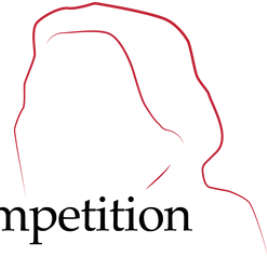


Helga Pedersen
Moot Court Competition



ANSWERS TO CLARIFICATION QUESTIONS

HELGA PEDERSEN MOOT COURT
COMPETITION

12TH EDITION - 2023/2024

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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The European Law Students' Association

12th Helga Pedersen Moot Court Competition

Answers to Clarification Questions

Note for Teams:

Several questions were related to substantive claims and arguments that the teams are expected to develop themselves. These questions have not been answered. Further, duplicate questions have been deleted.

Table of Contents

Part I: Questions regarding the judicial system of Zemland and the case law	2
Part II: Questions regarding the legal system of Zemland and general legislation	3
Questions regarding the Constitution of Zemland	3
Questions regarding international treaties	3
Questions regarding national legislation	4
Part III: Questions regarding contract law in Zemland and its implementation	6
Part IV: Questions regarding Zemland and other factual circumstances of the case	7
Questions regarding the demonstrations	7
Questions regarding Friendzone	7
Questions regarding the Applicant David Borg	8
Questions regarding the University and its actions and responsibilities	8
Questions regarding the factual and political climate of Zemland	9
Questions regarding the contract between Applicant David Borg and the University	10
Questions regarding the previous and current legal proceedings in David Borg v. Zemland	10
Part V: Questions regarding the wording of factual circumstances of the case	12
Part VI: Miscellaneous questions	13

Part I: Questions regarding the judicial system of Zemland and the case law

1. Have the comparable cases in the other Council of Europe Member States as referenced in § 27 of the Case also been brought before the national courts of the respective states?

It is for teams to research case-law and present relevant legal arguments.

2. What happened in similar cases where there was cancelling of researchers (as in § 27)? Is there a similar case to Borg's, in which there was violence in camps as a protest to their opinions?

In Zemland, there were several other cases of similar protests, including some property destruction; they did not lead to any physical injuries of protesters.

3. In accordance with ECHR's *Gorelishvili v Georgia* decision, does the Zemland constitution or courts make a distinction between value judgements and statements of fact in regard to defamation proceedings?

For the available information (including law and courts' reasoning), see the text of the case. Otherwise, it is for teams to present relevant legal arguments.

4. How did local courts evaluate the worthiness of ideas to be protected?

It is for teams to present relevant legal arguments.

5. In the other Member States dealing with cases of cancellations in university settings, can one bring civil proceedings before courts if there was an unlawful interference with their freedom of speech?

It is for teams to research case-law.



Part II: Questions regarding the legal system of Zemland and general legislation

Questions regarding the Constitution of Zemland

6. Is there a specific article in the Zemlandic Constitution that protects people in Zemland from being discriminated against on the basis of their sex, gender, descent, or race?

[See text of the Case.](#)

7. In line with Article 10(2) of the ECHR (regarding States' right to interfere with one's right to free speech), what provisions does the Zemland constitution include on the limitation of free speech?

[See text of the Case.](#)

8. What are the limits to Article 25 of the Zemlandic Constitution?

[The question is unclear.](#)

9. How are public universities such as Copernicus University set up in the Zemlandic constitution, do they have the same obligations as the state when considering education and freedom of expression?

[All universities are established by the State. They are financed from the State budget; students do not pay any tuition fees. All university programs need to be accredited by a State body on a regular basis. Universities enjoy academic freedom and are obliged to comply with the applicable legislation. They are separate legal entities.](#)

10. Does Zemland have a Constitutional Court and does the constitution allow individuals to bring a case to the Constitutional Court invoking a violation of fundamental rights?

[For the Zemlandic legal system and legal remedies, see text of the Case.](#)

11. A series of public lectures by the Applicant to various educational institutions were rejected as unscientific. In light of Art. 25 of the Constitution, on what legal grounds were they rejected?

[Assuming the question relates to para 3 \(events in 1992\), no further information is available.](#)

Questions regarding international treaties

12. What are the major Council of Europe and United Nations human right treaties that Zemland ratified? (No. 21)

[This includes treaties relating to the right to freedom of expression and non-discrimination.](#)

13. Please may you clarify whether Zemland is a party to other international Human Rights conventions, specifically whether it has ratified the ICCPR (International Covenant on Civil and Political Rights)?

Yes.

Questions regarding national legislation

14. What kind of regulations does the state have regarding whether social media platforms act within the scope of freedom of expression and other human rights-related articles?

Information is not available. For Zemlandic law, see text of the Case.

15. In what way does the State's legislation regulate and exercise control on the publishing houses referred to in para. 5 of the Case?

Information is not available.

16. Does Zemland belong to the Civil Law system or the Common Law system?

Civil law system.

17. What is the current legislation on defamation and freedom of expression in Zemland?

See text of the Case.

18. Has Zemland enacted, or is there any intention, of legislation (civil or criminal) regarding hate speech?

The Zemlandic legislation does not include one explicit definition of hate speech that would be applicable across the board. However, courts examine various aspects of hate speech, as applicable, when analysing individual cases under the criminal, civil, or administrative law.

19. According to Article 10 of the Convention freedom of expression shall be exercised without interference by public authority. Can a Public University be understood as a Public Authority? To what extent is Copernicus University autonomous and to what extent is it governed by the State (as per para. 23)?

It is for teams to present relevant legal arguments. For public universities in Zemland, see one of the answers above.

20. What is the definition for "cancel culture" in Zemlandic legal system?

See text of the Case.

21. What is the legal test for humiliation, stress and anxiety?

It is for teams to present relevant legal arguments.

22. When was the Draft Law on "Cancel Culture" prepared in relation to the Copernicus University's mass fight and how do the universities practice cancel culture in the absence of law?

The preparations of the draft law had started before the protest at the Copernicus University in the present Case. The second part of the question is unclear - see text of the Case.

23. What motivated the wide public disagreements in regards to the Draft Law on "Cancel Culture" - the formulated definitions, the envisaged sanctions for the universities, or something else?

The promoters and opponents disagree whether there is any need for such legislation and, if it is ever adopted, what should be its content.



Part III: Questions regarding contract law in Zemland and its implementation

24. What does the Zemlandic law on model agreements say regarding abusive clauses?

If a court concludes that a clause in a commercial contract is abusive, such clauses are considered null and void.

25. What are the legal effects of private contracts under Zemlandic domestic law? Does domestic law grant contracts the same status as "Law" in the application of the contract between the parties?

The Zemlandic legislation stipulates certain mandatory provisions in contracts (e.g. parties to the agreement, prize/payment, goods or service provided). Other than that, parties are free to agree on their own terms.

Part IV: Questions regarding Zemland and other factual circumstances of the case

Questions regarding the demonstrations

26. Were the police present at the campus of the University between 11:30 am and 12:30 pm on the 26th of April 2022 (at the time of the fight) and after, as mentioned in paragraph 14?

Assuming the question relates to para 13, not 14 - the police arrived shortly after they were called by the University.

27. Were the demonstrations that led to the cancellation of lectures properly notified to the government according to Zemland law?

The protest, as such, was not prohibited by the legislation.

28. What exact number of supporters of the applicant participated in the protest on 26 April 2022?

The exact number is not available.

29. Did anyone except for the Applicant face consequences after the protest on April 26, 2022?

The police started an investigation into destruction of the property and physical injuries; the investigation is ongoing.

Questions regarding Friendzone

30. To what extent does the government of Zemland have an influence on and connection with the social platform Friendzone?

Friendzone is run by a private company with its headquarters in a country that is not a Council of Europe Member State. It operates globally and within the scope of the relevant and applicable legislation.

31. Could you clarify how Friendzone defines misogynistic hate speech in its community standards, and provide instances of language or statements that would be considered a breach of these standards?

Information is not available. However, Friendzone largely follows the international and regional human rights standards.

32. What are the contents of the two deleted posts on Friendzone (paragraph 6)?

The information is not available.

Questions regarding the Applicant David Borg

33. According to point 15 of the Case - Does the Applicant have medical or psychological ground such as psychological opinion or medical certificate to support claims about humiliation, stress, and anxiety?

The applicant supported his court submission with medical reports.

34. What are Mr. Borg's precise academic backgrounds (diplomas, formations, ...)?

The applicant has a master's degree in social sciences.

35. What are examples of statements of Mr Borg (the actual wording) that he has made in the past in speeches or his books regarding women, feminism and climate change?

The information is not available.

36. Was David Borg able to post content relating to his programmed lectures on social media from the moment of invitation (2 April 2022) to the moment of cancellation (30 April 2022)?

Yes.

37. Were applicant's deleted posts (published on Friendzone in 2021 par 6.) about the same topic as his second scheduled lecture?

The posts were deleted and are not available to the ECHR.

38. May David Borg be considered a public figure?

It is for teams to present relevant legal arguments.

39. Did the applicant make any comments about the protest before or during the protest of 26 April, if so, what were the comments (paragraphs 12-13)?

No.

40. What was the information disclosed by the University or Mr. Borg to the public regarding the content of the speeches after their announcement, beyond the details currently outlined in the facts?

For all relevant information, see facts of the Case.

Questions regarding the University and its actions and responsibilities

41. The protest against the Applicant was planned, organised, and announced. Were any precautionary measures taken by the University in anticipation for these protests?

Regular/usual precautions as in all other similar cases in the past.

42. Was the Rector aware of the applicant's past incidences of being rejected from speeches, publications and other platforms?

Yes.

43. Did the university or courts inquire what the specific content of Mr. Borg's lectures was, other than their topic?

As for the two lectures in May/June 2023, the applicant was not asked to submit the exact content of his planned lectures.

44. How is the Rector of the Copernicus University in Zemland appointed?

Upon election by the University's academic body, a rector is appointed by the President of Zemland.

45. How many guest lectures (academics/researchers) did the university have in the last 5 years and how many of them were cancelled due to their unorthodox or unpopular opinion? (No. 8, 28)

The exact number of all guest lectures in all departments of the University is not known. In the past years, each department might have called several lecturers each semester.

46. Has the University previously hosted speakers considered to have controversial opinions, and have there been guests resulting in student protests, violence or guest lectures cancelled in the past?

Yes, there were speakers holding controversial views; smaller protests (mostly online) took place, but no major demonstrations such as in the present case.

47. How many other lecturers were invited under the broad title "What are they not telling us? Critical thinking, research, and practice."?

See text of the Case - this is the title of the applicant's two lectures.

48. Was the public statement of the Rector from paragraph 14 written or was it made through a video or other means posted on the University's website?

Written.

Questions regarding the factual and political climate of Zemland

49. What is the current social and political situation regarding climate change and women's rights in Zemland, are these highly discussed and polarised topics with substantial differences amongst people?

Average political situation in a Council of Europe Member State, no extreme views form part of a mainstream conversation. Climate change and women's rights are widely discussed as part of a regular discourse, including by their strong and vocal opponents.

50. What is the political regime in the state of Zemland (authoritarian regime/liberal democracy/socialist regime/socialist democracy/etc...)?

Council of Europe Member State.

51. Has Zemland ever restricted speakers with orthodox/conventional views due to public disturbances linked to the topics discussed?

See text of the Case.

Questions regarding the contract between Applicant David Borg and the University

52. What is the nature of the contract concluded between Mr. Borg and the Rector of the University acting on behalf of the University ?

[Commercial contract.](#)

53. What circumstances led to the introduction of the 72-hour cancellation right in the model contract priorly? Are there available statistics on how often this right has been exercised in the past?

[This is a standard clause used by the University for years to enable it to act promptly if the University needs to change/amend the schedule of planned lectures for any reasons, including urgent ones. No such statistics are available.](#)

54. On which provisions of the national law was the model agreement, concluded between the University and the Applicant (as per para.8 of the case), based on?

[Standard agreement for the provision of services.](#)

Questions regarding the previous and current legal proceedings in David Borg v. Zemland

55. What exactly was the content of the statements made by the human rights and constitutional law experts before the Terapolis Court?

[The information is not available - the submissions were considered by courts together with and in light of all available evidence.](#)

56. Could we have a precision on which legal or factual grounds the second speech happening in 2015 was cancelled?

[The organisers considered that the applicant's speech could incite hatred and/or violence on the basis of ethnic or religious grounds.](#)

57. Was the applicant already judged or condemned by the national courts for his non-respect of decisions?

[No.](#)

58. Have the domestic courts assessed the statements of the Rector of the University regarding the essence of Applicant's lectures and, if so, what was their assessment?

[See text of the Case.](#)

59. Which national legislation did the national courts take into account during their decision making process?

[See facts of the case - it is for teams to make relevant legal arguments.](#)

60. Did the domestic courts refer to specific circumstances (national legislative ban as per public expression/study program) of the "impossibility" of Borg's opinion, to their impact on the students etc?

[The question is unclear - however, for the courts' reasoning, see facts of the case.](#)



61. Does the Applicant's complaint fall within the ambit of Article 10 according to the Supreme Court's view? (Case § 19)

[It is for teams to present relevant legal arguments.](#)

62. In the defamation proceedings, did David Borg formally present a claim related to the cancellation of his lecture and, if so, was this action consistent with the domestic legal framework of Terapolis?

[It is for teams to present relevant legal arguments.](#)

63. Were the defamation proceedings the only way to examine the cancellation of the lectures and / or obtain redress?

[It is for teams to present relevant legal arguments.](#)

64. Is the amount of damages claimed at the ECtHR the same as the one claimed in the national proceedings?

[Yes.](#)

65. Is the allegedly defamatory statement made by the University against Borg part of the discrimination claim at the ECtHR? (Is he claiming that the statement is discriminatory under Art. 14 ECHR?)

[It is for teams to present relevant legal arguments.](#)

Part V: Questions regarding the wording of factual circumstances of the case

66. In wording “it has not been proven” (§ 17), has the Supreme Court placed the burden of proof for establishing that the University had deliberately spread untrue facts on the Applicant?

[It is for teams to present relevant legal arguments.](#)

67. Does “several Zemlandic Universities” in § 28 include the Copernicus University, meaning that they also cancelled only a select number of academics and researchers, but none with mainstream opinions?

[The phrase “several decisions by Zemlandic public universities to “cancel” a number of academics and researchers for their unorthodox or unpopular opinions \[...\]” includes the Copernicus University.](#)

68. What is meant by public lectures? More specifically, are public lectures open to university students/staff or also to the public at large (i.e. people who are not enrolled/working at the University)?

[They are open to the general public, including people who have no connection with the University.](#)

69. What specifically does the word “features” from paragraph 1 from case study mean? Does the Applicant feature his own work or is he featured as a subject?

[Both.](#)

70. What were the cancelled projects (mentioned in paragraph 15) that amounted to EUR 48,000 and what were the circumstances of the cancellation?

[The applicant was invited to deliver several other lectures and write opinions/publications as an individual person or in the context of larger-scale projects.](#)

Part VI: Miscellaneous questions

71. Are we able to bring other grounds of appeal or bring in things that are not mentioned in the facts as presented?

It is for teams to present relevant legal arguments based on the text of the Case.

72. Can articles 17 & 8 ECHR be brought into the submissions?

It is for teams to present relevant legal arguments based on the text of the Case.

73. Is there a connection between article 8 and article 14?

It is for teams to present relevant legal arguments based on the text of the Case.