

CLARIFICATION QUESTIONS AND ANSWERS 2013

- 1. What company or entity conducted the opinion poll referred to in paragraph 40 of the hypothetical case, what methods were used, and what degree of certainty do they provide?**

The opinion poll was conducted by a private company, "Consultex," through a sampling of telephone calls and in-person surveys. After examining the results with its specialists, the government accepted the results as valid; the poll has also been broadly accepted by civil society and academia, which have stated that the results of the poll accurately reflect the social perceptions in Elizabetia.

- 2. Do the opinion polls regarding the government's political agenda referred to in paragraph 40 of the hypothetical case have any legal or legislative effect?**

The poll was about the government's political agenda. The government studies this type of feedback as one element to bear in mind when formulating its policies and plans. It also takes account of news articles, opinion articles, public statements, communications from citizens, and other items that reflect the public's opinion of its work.

- 3. Paragraphs 4 and 33 make reference to the fact that Elizabetia has a "solid system of shared social values." What are those values?**

There is no single catalog of Elizabetian values. However, Elizabetian social discourse makes frequent reference to democratic society, the rule of law, respect for the individual person, and the separation of powers.

- 4. According to paragraph 61, Adriana told Serafina that she had suffered from the same disorder previously. What medical treatment did Adriana receive in order to recover that time?**

Adriana did not tell Serafina the specifics of her treatment. Unfortunately, the hospital where Adriana was treated—and all its physical records—were completely destroyed in a devastating fire caused by a nurse who was secretly smoking in a closet. The doctor who treated Adriana died some time ago in an unfortunate hot air balloon accident.

- 5. As stated in the case, "There are many aspects of Granti culture that have been assimilated into the customs, traditions, beliefs, and the very idiosyncrasies of the Elizabetian people"; Can it be inferred from the phrase: "for each Indian woman they brought another Indian girl to serve her, and all of them were the daughters of Indian chiefs" that unions between people of the same sex would be part of this cultural legacy?**

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There is no specific reference in Cáceres's Journals to marriage or unions.

6. Does, or did, Serafina Conejo Gallo identify with any characteristics of the Granti culture?

Serafina does not self-identify as Granti. However, see paragraph 10 of the case with respect to the matter.

7. According to paragraph 36 of the facts, Serafina received a public apology and the acknowledgement of her gender identity. In addition to that, did she receive any other type of reparations such as financial compensation or psychological support for the traumas she experienced in her childhood and adolescence?

Serafina received the reparations measures mentioned in paragraph 36, and stated that she was satisfied with them. She added that she had obtained other rehabilitation measures by her own means, but they fall within the sphere of personal privacy and are not part of the facts of the case.

8. In paragraph 51 of the facts of the case, when the State says that the petition for a constitutional remedy [*recurso de amparo*] is still pending, to what *amparo* proceeding is it referring?

See the facts described in paragraphs 48 and 49.

9. What factors does the competent authority take into account to authorize adoption in Elizabetia under its domestic law?

Socio-cultural, psychological, financial, and health studies.

10. With respect to paragraph 14 of the facts of the hypothetical case, what procedure does the Office of the Human Rights Prosecutor of the Republic use to grant its approval and thereby allow for the unconstitutionality action to be filed? What is the legal nature of the Office of the Human Rights Prosecutor of the Republic?

The procedure is not regulated. According to a recent interview with the Human Rights Prosecutor of Elizabetia, the opinion depends on legal relevance (that is, the need to question constitutionality in order for human rights to prevail) and political advisability (that is, an assessment of whether the action is advisable for collective coexistence within the nation). The approval is a discretionary act and it has never been known to have been appealed or changed.

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- 11. What are the requirements for filing the unconstitutionality action? How is it processed, what is the timeline for its processing, and what are the effects of the judgment in the State of Elizabetia?**

The action is governed by the legal requirements set forth in Article 110 of the Constitution. A finding of unconstitutionality results in the immediate removal of the defective provision from the Elizabetian legal system.

- 12. Is the unconstitutionality action established in Article 110 of the Constitution of Elizabetia considered an ordinary or extraordinary remedy under its domestic law?**

It is a *sui generis* remedy.

- 13. Has the Constitutional Chamber of the Supreme Court of Elizabetia had occasion to hand down a judgment regarding the constitutionality of same-sex marriage? If so, how did it rule?**

The only prior case law relevant to the case is contained in the statement of facts.

- 14. Has Article 396 of the Civil Code been the subject of any unconstitutionality action?**

The only prior case law relevant to the case is contained in the statement of facts.

- 15. On what basis did the Three-judge Plenary Tribunal with General Jurisdiction of District No. 5, hearing the petition for a constitutional remedy, affirm the decision of Family Court No. 3?**

The Court found that the lower court's decision was consistent with the law.

- 16. Please specify what constitutes "suitable evidence" under Article 406 of the Civil Code of Elizabetia to prove uninterrupted cohabitation for a period of five years, and whether it has any legal basis in the *Corpus Juris* of Elizabetia?**

The evidence is not described exhaustively and there is no single protocol to follow in order to prove domestic partnership. Therefore, it is appropriate to apply the evidence normally used to demonstrate any fact, including any documents, witness testimony, and expert evidence that the requesting parties deem relevant.

- 17. According to paragraphs 17 and 18, Article 406 of the Civil Code regulates domestic partnership and establishes that it has all of the effects described in Article 397. What is the exact text of Article 397?**

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Article 397

The parties to a marriage share the responsibility for the family and its guidance. Together they create the joint ownership of property, which includes the duty of deciding and managing domestic affairs, and ensuring the prospects of their offspring. They also have the obligation to respect one another, to be mutually faithful, and to come to one another's aid. They have the right to share social security. In the event of the death intestate of one of the parties to a marriage, the other has the right of first priority to inherit the assets of the deceased party in their entirety.

18. What does the special protection granted to the family pursuant to common-law marriage between a man and a woman entail according to Article 85 of the Constitution?

There is no exact statement of all of the consequences of the special protection described in Article 85; this is the result of interpretative developments.

19. How is the special protection referred to in Article 85 of the Constitution of Elizabethia different from the protection granted under the Elizabethian legal system to other types of families pursuant to Article 406 of the Civil Code?

There is no exact statement of all of the consequences of the special protection described in Article 85; this is the result of interpretative developments.

20. In addition to the type referred to in Article 85 of the Constitution, are other types of families recognized under the State's legal system?

The constitutional and legal references to the family that are relevant to the case are described in the hypothetical case.

21. With respect to paragraph 42, what requirements—besides those contained in Article 396 of the Civil Code—must be met in order for the National Secretariat of the Family to authorize a marriage?

The only requirements are those described in Article 396. It is assumed that the State possesses any information that could prevent the marriage from being performed—for example, a prior marriage that has not been dissolved, or legally established limitations to the capacity of a person of legal age.

22. In a domestic partnership consisting of two persons of the same sex, are the parties considered to be "spouses"?

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The word "spouse" is used in paragraph 59 of the case according to its common meaning.

- 23. Regarding Article 406.2, on what basis did the legislators exclude "domestic partnership" between two persons of the same sex from the category of "family" within the meaning of Article 85 of the Constitution and from the opportunity to adopt [a child] jointly?**

There is no written statement of the reasons for this specific language. Recent academic research into the legislative session debates on the amendment found multiple references to Elizabethian social values and morals.

- 24. Paragraphs 36 and 37 indicate that the draft Gender Identity Act was introduced two weeks after November 28, 2006, and entered into force 3 months later, which would be March 13, 2007. In this respect, was the January 13, 2007 recognition of Serafina's gender identity (paragraph 38) valid?**

Serafina's gender identity was recognized by means of an act of the Executive Branch, as part of the State's compliance with the IACHR's recommendations in petition P-300-00. That act used the same methods that would be described in the draft bill that was being debated in parliament at the time.

- 25. According to paragraphs 16 and 17 of the facts of the case, when was the Civil Code amended with respect to the legal concept of domestic partnership, in 2009 or 2010?**

The reform had its beginnings in 2009, with the judgment of the Constitutional Chamber of the Supreme Court; it culminated in 2010 when the legislative reform process ended and the amendment entered into force.

- 26. What are the legal effects of domestic partnership with respect to social security in the State of Elizabetia?**

A domestic partnership that meets the requirements of Article 406 of the Civil Code creates for the parties full rights of succession and assignment to the same social security system.

- 27. What recommendations did the IACHR make to the State of Elizabetia in Petition P-300-00?**

In accordance with its standard practice, and in view of the proven violations stemming from the refusal to recognize Serafina's gender identity, the IACHR recommended that the State adopt measures to:

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- stop the conduct that constitutes a violation or violations; and
- provide comprehensive reparation of the harm, including—if relevant—measures of satisfaction, compensation, and rehabilitation.

28. What is the basis under the American Convention and the legal argument for the IACHR’s decision to admit the Mariposa case for priority initial review, as stated in paragraph 50 of the hypothetical case?

The IACHR decided that the Mariposa case would be subject to priority initial review because it found that discrimination based on sexual orientation and gender identity is a problem with structural implications.

29. Is the legal concept of priority initial review (*per saltum*) provided for in the domestic law of Elizabetia (including the case law of any national court)?

There is no procedural institution by that name in Elizabetia.

30. How is “informed consent by proxy” regulated under the legal system of Elizabetia (including the case law of any national court) in cases in which the rights holder is temporarily incapacitated?

The only difference when informed consent is granted by proxy is the requirement that the person granting it must be a spouse or relative. The status of “spouse” depends on the requirements described in paragraphs 15 and 17, and “relative” status is determined by birth records (in the case of parents, siblings, or children) or general evidentiary means (testimony, expert evidence, or documents) in the case of other relatives. One salient aspect of this issue is that there are no specific requirements regarding the proximity of the family connection for the granting of informed consent by proxy. There are cases in Elizabetian practice in which the granting of informed consent by a third cousin has been accepted.

31. Does the Constitution of Elizabetia provide for “conventionality control” monitor?

There is no procedural institution by that name in Elizabetia.

32. What are the specific aspects of the Granti culture that have been assimilated into the Elizabetian society?

As happens usually in the formation of national idiosyncrasies, it is practically impossible to determine the aspects of cultures that blend with each other. Some historians

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identify a number of traditional dishes in the Elizabethan cuisine as coming from Granti traditions.

33. Are there any witnesses/written documents that can prove that Adriana told Serafina that she would risk death over amnesia?

This is something that was said by Adriana to Serafina in the course of a conversation they held concerning what each of them would want if placed in extreme health impairment.

34. In paragraph 43 did the National Secretariat of the Family take into account Serafina's genetic sex in accordance with article 13 of the Gender Identity Act?

The motivation of the resolution is as cited in the record: pursuant to Article 396 of the Civil Code of Elizabetia, the request is denied.

35. Are we supposed to consider that an appeal to the Supreme Court cannot be made and that we should only advocate the pending petition as ground for inadmissibility? Or the issue for preliminary objection can also include the fact that a petition for constitutional remedy has not been filed to the Supreme Court? The previous year's problem was specific about the constitutional remedy being filed to the Supreme Court.

The relevant facts are as established in the record. The question requests advice on litigation strategy, which ought to be decided solely by the parties.

36. Do the "legal and constitutional effects" in Article 396 include the right for a husband or wife to provide informed consent for his or her spouse's medical services?

Not specifically. Article 397, as seen in these clarifications, refers to spouses as caring and providing and for each other. In practice, this has been seen as constitutional basis for a wide range of rights; among them, the right to provide informed consent.

37. Do the Constituent Assembly, the Executive branch, and the Constitutional Chamber of the Supreme Court of Elizabetia have a system of checks and balances between them?

Their functions are widely considered to be, in themselves, a well-balanced system of checks and balances.

38. With reference to Article 406(2), can an LGBTI person adopt individually regardless of whether he/she is in a domestic partnership or not?

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There are no known cases of a single person that is openly lesbian, gay, trans, bisexual or intersex having been considered as adoptive parent of a child in Elizabetia.

39. What is the minimum period of cohabitation to be considered a family for the purposes of article 85 of the Constitution?

Marriage has no requirement of cohabitation. In the case of common law marriages, 5 years (view paragraph 17).

40. What reasons and normative basis if any did the Constitutional Chamber of the Supreme Court of Justice invoke when it ruled that the phrase "between a man and a woman" in the civil regulation recognizing the concept of domestic partnership was unconstitutional (paragraph 16)?

Article 9 in the Elizabethian Constitution and Article 1 of the American Convention on Human Rights.

41. What is the normative basis on which the Court no 3 based itself to invoke the lack of "manifest arbitrariness" (paragraph 48) of the Court no 7 to dismiss Serafina and Adriana's petition for a constitutional remedy?

The law of amparo (constitutional remedy) clearly establishes that such remedy cannot be raised against judicial decisions, unless "manifest arbitrariness" has occurred in the case.

42. Considering the political tradition of Elizabetia to alternate the executive branch every five years between the Pink Party and the Blue Party, and considering that paragraph 35 provides that the Pink Party representative was elected in December 2005, we request clarification on why the Pink Party had assumed power in January 2010.

Election periods are not exact in Elizabetia. All of the governments of the past thirty years have exercised and surrendered power at the required times.

43. What was the traditional family structure among the indigenous Granti people? Was the nuclear family based in couples consisting of a man and a woman or did it include other types of family units?

Cáceres's Journals do not contain any information in this respect.

44. How does the judiciary system of Elizabetia (procedures, deadlines, resources, bodies) function?

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All of the relevant legal provisions are described in the facts of the case.

- 45. According to article 406 of the Civil Code, a judicial declaration is necessary for the recognition of a de facto union of marriage. Has this declaration been issued to homosexual couples? To what extent?**

There are no exact figures, but there is ample information that many same-sex couples have obtained a domestic partnership decree.

- 46. Are there laws in Elizabetia that regulate the decision-making process of the Regional Medical Committee in situations like that of Adriana? For example, can related parties in the case of Adriana make a declaration to the Committee or is there any judicial appeal of the Committee's decision?**

All action by the authorities affecting the rights of one or several individuals is subject to constitutional protections and to the protections of the American Convention on Human Rights and other Inter-American treaties on this subject.

- 47. Can a judge of first instance declare a law unconstitutional or is only the Supreme Court authorized to do so?**

A declaration of unconstitutionality can be issued only by the Constitutional Chamber of the Supreme Court.

- 48. Is the organization Mariposa a legally created and recognized NGO in one or more countries of the Inter-American Human Rights System? Has Mariposa adjusted its status as an entity?**

The organization Mariposa is legally recognized in Elizabetia.

- 49. Was Mariposa's petition for provisional measures presented to the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights?**

Mariposa filed its request with the Inter-American Court of Human Rights.