

Helga Pedersen  
Moot Court Competition



# ANSWERS TO CLARIFICATION QUESTIONS

HELGA PEDERSEN MOOT COURT  
COMPETITION

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COUNCIL OF EUROPE



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*elsa*

The European Law Students' Association

**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.

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## **Part I: Questions regarding the legal system of Zemland and general legislation/case law**

### **Questions about the laws and procedural rules in Zemland in general**

1. Are international law conventions directly applicable in Zemland, and if so, do they take precedence over domestic laws, granting the applicant legal entitlement to these ratified conventions?

*Yes.*

2. Has Zemland made any reservations to the international conventions it ratified, as indicated in § 24 of the Case? If so, what are the wordings of these reservations?

*No.*

3. Has Zemland ratified the Vienna Convention on the law of treaties?

*Yes.*

4. Have Zemland ratified the CRPD and Optional Protocol and if they are a dualist State have they incorporated this into their domestic legislation?

*Yes.*

5. Zemland is not a Member State of the European Union. Is it acceptable to refer to the legal documents related to the European Union?

*For the teams to assess.*

6. What specific legal provisions formed the basis for the second-instance court's decision to acquit the applicant, and if Article 100.1 was applied, what were the "exceptional circumstances" here?

*For the teams to argue.*

7. Which authority, according to what procedure, decides on the exception under Section 12 of the Law on Controlled Substances, and does domestic law provide for any judicial review/recourse? §32 facts

*The Ministry of Health is in charge of the national register of authorised Medicines and reviews requests for exceptions. Individuals do not have the right to challenge the Ministry's decisions in this regard.*

8. Does forfeiture under Zemlandic law mean the permanent loss of property and if so does this also apply for landed property and shared property?

*Yes. The part of the land owned and used by the applicant was forfeited in the present case.*

9. What is the precise legal basis for forfeiture of assets within the Criminal Code and are there specific limits/parameters regarding what can be seized, depending on the severity of the criminal act?  
*Subject to judicial discretion. Please see para 35 of the case.*
10. Given that Zemland's Constitution guarantees the right to the 'highest attainable standard of health,' how does the court reconcile the applicant's cultivation of cannabis for personal medical use with the state's obligations under Article 30 of the Constitution?  
*For teams to argue.*
11. Can Article 100 of the Zemland Criminal Code, which allows sentence reduction under certain exceptional circumstances, apply to severe health deterioration even when these are not life-threatening?  
*For teams to argue.*
12. What criteria define "exceptional circumstances" under Article 100.1 of the Criminal Code, specifically what constitutes an emergency or life-threatening situation? Why was the applicant's health condition not considered as "emergency" or "life-threatening"?  
*See facts of the case and for teams to argue.*
13. Have the National courts of Zemland ever considered serious physical or psychological diseases as an exceptional circumstance according to Article 100.1 of Zemland Criminal Code?  
*National courts have heard cases before, but have never granted such requests.*
14. Is it possible to expand the application based on the other articles of the Convention/Is the application in point 23 a closed set?  
*For teams to argue.*
15. Article 255 sets the same penalty for both giving and selling drugs. Are these behaviours evaluated in the same way when the judges decide the penalty?  
*Judges decide on a case-by-case basis.*
16. Under Zemlandian law, can statements made outside the context of criminal proceedings, such as those on social media, be used as decisive evidence for the court's decision?  
*Judges are the ones who decide on the weight to be given to evidence adduced.*

17. What is the legal nature of the provided application for exceptional use of unregistered medication on compassionate grounds and how is this process specifically regulated?  
*There is no legal entitlement to such exceptions. As of 2022 the Ministry of Health may decide on a case-by-case basis considering specific circumstances of each case. There is no specifically regulated procedure that the Ministry follows when it renders its decision. Out of three requests submitted thus far, all have been refused with a very succinct reasoning.*
18. What are the criteria for determining the reliability of witnesses?  
*Judge's decision.*
19. Is there an expert opinion of standing a trial meaningfully and consciously by the applicant? And if not, why?  
*No. It was not deemed necessary.*
20. What does section 10 (point 29) and section 12 (point 31) mean, is it alluding to the Criminal Code or to something else?  
*Please see the facts of the case. Law on Controlled Substances.*

### **Questions about the laws/ regulations and procedural rules surrounding cannabis in Zemland**

21. Given that Zemland has never granted the exception to use unregistered medication for medical cannabis; what are other cases of unregistered medication where compassionate grounds have been applied?  
*Same as Q17.*
22. How many people in Zemland applied for cannabis as an exception to use an unregistered medication on compassionate grounds, which institution approves or rejects the request, why was cannabis denied, and what is the overall process and criteria? Did any of the patients who applied for the exception suffer from multiple sclerosis?  
*Please see facts of the case and responses to clarification questions. No person suffering from multiple sclerosis has applied before the applicant..*
23. Were the Applicant's siblings (for whom there was evidently evidence of cannabis trafficking) also prosecuted? If so, what was the procedure, and what sentences did they receive?  
*Please see facts of the case.*

24. Is there a national framework to grant exceptions to use unregistered medication on compassionate grounds as per Section 12 LoCS? If so, what is the role of attending doctors and applicants' symptoms? Has Zemland's legislature prescribed any certain grounds for such an exception?

*Please see response to Q17.*

25. For how long has the possibility of applying for an exception to use unregistered medication on compassionate grounds pursuant to Section 12 of Zemland's Law on Controlled Substances been in force?

*Please see response to Q17.*

26. Had the Applicant filed for an exception to use an unregistered medication on compassionate grounds per Section 12 of the Law on Controlled Substances prior to cultivating cannabis illegally?

*She has applied but her request was dismissed.*

27. Has there been any other court hearing in Zemland where an expert opinion (on the effect of cannabis on human health) was considered relevant?

*Expert opinions on topics on which the court have no expert knowledge are regularly used in court proceedings in Zemland as in all other CoE Member States.*

28. In accordance with the applicable legal framework, is it doctors who are the authority for examining requests of the exceptional use of unregistered medication?

*Again, Q17.*

29. According to point 31 of the case, no exception has ever been granted for patients requesting to use medical cannabis - is such a statement is written in a provision of the law?

*Please see facts of the case and answers to clarification questions.*

### **Questions surrounding the (previous) proceedings against the Applicant**

30. Can it be specified on what basis and with what evidence Ms. Adela Marlier is found guilty?

*Please see facts of the case.*

31. What were the legal grounds for determining the amount of 20 000 EUR to be forfeited and what criterion was applied to?

*Please see facts of the case and responses to clarification questions.*

32. What evidence was considered by the domestic courts to establish that the money on Applicant's bank accounts highly likely constituted profits from cannabis trafficking and thus should be seized?  
*Please see facts of the case.*
33. Did the prosecution open the criminal proceedings against the applicant ex officio?  
*Yes.*
34. Did the execution of the applicant's criminal proceedings take place in conformity with national law and the Convention, with no procedural defaults?  
*For teams to argue.*
35. Was there any arrest warrant before the prosecutors entered the property, and was the applicant arrested during the criminal proceedings?  
*Please see facts of the case.*
36. On what date in July 2022 was the applicant charged for unauthorised possession and trafficking in narcotic drugs and psychotropic substances?  
*12 July 2022.*
37. On what grounds did the court of first instance find the witnesses' testimony—confirming the applicant's health condition and that she only provided cannabis to other patients for free—untrustworthy?  
*Please see facts of the case.*
38. Can you provide details on the witnesses claiming Ms. Marlier's involvement in cannabis sales and how their testimonies were deemed credible?  
*Please see facts of the case.*
39. Did the prosecution provide evidence that the applicant was aware that people related to her sold cannabis plants?  
*Please see facts of the case.*
40. Were the applicant's siblings amongst the persons related to her that presumably sold cannabis plants, according to the testimonies brought by the prosecution?  
*Please see facts of the case.*
41. In total, 20 plants were cultivated by the Applicant, but the court decided about forfeiture of 6 cannabis. Why did the court not take into consideration the rest 14?  
*Please see facts of the case. There were 6 plants found on the land. The applicant cultivated 20 plants over time (i.e. this does not mean that she cultivated all 20 plants at the same time).*

42. Was the forfeiture of the 6 cannabis plants and all the dried cannabis buds based on a warrant or a court order that was specific as to the objects for forfeiture?

*See the law part of the case.*

43. In the context of Article 255, does 'giving' include free transfers of cannabis? **Yes** If not, what evidence supported a sale? Additionally, per § 35, what proof linked the applicant's funds to trafficking?

*For teams to argue.*

44. Did the Applicant make an admission that she possessed cannabis for personal use in the domestic proceedings on which the Supreme Court also based its conviction?

*See facts of the case.*

45. When access to medical cannabis was denied on compassionate grounds, what were the reasons for denial? Were remedies available for challenging this decision, and was the applicant informed of them?

*See Q17.*



## **Part II: Questions regarding Zemland and other factual circumstances of the case**

### **Questions about the land**

46. Did the €20,000 seized represent all of the applicant's available assets, and did the land forfeiture include only her share or also her siblings' shares?  
*Yes. Only the applicant's share used to cultivate cannabis.*
47. How large is the entirety of the family's land, how much of it was used to cultivate the cannabis and what proportion of the entire land was forfeited to the State?  
*See facts of the case - the applicant's share used to cultivate cannabis was forfeited.*
48. What factors guide the case-by-case assessment when applying the automatic forfeiture?  
*See facts of the case.*
49. Who, exactly, has been living in the family house adjacent to the family land, and since when?  
*The applicant and her family lived there.*
50. Is the "family house" of §5 the main residence of the applicant in Orionopolis  
*Yes.*  
and what is the exact legal meaning of "equal shares" in §5 ?
51. Was the forfeited property part of the applicant's main and only residence?  
*See Q50.*

### **Questions about the cannabis**

52. What are the prosecution statistics for the cultivation and trafficking of cannabis (how many people have been prosecuted for this—how many cases were settled by agreeing to drop the prosecution, how many were convicted, what were the circumstances, and what sentences were imposed)?  
*Detailed statistics were not shared with local courts or the ECHR.*
53. Which narcotic drugs and psychotropic substances are registered in Zemland's national register of authorised medicines?  
*For relevant data see facts of the case.*
54. What was the percentage of tetrahydrocannabinol (THC) found in the seized cannabis plants and dried cannabis from the Applicant's property?  
*More than 0.3% by dry weight.*

55. What did the research cited in the domestic trial say about marijuana improving mental health (anxiety and depression) and improving tremors?

*See facts of the case.*

56. Have there been any other cannabis-related prosecutions and/or convictions in Zemland since Marlier's social media posts as of September 2021 about the effects of cannabis on her health, and if so, how many?

*Yes. Detailed statistics have not been made available to the ECHR.*

57. Has it been proven that the confiscated plants were in breach of the rule that the cultivation of hemp containing less than 0.3% THC is legal, provided it is not used to produce illicit substances?

*Yes.*

58. What type of cannabis plant is Ms Marlier planting: marihuana, hemp or both? If both, which quantities of each plant?

*See facts of the case and questions above.*

59. Was the cannabis consumed by the applicant's acquaintances on the applicant's territory/property or elsewhere? (paragraph 6)

*Elsewhere.*

60. Were the THC concentration and the sex (female/male) of Ms. Marlier's confiscated cannabis plants determined, and how did she consume them to manage her symptoms?

*See the questions above.*

61. Does Zemland's narcotics list ban all cannabinoids, including CBD, or only high-THC types, given that Ms. Marlier's symptom relief suggests her use may have focused on CBD?

*See facts of the case.*

### **Questions about the applicant and her relationships with others**

62. Since there is no information on Ms. Marlier's current situation, should we assume that she is serving her sentence in prison?

*Yes.*

63. Since when were the authorities aware of the applicant's cannabis use?

*See facts of the case.*

64. Paragraph 11 refers to witness testimonies of 'persons related to the applicant', what constitutes exactly as 'persons related to' and how is their conduct connected to the applicant's actions?

*Persons related through family or personal connections. The rest is for teams to argue.*

65. Regarding the medical assessments, did the neurologist and psychiatrist inform the applicant of the option to apply for cannabis on an exceptional basis? Additionally, were these practitioners affiliated with or employed by a public hospital?

*No to both questions.*

66. The applicant has stated that cannabis has ameliorated her symptoms but have medical experts agreed that withholding cannabis will cause a real risk of a significant, permanent and rapid increase in her pain?

*See facts of the case.*

67. Did the applicant's petition to the Parliament to allow medical cannabis use?

*See facts of the case.*

68. Does the applicant's calling on the authorities also include application for an exception to use an unregistered medication on compassionate grounds?

*See Q26.*

69. What is the applicant's average salary as a factory worker?

*800 EUR net.*

70. Who was her social media and public audience, inter alia age structure, and what was the nature of the content communicated to them?

*The information about the audience is not available. For posts see facts of the case.*

71. Did the applicant gain any material benefit from her social media presence?

*No.*

72. Was the linguistic analysis conducted on the applicant's social media posts to determine whether there any encouragement by the applicant for others to use cannabis? (paragraph 21)

*No.*

### **Other general questions**

73. How common is multiple sclerosis among the population of Zemland?

*Prevalence comparable to the European average.*

74. What does the "standard protocol" for patients with multiple sclerosis include and which are the alternative treatments in case of ineffective application?

*Standards comparable to other European countries.*

75. Are there any alternative medical methods (like acupuncture or homoeopathy) available in Zemland other than standard medical care and if there are, are they accessible by citizens?

*Not through the public health insurance.*

76. What was the exact name of the research that was published by another Council of European Member State in 2021?

*Not available.*

77. In what month was the 2021 study (mentioned in para. 12 of the Case) on the effects of medical cannabis published?

*Not available.*

78. Could we rely, as lawyers, on other existing research by other States concerning the use of medical cannabis?

*For teams to assess and argue.*