



Inter-American Sustainable Development Moot Court Competition

-- 5th edition --

Clarifications of the Rules and Hypothetical Case

Case of the Rural Community of Candela v. The Federation of Clonalia
Case No. 042114/RLJ/0415 Inter-American Court of Human Rights

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Question number	English
1	There is a contradiction between paragraph 21 and 33. Paragraph 21 indicates that Clonalia has less responsibility for climatic change, with 21% of the GEI historical emission and 18% of the current emission, compared to Paragraph 33 which indicates that Clonalia is responsible for 44% of current emissions. Which percentage should be taken in account?
	The historical and current GEI emissions of Clonalia are the ones registered in paragraph 21.
2	In relation to paragraph 48 of the case, could you clarify the nature of the official request made by the CEC to the Federation of Clonalia? Is it part of the application for refugee status initiated by irregular migrants? If not, are they parallel acts?
	Paragraph 48 is referring only to a request for refugee status.
3	Regarding the process of deportation described in paragraphs 52 and 53, could you clarify what constitutes the referenced "administrative procedures" (paragraph 52) and also if the expulsion order was prior, subsequent or simultaneous to the arrest warrant?
	The administrative procedures to deport someone can be divided into four stages. First, the individuals are singled out and their original countries of citizenship are identified. Second, the public authorities write a formal petition, so other public authorities can identify the persons in question. Third, the public authority in charge of the process notifies the individuals and simultaneously notifies the security forces of the official order so they can initiate the apprehension process. Finally, once the person is apprehended they are held in a temporary deportation facility until the deportation process and notifications take place. The detention is part of the expulsion process.
4	Were there legal and constitutional remedies available to challenge the administrative decisions on migration and the arrest warrant?
	There is no additional information other than that available in paragraph 54.
5	What was the process of integration and separation of Marsli from the Federation of Clonalia in the XVII century (paragraph 8)? Prior to the XVII century, was Marsili a State? Could you provide some details on succession agreements?
	Marsili gained its independence in 1967 (see paragraph 2) after a referendum that was respected by Clonalia. Marsili was not a state previous to the XVII century. No additional details about the succession agreements have been provided in the case.
6	In paragraphs 27 and 28 what, if any, were the responses from the international community to the request of President Nasheed Ospina?
	There was no response from the international community in regard to the events in items 27 and 28.
7	In paragraphs 58 & 59 what was the local law upon which the FM relied to give it the right to withhold the report on the basis of national security?
	Domestic legislation grants the FM the discretion to withhold information from the public on the basis of national security
8	In paragraph 54 what are the conditions of detention and status of the refugee/asylum seekers?

	The migrants are considered to be deportees awaiting imminent deportation, and they are detained in a temporary deportation facility until that time.
9	Did Immigration Law of 2009 repeal/replace Law 715 of 1989 and if not, what is the relation between the two?
	The Immigration Law of 2009 did not repeal or replace Law 715 of 1989. Both pieces of legislation are in full effect.
10	What are the judicial guarantees afforded to the FM in its role as a tribunal and how does this judicial body function when deciding on issues of migration and processes of appeal?
	The FM is an administrative agency that has an internal judicial mechanism that operates similarly to a lower court proceeding. A judicial decision made by the FM judicial body may be appealed within the FM judicial framework. Judicial decisions made by the FM judicial mechanism are subject to review by the Clonalia Supreme Court.
11	In paragraph 25 there is information that approximately 67% of migrants arrived "from Clonalia". However, according to information from the case, the meaning of the migration would be from Marsili to Clonalia. Please enlighten.
	The third sentence of item 25 should read: "The official 2010 report of the Joint Committee on Foreign Affairs of the Republic of Marsili and the Federation of Clonalia (JCFAMC) states that approximately 67% of Marsili migrants since 1990 have gone to Clonalia."
12	Does the legislation of Clonalia authorize judicial intervention over Executive departments' policies?
	Under the Constitution of Clonalia, the Supreme Court may, when properly petitioned, interpret the Constitution and review the acts of the Executive and the Legislature vis-a-vis the Constitution.
13	Paragraph 52 mentions the fact that the Ministry of Foreign Affairs did not consider the application of the 23 families from Candela in February 28 2014. However, according to paragraph 48, the petition presented by the immigrants is dated April 13th 2014. Please clarify the correct dates.
	This is a typo; the date referenced in paragraph 48 should be January 13th of 2014.
14	Paragraph 59 mentions the CCA's appeal of the FM's decision. However, para. 54 states that the decisions of the FM were already appealed in March 8 2014 by the referred to NGO. Please clarify whether there is the possibility of double appeal or whether para. 59 deals with a different appeal since that judgment was taken to an administrative judge.
	They are different appeals. The appeal referenced in paragraph 54 is of the decision of the FM to not grant refugee status, while the appeal referenced in paragraph 59 is of the decision of the FM to make the text of the NEC a matter of national security.
15	Paragraph 66 mentioned a request of the Commission to the Court for it to determine the alteration of Clonalia's laws. The Commission's intentions would be to create a new law or to regulate the existing laws?
	The Commission's intent with the request, pursuant to Article 2 of the American Convention on Human Rights, is to give domestic effect to the rights or freedoms which are not "already ensured by legislative or other provisions", by means of

	adopting "legislative or other measures as may be necessary to give effect to those rights or freedoms".
16	Paragraph 65 mentions the fact that the Commission decided to declare the case admissible for purposes of examining the alleged violation of Articles 4, 5, 8, 13, 21, 22, 25, 26 of the American Convention on Human Rights and Article 11 of the Protocol of San Salvador. However, the summary at the end of the case indicates as violated rights according to the Commission Articles 5, 7, 8, 13, 21, 22, 26 of the American Convention on Human Rights and Article 11 of the Protocol of San Salvador. Please clarify which rights were violated on the view of the Commission.
	The Commission decided to declare the case admissible for purposes of examining the alleged violation of Articles 4, 5, 8, 13, 21, 22, 25, 26 of the American Convention on Human Rights and Article 11 of the Protocol of San Salvador, but found violations and decided to present the case to the Court based only on Articles 5, 7, 8, 13, 21, 22, 26 of the American Convention on Human Rights and Article 11 of the Protocol of San Salvador.
17	Please clarify whether all remedies under domestic law have been exhausted in relation to the refugee status request. Please indicate Clonalia's domestic procedure in order to evaluate whether there was any further available remedy.
	All remedies under Clonalia's domestic law have been exhausted.
18	May the Rural Community of Candela be characterised as indigenous or peasant?
	The indigenous population that is native to the island ranges from three (3%) to four (4%) of the total population. The indigenous people are scattered amongst the different isles.
19	Has the Federation of Clonalia ratified the UN Convention on the Rights of the Child, the Aarhus Declaration and the Cartagena Declaration?
	No.
20	In paragraph 53, please clarify whether the families that applied for refugee status after the decision of the Ministry of Foreign relations which determined their deportation received individual notification.
	Yes
21	Is the Federation of Clonalia a developed country?
	Yes
22	Which were the stages of detention (moment of detention, conditions of detention and arrest, waiting time of deportation and the deportation itself) of the immigrant families from the Federation of Clonalia?
	See answer to question 3
23	When, in paragraph 52, it indicates that the entity "would not consider the application for determining the refugee status", does it mean that there was a trial but the request was rejected, or it did not hold a trial at all?
	There was no analysis of the content of the petition but a decision due to the lack of merit of the petition.
24	During the time between the arrival of the families from Candela to Clonalia, and the denial of the application, what was the condition of the families (work, housing, health care, etc)?

	The members of the community of Candela were living in rented houses in different areas and paid the rent with the informal income that they obtained from diverse temporary jobs that they were able to get, such as street vendors, restaurant servers, sales, and construction, among others.
25	Was there a formal mistake in reference to the indication that “approximately 67% of migrants since 1990 have come from Clonalia”, in paragraph 25 and the current GHG emission index by the Federation of Clonalia in paragraph 21 or 33 (18% in the first and 41% in the second) ?
	See answers to questions 1 and 11
26	On October 2013, 23 families from the rural community of Candela traveled by boat from the Republic of Marsili to the Federation Clonalia, entering the State informally (Fact 47) . However, it is not until April 13, 2014 that they begin the process to apply for their recognition as refugees for environmental reasons (Fact 48). Considering that it took almost six months since they arrived in the country, we want to know what economic activities they engaged in, where were they located and under what conditions were members of the community Candela living in?
	See answers to question 13 and 24
27	From the facts of the case we understand that: According to fact 48, on April 13 of 2014 the undocumented migrants initiated a process to petition for recognition of refugee status for environmental reasons. According to fact 52, the Federation of Clonalia determined by February 28, 2014 that they would not consider the application for refugee status of the 23 families from the rural community of Candela, who were in the territory of Clonalia, arguing that it had no merits and rejected the request as invalid. According to fact 53, following the rejecting of the application for asylum of the members of the Community of Candela without examining its merits, the FM issued an arrest warrant for the 23 families on March 5, 2014. Should it then be understood that the Federation of Clonalia knew in advance of the illegal presence in the territory of the 23 families and also the arguments that motivated the asylum application and as such, decided no to consider the petition, and rejected the petition because of the lack of a valid petition and in consequence the detention of the families was ordered before they could present the asylum petition?
	The Federation of Clonalia did not know in advance the specific situation of the petitioners, nor the arguments prior arrest order. See answer number 13.
28	The Republic of Clonalia has within its legal system Law 715 of 1989, which aims to "establish the system of protection to refugees and asylum seekers of that status" (fact 48) and the Immigration Act 2009, which includes into the national order the Convention relating to the Status of Refugees and its 1967 Supplementary Protocol (fact 50). According to the facts of the case, does the FM, that ordered the detention of families to undertake a process of deportation to the Republic of Marsili (fact 53), have the authority and procedure for performing these two processes (the arrest and deportation proceedings) within the regulations cited above or within any other legal source of domestic law of the Federation of Clonalia?
	The arrest and deportation proceedings were made under Law 715 of 1989.
29	According to fact 54 of the proven facts of the case, the CCA appealed the decision

	not to grant refugee status and the deportation order before the same FM. Also, according to fact 53 the detention of the families of Candela was made to begin the deportation process. Could you say, based on these two facts, that when you exhaust these remedies against the FM, the CCA also questioned the legality of the arrest?
	The detention is part of the deportation process and, as such, the appealing of the order could or could not have included questions about the detention. However, it is not in the proven facts of the case.
30	The rural community of Candela has been the most affected by the loss of territory (Fact No. 29), of the 133,632 inhabitants of Theodore, 14,000 live in 16 temporary camps on the outskirts of Samantha (Fact No. 24). To find a legal solution to the environmental crisis in Theodore, the NGO "Climate Change Action" (CCA), on March 25, 2011, decided to represent the 52 peasant families Candela (Fact No. 46). On October 2013, a group of 23 families belonging to the Rural Community of Candela traveled from the Republic of Marsili to the Federation of Clonalia. Should it be understood that the 29 families from Candela that are still in Marsili are in temporary camps or what is the specific situation that the 29 families from the rural community of Candela are facing?
	The remaining 29 families in Marsili are living distributed in the remaining 16 temporary camps identified in paragraphs 24 and 27 .
31	Does the Rural Community of Candela identify itself as a traditional community or a tribal community?
	No.
32	It was indicated that the Republic of Marsili ratified the Kyoto Protocol, however is this country in annex 1 or annex 2?
	Marsili is in the Annex 1 of the Protocol
33	In paragraph 51, there is a reference to article 4th of a determined law. What is the referred law?
	Law 715 of 1989
34	In paragraph 52 of the hypothetical case , it is said that the Ministry of Foreign Affairs of The Federation of Clonalia decided on 28 February 2014 that they would not consider the request to decide on the Status of Refugees of 23 families in the rural community Candela. However, these families filed the application for recognition of refugee status on April 13 , 2014. How can they reviewed the application before it was made ?
	See answer to question 13
35	In paragraph 66 from the document, does it refer to the Commission request to the Court or to the CCA?
	The Commission request to the Court.
36	Paragraph 21 indicates that the percentage of GHG emission is 18%, but in paragraph 33 it is shown that the emission is around 41%. What is the current percentage of GHG emissions by the Federation of Clonalia?
	See answer to question 1.
37	Is there any judicial court in Clonalia competent to judge refugee actions and their requests?

	See answer to question 10
38	Besides Clonalia, is there any other significant State next to Marsili?
	No as a proven fact of the case.
39	Were the warrants of arrest issued by Clonalia all abided by?
	Please see paragraph 53.
40	Which individuals were really arrested? How long have they been arrested for? Have they access to defense lawyers?
	Please see paragraph 53. The families arrested are still in custody waiting for the decision of the Inter-American Court. They have access to public defenders.
41	What were the exact Articles violated given the divergence from the case text and the table at the end of the document?
	See answer to question 16.
42	The organizers confirm the timelapse concerning the acknowledgement procedure of refugee status - indicated in items 48, 52, 53, 54 and 55 - in which the FM rejected the solicitation to decide about the refugee situation of the 23 families of the Rural Community of Candela?
	Yes
43	Has anyone died or been injured by the deportation of the 23 families from the Federation of Clonalia? Has any member of the Rural Community of Candela died or been injured because of the climatic crisis?
	There is no registry of any dead people in the case
44	In rejecting the request from 23 refugee families, which were in Clonalia`s territory, was the FM decision - shown in paragraph 52- based in previous legal documents? What is its content?
	No additional information other than the facts of the case were provided.
45	Do the Marsili indigenous populations have any religious or cultural links to particular sites or particular parts of the land?
	See answer to question 18. No additional information is part of the case.
46	Paragraph 19: the last line of paragraph 19 states, "third decade of the XX century" -- did it mean to say XXI century? (which is what other facts in the paragraph suggest).
	Third decade of the XXI century
47	Paragraph 21 & Paragraph 33 discrepancy: Which is the correct figure of Clonalia's responsibility (18% or 41%)?
	See answer to question 1.
48	Paragraph 23: It states that Marsili is now forced to import 60% of its agricultural products. Was Marsili self-sufficient before?
	Before the loss of land, Marsili imported roughly 4% of its basic agricultural products.
49	There is no knowledge in the problem of Marsili's treaty ratification history at all. It is also not clear if Marsili has ratified the protocol they have invoked. Should we

	assume Marsili has only ratified the agreements mentioned in the fact pattern (UN Framework Convention on Climate Change in 1995; American Convention on Human Rights; Kyoto Protocol)? Or, if it mentions that Clonalia ratified a treaty, but does not mention whether Marsili ratified it (e.g. Convention on the Status of Refugees of 1951), should we assume that Marsili has not yet ratified it? Please also note that Paragraphs 50 & 72 uses the term “signed” - do we assume this means ‘ratified’?
	In the case the treaties mentioned as signed were also ratified, so the teams should assume that signed treaties have been also ratified
50	According to the most recent report from G2C2, from 2014, the Federation of Clonalia is responsible for the emission of approximately 18% of global GHGs. According to item 33, this nation would be responsible for the global GHG emission of 41%. Therefore, what is the current percentage of the Federation of Clonalia's global GHG emission?
	See answer to question 1.
51	Does the Federation of Clonalia possess a single jurisdictional system or does it adopt a dual jurisdiction model, with a separate administrative jurisdiction? Is there the possibility of judicial review in administrative decisions or any type of administrative extraordinary appeal or improper?
	See answer to question number 12.
52	The nullity action mentioned in paragraph 41 of the hypothetical case refers to a judicial action or a nullity action in administrative process against the same branch?
	It is a judicial procedure.
53	In paragraph 59, the request for information from NEC by CCA, was made in CCA's own name, or in the name of the Candela's community members?
	No additional facts are registered about this matter.
54	In item 41 it is written: “In March 2012 the CCA filed a nullity action against the administrative decision of the MEC of the Federation of Clonalia in which it decided that it should not regulate the emission of greenhouse gases, as it was a global phenomenon whose legislation at the national level was only indirect and could not produce clear effects on the air quality in the Federation.” This paragraph brought up some questions, as it was not precisely indicated in behalf of which organ, from the Federation of Clonalia, the nullity action was presented. In item 38 of the hypothetical case there is reference to the Federation of Clonalias's Supreme Court, what made us presuppose that this is the possible competent organ to the indicated action. However, as it was not expressly described, we believe that it will be of big importance to the Competition, the enlightenment of which organ would have received such nullity action, proposed by the CCA.
	The nullity was decided by the Supreme Court
55	As it is indicated in the paragraph nº50, the Immigration Law of 2009 incorporated the Convention on the Status of Refugees and its Additional Protocol of 1967. However, it is not clear if it was merely transcribed from the international norm's scope to the national legislation, or if it was effectively fully ratified from the international norms into the national legal order. Therefore: a) Does this Convention

	and its Additional Protocol where effectively ratified by the Federation of Clonalia, allowing it to become internationally responsible in cases of non-compliances? If yes, when did the
	They were ratified and are part of the national legislation of the Federation of Clonalia since 2009.
56	<p>Analyzing paragraphs nº52 and 53, which concerns to the hypothetical case, we noticed that there was an imprecision in the mutual use of the terms “expulsion” and “deportation”, which seems to be referring to the same subject. Denying the validity of the 23 families, from the Rural Community of Candela, request, with refugee status in Clonalia, the FM authorities look forward to adopt administrative measures in which concerns such families.</p> <p>In this way, it is indicated in item 52 that the procedure to be adopted refers to the “expulsion of people involved in the process”.</p> <p>However, in the following topic is indicated that the administrative measures adopted by the FM to the 23 families, had as objective their deportation to the Republic of Marsili.</p> <p>As it is understood from paragraph nº52, the FM, on February 28, 2014, hasn’t even received the refugee status request from the 23 families. However, the request’s presentation, issued by CCA, occurred April 13, 2014, as it is indicated in paragraph nº48. Taking in account the indicated dates, we believe that the refugee status’s request date, as in nº48, is misguided. Therefore, is there a mistake in the dates, or the indicated dates refers to two distinct requests?</p>
	See answer to question 13 and 57
57	<p>It would be convenient to point out that the conceptual difference between “expulsion” and “deportation” concerns, mainly, the fact that the expulsion procedure demands a more severe cause in order to be issued, than an administrative deportation decision. Therefore, the expulsion does not allow the return of expelled individuals to the State that issues the procedure; on the other hand, deportation allows the regress of such deportees, to the State of the issued procedure. In this case, we would like to know from the organizers what is the desired concept of choice: expulsion or deportation? After all, the distinction is important to the understanding of paragraph 52.</p> <p>We believe that in paragraph 55 the use of the term “refuge” has another meaning, it does not refer to the legal institute, but to the mere protection of individuals. This occurs because the nationals of Candela searched for protection (“refuge”) in its own country embassy. On the other hand, in paragraph 56, it is shown that NEC’s operations will analyze the “potential petition of asylum for environmental reasons”. Wouldn’t there be a mistaken use of the term “asylum”, rather than “refuge”? The question sustains itself as the terms choice will change the institute, which will make the legal argument follow one of the two different ways.</p> <p>Therefore: a) In paragraph 55 does “refuge” refer to the legal institute, or the protective act? b) Paragraph 56 refers to which legal institute: “asylum” or “refuge”?</p>
	<p>The process under review is deportation. The use of the term expulsion in paragraph 52 is synonymous with the removal of the undocumented individuals from Clonalia. The use of the term expel in paragraph 55 was done in a political declaration and not in a legal proceeding.</p> <p>Also the legal petition is for the recognition of refugee status. The term asylum used</p>

	in paragraph 55 was, again, a political declaration, not a legal proceeding. Finally, the question entrusted to the experts commission was formulated as it is annotated in paragraph 56.
58	The IACHR, as in paragraph 65, granted injunctions to the rural community of Candela; however, the paragraph lacks more information about such injunctions. Considering the IACHR dynamics of operation: which were the injunctions granted by the IACHR? Were they abided by the Federation of Clonalia, or not? Such injunctions would be the “recommendations” from paragraph 69?
	The measures were "the protection and no deportation of members of the community until the Court decided the case " and those measures were abided by Federation of Clonalia. The recommendations are as defined in paragraph 69.
59	What is the total amount of immigrants in Clonalia?
	The 23 Marsili families are the only immigrants in Clonalia that have any bearing on the outcome of the case.
60	In paragraph 50, what is the amount which concerns the term “current territory”?
	Assuming that the question refers to paragraph 30 instead of paragraph 50, the term "current territory" refers to the 2013 official measurement which found that Marsili has an area of 211 square kilometers. .
61	In the referendum concerning Marsili’s independence, what was the favorable voting percentage?
	The overwhelming majority of the inhabitants of Marsili voted for independence.
62	What is the total number of indigenous people in Clonalia?
	There is no additional reference to this question in the case.
63	What is the estimate of the “current territory” loss in paragraph 50?
	Again, assuming that the question refers to paragraph 30, the "current territory" loss is 89% of the 2013 official measurement of 211 square kilometer, so a loss of approximately 188 square kilometers.
64	Are administrative decisions in Clonalia’s administrative system subjected to judicial review?
	See answer to question 12.
65	Which was the most intense immigration flow in its history?
	The most intense immigration flow in the history of both the Republic of Marsili and the Federation of Clonalia is the mass exodus detailed in paragraph 25.
66	Which is the current emission index of Clonalia: 41% (paragraph 33) or 18% (paragraph 21)?
	See answer to question 1.
67	Is there any significant information concerning socioeconomic data from Clonalia, to the case?
	The only socioeconomic data from Clonalia important to the case is found in the facts of the case.
68	Paragraph 25: Arrived FROM Clonalia or TO Clonalia?

	See answer to question 11.
69	What is the correct figure of the percentage of emissions of greenhouse gases in Clonalia? Is the figure 18 % (paragraph 21) or 41 % (paragraph 33)?
	See answer to question number 1.
70	Does Clonalia currently have a humanitarian visa in their immigration legislation?
	No.
71	Has Clonalia signed the Cartagena Declaration of 1984?
	No.