effective inclusion of such population (see for instance: Gaune 2009).

In 1823, a new Charter was approved. This Constitution set the contours of what would become the citizenship regime of Chile for the next two hundred years: a system based on *ius soli* and some limited elements of *ius sanguinis*, a rather open naturalisation policy and a discretionary power of the legislature to award citizenship on an individual basis. This configuration, which resembled that of most other countries in the region, clearly evidenced the priority of the country in this historical phase: that of creating a nation out of a bundle of indigenous populations, ex-colonists, ex-slaves, established migrants and a continuous inflow of new migrants. In the next years, the political instability continued and two further Constitutions were approved. It is interesting to mention that the 1828 Constitution explicitly distinguished between the concept of "natural Chileans", used for those who were born in the national territory, and that of "legal Chileans", used for those who were either children of Chilean parents born abroad in the moment they settle in Chile or foreigners who had naturalised.⁴

With the approval of the Constitution of 1833, Chile reached a certain level of stability, at least concerning the legal foundations of the state. Although a number of amendments were approved in the years to follow, this Charter remained in force until 1925. The citizenship regime configured by Article 6 and 7 of the constitutional text combined the *ius soli* principle with a restricted form of *ius sanguinis*. Apart from all individuals born in the national territory the Chilean citizenship was awarded to: A) children of Chilean parents born abroad, once they settle in Chile (the settlement condition was not required for the children of diplomats working outside the national territory); B) foreigners who worked or had a property and had lived for ten years in Chile (only six years were required for those who are married and have a family in Chile, and three for those married with a Chilean); C) those who had obtained a grant of naturalisation.⁵ The characteristics of this regime were functional to the plans of the Chilean state in a historical phase characterized by massive migrations to the country especially from Europe and the Middle East. Newcomers arrived in waves and were often encouraged by the government, which was determined to repopulate the southern part of the country with "white" populations. The main origin countries included Germany, Spain, France, Italy, Great Britain and Palestine. The children of

³ Ley S/N – 1819 - Ciudadanía chilena a favor de los naturales del país.

⁴ Constitución Política de la República de Chile 1828, Art. 5 and Art. 6.

⁵ Constitución Política de la República de Chile 1833, Art. 6 and Art. 7.

the new settlers automatically acquired the Chilean citizenship, while their parents had to wait a number of years depending on their family and economic situation.

In 1925, under the first presidency of Arturo Alessandri Palma (1920-1925) a new Constitution was approved. This Charter remained in force until 1980, although its application was partially suspended after the coup d'état in 1973. As regards the citizenship regime, a number of novelties and specifications were introduced. On the one hand, regarding the modes of citizenship acquisition, the automatic application of the *ius soli* principle, which until that moment did not know any exception, was limited in two cases: that of children of foreigners residing in the country as representatives of their governments and that of children of transient foreigners. In both cases, the affected individuals could choose between the Chilean citizenship and that of their parents. Concerning naturalisation, the request to expressly renounce the previous citizenship in order to acquire the Chilean one was added. The other modes of acquisition were not modified. On the other hand, the modes of citizenship loss were regulated for the first time. Article 6 established three main cases in which Chileans could lose their citizenship: naturalisation in another country, the cancellation of the naturalisation certificate or offering assistance to an enemy of Chile during a war.

In 1957, a constitutional amendment modified the newly introduced principle of citizenship renunciation for Chileans who naturalised in another country. Two exceptions were allowed. Firstly, a new provision added to Article 10, stated: *“No renunciation of the Spanish nationality will be required from those born in Spain, with more than ten years of residence in Chile, as long as the same benefit is accorded to Chileans in that country”*.⁶ A year later, in 1958, the Chilean-Spanish agreement on dual citizenship was signed.⁷ On its basis, Spaniards did no longer have to renounce their original citizenship when becoming Chileans and Chileans did not have to renounce their citizenship when becoming Spanish. Secondly, the loss of Chilean citizenship did not apply when: *“resulting from the legal and constitutional provisions of other countries, resident Chileans are required to adopt the citizenship of that country as a condition for their permanent residence there”*.⁸

The coup d'état orchestrated in 1973 by the military forces under the command of General Augusto Pinochet brutally interrupted the democratic history of Chile. This dramatic event also affected the citizenship regime. One of the first measures of the Governing Board (*Junta de Gobierno*) presided by Pinochet was the modification of the Constitution regarding the causes that could justify the withdraw of Chilean citizenship. Forcing the constitutional procedure, the governmental Decree 175 (1973) added a provision to Article 6 of the Constitution which stated: Chilean citizenship is lost when an individual *“seriously engages from aboard against the vital interests of the State [...]”*⁹. According to this modification the military regime was able to strip nine Chileans who had actively opposed the dictatorship from the exile of their citizenship.

⁶ Ley No. 12548 – 1957.

⁷ Decreto No. 569 of 1958. Convenio entre los gobiernos de Chile y España sobre doble nacionalidad.

⁸ Ley No. 12548 of 1957.

⁹ Decreto Ley No. 175 of 1973.

In 1980, still under the rule of the military, a new Constitution was approved. Although the whole text was new, only minor modifications were introduced regarding citizenship acquisition. Concerning the regulation of naturalisation, the exception to the requirement to renounce the previous citizenship was extended to all the cases in which a bilateral agreement made dual citizenship possible on grounds of reciprocity (not only with Spain). Two important novelties that affected citizenship loss were included. The first was the extension of the causes that allowed maintaining Chilean citizenship when another citizenship was acquired. This was possible not only when naturalisation in the other country was necessary in order to be able to stay but also when it was necessary in order to “have the same legal status and the same access to civil rights of the nationals of that country”.¹⁰ The second was a restatement of the principle introduced by Decree 175 of 1973. In its new version the provision specified: Chilean citizenship will be lost in case of “*a judicial sentence for crimes against the dignity of the country or against the fundamental and permanent interest of the State, if it so considered by the law approved with a qualified majority*”.¹¹ From that moment on, also citizens residing in the national territory and not only those abroad could be stripped of the Chilean citizenship by a decision of Congress. Nine Chileans who opposed the military regime lost their nationality on the basis of this rule during the dictatorship.

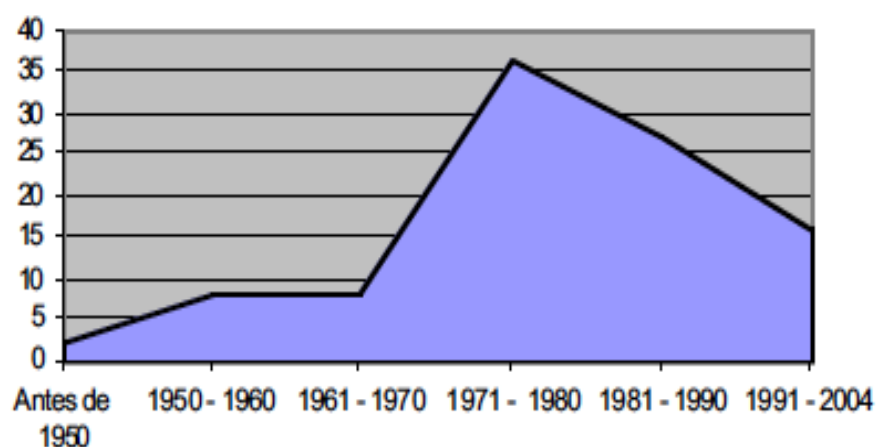
The Constitution of 1980 was substantially modified by a reform approved in 2005 under the presidency of Ricardo Lagos. As a result, the citizenship regime of Chile has shifted from a conception substantially based on *ius soli* to one based on a combination of the *ius soli* and *ius sanguinis* principles. This transformation can be related to the important change in the migratory trends that had affected the country in the preceding decades and especially after the coup d'état in 1973. As it emerges from the data shown in Diagram 1, during the two decades of military regime an unprecedented outflow of emigrants left the country either as political refugees or exiles. The growth of a Chilean diaspora living outside the national territory certainly contributed to modifying the self-perception of the nation and the political priorities regarding the citizenship regulation. If Chile had historically perceived itself essentially as an immigration country, and the main concern of politicians had been the inclusion of the arriving populations, this was no longer plausible after 1989 with almost half million Chileans living abroad. Chile had become an emigration country and the relation with the expatriates became increasingly important.

A period of intense and complex political debates culminated in the reform of 2005. While the military dictatorship had come to an end as a result of a popular referendum held in 1989, the transition to a fully democratic regime took more than a decade. During the 1990s the influence of the military was still decisive and many crucial issues, such as the violation of human rights during the dictatorship but also the relations with the exiles were highly sensitive. Nevertheless, as the new regime stabilised, the conditions for fulfilling the demands of the Chileans living abroad finally materialised.

¹⁰ Constitución Política de la República de Chile –1980. Article 11.

¹¹ Constitución Política de la República de Chile –1980. Article 11.

Diagram 1: Year of emigration of the Chilean population currently living abroad (in per cent)



Source: Ministerio de Relaciones Exteriores e Instituto Nacional de Estadísticas (2005) – *Chilenos en el Exterior*, p. 41

3. The current citizenship regime

The current citizenship regime of Chile is regulated by the Constitution promulgated in 1980, under the dictatorial rule of General Augusto Pinochet. The Constitution, however, experienced an important reform in 2005 under the presidency of Ricardo Lagos.¹² This reform introduced substantial modifications determining a paradigmatic shift that affected the overall conception of Chilean citizenship. A number of ordinary laws, the most important of which is Decree 5124 of 1960, further develop and specify the constitutional provisions.¹³

At present, all the children born in the national territory acquire Chilean citizenship on the basis of the *ius soli* principle. There are two minor exceptions to the general rule: the Chilean-born children of foreigners who are in Chile in service of their governments¹⁴ and the children of “transient” foreigners are not automatically awarded the Chilean nationality. Individuals of both groups, however, may opt for the Chilean citizenship after their eighteenth birthday. Regarding the *ius sanguinis* principle, all children born abroad automatically become Chilean citizens when at least one of their parents or grandparents had acquired Chilean citizenship by birth in the territory, regular naturalisation or special grant of naturalisation.

¹² Ley No. 20.050 – 2005. Reforma constitucional que introduce diversas modificaciones a la Constitución Política de la República.

¹³ In particular, the Decreto Ley No. 5124 – 1960 (and subsequent modification, the last in 01/2016). Disposiciones sobre nacionalización de extranjeros.

¹⁴ According to Ribera Neumann the expression “in service of their governments”, included in Article No. 10 of the Constitution does not only refer to the children of diplomats but also of administrative and technical personnel working in foreign embassies (Ribera Neumann 2012).

The current citizenship regime includes two other modes of citizenship acquisition. The first is naturalisation. Also this matter has been affected by the 2005 constitutional reform, which erased the renunciation requirement that had been present since 1925. This *de facto* allows dual citizenship without the necessity of *ad hoc* treaties with other countries. Therefore, the only existing treaty of this kind, the one with Spain, has lost its relevance. This issue, however, has been an object of juridical debate over the last years because the Decree 5124 of 1960 still includes such a requirement (Ribera Neumann 2012). The second mode of citizenship acquisition, a more peculiar trait of the Chilean regime, is the special grant (*gracia*) of naturalisation by law. According to this provision, the Congress can discretionarily confer the citizenship to an individual for his/her high merits and contributions. Although acquisition through this mode appears to have been increasing in recent years, the overall numbers have been very limited.¹⁵

The 2005 reform has introduced two substantial modifications also when it comes to the modes of citizenship loss. The first canceled the automatic loss of Chilean citizenship when another citizenship has been acquired. At present, then, citizenship can be lost only after a public and explicit renunciation on the part of the concerned individual. For such renunciation to be valid, though, he/she must first have effectively acquired another citizenship. This condition has been included in order to prevent statelessness. The second modification removed the possibility for the Chilean government to withdraw the citizenship of individuals who have been sentenced for crimes against the dignity and interests of Chile. This amendment is particularly relevant since the previous rule gave to the State an enormous and discretionary power to decide on the status of individuals. Therefore, the current Chilean citizenship regime includes four modes of citizenship loss: renunciation, a sentence for collaboration with Chilean enemies during a war, cancellation of the naturalisation certificate (only in case of fraud regarding the conditions for the award), cancellation of a special grant of naturalisation (when the reasons for the grant have changed).

3.1 The main modes of acquisition and loss of citizenship

3.1.1 The acquisition of Chilean citizenship

Article 10 of the Constitution regulates the acquisition of Chilean citizenship. Each numbered section of the article establishes a different mode of citizenship acquisition; overall, there are four different modes: *ius soli* (number 1), *ius sanguinis* and the right to opt (number 2), naturalisation (number 3), the awarding of grant of naturalisation by law (number 4)¹⁶. The Decreto Ley No. 5142 of 1960 (and subsequent modifications, the last of 01/2016) further specifies the details concerning the naturalisation mode.

Let's look at the provisions of the Constitution in more detail. Article 10 states:

¹⁵ Ministerio de Interior y Seguridad Pública (2016), Migración en Chile 2005 – 2014, Anuario Estadístico Nacional de Migración en Chile.

¹⁶ Constitución Política de la República de Chile – 1980 (and subsequent modifications), Art. 10.

“Chileans are:

1) - those born in the territory of Chile, with the exception of those children of foreigners who are in Chile in the service of their Government and the children of transient foreigners, all of whom, however, may opt for the Chilean nationality;”

This provision regulates the *ius soli* principle. According to Article 74 of the Civil Code, “the individual of the human species that, being completely separated from the mother, has lived at least for a moment is considered born”.¹⁷ The “territory of Chile” includes both “real territory”, which comprises the national territory including land, subsoil, sea, skies, and “fictional territory”, such as national ships and airliners. The provision also establishes three exceptions. The first applies to the children of foreigners who reside in Chile and work for the foreign administration of another state. The second applies to the children of transient foreigners. This exception was included to avoid granting the Chilean citizenship to someone who is not interested and does not intend to reside in the country. Although not explicitly mentioned in the constitutional provision, a third important exception to the *ius soli* principle should be considered. As noted by Ribera Neumann, the Civil Registry, in order to grant the Chilean citizenship to newborns, requires their parents to be legally residing in the country (Ribera Neumann 2012). This implies that the children of irregular migrants born in the national territory are considered as falling into the same category of those born to transient foreigners. Although the children affected by these three exceptions are not automatically granted the Chilean citizenship for the sole fact of having born within the national borders, as implied by the last sentence of the provision under examination, they may opt for it. At this respect, the Supreme Decree 5142 on “Nationalisation of Foreigners” (*Nacionalización de Extranjeros*) further specifies in Art. 10: “*Those born in the Chilean territory who are the children of foreigners who are in Chile in the service of their Government, and of transient foreigners, that decide to opt for the Chilean citizenship, [...], will do it through a statement in which they manifest their request. Such statement should be made within the mandatory term of one year since their eighteenth birthday*”.¹⁸ As explained above, the right to opt for the Chilean Citizenship no longer requires choosing between the previous citizenship and the new, *de facto* allowing for the possibility of dual citizenship. Although *ius soli* in Chile does not extend to the children of irregular migrants, it creates an option for them to opt for citizenship after reaching the age of majority.

“2) the children of a Chilean father or mother, born in foreign territory. However, it will be required that one of his ancestors in a direct line of first or second degree, has acquired Chilean nationality by virtue of reasons established in sections 1, 3 or 4.;”

This provision, substantially modified by the Constitutional reform of 2005, has produced the most radical revision of the Chilean approach to citizenship throughout its history, giving equal importance to the *ius sanguinis* principle and the traditional *ius soli*. Although the *ius sanguinis* principle had been included in the Chilean Constitutions since 1822, until the reform of 2005 this mode of citizenship

¹⁷ Código Civil de la República de Chile. Art. 74.

¹⁸ Decreto Ley No. 5124 – 1960 (and subsequent modification, the last in 01/2016). Disposiciones sobre nacionalización de extranjeros, Art. 10.

acquisition could be considered secondary. As discussed above, a number of limitations had conditioned its application throughout history. Basically, the *ius sanguinis* principle directly applied only to the children of Chileans residing abroad in service of their Government; indirectly it also applied to the children of Chilean parents in general, but in order to become effective they had to return and settle in Chile. The historical change implied by the effective implementation of the *ius sanguinis* principle was the result of a heated debate in the National Senate and the Chilean society more generally. Although with the growth of the Chilean community living abroad the necessity to create modes of citizenship acquisition for the newborn had become commonly accepted, disputes concerned the extent to which the new principle had to be effective and the risks of a loss of national cohesion. In this respect, the issue concerning which generation of Chileans living abroad should be enabled to pass citizenship on to their descendants was pivotal. Beyond the ideological disputes, a very concrete problem that needed to be solved concerned the numerous cases of stateless persons that the previous legislation had created. In fact, the children of Chilean citizens born in countries that did not apply *ius soli* were condemned to be stateless. Eventually, the new provision established that all the children and grandchildren of Chilean citizens who were born in the national territory or had obtained a naturalisation certificate or a special grant of naturalisation could automatically acquire Chilean citizenship. According to Ribera Neumann, the wording “has acquired Chilean nationality” does not imply that the parent or grandparent who transmits the citizenship is a citizen at the moment of the transmission, it is enough that they had been Chilean citizens at any point in their lives (Ribera Neumann 2012). A limitation that emerges from the constitutional text concerns the capacity of Chileans born in foreign territory to transmit citizenship. As a matter of fact, although their children will be Chileans, because at least one of his/her grandparents has acquired Chilean citizenship by virtue of *ius soli* (section 1), naturalisation (section 3) or grant of naturalisation (section 4), their grandchildren will not because they and their children had acquired citizenship by virtue of *ius sanguinis* (section 2). While the right to acquire citizenship is automatically granted to persons specified in this section, the effective acquisition demands the inscription of the newborn and the official request of citizenship. Both procedures can be carried out in Chilean consulates outside the national territory or at the Civil Registry.

“3) the foreigners who obtain a certificate of nationalisation in accordance with the law;”

This provision regulates the ‘nationalisation’ or naturalisation of foreigners residing in Chile. Also in this case, the reform of 2005 modified the provision originally included in 1980. The current text retains the first sentence of the previous version, but the two additional sentences have been erased. The first of these had explicitly required from the new Chilean citizen the obligatory renunciation of the previous citizenship. The second had made an exception to this obligatory renunciation if an international treaty with another country allowed dual citizenship on a reciprocal basis. Historically, only one treaty of this kind had been implemented by Chile. In 1958, the Treaty on Dual Nationality (*Convenio de Doble Nacionalidad*), which permitted dual citizenship for their respective citizens on a basis of reciprocity, was signed between Chile and Spain. The introduced modifications provide the legislator with additional capacity to decide on this matter. The ordinary law not only establishes the conditions and procedures for obtaining a certificate of naturalisation,

as was the case before the amendment, but decides also cases in which renunciation of another citizenship is required. As a consequence of this reform, the legislator can permit dual citizenship without being constrained by the necessity of an international treaty and reciprocity requirements.

As previously mentioned, the Decreto Supremo No. 5142 of 1960 (and subsequent modifications, the last of which in 01/2016) is the ordinary law that further regulates the naturalisation of foreigners by establishing the requirements, restrictions and procedures for obtain the naturalisation certificate. The main requirements regulated by Article 2, are: A) being at least eighteen years old, B) five years of legal residence, C) a permanent residence permit. There are two exceptions to this general rule. The naturalisation certificate can be required also by the children of foreigners who are at least fourteen years old, have more than five years of residence, have the permission of their legal guardians and hold a permanent residence permit as well as minor children whose father or mother has been granted the status of refugee.¹⁹ According to section 2, a further requirement applies to all the cases. Although, as mentioned, the reform of 2005 erased the previous citizenship renunciation requirement from the Constitution, giving freedom of choice to the legislator, the ordinary law still contains such a provision. At present, in order to obtain the Chilean citizenship, it therefore is compulsory to renounce the previous citizenship. The main restrictions that prevent the issuing of a naturalisation certificate are regulated by Article 3. Excluded are those candidates: A) who have received an unappealable criminal sentence or against whom an ongoing criminal investigation is being carried out, B) who is not capable to make a living, C) who practice or disseminate doctrines that can result in a revolutionary change of the social or political order or who can affect the integrity of the nation, D) who engage in activities that are illicit, immoral or threaten national security.²⁰ The main procedures and steps for obtaining the naturalisation certificate are regulated by Article 4 and 5. In particular, the Interior Ministry is the administrative authority entitled to verify the validity of the documentation presented by candidates, the fulfillment of all the requirements and the lack of impediments.

“4) those who have obtained a special grant of naturalisation by law”;

This section regulates a special, discretionary type of citizenship acquisition on the basis of a grant (*gracia*) by the Chilean state. The origins of this legal provision can be traced back to the historical absolute power of the king to concede or withdraw the citizenship to a subject. Nowadays, the grant can be proposed either by a member of Congress or the President of the Republic and is awarded by ordinary law. This naturalisation by law neither presupposes a request by the beneficiary nor his/her obligation to accept the grant. As mentioned by Ribera Neumann, in 1997 the Human Rights, Nationality and Citizenship Commission of the House of Representatives elaborated a memorandum specifying the grounds for a special grant of naturalisation. This included honour and high services offered to the country in fields such as law, science, art, literature, culture, economy. Throughout the history of the Chilean Republic approximately eighty persons have been awarded naturalisation by special

¹⁹ Decreto Ley No. 5124 of 1960 (and subsequent modifications, the last in 01/2016). Disposiciones sobre nacionalización de extranjeros, Art. 2.

²⁰ Decreto Ley No. 5124 of 1960 (and subsequent modifications, the last in 01/2016). Disposiciones sobre nacionalización de extranjeros, Art. 3.

grant. In the last decades and especially after the approval of the new Constitution in 1980, the numbers involving this type of naturalisation have been growing (see: Cea Engaña 2013; Ribera Neumann 2012).

Article 10 includes a final provision that states:

“The law will regulate the procedures for opting for Chilean nationality; for [the] granting, denial and cancellation of naturalisation papers and for the creation of a register for all these acts.”

3.1.2 The loss of Chilean citizenship

Article 11 of the Constitution regulates the loss of Chilean citizenship. There are four modes of citizenship loss, each detailed in a specific numbered provision.²¹

“Chilean nationality is lost:

1) by voluntary renouncement declared before a competent Chilean authority. This renunciation will only produce effects if the person has previously been naturalised in a foreign country;”²²

The Constitutional Reform of 2005 substantially modified this provision *de facto* turning upside-down the logic behind the principle. Until the reform, the general rule stipulated the loss of Chilean citizenship when another citizenship was acquired and included a number of exceptions. After the reform, the general rule stipulated the permanency of Chilean citizenship except in the case of a voluntary and explicit renunciation by the person concerned. In order to produce effects, the renouncing person needs to have already naturalised in another country. This modification, which fundamentally has established dual citizenship as the general rule for Chileans who obtained an additional citizenship, has been the final step of a long and slow process of liberalisation in this field. As discussed previously, throughout Chilean history, this matter had been dominated by a nationalistic attitude that considered the idea of a citizen obtaining another citizenship as a betrayal. Moreover, as long as Chile was mainly an immigration country, the issue involved relatively few cases and legislators focused more on the ways to stabilise and secure the loyalty of the new populations. When the migratory trends reversed, especially at the end of the 20th century, and the community of Chileans living outside the national territory grew rapidly, a whole range of new problems arose. The new priorities, which gained increasing support in the public opinion, were the desire to support as much as possible the integration of Chilean emigrants in their host countries and the wish to maintain ties with the diaspora.

“2) by supreme decree, in the case of provision of services to enemies of Chile or to their allies during an international war;”

²¹ Constitución Política de la República del Chile –1980 (and subsequent modifications), Art. 11.

²² Since the intention of the provision is to avoid statelessness it is also applied to persons who have acquired a foreign citizenship at birth.

This provision, which maintained the original wording of the 1980s Constitution, implies the loss of Chilean citizenship if a citizen offers his/her voluntary help to an enemy of Chile or to their allies during an international war. The concept of “provision of services” is broad and may include military, administrative, scientific, informational and propagandistic help. Furthermore, the wording “during an international war” implies that the President of the Republic, after a congressional authorisation, must have officially declared war.²³

“3) by cancellation of a naturalisation certificate;”

As pointed out by Ribera Neumann, the Supreme Decree (*Decreto Supremo*) that grants a naturalisation certificate is essentially irrevocable. Authorities cannot discretionarily cancel it on ground of merits, opportunity or convenience. The only case in which this type of act could be invalidated is when a violation of the legal requirements that permitted its promulgation is discovered (Ribera Neumann 2012).

“4) by [a] law which revokes the naturalisation conceded by grant;”

Since for the concession of the special grant of naturalisation the approval of a law by Congress is necessary, a law is also necessary for its revocation. As it occurs in the case of the naturalisation certificate, authorities cannot discretionarily cancel the naturalisation conceded by grant, unless it turns out that it had been awarded based on false assumptions.

Article 11 includes a final provision that states:

“those who have lost Chilean nationality for any of the causes established in this Article, can only be rehabilitated by law.”

This implies that, notwithstanding the reasons that motivated the loss of Chilean citizenship, the only way to recover it is through a law that restores it.

Article 12 of the Constitution regulates the basis on which and the procedure how a person can appeal against an administrative act that deprives him/her of Chilean citizenship.

“The person affected by [an] act or resolution of administrative authority which deprives him of his Chilean nationality or which no longer recognizes [desconocer] it, can appeal on his own behalf or through anyone in his name within a period of thirty days to the Supreme Court, which shall acknowledge it as a jury and in plenary tribunal. The submission of the recourse will suspend the effects of the act or resolution appealed.”²⁴

It is important to underline that Article 12 only refers to acts or resolutions implemented by administrative authorities and therefore excludes those implemented by legislative and judicial authorities. The cases regulated by Article 11, namely loss of citizenship in the case of provision of services to enemies of Chile or the

²³ Constitución Política de la República del Chile –1980 (and subsequent modifications), Art. 32.

²⁴ Constitución Política de la República del Chile – 1980 (and subsequent modifications), Art. 12.

revocation of naturalisation conceded by grant are not affected. Moreover, both the terms “deprive” and “*desconocer*” refer to an already acquired Chilean nationality. In this sense, the type of appeal regulated by this article does not apply for instance to the denial of naturalisation.

3.2. Specific rules and status for certain groups

The current citizenship regime of Chile does not include special provisions for any specific group or minority. However, it is worth mentioning that in 1990 Congress approved Law 18994 which created the National Office of Return (*Oficina Nacional del Retorno*). The objective of this institution was to help the return of political exiles that had left the country during the Pinochet dictatorship. Article 2 of the law states: *“The Office will adopt the necessary measure in order to: facilitate the reacquisition of the Chilean nationality by those who have been deprived of it as a consequence of their residence outside of the country; facilitate the residence of foreigners married to Chilean exiles who have returned to the country and of their children.”*²⁵ Although this law suggested the possibility of a special legal treatment for this relevant group, the aim of the Return Office was limited to provision of support and assistance.

The current citizenship regime does include a number of small but relevant differences among citizens depending on the mode of citizenship acquisition and the length of time for which they have been citizens. Firstly, concerning the acquisition of active electoral rights, Article 13 of the Constitution states: *“For the Chileans referred to in sections 2 and 4 of Article 10, the exercise of the rights that confer citizenship on them will be subject to [their] having been resident in Chile for more than a year.”*²⁶ This creates a difference between Chileans who have acquired their citizenship on the basis of *ius soli* (Article 10(1)) or regular naturalisation (Article 10(3)) who do not require a certain residence time, and Chileans who have acquired their citizenship on the basis of *ius sanguinis* (Article 10(2)) or grant of naturalisation (Article 10(4)) who require one year of residence in the national territory. Secondly, regarding the acquisition of passive electoral rights, Article 14 of the Constitution states: *“Those nationalised in conformity to section 3 of Article 10 shall be eligible for public offices filled by popular election only after five years of being in possession of their naturalisation papers.”*²⁷ This provision creates again a difference between Chileans who have acquired their citizenship on the basis of *ius soli* (Article 10(1)), *ius sanguinis* (Article 10(2)) and grant of naturalisation (Article 10(4)), on the one hand, who are automatically eligible once they have obtained their political rights at age eighteen, and Chileans who have acquired their citizenship on the basis of a regular naturalisation, on the other hand, who must wait five years from the moment the certificate has been awarded. Finally, concerning the opportunity to run for President of the Republic of Chile, Article 25 of the Constitution requires that candidates have acquired the citizenship either through *ius soli* (Article 10(1)) or *ius sanguinis* (Article 10(2)), therefore excluding naturalised citizens (Article 10(3)) as well as citizens thanks to a special grant of naturalisation (Article 10(4)).²⁸

²⁵ Ley No. 18994 (1990). Crea Oficina Nacional del Retorno.

²⁶ Constitución Política de la República del Chile –1980 (and subsequent modifications), Art. 13.

²⁷ Constitución Política de la República del Chile – 1980 (and subsequent modifications), Art. 14.

²⁸ Article 25 of the Constitution was also affected by the 2005 reform, which erased the requirement for candidates for President of the Republic of Chile to have been born in the Chilean territory. Until the

3.3. Special institutional arrangements that are peculiar to the Chilean citizenship regime

The Chilean citizenship regime displays a peculiar institutional arrangement since the Constitution directly and rigidly regulates practically the whole matter. As Article 56 of the Civil Code make clear: “Chileans are those whom the Constitution determines as such. The others are foreigners.”²⁹ The space for the intervention of ordinary law is explicitly constrained and relatively limited, usually to procedural issues. The regulation of naturalisation can be considered an exception to this rule. As has been previously discussed, for instance, the requirement of renunciation of the previous citizenship as a condition for obtaining the Chilean one, once erased from the Constitution in 2005, has been left as an option to the will of the legislator. Another sign of the importance conferred to citizenship can be traced in the explicit exclusion of the possibility for the National Congress to delegate powers to the President of the Republic to decide in this matter.³⁰

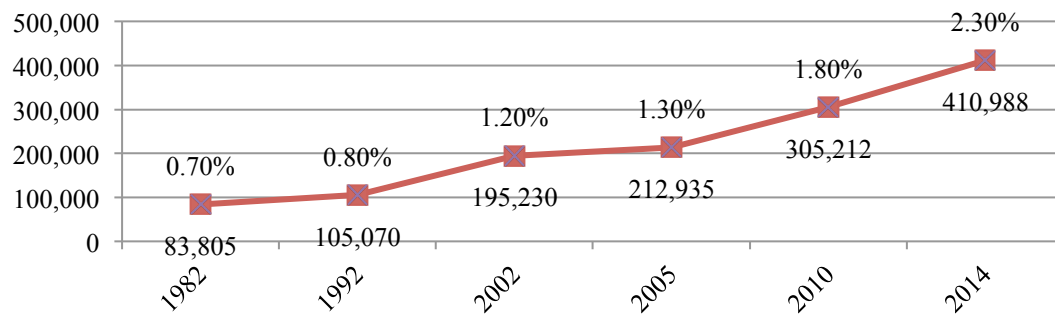
4. Citizenship Statistics

The recent data published by the Interior Ministry (*Ministerio de Interior y Seguridad Pública*) allows a preliminary evaluation of some figures concerning citizenship in Chile and in particular on the issuing of naturalisation certificates. As it is possible to observe in Diagram 2, the immigrant population in Chile has continuously grown over recent decades, and especially in the last one. The foreign population regularly residing in Chile in 1982 amounted to 83,805 individuals, who represented 0.7% of the total population. Three decades later, in 2014, the number had increased to 410,988 foreigners representing 2.3% of the total population.

reform, only *ius soli* citizens and *ius sanguinis* citizens, born abroad as children of Chileans in the service of their government, could run as candidates.

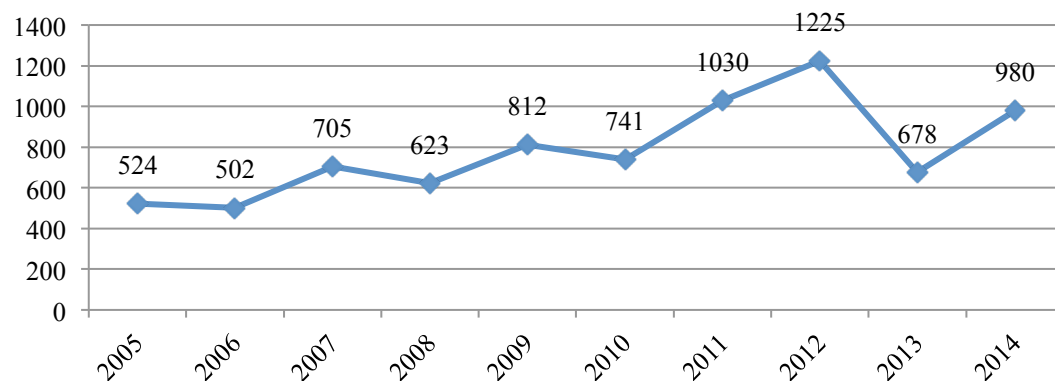
²⁹ Código Civil de la República de Chile. Art. 56.

³⁰ Constitución Política de la República del Chile – 1980 (and subsequent modifications), Art. 64.

Diagram 2: Total foreign nationals in Chile and percentage of the total population

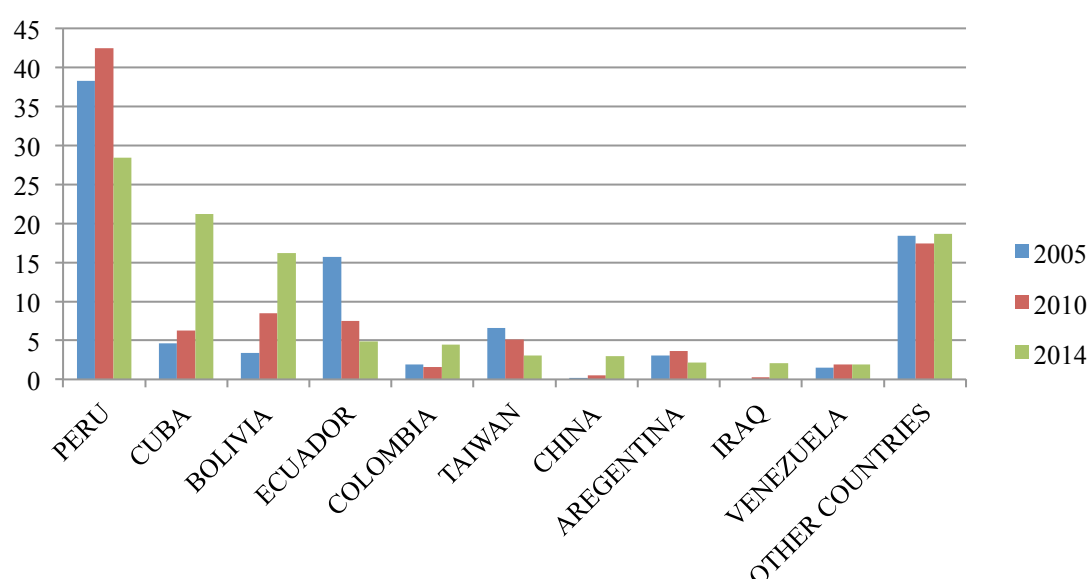
Source: Ministerio de Interior y Seguridad Pública (2016), Migración en Chile 2005 – 2014, Anuario Estadístico Nacional de Migración en Chile

Unfortunately, as shown in Diagram 3, the data concerning the awarded of naturalisation certificates is only available after 2005. After that year, in which a total of 524 certificates were issued, it is possible to observe an overall increasing trend until 2012, when 1225 foreigners got the Chilean citizenship. In the following year, this number sharply dropped by almost 50 per cent to grown again in 2014. All in all, naturalisation numbers, although increasing, appear to be relatively small especially if compared with the total number of noncitizen residents.

Diagram 3: Total naturalisation certificates awarded per year

Source: Ministerio de Interior y Seguridad Pública (2016), Migración en Chile 2005 – 2014, Anuario Estadístico Nacional de Migración en Chile

Diagram 4 shows the main countries of origin of the naturalised individuals. The main features are, firstly, the relevance of the Peruvian contingent, which in 2014 represented more than a quarter of the total. Secondly, citizens of other Latin American neighbouring countries such as Bolivia, Ecuador, Colombia and Argentina also had an important share. Finally, and especially in the last years, the share of Cubans has grown rapidly to surpass the 20% threshold in 2014.

Diagram 4: Origin countries of naturalised Chileans (% of the total)

Source: Ministerio de Interior y Seguridad Pública (2016), Migración en Chile 2005 – 2014, Anuario Estadístico Nacional de Migración en Chile

5. Conclusions

The citizenship regime of Chile appears to have gradually evolved throughout its history from a purely *ius soli* based system to a mixed *ius soli/ius sanguinis* system. Such transformation has taken place through incremental steps over the course of two centuries. The almost exclusive treatment of citizenship matters at the highest level of law, in the Constitution, has implied that its evolution has been connected to that of the fundamental law. Although the historical factors that have determined each modification are complex, this characteristic makes it somehow easier to follow the evolution of the citizenship regime.

After the independence from Spain in 1818 and fifteen years of political turmoil in which eight constitutional texts were successively adopted, the country reached political and legal stability with the approval of the Constitution of 1833. This Charter, which set the basis of the citizenship regime, was strongly influenced by the liberal ideas popular in Latin America in that period and by the pragmatic need to build the Chilean nation. The regime was characterised by the unconditional application of the *ius soli* principle, a very limited *ius sanguinis*, a fairly liberal naturalisation policy and a discretionary power reserved to Congress to grant citizenship on an individual basis. This setting, which resembled that of most countries of the region, allowed the rapid inclusion of subsequent waves of international migration that arrived in the country.

After 1833, three constitutional reforms, in 1925, 1980 and 2005 respectively introduced modifications to the citizenship regime. Each of these reforms reveals important aspects of the historical phase when it was approved and of the concerns that were in the legislators' minds. The Constitution approved in 1925 introduced, for the first time, limitations to the application of the *ius soli* principle, included the

previous nationality renunciation requirement for those who wished to naturalise, and regulated the modes of citizenship loss. The direction of these provisions clearly shows a change of perspective on the part of the Chilean government and the influence of the nationalistic spirit of the time. Although immigrations were still welcome they had to be better regulated and made compatible with the cohesion and safety of the Chilean nation.

The Constitution of 1980, approved under the military regime of General Augusto Pinochet, introduced two modifications that appear particularly significant. On the one hand, a number of exceptions that allowed those who acquired another citizenship to hold the Chilean one were introduced. These exceptions, which were added to the one introduced in 1957 allowing dual nationality for those who acquired Spanish citizenship, underlined the emerging of a new issue that required the intervention of the Chilean government: the numerous Chileans residing outside the national territory. At the same time, the new constitutional text included a provision particularly revealing of the authoritarian nature of the regime that approved it: The State could withdraw Chilean citizenship of individuals who had committed crimes against the dignity or the interest of the country.

Finally, in 2005, more than fifteen years after the end of the military rule, the most recent reform of the constitution was approved. This reform, which has set the basis for the current citizenship regime of Chile, completed the process of transition towards a mixed *ius soli/ius sanguinis* system. This outcome, beside the peculiarities of the Chilean case, can be seen in connection to a trend that has been gaining momentum in Latin America since the 1990s (Vonk 2014). In Chile, as for many other countries of the region, the main reason behind this evolution can be found in the migratory dynamics of the last decades. After a long history of immigration, the coup d'état of 1973 triggered a reversal of the direction of flows: Chile has become an emigration country.

The regime configured by the 2005 reform establishes four modes of citizenship acquisition and four causes of citizenship loss. Chilean citizenship is acquired by:

- automatic *ius soli* for all children born in the national territory with the exception of the children of diplomats or children of transient foreigners who can opt for the Chilean citizenship after their eighteenth birthday;
- automatic *ius sanguinis* for all the children or grandchildren of Chilean citizens born abroad who had not acquired their citizenship thanks to previous restrictions on *ius sanguinis*;
- regular naturalisation which no longer requires the renunciation of a previous citizenship;
- special grant of naturalisation by a legislative act of Congress.

Chilean citizenship can be lost by:

- voluntary renunciation, which is permitted only if another citizenship has been previously acquired;
- supreme decree in case of citizens who have provided services to an enemy of Chile during an international war;
- cancellation of the naturalisation certificate;

- cancellation of the special grant of naturalisation.

The current regime allows the possibility of dual citizenship both for Chilean citizens who acquire another citizenship and for foreigners who acquire the Chilean one.

Two aspects of the current citizenship regime are objects of debate and may be modified in the near future. The first concerns the automatic *ius soli* limitation that applies to the children of transient foreigners. This issue has been particularly problematic in the case of the children of irregular migrants. At the present day, since their parents are considered transient migrants, they cannot be awarded with the Chilean citizenship until their eighteenth year. The second concerns the case of foreigners who acquire Chilean citizenship. Although the Constitution has abolished the renunciation requirement, it is still included in Decree 175 of 1973, which further regulates the matter. The problem exists because, while the erasing of the requirement from the Constitution may suggest the legislator's will to liberalize the matter, according to the constitutional indication it is still ordinary law where this issue is decided and, until now, ordinary law still includes this limitation.

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