

## **Clarification Questions and Answers for the Nineteenth Inter-American Human Rights Moot Court Competition of the Academy on Human Rights and Humanitarian Law**

- 1. What were the female residents at La Casita told they were being injected with at paragraph 26 of the hypothetical?**

They were told that the medication was necessary for their medical treatment, but were not told that it was a contraceptive.

- 2. What were the psychiatric drugs that were given to Cristal Tovar?**

This information is not relevant to the analysis of the case.

- 3. Was Cristal given any idea of the contraceptive injections in advance? If so, was she able to express her consent to the use of the medication?**

See answer 1.

- 4. Were the symptoms that Cristal experienced on September 1 and December 26 checked out and identified?**

According to the diagnosis of the doctor from the Raúl Cano National Hospital, her symptoms resulted from the side effects of the medical treatment.

- 5. What was/were the cause(s) of the symptoms suffered by Cristal in paragraphs 27 and 28 of the hypothetical?**

See answer 4.

- 6. Did the medical staff at La Casita explain to Cristal Tovar in detail, in terms that were simple, clear, and appropriate to her condition, the effects of the medications and treatments given to her, in such a way that she could give informed consent prior to receiving them?**

See paragraph 25 of the facts of the case.

- 7. Is Exclutia a party to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) and if so, when did it become a party?**

Yes, it was ratified on January 29, 2001.

- 8. Is La Casita a state-run organization or a private organization?**

La Casita is a state-run organization.

- 9. Was the school that Cristal Tovar attended, as described in Paragraph 8 of the facts of the case, a public or private institution?**

It was a public institution.

- 10. As a State entity, are the existence and budget of La Casita provided by law?**

Yes.

- 11. Is the management of La Casita autonomous/independent from the State, with its own directors/managers?**

See answer 8.

- 12. What is the court of last resort in Exclutia?**

Supreme Court of Justice of Exclutia.

- 13. Did the judge who issued the declaration of incompetency schedule one or several time periods for its review?**

See answer 24.

- 14. At page 7, paragraph 33 of the hypothetical case, the Court of Appeals denied the motion to vacate filed by the NGO ODNEI. Is there any other remedy under the laws of EXCLUTIA and, if so, why did the NGO not make use of this remedy?**

See paragraph 33 of the facts of the case.

- 15. The judge who ruled on the motion to vacate filed by ODNEI found it inadmissible for lack of standing. Once ODNEI appealed that decision, the Court of Appeals decided to deny the motion for appeal, insofar as "there had been no abuse on the part of Cristal's guardian." Why did the Court make that assertion on the merits,**

**when the appeal concerned the issue of procedural standing to file the motion to vacate?**

The Court of Appeals dismissed the lower court's conclusion and heard and decided the merits of the case in a replacement judgment.

- 16. Page 7, paragraph 34 of the hypothetical case states that, 6 months after the Second Constitutional Chamber ruled on the petition for a constitutional remedy, the State allocated \$200,000 in its budget to improve the infrastructure at La Casita. How was this money used?**

The State painted the shelter, bought new mattresses, bedding, and furniture for personal use, hired a new food service provider, made repairs to the drainage system, and installed lighting in the green spaces.

- 17. Under the laws of the State of Exclutia or otherwise, is it possible to exercise “diffuse” or “decentralized” control over the constitutionality of national provisions, and who exercises it?**

No.

- 18. According to the national laws of Exclutia, who has standing to file an unconstitutionality action before the Constitutional Court?**

See answer 20.

- 19. Did the parties receive notice of the Second Constitutional Chamber's granting of the petition for a constitutional remedy on December 2, 2012?**

The parties were given notice on December 3, 2008, the day after the decision was issued.

- 20. What is the legal procedure for bringing an unconstitutionality action before the Constitutional Court of Exclutia (mentioned in paragraph 33 of the case) and who has standing to file it?**

Any person with a legitimate interest can file an unconstitutionality action directly before the Constitutional Court of Exclutia.

- 21. On page 2, paragraph 6 of the hypothetical case, it states that a constitutional amendment passed by the State in 2008 gave human rights treaties the same status as**

**constitutional provisions. Does this amendment also apply to all of the human rights treaties signed prior to 2008?**

Yes.

**22. What are the legal rules for the unconstitutionality action in the State of Exclutia?**

See answer 20.

**23. What kinds of acts did Dr. Lira perform in her capacity as Cristal Tovar's guardian?**

They were consistent with the activities inherent to her position as the director of the shelter.

**24. What are the extent and time limit of Dr. Lira guardianship's over Cristal Tovar?**

It is full guardianship and must be reviewed every year.

**25. What was the content of the judgment whereby Cristal Tovar was declared incompetent? Did the judge take account of factors beyond the medical findings and the testimony of Dr. Lira?**

See paragraphs 22 and 23 of the facts of the case and the answer to clarification question 24.

**26. What is/are the criterion or criteria for assigning individuals to a particular area when, due to their qualities, conditions, or characteristics, they could be sent to more than one of the areas specified in paragraph 14 of the facts of the case?**

See paragraph 20 of the facts of the case.

**27. Are the treatments indicated in paragraph 16 of the facts of the case (physical therapy, psychological services, or training in daily life) provided to all the residents of La Casita that need them, regardless of the area in which they reside, or are treatments provided solely according to area?**

They are provided to all persons who need them.

**28. What was the procedure by which Cristal Tovar was picked up by the "Sheltering Our Poor" program (paragraph 12 of the case)? Was there any resistance or exacerbation due to noncompliance on Cristal's part?**

Cristal did not resist or make any remarks.

**29. According to the domestic laws of the State of Exclutia, what are the medical requirements for a diagnosis of mental deficiency and what is the procedure that the health professionals should use to make and review such a diagnosis?**

This information is not relevant to the analysis of the case.

**30. Paragraph 5 states that the 2008-2013 administration “implemented a number of social policies” focused on persons with disabilities. In addition to the \$200,000 budget allotted to La Casita for remodeling its infrastructure and improving its conditions, what other specific measures and laws did the 2008-2013 administration pass to assist persons with disabilities?**

The enactment of the 2009 National Law for the Inclusion of Persons with Disabilities, the creation of a dialogue group between civil society and the government within the Ministry of Interior, and greater budget allocation to the National Council of Persons with Disabilities (CONADISE).

**31. Page 3 and 4, §§ 14 and 20: Are there other residents of La Casita in Area B who are suffering from both a mental/intellectual disability and a physical/sensory disability?**

Yes.

**32. Page 3, §§ 15 - 16: What kinds of activities were organized on a weekly basis to entertain the women with mental and intellectual disabilities?**

Paragraph 16 of the hypothetical case should state that two individuals provided “training in daily life” and not entertainment.

**33. Page 4, § 19: Why did the psychiatrist, who performed the exam on the applicant, consider her depression a mental disability?**

The psychiatrist diagnosed that Cristal’s symptoms of depression were due to a mental disability.

**34. Bearing in mind that Article 41 of Exclutia’s 1997 Civil Code establishes that the judgment of incompetency “shall establish the extent and limits of the guardianship according to the type of disability,” what were the extent and limits established in the judgment in which Cristal Tovar was declared incompetent?**

See answer 24.

- 35. Besides changes made to Article 41 of Exclutia's Civil Code, is there any other action taken by the Exclutian State to comply with the Commission's Merits Report?**

In its two communications subsequent to the adoption of the merits report, the State provided information on the draft bill, on the improvements made at “La Casita,” and on the implementation of the policies adopted in 2009.

- 36. If the proceeding for the declaration of incompetency is regulated in Article 41 of the Civil Code, which provides only for petitions for the review and/or revocation of the declaration of incompetency, how is the ODNEI’s filing of a motion to vacate explained and how are motions to vacate incompetency proceedings regulated in Exclutia?**

Under the laws of the State of Exclutia, motions to vacate may be filed against any court decision.

- 37. In declaring Cristal Tovar incompetent, what provisions did the judge make with respect to the limits of guardianship and review periods (provided for in Article 41 of the Civil Code)?**

See answer 24.

- 38. According to paragraph 37 of the case, the State made reference to a legislative bill to amend Article 41 of the Civil Code. What happened to that bill?**

The bill was passed by the Social Inclusion Committee of Congress and is currently pending debate before the full session.

- 39. In paragraph 33, the civil judge for Cristal Tovar’s incompetency appeal denied the motion “on the grounds that there had been no abuse on the part of Cristal’s guardian.” Under Exclutia’s Civil Code, Act No. 1160, Section IV, what other grounds or elements must be present for incompetency to be revoked?**

Those elements are not provided for in the law. The judge will examine situations on a case-by-case basis.

- 40. Paragraph 35 states the Inter-American Commission granted certain precautionary measures and paragraph 36 states that the Commission made several recommendations with respect to the situations that violated the rights of Cristal Tovar. Did the precautionary measures or recommendations include any specific**

**building requirements such as separate shower stalls, lockers for storing personal items, privacy screens between each bed, etc.?**

No.

**41. What were the Commission's specific recommendations to the Democratic Republic of Exclutia?**

In general terms, the IACHR requested that the State of Exclutia take measures designed to provide reparations to the victim and adopt measures of non-repetition.

**42. What changes has the State of Exclutia made with respect to the conditions at La Casita since the judgment on the petition for a constitutional remedy?**

See answer 16.

**43. Are the provisional measures requested by Cristal's representatives limited only to the grounds of the involuntary isolation, or [do they pertain] to all the alleged violations?**

They are limited to the grounds of involuntary isolation.

**44. Are the provisional measures requested by Cristal's representatives limited to Cristal alone, or do they extend to all the persons in La Casita?**

They concern the residents of La Casita who may be subject to involuntary isolation.

**45. What rehabilitation measures were taken at La Casita with respect to Cristal Tovar's blindness?**

See paragraph 16 of the facts of the case.

**46. What programs or measures have been taken within the public policy framework focusing on persons with disabilities in Exclutia?**

See answer 30.

**47. What measures have been taken in Exclutia to strengthen the decision support systems for persons with disabilities?**

See answer 30 and paragraph 37 of the facts of the case.

**48. What were the limits to the guardianship appointment made by the VI Civil Court of the city Inclutiarán in view of the declaration of Cristal's incompetency in 2006?**

See answer 24.

**49. What were the precautionary measures granted by the IACHR with which the State of Exclutia failed to comply?**

The precautionary measures are in force, and the IACHR continues to monitor compliance with them.

**50. What were the recommendations and measures of non-repetition adopted by the Inter-American Commission in Merits Report No. 12/13 of March 11, 2013?**

See answer 41.

**51. What were the specific recommendations that the Inter-American Commission made to the State of Exclutia in Merits Report No. 12/13?**

See answer 41.

**52. What were the specific precautionary measures granted by the Inter-American Commission?**

For the State to take measures to protect and guarantee the rights of the beneficiaries to life and humane treatment.

**53. With regard to Part VIII of the hypothetical case "Proceedings before the Inter-American Human Rights System," paragraph 35: What were the precautionary measures granted by the IACHR to the residents of La Casita?**

See answer 52.

**54. With regard to Part VIII of the hypothetical case "Proceedings before the Inter-American Human Rights System," paragraph 36: Specifically, what were the recommendations and measures of non-repetition that the IACHR made to the Democratic Republic of Exclutia?**

See answer 41.



**55. What were the precautionary measures granted by the Inter-American Commission of Human Rights for the benefit of the residents of “La Casita,” and how did the State act with respect to them?**

See answer 52.

**56. What were the other recommendations (other than the draft legislation) made by the Inter-American Commission in the Merits Report with which the State allegedly failed to comply?**

See answer 41.

**57. With regard to Part VI of the hypothetical case “Situation of Cristal Tovar at ‘La Casita’ shelter,” paragraph 29: What was Cristal Tovar’s specific health condition that led the attending physician at the Raúl Cano National Hospital to conclude that Cristal should remain under observation for at least a week?**

To monitor the symptoms for which she was brought to the hospital.

**58. What were the human rights conditions at the La Casita shelter on the date on which the case was submitted [to the Inter-American Court]?**

See answer 16.

**59. What are the consequences of a declaration of incompetency in the State of Exclutia?**

This must be analyzed by the parties in light of the facts of the case.

**60. What are the criteria of the La Casita shelter for subjecting its residents to confinement in the isolation rooms?**

See paragraph 17 of the facts of the case.

**61. Is there any legal mechanism in Exclutia for challenging the deprivation of liberty (whether or not it involves incarceration), such as habeas corpus? If so, who has standing to petition for it?**

Yes, Exclutian law provides for habeas corpus relief, and any interested party can file a petition.

**62. How is the constitutional remedy of habeas corpus provided for under Exclutian law?**

See answer 61.

**63. Did the residential center mentioned in paragraphs 11 and 12 of the hypothetical case require payment, or was it free of charge? Did Cristal refuse to go to the center because she did not have the financial ability, or simply because she did not want to go?**

La Casita is a free, public entity. With respect to the second part of the question, see paragraph 12 of the facts of the case.

**64. Was the victim taken to La Casita by force, or could she have opted not to go?**

See answer 28.

**65. Did Cristal Tovar give her consent to be taken to La Casita?**

See answer 28.

**66. Did the police officer restrain Cristal Tovar or arrest her before taking her to La Casita?**

See answer 28.

**67. Did the State effectively comply with the judgment of the Constitutional Court?**

See answer 16.

**68. Could the victim waive the guardianship if her clinical symptoms improved?**

According to the laws currently in force in Exclutia, the revocation must be ordered by the judge.