

Clarification Questions and Answers for the Twenty-Second Inter-American Human Rights Moot Court Competition of the Academy on Human Rights and Humanitarian Law

- 1. Concerning the drone attack on the museum: was the army involved in the attack or was it only aware of its imminence?**

The attack was planned and ordered by the Army.

- 2. Battalion 2.**

On what domestic legal basis did the State decide to offer the Madeira family 50.000\$ in compensation, rather than ordering the killer to compensate the family?

Zircondia's domestic law allows the State to grant compensation directly to a crime victim.

Was an investigation currently being undertaken to find and subsequently punish the members of the Terror Squad who captured Ricardo Madeira and Milena Reyes and subsequently subjected them to harsh treatment?

Yes, the competent authorities continued to investigate the facts even after Timoteo Anaya was convicted, with a view to finding other perpetrators.

Was Esteban Martinez one of the six inmates who went on hunger strike and was subsequently force-fed?

Yes.

What was the manner of force feeding used by the authorities?

They used parenteral nutrition (intravenous feeding), which the medical team considered appropriate, to address the inmates' situation at that time; they did not rule out the possibility of using other measures later, depending on any developments in the inmates' health status.

Were other measures taken, in addition to the ones mentioned, to investigate the acts carried out by the Terror Squad against the employees of Samrium International? (paragraphs 18-20)

See the answer to question 4.

When was the warrant issued for the wiretap on Esteban Martínez's mobile phone? (paragraph 31)

The warrant was requested from and issued by the National Security Court in October

See the answer to question 1.

10. What is the connection between the Terror Squad and the Police Forces?

Some members of the Police Forces have agreed to turn a blind eye to the criminal activities of the Terror Squad in exchange for financial compensation; in some cases, police give the Terror Squad advance notice of operations planned against it. On rare occasions, some police officers have helped the Squad identify potential victims and carry out kidnappings.

11. What proceedings and investigations were conducted after Reynaldo Restrepo's death?

Three days after the attack, the Army conducted the expert work that made it possible to identify Restrepo's remains. It was not possible to determine the identity of the other person who died as a result of the attack.

12. Was Esteban Martínez one of the 14 detainees named in the writ of habeas corpus that was filed on their behalf?

Yes.

13. Did Zircondia notify the security general that it was derogating from Art.7 of the American Convention of Human Rights?

In view of the urgent threat to the country's public order and national security, the President of Zircondia addressed a communication to the Secretary General of the OAS on August 18, 2006, informing him that he believed that a "broad and general" suspension of the obligations assumed under the American Convention was necessary in Zircondian territory for a period of six months; the President further indicated in that letter that he reserved the right to extend the measure at the end of the six-month term.

14. Is Battalion 22 a part of the National Army?

Yes. The Battalion is part of Zircondia's Army.

15. Did anyone from the Federal government authorize Coltech's attack?

See the answer to question 1.

16. Paragraph 16 states that Milena Reyes escaped "while being transferred to another facility". Paragraph 19 states that she escaped in San Fermin. Did she escape as her and her captors were vacating San Fermin, or was San Fermin a stop on their journey to the next facility?

Milena Reyes escaped when her captors left the town of San Fermín, where the clandestine jail was located.

17. Paragraph 17 states that the Army had knowledge the FNC was storing military materiel at the Provincial Museum of Hipolito. Is there evidence that the Army also had knowledge, including intelligence reports, that people were inside the museum at the time of the attack?

There is no information in this regard.

18. Paragraph 36 states that friends and relatives of 14 of the detainees filed a writ of habeas corpus. Was Esteban Martinez one of those 14 detainees?

See the answer to question 12.

19. When was the Military Intelligence Service able to fully identify Reynaldo Restrepo as a member of the FNC?

See the answer to question 41.

20. When did the State of Zircondia find out about the detention of Ricardo Madeira and Milena Reyes by the Terror Squad, and what actions did the state take during the first eight days of their detention?

Company executives were informed of the kidnapping the following day by eyewitnesses. First, they sought to make contact with the Squad in order to negotiate the release of their employees through an intermediary. After three days of unsuccessful attempts, they decided to notify the local and federal authorities who, with the support of the Army detachment stationed in the area, launched an exhaustive operation to find the kidnap victims.

21. After his arrest, was Esteban Martinez promptly brought before a judicial authority?

No; during declared states of emergency, Zircondian national law allows the authorities to have an extended period of 40 days to conduct certain proceedings.

22. What was the relationship between Coltech (private security company) and the government/Army of Zircondia?

Coltech is a company that has been hired by the State of Zircondia to assist with tasks supporting the national Army.

23. Was any judicial or investigative proceeding conducted with respect to the allegations made by Milena Reyes?

The information available on this matter is limited to that provided in the hypothetical case.

24. Was Esteban Martínez convicted or subject to any criminal proceeding while he was detained?

No. See the answer to question 21.

25. What is the legal status of the individuals who died in the events but were not mentioned in the petition before the IAHR (the other victim who died in the attack on the museum in Filipolandia and the rest of the detainees in Serena)?

Regarding the events that took place in Filipolandia, see the answer to question 11. With respect to the events in Serena, there are no updates.

26. Was the attack on the museum in Filipolandia the result of a coordinated effort between the military and the police?

- 27. On what basis did the National Police decline to press criminal charges against the officer who shot and killed Esteban Martínez (p. 39 of the hypothetical case)?**

There is no information about this matter.

- 28. The date given in the last paragraph of the hypothetical case, 44th para; i.e. “October 4, 2016” seems to be a typographical error. Cause, as per the facts of the case and the coherence shown in the previous dates, the date should be “October 4, 2008”. This is owing to the fact that as per the procedure of the Inter-American court the time given between communication of submission of the reply to the actual submission of the entire case to the court should be 3 months, and October 4, 2016 makes it 8 years, thereby, not making sense to the chronological dates of the case. Please clarify.**

As is clear from the most recent cases adjudicated by the Inter-American Court, processing times vary widely. In the hypothetical case, the dates of each intermediate stage between the filing of the petition and the submission of the case to the Court were omitted because they are irrelevant to the adjudication of the case.

- 29. Is Zirconia a sovereign state? Please clarify.**

See paragraphs 1 and 2 of the hypothetical case.

- 30. On what date was the last final and unappealable court decision handed down in Zircondia before the Zircondian Association of PhDs in Law filed the petition with the Inter-American Commission on Human Rights? To which of the victims did it refer, and what were the legal bases for it?**

See the answer to question 23. The decision of the Supreme Court of Cassation was dated February 26, 2008.

- 31. Was the private security company Coltech hired to carry out the drone attack on the museum? If so, who hired it? If not, what were the company’s reasons for the attack?**

See the answer to question 1.

- 32. Can it be said with certainty that the detainee who took one of the doctors hostage was Esteban Martínez? If not, why was he executed with the others?**

Yes.

- 33. Was Esteban Martínez one of the hunger strikers mentioned in paragraphs 37 and 38 who was force-fed? If so, what method was used?**

Yes, he was one of the inmates subject to the measure. See the answer to question 6.

- 34. What exactly is the outside help that the Front for a New Beginning receives from the Republic of Roseta (mentioned in paragraph 12)?**

The support is mainly financial: the sale of weapons and provisions at low cost; sometimes those deliveries are made according to a deferred payment scheme.

35. Did the State present any preliminary objections before the Inter-American Commission on Human Rights? If so, what were they?

No.

36. In light of the facts stated in paragraph 17, clarification is needed about the subsequent domestic investigations (and their timeline: start, end, and/or duration) conducted by the Zircondian authorities with respect to the consequences of the military attack that destroyed a large part of the Provincial Museum of San Hipólito and killed two people, including Reynaldo Restrepo.

See the answer to question 11.

37. Paragraph 16 states that a complaint was filed with the Office of the Ombudsman in relation to the violations committed by members of the “Terror Squad” against Milena Reyes and Ricardo Madeira. However, the judicial proceedings to investigate the disappearance/death of Roberto Madeira were opened based on the complaint filed by his brother (paragraph 18)11 0 T-u[0-5(e)1(o)- T0.272 0 -

42. What domestic proceedings were conducted with respect to the complaints alleging the kidnapping of Milena Reyes?

See the answer to question 23.

43. How was the police operation at the jail that resulted in the death of two detainees and Esteban Martínez conducted?

The six hunger strikers were cared for in two groups in the infirmary. The first group received its treatment without incident. The second group, which included Esteban Martínez, took the doctor hostage. It bears noting that, given the dangerousness of the situation, the medical team had been sent from the Army and therefore had basic training to act in combat situations.

Notified of the hostage situation, and in anticipation of a potential intervention, the tactical team on duty conducted a few drills in scenarios that replicated the jail as closely as possible. The drills were carried out at the National Police Academy. When the team entered the infirmary, the doctor managed to break free from his captor. In the ensuing confusion, the other two inmates made aggressive gestures aimed at regaining control over the doctor, and were taken down.

44. Were the six hunger-striking inmates being cared for at the same time in the same cell when they took the doctor hostage, and did the police intervene?

See the answer to question 43.

45. According to paragraph 14 of the facts of the case, both the Army and the Front for a New Beginning (FNC) have a presence in the zone controlled by the armed criminal group known as the Terror Squad. Nevertheless, neither of the two has “really” confronted the Terror Squad. In that regard, what should be understood by “really” with respect to the actions of the Army and the FNC against the Terror Squad?

The State has made specific and ongoing efforts to confront, to the extent possible, the threat that the Terror Squad poses to the private citizens who live in the region. The Army and the Police have concentrated more on the protection of the population than on attempts to defeat the Terror Squad. The FNC has taken some isolated actions against

48. Does Zircondia's criminal law provide for the offense of murder *criminis causa*?

No.

49. What are the penalties under the criminal law of Zircondia for the offense of torture?

A term of imprisonment from three to eight years, and 80 to 300 day-fines.

50. Has Filipolandia and/or Serena declared a state of emergency?

See the answer to question 13.

51. Did the drone used in the museum attack have the capacity to detect the people moving inside the museum and differentiate whether they had assumed a hostile stance?

The unmanned aircraft used for the operation did not have that function.

52. In what way were the hunger strikers forced to eat?

See the answer to question 6.

53. What actions were taken by Zircondia to punish the masterminds and direct perpetrators, and to provide reparations to victims Ricardo Madeira, Milena Reyes, Reynaldo Restrepo, and Esteban Martínez and their relatives?

All of the available information is provided in the hypothetical case and the answers to the clarification questions.

54. What were the arguments supporting the appeal and request for reconsideration filed by the attorneys for Ricardo Madeira's family, as well as the decisions of the Appeals Court and the Supreme Court of Cassation for dismissing those petitions?

The attorneys for the Madeira family sought to have a more severe sentence imposed upon Timoteo Anaya, based principally on the mistreatment to which Madeira had been subjected. At both levels of appeal, the judges reached the conclusion that the lower court judge had properly considered all relevant aspects of the case to determine the sentence imposed.

55. How did the Office of the Attorney General of the Republic, the Office of the Special Human Rights Prosecutor, and the Investigation Commission exercise their respective duties in the case of the detainees in the maximum security jail referred to in paragraphs 35 - 40 of the facts of the case?

All of the available information is provided in the hypothetical case and the answers to the clarification questions.

56. (Paragraph 33) How credible is the information provided by the State agents about Martinez?

Highly credible.

57. (Paragraph 7) How would the annexation of Filipolandia be carried out, considering that it is located in the northern part of the State of Zircondia, and Rosetta is to the south (that is, without borders)?

See the answer to question 40.

- 58. According to paragraph 39 of the case, what was the evidence that came to light in the investigation into Esteban Martínez's death that led to the decision not to bring criminal charges [against the officer responsible] for his death?**

See the answer to question 27.

- 59. What complaints were filed with respect to what happened to Milena Reyes and Reynaldo Restrepo?**

In the case of Milena Reyes, See the answer to question 23; in the case of Reynaldo Restrepo, all of the available information is provided in the hypothetical case and the answers to the clarification questions.

- 60. According to paragraph 40 of the case, what specific work is being done by the Investigation Commission in charge of establishing the facts of the events that took place during the march and in the jail?**

There is no more information than what is provided in paragraph 40.

- 61. Was there any assistance, judicial proceeding, and/or redress for Milena Reyes after she escaped from her captors?**

See the answer to question 23.

- 62. Which of the 3 inmates took part in the negotiation with State agents referred to in paragraph 38 of the facts?**

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The situations that arose in Filipolandia and Serena have led to some studies, mostly from the academic world, that arrive at different conclusions. No statements have been issued by foreign governments or international bodies.

- 68. Has the government of Zircondia informed the Secretary General under Article 27(3) of the American Convention of a declaration of a State of emergency in Zircondia or any part thereof and the suspension of specific guarantees under the Convention?**

See the answer to question 13.

- 69. In paragraph 17 of the hypothetical, what were the reactions of the civilians including those who were killed, to the sounding of the alarm?**

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See the answer to question 10.

76. What are the appropriate remedies in Zircondia that