

11th Helga Pedersen Moot Court Competition

Clarification Questions

Part I: Questions regarding the judicial and legal system of Zephyria

1. Although we know that it's a different applicant, we believe that there is a need for accuracy regarding the Leti Civil Court. What difference does it have with the others (Leti City Court and Lari City Court)? Is this a contentious/non-contentious proceeding? Please, clarify the structure and relation of the judicial instances. **The text should read Lari City Court in §21 and §22. There is only Lari City Court, Leti is a mistake.**
2. What are the criteria to select which court shall decide the dispute? **Courts' jurisdiction is assigned based on *ratione loci* and *ratione materiae*. Civil courts decide in all types of civil cases, including both contentious and non-contentious proceedings.**
3. How long are the proceedings from Levi Civil Court pending? **Since 2 June 2022.**
4. What, if any, mechanisms are available in Zephyria for citizens to contest the existing legislative framework? **This is not possible – see facts of the case.**
5. Which bodies are allowed to request the Constitutional Court to review compliance of legislation with the Constitution and other laws, as well as international standards such as the Convention? **See Q4. Only the Parliament can amend the laws. The President, the Ombudsman, and the regular courts can request the Constitutional Court (CC) to review constitutionality of legal provisions – however, no court has ever submitted such a request to date.**
6. Could Regional Courts review if the legislation complies with the Constitution or the Convention? **No.**
7. Can ex officio urgent measures (as mentioned in §41 of the case) be appealed before the Constitutional Court of Zephyria? **No.**
8. What are the guiding principles and fundamental rights of Zephyria's legal system, whether it is a legalistic or precedent-case-law based system, the general procedural functioning of the legal system and its courts as well as the specific functions of its Constitutional Court? **Zephyria is a civil legal system (please see facts of the case, §29) and Constitutional Court decides on constitutional complaints and reviews constitutionality of legislation.**
9. Are Zephyrian public authorities and courts permitted to make use of customary law and analogies when applying administrative law? **Zephyria is a civil legal system and courts do not create law.**
10. Does Zephyria fall within the category of a developed country or developing country under the relevant Council of Europe and United Nations human rights treaties? **Developing.**
11. How does Zephyrian law incorporate international treaties, legislation and protocols? **Through ratification.**

Part II: Questions regarding the family law in Zephyria and its implementation

1. Is the status of individuals with registered partnerships considered different from the status of married couples in a legal way? **For teams to argue.**

2. Are civil partnerships, both within the legal science, political and media fields in Zephyria, generally presented as and truly are a marriage alternative for same-sex couples, with the singular exception of being able to adopt children? **In general, yes.**
3. Given the lack of possibility to adopt a child, what are the ways for same-sex couples to exercise joint parental rights over a child? **For teams to argue.**
4. §35 of the case states that in Parliament, there is no clear support nor disapproval for legislative changes with regard to adoption. What are societal views on same-sex adoption? **Ambiguous.**
5. What is the definition of 'parent' in Zephyrian Family Law? **Please see §36 of the case as re the mother. Otherwise, a parent is any person, whether biological parent or not, who has parental responsibility recognised by administrative authorities and/or courts and cares for a child.**
6. Under Zephyrian law can three persons or just one person be registered as parents of a child? **Only two.**
7. What kind of legal protection does the Zephyrian legislation provide to the second parent who is not indicated in the child's birth certificate but is the registered partner of the child's parent who is legally indicated? **For teams to argue.**
8. According to Zephyrian law, is being registered in the birth certificate a precondition for claiming (physical and/or legal) custody before the competent courts? **The issue is not explicitly regulated in the law and there has been divergent domestic case-law.**
9. What are the formal requirements for a valid relinquishment of parental rights under Article 70 of the Family Law? **If a relinquishment is challenged, it will be ultimately considered by a court - after a careful consideration, the court can conclude that it was done with free will and in full mental capacity of the parent, weighing the best interests of the child.**
10. For opposite-sex couples who have undergone surrogacy, do they ever use adoption to legally recognise parental rights and in what circumstances? **Yes, they use it in practice. For the rest, see facts of the case.**
11. Are there any medical or legislative conditions for a woman to enter into a gestational surrogacy agreement (for example: a number of kids before that, age, etc.)? **There are no strict requirements, but candidates' physical and mental health and other conditions (to see whether there may be any medical conditions preventing pregnancy) are usually assessed by clinics before a surrogacy agreement is signed. Ms D underwent such examination and was declared fit for surrogacy.**
12. In §42, it is stated that Zephyria's institutions have regularly accepted gestational surrogacy agreements as a basis for entries into birth certificates. While the courts have regularly accepted "altruistic" surrogacy agreements in terms of recognition of maternity/paternity and/or parental rights. What does 'regularly' mean in these cases? **For teams to argue.**
13. §42 of the case facts states that the courts have regularly accepted "altruistic" surrogacy agreements, have they accepted any between the surrogate mother and same-sex couples and, if so, what were the circumstances of the cases? **Yes – for the rest, see facts of the case.**
14. How many gestational surrogacy agreements were accepted by the state institutions, and how many of those couples who were granted the right have been (I.) married, (II.) are in a cohabitation union, (III.) are couples from a registered partnership? **No such detailed statistics are available.**
15. Were there any discussions in parliament or draft laws about surrogacy in Zephyria? **Not yet.**

Part III: Questions regarding Zephyria and other factual circumstances of the case

1. What is the average salary in Zephyria? **EUR 1,300**
2. Subsequent to the 2005 Zephyrian scientific report on children development referred to in §18 and §35, has any research, national or international, on the same topic or a topic of similar nature been published? **This was the largest and most recent research of such scale in Zephyria.**
3. Is the 2005 research by Zephyrian psychologists the focal point for the argumentation of the opponents to the legislative changes or does all other not explicitly mentioned in substance and in count research have the same weight? **For teams to argue.**
4. How was the 2005 research conducted (e.g., were the conclusions regarding surrogate mothers made in analogy to biological mothers; were the different types of surrogacy examined etc.)? Who conducted the research? Who funded the research? Do new findings both in Zephyria and internationally contradict the research? **It was conducted in line with the contemporaneous scientific research methodology by the lead scientific institution in Zephyria.**
5. What were Ms D's motives for signing the surrogacy agreement (did she ever really intend to give B. to the gay couple)? Ms D. wanted to go away, yet she signed the surrogacy contract a month after she had started her unpaid leave. **Ms D took unpaid leave to dedicate to a number of personal projects, IVF was one of them. No further information about her intentions is available.**
6. In what context and conditions was the agreement signed (e.g., did both parties have the assistance of an attorney) and what terms did the surrogacy agreement explicitly include (abortion, cesarean, change of opinion, ...)? **Both parties had an attorney. According to the agreement, once Ms D had a positive pregnancy test, she had to continue with the process and could no longer change her mind. All decisions related to the pregnancy (including its termination for medical reasons) would need to be approved by the intended parents. Ms D could, in agreement with the intended parents, present a "birth plan" (i.e. type of birth, medication, environment, etc) to the hospital.**
7. Are the five largest fertility clinics in Zephyria mentioned in §44 state-run? **Three of them are state-run and two are private.**
8. Is the Central hospital in Lari in which Ms. D gave birth (§7) to B of the case state-run? **Yes.**
9. Is the fertility clinic that the applicant and his partner went for screening one that is officially recognized and regulated by Zephyria and falls under the relevant guidelines of the Council of Europe? **Yes, it is the largest hospital in the country.**
10. Did the applicant submit to the Zephyrian courts the in-depth psychological and physical screening tests that they underwent at the fertility clinic in Zephyria and on the basis of which they were accepted to become parents via surrogacy? **Yes.**
11. On whose side was the psychologist's opinion submitted, on the side of the State or on the side of the applicants? **If the question relates to §18 of the case, it was an independent expert opinion requested by the court.**
12. Did the hospital have any obligations to account for the agreement between the Applicant, his partner and Ms D, and by knowing the content of the contract was there any obligation to stop the registration and to not allow Ms D to indicate herself to the birth certificate as the

mother of the child? **The hospital was not a party to the surrogacy agreement – the rest is for teams to argue.**

13. How long have the applicant and Mr Luke Kramer been in a relationship before they entered into a registered partnership? **Five years.**
14. Whether the trial and appealing procedure developed in front of national courts has complied at all times with the standard of a fair trial with all procedural guarantees being respected or there has been any kind of irregularity on the procedure? **For teams to consider any relevant legal arguments.**
15. The last enforced decision (of the Regional Court) ordered that the child should be placed in Ms D's care, while was guaranteed Mr Luke Kramer visitation rights. Is Mr Anton Kramer, in practice, visiting the child together with his partner? **No. Mr Anton Kramer does not have visitation rights and cannot legally visit the child.**
16. How often and for what period of time is Luke Kramer allowed to visit B? **In line with the court order – every weekend.**
17. If Ms D is permanently employed, does she hire a babysitter to take care of B? **Not relevant.**
18. What "personal projects", other than travel, did Ms D. want to undertake during her unpaid leave? In relation to § 3 of the case. **She did not specify (and was not required to specify) any details to her employer. IVF was one of such projects.**
19. In the case, it is stated that the bond between mother and baby was created during pregnancy. In response to this scientific research, is it possible to present a scientific report on the relationship created after birth between parent and child? **Kramers submitted an alternative report by a well-known psychologist about the importance of bonds formed between fathers as well as non-biological parents regardless of gender, but the Regional Court refused the proposal, opining that the earlier research about bonds during pregnancy was the predominant scientific thought.**