

Ruvia Vs. Kravina

DISCLAIMER

The Moot Court Competition is based on a purely fictitious compromise, whereby the characters & the incidents or the course of events in the compromise are completely imaginary and the same has no relation to any person living or dead or any past/present real-life incident. The Moot Court Competition is made solely for the purpose of training law students of India in developing an analytical bent of mind and serving the Bar and the Bench to the best of their abilities.

Kravina is a developing country, with a population of over 40 millions people, that fully ratified the **International Covenant on Civil and Political Rights**. Its economy focuses on manufacturing, to provide various parts and devices for its more developed neighbours in the West. Kravina used to be part of a state known as Ruvian Union which collapsed in 1991, leading to Kravinian independence. Since then, Kravina shares its eastern border with Ruvia and some Kravinians living in the East proclaim themselves as ‘Ruvian minority’ due to some linguistical differences.

Kravina suffers from relatively poor stability, as until 2018 it was torn by civil war in its Eastern territories, with the Ruvian government (Eastern neighbor) allegedly supporting separatist anti-Government movements, having a ‘Ruvian minority’ at the root of the conflict.

After the war, numerous Kravinian citizens from the East were granted Ruvian citizenship. These Ruvian citizens migrated within Kravina from the war-torn regions, all over the country. A popular Western political commentator labelled these grants of citizenship as ‘an unprecedented, calculated political move aimed to further disrupt the unity of the Kravinian state’.

As COFID-19 has risen to the status of a global pandemic in 2020, the entire global economy has suffered. Kravina’s factories stopped working as a result of the pandemic, in the fear of the health of its workers. However, the biggest labour union in Kravina, called Kravinian Tribunes, has started lobbying in the Government to restart factories when the infection rate started dropping in May.

The Kravinian Tribunes’ reasons were the following:

that Kravinian social welfare policy poorly safeguards against the financial impact of unemployment (as found in the UN’s report on poverty in 2017), and

that Kravinian Government financial scheme to help all citizens affected by COFID-19 is insufficient to cover those factory workers that have more than 1 children (78% of the union’s members: roughly 4,6 millions of workers), and

that Kravinian economy will not survive June without exceeding debt levels of 90% of Kravinian GDP (87% in May; 90% being constitutional threshold at the point of which Government would be forced to consider massive privatization of Government enterprises what could lead to even 1 million workers losing their jobs)

The government was convinced by the Kravinian Tribunes's argument, but remained wary of the further spread of COFID-19 that has caused over 300,000 infections and 15,000 deaths in Kravina as of May 2020.

Kravinian's Minister of Health was subsequently approached by his cousin who works at a global health-tech corporation, Panaceum Technologies (Panaceum), in the West-neighbouring country. Panaceum had developed the 2nd version of its chip, Pan-Terma 2.0, that had been undergoing clinical trials in the West at that time. As Pan-Terma chips can measure temperature, blood pressure and heart rate of a person, they can be used to detect symptoms of COFID-19.

The trials of the 1st version of the chip, Pan-Terma 1.0, were shut down when it was found that it has caused blood infections or other internal damage due to the material and manufacturing imperfections (3 out of 300 test subjects were affected within 10 months and another 4 within next 5 months). However, after 12 months, none of the 200 test subjects was adversely affected by the presence of Pan-Terma 2.0 in their bodies.

The health standards of Kravinian neighbours would require 'best-practice' length of 18 months of clinical trials in case of such chips, the standard that was followed by Kravina. Panaceum has offered Kravinian government 10,000 chips if they would lower the standard of the length of a clinical trial to 12 months. Additionally, chips were offered on a 'non-profit' basis, meaning that Kravinian Public Healthcare would only pay for the production costs.

Pan-Terma chips can harvest data from people who have them and send this data to centralized servers. Importantly, data is not a property according to the Kravinian law.

Kravinian parliament has subsequently enacted **Emergency Vaccinations and Countermeasures (COFID-19) Act 2020** that immediately came into force. As a result, the early versions of vaccines were gradually introduced to Kravina, along with Pan-Terma 2.0 chips.

Chips were procured outside the standard Government procurement procedures, using 'emergency' grounds of procurement for the immediate need, so no competitors of Panaceum could have made an offer. One such competitor was Pharmosis, which employed ex-employees of Panaceum.

Pharmosis developed the clinically approved chip in early 2020, bearing properties similar to Pan-Terma. However, Pharmosis' chip would be twice as expensive under normal circumstances, and three times more expensive than Pan-Terma 2.0 procured on the 'non-profit' basis.

Pan-Terma 2.0 was rolled out among 10,000 factory workers in early June 2020. After the initial monitoring of these workers, another 400,000 chips were injected in Kravina by September 2020 in the fears of another spike of COFID-19 and its impact on Kravinian economy. There was no separate procurement procedure, as the initial procurement contract was amended. The workers who received chips were working in the industries where the risk of contact with the infected people was the highest. Panaceum has earned 20 USD dollars per chip in the second round of injections.

As a result of chip injections, Kravinian factories worked during the 2nd spike of COFID-19 infection in Autumn 2020, possibly saving the country from severe economic measures.

At the same time, Pharmosis claimed that it would also have offered its chips on 'non-profit' basis, but could not even have participated in the procurement procedure, as the second round of injections was not a subject to the separate procurement procedure. As Pharmosis chips rose in popularity in the other countries during COFID-19 pandemic, they started being manufactured at a large scale and their price was competitive in comparison with Pan-Terma 2.0 as per August 2020.

In November 2020, 5 out of 200 Pan-Terma 2.0 clinical test subjects outside Kravina have suffered from blood infections and another 10 in December. Panaceum has suppressed press reports on these incidents.

By early 2021, Panaceum had undertaken to remove all Pan-Terma 2.0 chips and swap them with Pan-Terma 3.0 chips that were developed through the processing of data from Kravinian workers. However, Kravinian workers who wanted Pan-Terma 3.0, had to sign a 'clinical trial' contract that was badly translated and was misunderstood by many workers. Only a small percent of workers had Pan-Terma 2.0 removed and refused to have Pan-Terma 3.0 injected, as many employers require workers to have Pan-Terma chips due to returning waves of COFID-19.

Also in 2021, it was revealed that over 2000 factory workers suffered from Pan-Terma 2.0-related blood infections. Around 500 of them had Ruvian citizenship.

Kravinian Tribunes has launched a lawsuit against the Government. In the process of the trial, it was revealed that Pan-Terma 2.0 clinical trials subjects outside of Kravina similarly suffered in late 2020. It was also publicly revealed that Pan-Terma 3.0 was developed through processing data of Kravinian workers.

By 2022, no people were affected by Pan-Terma 3.0 and the clinical trial was formally concluded. The Kravinian trial judge accepted liability of Panaceum for Pan Terma 2.0-related injuries caused to Kravinian workers on the basis of strict liability rather than fault-based liability. However, the judge refused liability of the Government for introducing a chip that has allegedly 'stole' Kravinians' health data, as data cannot be stolen according to the Kravinian law as it is not a property.

Kravinian Appeal Court and Kravinian Supreme Court upheld the trial judgement. In due process of the appeal, it was also revealed that Kravinian Tribunes received funding from organisations closely linked to the Ruvian government, placing the labour union under investigation. Ruvian Government defended its decision to support the Kravinian Tribunes, as its citizens were part of it.

At the same time, Pan-Terma 3.0 is being widely introduced in Western countries as a cheap alternative to Pharmosis' chip. Undoubtedly, Pan-Terma 3.0 would not have been developed that quickly but for the extraction of data from Kravinian workers. Importantly, blood infections caused by Pan-Terma chips were never fatal and have never led to permanent injury.

As many affected factory workers were Ruvian citizens (all of whom obtained citizenship in 2018 after the end of civil war), Ruvian government filed an official complaint to the ICJ on the following grounds:

GROUND ONE

Kravinian government failed to obtain the 'informed consent' of Ruvian citizens for clinical trials, on occasions of injecting both Pan-Terma 2.0 and 3.0 chips, breaching article 7 of ICCPR, Nuremberg Code

1947 and straying from the CIOMS' International Ethical Guidelines for Health-related Research Involving Humans (CIOMS' guidelines) n. 9 and 10, as:

workers had no knowledge that Pan-Terma 2.0 is not clinically tested to the 'best standards'. Therefore, Panaceum, with the Government's permission, has been de facto conducting clinical tests in Kravina, where the clinical test standards were lowered without considering appropriate alternatives such as Pharmosis' chips, and

workers were under economic pressure to sign Pan-Terma 3.0 clinical trials contracts that they could not have reasonably understood, and

quoted authorities bind Kravina as International Law through its ratification of ICCPR as a matter of legal custom, as illustrated by the US judgement in *Abdullahi v Pfizer Inc I and Inc II*, notwithstanding *Inc III*, where Courts had honoured international legal instruments that formed 'law of nations' regarding clinical trials.

GROUND TWO

Kravinian government failed its obligation to recognise the value of personal data as either a property or any other item of particular legal value - thus:

failing its obligation to protect the privacy of Ruvian citizens in Kravina as per **article 17 of ICCPR**, and straying from **CIOMS' Guideline n. 12**, as in cases of both Pan-Terma 2.0 and 3.0, Panaceum collected data from Ruvian citizens without 'informed consent' because it has failed to inform them how their data could be used

Kravinian government states that:

GROUND ONE

It acted in the best interests of a nation under extreme circumstances of a pandemic, having special regard to the article 1(2) in ensuring that no person in Kravina is deprived of means of subsistence, therefore:

Shortening the usual length of clinical trials through lawful means (**Emergency Vaccinations and Countermeasures (COFID-19) Act 2020**) was a legitimate course of action so injections of Pan-Terma 2.0 in Kravina do not count as clinical trials, and

Workers were not stopped from obtaining legal advice about the Pan-Terma 3.0 contracts thus they made an informed consent, and

It is up to each state to translate international declarations such as ICCPR or any subsequent documents into legal obligations. In *Abdullahi v Pfizer Inc III*, the court found that legal obligations cannot arise out of international declarations. Thus determining the duties of Kravinian government through non-enforceable documents with a poor track record of significance such as the Nuremberg Code is a fallacy.

GROUND TWO

Kravinian Government has not failed its obligation to protect data of Ruvian citizens residing in Kravina as:

even though data is not a property in Kravinian law, the reason for data harvesting was in the best interest of Kravinian workers - to enable them earning money and to protect the public. This provides a fair balance between **art. 1(2) and art. 17 of the ICCPR** and qualifies as a 'disease surveillance' exception within **CIOMS' guideline n. 10**, and

the consent was informed because it is only obvious that the purpose of a chip is to gather data for analysis.

As a bonus round, one counsel from the teams that enter quarter-finals and above, will deliver short (max. 5 minutes) submission on granting Ruvian citizenship to Kravinian citizens.

In the bonus round, Kravinian government alleges that Ruvia used citizenship as a political vessel, contrary to the spirit of international law as per Nottebohm case (**Liechtenstein v. Guatemala**) [1955] ICJ 1. Nottebohm is a good, binding law that is crucial for the efficacy of International Law.

Therefore, Kravinian citizens that have obtained Ruvian citizenship, are not Ruvian citizens for the purpose of International Law and Ruvian government has no legal standing in this instance.

In the **bonus round**, Ruvian government argues that: Nottebohm principle should be revised due to logical flaws in its reasoning, as it invalidated the only citizenship of the individual concerned, unjustly making Friedrich Nottebohm a stateless person. In granting citizenship, it has acted to protect people of Ruvian origin and family members of Ruvian citizens, effectively following the common practices of granting citizenships on the basis of either 'right of blood' or 'right of soil'.

In the **quarter-finals and above**, the order of submissions is the following:

Senior Ruvian counsel (the 1st ground)

Junior Ruvian counsel (the 2nd ground)

Senior Kravinian counsel (the 1st ground)

Junior Kravinian counsel (the 2nd ground)

Kravinian counsel in the bonus round

Ruvian counsel responding to Kravinian allegations in the bonus round

As a sidenote, each counsel can deliver any number of submissions within the particular ground, bearing time limit in mind. The arguments were marked with numbers in the brackets (1) to make them more readable.