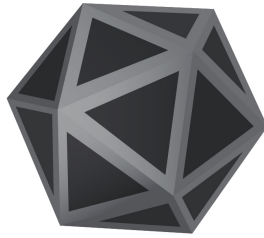




**APPLICATION OF THE KLEROS
DECENTRALIZED DISPUTE
RESOLUTION TECHNOLOGY TO
THE ARGENTINE COURTS IN
CASES OF CIVIL LIABILITY DERIVED
FROM PARENTAL RESPONSABILITY.**

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FELLOWSHIP OF JUSTICE PROGRAM 2019



K L E R O S

Fellowship of Justice Program

Application of the Kleros decentralized dispute resolution technology to the Argentine Courts in cases of civil liability derived from parental responsibility.

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Abstract

The Kleros decentralized dispute resolution technology has already proven its worth in the private sector as an effective alternative arbitration method, which is why in this paper the case will be made for its application in the public sector.

Because the public order of a country – in this case Argentina – will be at stake when testing this protocol in the Courts, it is important for the matter being discussed to be as straightforward as possible in order to avoid any undesired rights violations. That is why this paper studies the possible extrapolation of the Kleros protocol from the private to the public sector in Argentine Family Courts in cases where the existence of a civil liability of the parents, derived from their parental responsibility duties, is being investigated.

In these cases – presumably – the judge's intervention could be rescinded due to the objectivity of the subject matter being discussed and it is therefore a good example of the potential use of Kleros as a tool to alleviate a Court's workload leading to a more efficient allocation of the judge's time and the State's resources.

In order to demonstrate how the platform could be used, this paper focuses on the analysis of the applicability of the Kleros decentralized justice system to the civil liability that parents face for the harmful acts committed by their underage children over whom they have custody.

In these cases, the Argentine legal system assumes (making it almost impossible to refute) that the parent is liable for any damage caused by their underage children when they are under their custody (in the broadest sense of the word).

Therefore, what the Kleros jurors will be deciding over is simple: whether the conditions are met for the parents to be held liable and therefore need to compensate for their child's damages or not. Once the Kleros jurors have voted, the Courts would only need to review the cases to guarantee that the right to a due process as stated in Article 18 of the Argentine Constitution is being respected.

This paper is structured as follows:

Section I introduces the notion of parental responsibility as described in the Argentine Civil and Commercial Code of 2015 and its underlying principles.

Section II explains the civil liability that is derived from the parental responsibility and how this operates in different scenarios.

Section III analyses the reigning jurisprudence regarding the parents' civil liability for the harmful actions of their children.

Section IV underlines how the application of the Kleros adjudication process would work in a civil liability scenario.

Section V presents the additional step required for the right to a due process to be guaranteed and demonstrates with an example how it could work in practice.

Section IV concludes the paper with an analysis of the obstacles encountered and the issues that must be addressed when implementing the Kleros protocol to the public sector.

Introduction

The Civil and Commercial Code of Argentina contemplates two types of liabilities: an “objective” liability and a “subjective” one. While the latter analyses guilt and intentional torts or negligence of the parties, the first is applied in those cases which do not require any human deliberation in order to determine whether the party should be held liable. This is also often referred to as “strict liability”. This distinction is reproduced in many other legal systems worldwide.

Because the exercise of parental responsibility will result in an objective civil liability, it presents a straightforward scenario that can be used to test the potential application of the Kleros protocol in the public sector.

When discussing parental responsibility and its consequent liability, reference is made to underage children that carry out acts that result in damage to a third party.

This is a particularly sensitive topic worldwide nowadays, as unfortunately almost on a daily basis we learn on the news of episodes where children and teenagers are involved in harmful acts which provoke damages to third parties and their property.

An example of this are the rising levels of violence in schools all over the world. A clear example being the fights between different groups of minors that may result in their hospitalization and sometimes even their death. Furthermore, these violent behaviors are sometimes exacerbated by the consumption of alcohol and the use of drugs by minors.

Due to the increasing globalization and technological advances another tendency worldwide is the decreasing influence the parents seem to have over their children's lives. This results in parents that are unaware of some of their child's activities even when they may consider they are doing a good job looking after them (exercising their custody).

Consequently, when a minor's detrimental actions provoke certain damage to a third party it is hard for judges to rule that the parents have been negligent, as it is arguably very difficult for the parents to demonstrate an actual knowledge of what is going on in their children's lives, especially when they may choose to hide behind an online persona.

At the same time nonetheless, judges are aware that the harmed party needs to be properly compensated for the damage suffered. The law does not protect the person who has caused harm to another, but rather it creates a duty to compensate the damage leaving the victim in a situation that is as similar as possible to the one he/she was in before the episode occurred. This is what we typically envision when we make reference to someone "being liable" or "the existing liability" for the damages caused to another and is why there is a recognized principle in Article 19 of the Argentine Constitution known as the duty not to harm others.

With this background one can appreciate why parental responsibility is considered a "hot topic" nowadays. This is also why the new Argentine Civil and Commercial Code, which came into force in August 2015, focused on reflecting this important shift in paradigm.

In the following pages, the case will be made for the potential use of the Kleros decentralized dispute resolution technology as a tool in cases of civil liability derived from parental responsibility in Argentine Courts, and what this would entail.

Parental Responsibility in The Argentine Civil and Commercial Code

Article 638 of The Argentine Civil and Commercial Code (from here onwards referred to as the "**CCC**") defines parental responsibility as the set of rights and duties parents have over their children and their children's assets, for their protection, development and comprehensive education while they are minors and are not emancipated.

Parental responsibility begins with the existence of the person and is extinguished when the age of majority is reached (which in Argentina is set at 18 years) or in some cases by emancipation. For parental responsibility to exist some conditions must be met.

These are:

- A fixed and affirmative condition that is that *the children must be minors (under 18 years old)*,

- A negative and contingent condition that is that minors *must not be emancipated*.
- An affirmative but contingent condition that is that minors *must have ascendants who are expected by the law to exercise this responsibility*, and
- A negative condition that requires that the *ascendants are not incapable or impeded from exercising this responsibility*.

Article 18.1 of The Convention on The Rights of the Child clearly states that parents or legal guardians have the primary responsibility for the upbringing and development of the child and that the best interests of the child will be their basic concern.

Therefore, aligned with this international standard, the concept of parental responsibility aims for the integral development, protection and preparation of the minor for the fullest and most harmonious development of her/his personality in order to be fully prepared to live independently in a society.

The incorporation of the Human Right Treaties into the Constitution of Argentina through its Article 75.22 has impacted the previously existing regulation regarding the relationship between parents and their children. The Convention for the Elimination of All Forms of Violence Against Women declares in its Article 16 the equal rights of men and women regarding the upbringing and education of their children. This is necessary in order to comply with the right every child has to maintain a relationship with both parents, even when the parents are separated or do not cohabit as per Articles 9 and 18 of The Convention on The Rights of the Child.

On the other hand, the progressive autonomy of children and adolescents has allowed for a shift in paradigm. There has been an evolution from the concept of the parents exercising a certain "power" over their children to the notion of them having a responsibility. The latter requires that the parents "provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise of the rights recognized in the present Convention" so that he/she "...should be fully prepared to live an individual life in society, and be brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity."

In line with these international treaties, the CCC states on its Article 639 the principles that rule the parental responsibility. These are:

- i. The best interests of the child;
- ii. The progressive autonomy of the child according to her/his psychophysical characteristics, aptitudes and development. This specifies that as there is a progressive increase in the child's autonomy the parent's representation in the exercise of their child's rights will decrease; and
- iii. The right of a child to be heard and for her/his opinion to be taken into consideration. This is always analyzed when looking at the child's age and maturity.

The legal figures derived from the parental responsibility as defined in Article 640 CCC are:

- a. The entitlement and exercise of the parental responsibility;
- b. The caretaking duties exercised by the parents;
- c. The custody of the child granted by a judge to a third party.

Article 641 CCC explains how the exercise of parental responsibility applies in the following cases:

- A. If the parents are cohabiting: They both exercise the parental responsibility and it is presumed that they share all the decision-making processes regarding their child, except for those cases contemplated in Article 645 CCC or if there is a clear and explicit opposition from one of the parents;
- B. If the parents do not cohabit, they are divorced, or their marriage is declared null: They both exercise the parental responsibility. The decision-making process is assumed to be shared unless it is otherwise declared by a judge considering the children's best interests;
- C. If one of the parents is deceased, the other exercises the parental responsibility;
- D. When the child is born of unmarried parents with only one "recognized" parent, the only parent exercises the parental responsibility; and
- E. When the child is born of unmarried parents and has two parents, but one has been recognized by judicial declaration: The parental responsibility is exercised by the parent who voluntarily recognized the child, although the judge together with the parents can decide otherwise in a homologated document, always considering the best interests of the minor.

Furthermore, Article 648 CCC introduces the duty of personal care of the child that the parents must comply with. This caretaking duty constitutes a separate right derived from the exercise of parental responsibility and it impacts the child's life directly.

Article 649 CCC states that in cases where the parents do not reside together, this care can be exercised by one or both of them, and Article 650 CCC mentions that in case it is shared by both it can be either alternate or indistinct. In the first case, the child spends periods of time with each parent, according to the family's organization and possibilities, while in the second the child resides primarily in one parent's home, but both parents share the decision-making processes and distribute the workload related to the child's caretaking in an equitable way.

The possibility of delegating the exercise of parental responsibility on another relative (for a maximum of one year) is contemplated in Article 643 CCC. This time limit is set because of the nature of the responsibility as it is a personal obligation which cannot be delegated (only under certain circumstances and with a time restriction) and it is non-transferrable. There must be a homologated document that judicially recognizes this delegation, which can be renewed for one more term (a

maximum of two years in total) if needed. Even when there is a delegation, the parents keep the titularity of the parental responsibility and the right to supervise the upbringing and education of the child. This delegation does not exempt the parents of liability for the illicit acts of their children.

It is stated that adolescent parents, married or not, exercise parental responsibility over their children and they can perform the tasks necessary to take care of the children, their health and education. Even so, the person(s) that exercise the parental responsibility over the adolescent parent can oppose the realization of certain acts which may prove detrimental for their child and can also intervene when the adolescent parent omits to carry out some actions necessary for the appropriate development of his/her child.

Another concept that is contemplated in the CCC is that of parents and "kindred children", which alludes to the relationship between the biological parent's partner and the child when this biological parent exercises the parental responsibility.

Parental Responsibility and Civil Liability

The concept of parental responsibility comprises both its *titularity* and its *exercise*. While the titularity alludes to the rights and duties that the law recognizes for both parents, the exercise refers to the possibility of acting in accordance with these rights and duties.

Article 1754 CCC states that parents are jointly liable for the damages caused by the children over whom they exercise the parental responsibility and that reside with them. It mentions that this is so regardless of the personal and concurrent liability that the children may also have, and it does not cease if it is derived from a cause that can be attributed to them.

If one analyses the case law and jurisprudence in Argentina, it shows a clear tendency towards only exempting parents of their civil liability when the social expectation that the damages are adequately repaired is met.

The thought process normally applied by the judges in these cases is the following:

- i. The parents are held liable and considered guilty because of their duty to look after their children, as they must take care of the minor adequately, according to his/her age.
- ii. If the parents can demonstrate that they have been looking after the minor and therefore fulfilling their caretaking duty, they will still be considered guilty because it will be assumed that they have not provided the child with an adequate education, and this means they will be held liable.

iii. The fact that the child has committed the wrongful act is considered proof enough that the education he/she received was not adequate.

Looking at this rationale, it is pretty clear that the result is an "objective" or strict liability from which parents can hardly escape, even in those cases in which their liability may be concurrent with that of the child.

As was previously evaluated, the jurisprudence states that parents are not exempted from their liability even when their underage child does not live with them if the act the child has committed may, in some way, be traced back and attributed to them. This of course requires a very detailed analysis and, most likely, will result in the parent being held liable nonetheless.

Regarding the minor's legal guardians, Article 1756 CCC states that they are as objectively liable as the parents for any damages the children they care for cause to third parties. Once again, the law allows for the guardians to be exempted when they can demonstrate their inability to prevent the damage. In this case too the impossibility cannot be derived from the mere fact that they might not have been present when the detrimental event took place.

An example of this can be the case where a minor crashed the car he was driving a car onto a motorcycle. The judgement on the case was that the minor's legal guardian could not prevent him from driving the car, given that the State had granted the minor a license to do so, but that he could have prevented him from driving without an adequate insurance policy. Therefore, even though the minor had a valid driver's license, because the guardian had not verified that the minor had the insurance policy required by the law to circulate with the vehicle in the city, he had failed to comply with his duty to look after the minor and was therefore held liable to compensate the victim.

According to Article 710 of the CCC, the underlying principles of Family Law in Argentina are freedom, amplitude and flexibility of proof and it is said that the burden of proof lies on the person who is in a better condition to prove (or obtain the evidence necessary to do so).

That is why in cases where both parents are held liable for damage caused by their child, but one has fewer economic means to defend himself/herself, the underlying principle is that the burden of proof relies on the person better suited to defend himself/herself.

All of this seems to demonstrate that there are only two requirements that must be met for the parent to be held civilly liable for the harmful acts of his/her child and these are:

1. **The child must be a minor.** This is to say that parents or legal guardians will be held liable for their children's wrongdoings which derive in a damage to a third party until they turn 18 years old. The age is considered at the time of the act and not at the time of the sentence.

2. **The parents or legal guardians cohabiting with the child.** Although this is a condition that is imposed by Article 1754 CCC it is hard to understand the reasoning behind it, since in practice this is an objective liability which does not allow for any further interpretation. A possible explanation for this could be that although it is a concept that has become obsolete with the new CCC, it was aligned with those (particularly that of the patria potestad) existent in the previous Civil Code.

According to Article 700 CCC, parents can be deprived of their parental responsibility for one of these four reasons:

1. When they have committed an intentional crime against their child or his/her goods;
2. When they have abandoned the child;
3. When they have risked the safety, or physical and/or psychical wellbeing of the child;
4. When they have declared that they are giving their child up for adoption.

However, Law 27363 sanctioned by the Argentine Congress on May 2017, considered that these were insufficient and therefore sanctioned Article 700 bis CCC which expanded the motives in order to include the following:

5. When the parent is convicted as the author, coauthor, instigator or accomplice of the crime of homicide aggravated by the relation or by the exercise of gender violence against the other parent of the child;
6. When the parent is convicted as author, coauthor, instigator or accomplice of the crime of lesions (as stated in Article 91 of the Penal Code) committed against the other parent of the child;
7. When the parent is convicted as author, coauthor, instigator or accomplice of the crime against the sexual integrity (as stated in Article 119 of the Penal Code) committed against the child.

Although this ampliation in the motives for the deprivation of parental responsibility was necessary, I consider the latter to be insufficient. This is because the commission of this type of crimes against any of the parent's children should automatically deprive him/her of the parental responsibility over all of his/her children, not only the one he/she committed that particular crime against.

Regarding the progressive recognition of the capabilities of the minor as is stated in Article 26 CCC it stands out that the child must "actively" participate in judicial procedures where her/his rights are being discussed even when the parent may also be held liable. This imposes a clear duty on the judges who will need to listen to the children and their requests in all judicial procedures that may involve and impact them.

Furthermore, Article 680 CCC states that the adolescent child does not need to be represented by her/his parents when criminally accused nor when she/he is sued for the recognition of children of her/his own.

Exercise of the Parental Responsibility and Jurisprudence

In Argentina, the exercise of parental responsibility commences with the birth of the child and lasts until she/he turns 18 years old. This responsibility of the parents derives from their civil liability when the child acts in such a way that results in damage or harm being produced on another person or thing.

In case of multiple filiation, the parents will be held jointly liable and their liability will be regulated by Articles 827 to 843 CCC. Their liability includes the duty to compensate for any damage caused by their children, and this will be done conjointly when their children are 10 years or older, according to Article 1750 CCC that states that even involuntary acts may result in the liability of their author.

Nevertheless, the liability of the child may be mitigated considering her/his assets, as is often the case when the child is insolvent. It may also be mitigated considering the personal situation of the victim and the specific factual circumstances, such as if the damage was caused accidentally (negligence). This mitigation is not applicable when there is malice according to Article 1742 CCC if, considering the child's age at the time of the act, this appreciation is even possible.

The joint liability of the parents and the child may be total or partial, and the possible mitigating circumstances that may result applicable in each case will need to be considered. It would be unfair to sacrifice the right of the victim to receive a full compensation simply because there is a factual need to reduce the child's liability. I share Carlos Parellada's criteria insofar as he believes that the liability of the parent cannot be reduced even when a judge may decide that the child's liability should be moderated in a particular case.

Furthermore, the parent's liability will be concurrent with that of the child when it is derived from the property or from carrying out activities that may prove dangerous to third parties (e.g. in practicing risky sports), when pertinent. The parent's liability may also be concurrent with that of the person (or persons) on whom the parental responsibility was delegated for a period of time, since according to Article 643 CCC the parents will still be held liable. However, in these cases the liability of the guardians may be subjective and therefore they may sometimes be exempted from responding civilly.

It is clear that there are many potential debtors who could be held liable and would need to compensate for the damage caused to the victim. In every case there is an objective liability of the material author (considering whatever limits the judge may consider applicable) and the parents (biological, adoptive or other) or legal guardians. Eventually, other relatives to whom the judge may have assigned the custody or guardianship of the child or adolescent, could be considered as being liable. Even the "kindred parents" will be held liable if it can be proven that they

intervened in the caretaking. In these last cases however, as there is no ruling presumption, the victim will need to prove the guilt of the parties and the liability will be analyzed subjectively by a judge.

It can be determined from the examination carried out in Section II that nowadays in Argentina the parental responsibility is considered an objective one, making it almost impossible to contest its application when both the age requirements of the child and custody over him/her are met.

It is also important to highlight once again that the doctrine in Argentina is that the age of the child will be appreciated at the time the act occurred, and not the time the judgement was passed. This has been clearly stated in the cited case where it was said that "the parents of those who committed a robbery while underage must be held jointly liable for the harm caused to the victim" and that "it is irrelevant for this analysis that they may have come of age during the process, since this circumstance does not erase the parental responsibility as the age must be considered at the time the damage was caused."

Furthermore, regarding the duties of caretaking derived from the custody the parents have over the child, the doctrine is very strict when deciding whether this duty has been adequately fulfilled by the parents.

In a case where a minor was driving his bike on the street in the wrong direction and he hit a pedestrian, provoking cranial nerve damage, the Supreme Court of Justice of the Province of Buenos Aires ruled that: "the caretaker has been insufficient because the minor was not taught the traffic rules, which is something that undoubtedly must be included in the 'moral education' his parents impart (...) needless to say the sole circumstance of the child attending school is insufficient to demonstrate that an adequate intellectual and moral education was provided, at least regarding his road safety education."

In another case where two minors were playing on the streets throwing rocks that they found on the ground at each other and one threw a rock at the other and consequently blinded him in one eye, the Court also found the parents liable for the harm caused by their child. In this case the justification presented by the judges was that the parents did not comply with the caretaking duty, as they were aware of the manner in which the children usually played and considered it dangerous but nevertheless did nothing to stop their child from playing in this way.

While some of this jurisprudence precedes the new CCC, it can be noticed that both the doctrine and jurisprudence had been inclined towards the concepts now comprised in the CCC even before it entered into force in 2015. Because it is usual for jurisprudence to be considered when regulating and approving a modification to a certain law, this is presumably what happened regarding parental responsibility. As a result, nowadays both jurisprudence and doctrine are aligned with the CCC regarding parental responsibility in Argentina.

This will make it easier for judges to interpret the law, as previous rulings can be cited and also due to the objective tendency that the new CCC displays regarding parental responsibility. This places the burden of proof on the parents, who in turn will need to demonstrate that they have complied with their duties in order to potentially be exempted.

The Kleros Adjudication Process and Parental Responsibility

Kleros is a decentralized dispute resolution platform that works as an opt-in system in the private sector, where the contract signed by the parties must have a clause stating that in case of dispute it shall be adjudicated to Kleros as well as in which subcourt this issue will be resolved.

While this idea is innovative and it certainly works to alleviate the parties from any unnecessary bureaucracy in case a dispute arises in the private sector, it would be interesting also to find the means to extrapolate it to the public sector.

First off, it is important to find a Court that is willing to test the Kleros protocol for the resolution of certain disputes, and for a Court to consider adopting a new tool (other than the judges, which so far is the only one they have) they would have to have a real need for it.

In Argentina Family Courts tend to be some of the busiest and it may take months and even years for the simplest cases that reach these Courts to be solved. Therefore, it presents a good opportunity as a testing ground for how Kleros could be applied to relieve the judges of some cases. The idea would be to alleviate their workload and allow them to focus on other cases which may need a lot of subjective ponderation and a deeper knowledge of the law.

It would be necessary for the matter being discussed to be as straightforward as possible, which is why (considering the examination carried out in the previous sections) it seems pertinent to test the use of the Kleros protocol in cases of civil liability derived from parental responsibility.

In these cases, as has been previously argued, the liability is analyzed as objective, and there are two main factors that the jurors would need to contemplate before voting: the age of the child who has committed the harm (at the time of the event) and the custody the parents may have over the child.

Having analyzed the reigning doctrine and jurisprudence in the country it appears that if both these conditions are met by the parents or guardians then they are

automatically - and practically irrefutably - liable to compensate the victims. This will be so independently of any other existing liability of their children.

As outlined in Kleros' founders' paper, at an early stage of the trial, the dispute could involve only two parties (the victim and the parent) and the voting option could be narrowed down to whether the parent is liable or not. If found liable a full payment would be made to the victim. At a later phase and if this trial is successful, Kleros may consider adjudicating more complex disputes to the jurors, where there could be a percentage of guilt that could be divided between the parents and the children, allowing for the compensation payments to be split.

Therefore, these cases could work as a trial for the possible application of this technology to other civil disputes based on similar scenarios where there is an underlying objective liability.

As Kleros' founders have stated, the decision process is made up of 7 elements: Contract, Securing Evidence, Jury Selection, Analysis, Voting, Appeal and Token Redistribution. I will outline how these would work in cases of civil liability derived from parental responsibility.

A. CONTRACT

Since Kleros was designed as a voluntary opt-in system, it could be applied to the public sector either by voluntary adoption of the protocol by the Court that was assigned the case in the first place or, if the Court wills it so, it could give the parties the choice of being judged either by a judge or by application of the Kleros dispute resolution tool.

A Kleros subcourt specialized in Family Law (or in Parental Responsibility only at first) would need to be created, and the cases would be adjudicated here. This subcourt can be made up of people with a basic knowledge of the law, who will receive a short document explaining the basics of parental responsibility and civil liability (such as an abridged version of Sections I and II of this paper).

The arbitration fees would be covered by the losing party, however, because there is a need for the deposit to be made in order for the jurors to be drawn, both parties could be compelled to integrate 100% of the amount that is at stake. This amount will be refunded to the winning party together with the transfer of the compensation funds owed to him by the losing party.

B. SECURING EVIDENCE

The relevant evidence in this case would need to be provided by the parties. Since, as was previously analyzed, in this type of disputes where the liability is objective the burden of proof will lie on the parent who wants to be exempted, it is possible to assume this will be the party most interested in providing sufficient evidence to make his/her case.

Examples of relevant evidence could be a birth certificate that allows for the verification of the age of the child, or a Court document regarding the arrangements that have been made regarding the custody of the child, amongst others.

These will need to be presented and verified by the Court in order to decide whether the documents are legal and admissible for the jurors to analyze.

Another very important issue is the underlying confidentiality, which must prevail in the judicial system and especially in Family Law Courts. When most final judgements are published only the initials of the parties are used to guarantee their anonymity. However, when using the Kleros protocol, the evidence would have to be provided to the jurors for their examination, which is why the Court should be careful to eliminate any names, addresses, birth dates, or any other personal data before submitting the evidence for the jurors to review.

C. JURY SELECTION

The jury selection could be carried out replicating the model applied in the private sector. The jurors will have the same economic incentive (*pinakions* or PNKs) which they will need to activate for the Family Law subcourt in order to be drawn in a particular case.

D. ANALYSIS

A briefing document could be provided for all users (jurors) who would like to participate in this subcourt, explaining what elements they must evaluate in order to rule in these types of cases. But, because the cases will be standard and straightforward (at least during the trial phase), one can presume that almost anyone will be able to vote according to the law.

They will also need to receive the anonymized copies of the evidence provided by the parties for them to review and vote.

At first, it would be best to limit the voting options as much as possible, which is why the jurors should be presented with a dispute based on two parties and two voting options when the trial phase begins.

Therefore, the case shall be presented as damaged party (victim) vs. parents of the child who has caused the harm. The analysis of the child's liability and the amount that should be repaid as compensation would, at least at this stage, need to be considered as separate issues and studied by a judge.

E. VOTING

The jurors will need to vote in favor of either option (parents found liable or not liable) once they have assessed the evidence and they will need to justify their decision.

The simplest voting options for the jurors could be presented as follows:

1. The conditions are met for the parental responsibility to operate in the case and therefore the parent in question is found liable and must compensate the victim, or
2. The conditions are not met for the attribution of parental responsibility and therefore the parent is exempt and does not need to compensate the victim.

In both of these proposed wordings the voting options would be "Yes" or "No".

As in every other Kleros dispute resolution so far, the vote cannot be changed once it has been cast and it is not disclosed until a decision has been reached.

F. APPEAL

One of the main incentives when using Kleros as a dispute resolution system is to combat unnecessary delays in the judicial processes, therefore if the losing party chooses to appeal, the same rules will be applied as for the other Kleros cases, meaning that the cost will be greater each time as more jurors will need to be drawn to vote. The higher cost of appealing will presumably be another deterring factor that the party will need to consider before making the decision.

G. TOKEN REDISTRIBUTION

As with the other Kleros dispute resolutions, once all the jurors have voted there will be a *pinakion* (PNK) redistribution. Those jurors who voted coherently with the majority will be rewarded while those who did not will lose tokens.

This is important because, as the Kleros founders have stated, "The expectation of winning or losing tokens gives jurors the incentive to self-select into the subcourts where they truly have expertise, to analyze the evidence carefully and to vote honestly." After all, it would be ideal for the jurors of the Kleros Family Law subcourt to gain knowhow as this may result in the adjudication of more complex cases to the platform over time.

The Additional Element: Court Review

The main goal of pursuing the application of the Kleros dispute resolution system in the public sector is to offer an additional tool for Courts that are saturated with cases that can be resolved quite simply and which nowadays results in an inadequate distribution of the judges' time and the Nation's resources.

It is important to denote that there are some cases of parental responsibility that will not be able to be solved by jurors drawn randomly, but that will require careful

ponderation by a judge. Thus, the use of the Kleros platform will only be successful insofar as there is a close and careful monitoring by the Court.

The Courts are filled with judges and lawyers specialized in Family Law who will be the ones who best equipped to assess which cases are subjective and need to be decided by a judge and which are objective enough that they can be decided using the Kleros platform.

Therefore, it is the members of the Court who will need to elect the cases that can plausibly be resolved using the Kleros platform and decide in which cases its application is simple not feasible. They will also need to examine the evidence provided by the parties to determine their legality and admissibility for review by the jurors and anonymize it.

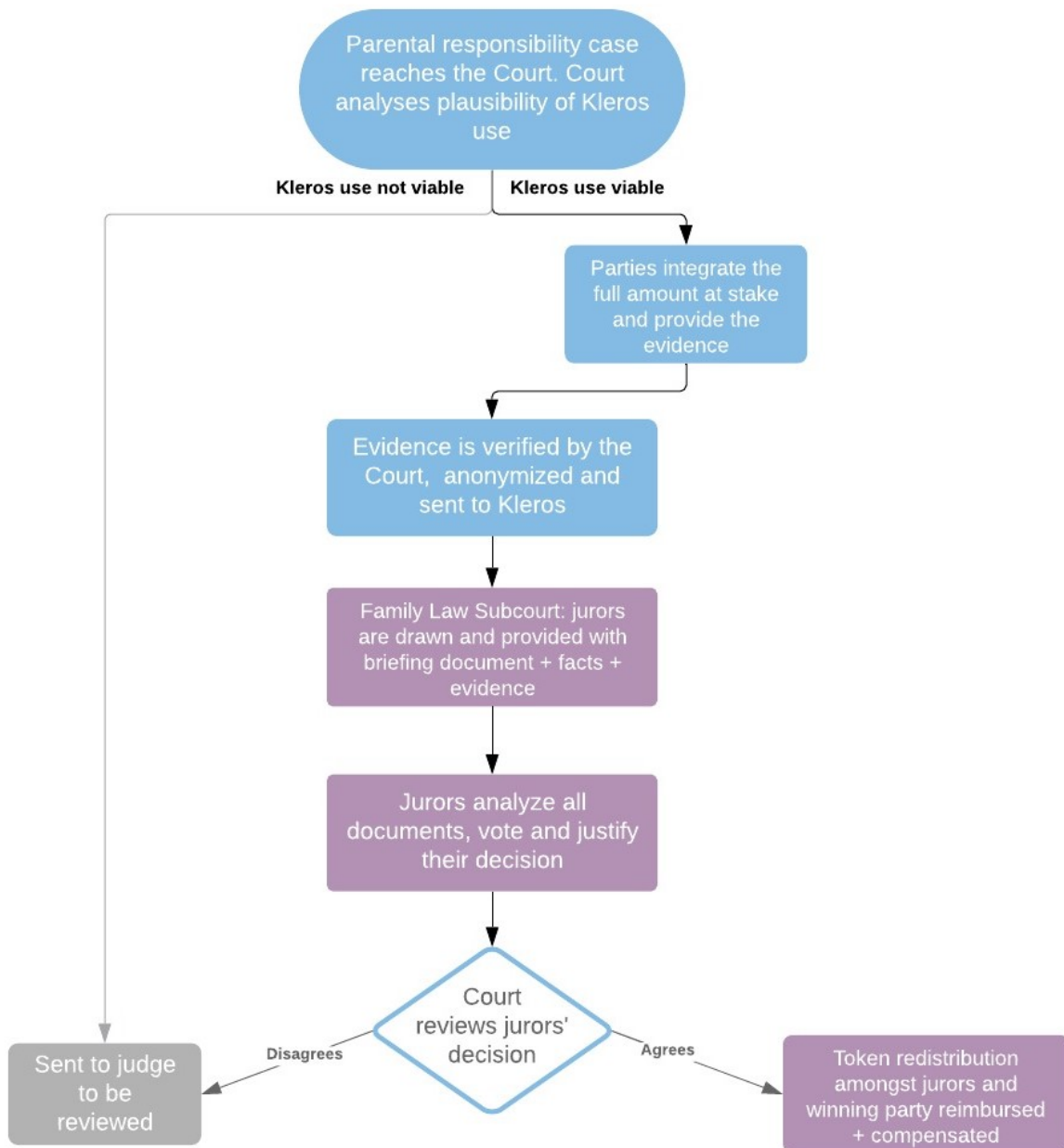
Nevertheless, this initial Court review may not be enough to assure the public that the Constitutional right to a due process is being respected, which is why it is important to incorporate an additional intermediate step once the particular case has been deemed adequate for Kleros.

The intermediate step necessary in order to guarantee that the Court respects the rights of the parties to a due process is the review by a member of the Court of the decision reached by the jurors. This review would be carried out by the judge or her/his secretaries and it would take place after the jurors have voted and presented their justification, and before the distribution of tokens by the platform.

As an example, if the Kleros platform was used in the cited case where the two children were throwing rocks at each other and one was blinded, and imagining that the Court is one that adheres to the use of the Kleros dispute resolution technology without consulting the parties, the whole Kleros-Court adjudication process could develop as follows:

Even contemplating this intermediate step, the Courts would likely still be greatly relieved from the tediousness of repeating their rulings on matters which are basic and which, should they be outsourced to the Kleros platform, would only need their approval before the final judgement.

Kleros adjudication process



The obvious benefit for the Courts derived from the use of Kleros is the alleviation of their workload, as the mere review of the cases would imply a great reduction on the time that is spent on these. Even the arguments presented as justification for the decisions taken by the Kleros jurors could be adapted and used by the Court.

An extra benefit for the parties derived from this acceleration in the time taken for a final judgement to be passed is related to the historically high rates of inflation in Argentina. As is often the case, by the time a final judgement has been reached the

amount that was originally claimed as compensation for the damage is rendered insufficient because of the high inflation rates and an additional claim arises regarding the applicable interests, which the judge must once again decide over.

However, because the Kleros platform would require the parties to make the full deposit of the amount at stake before the case is even analyzed, and because the final judgement would be reached at a considerably faster pace and the compensation amount (together with the reimbursement) would be payable to the winning party almost immediately after the Court review, there will presumably be no need to argue over the interest rates once a final decision has been reached.

Conclusions

The Kleros protocol was created with the aim of "bringing justice to the unjusticed" by providing a fast, inexpensive, reliable and decentralized alternative to the existing dispute resolution systems. It claims to follow the same principle the ancient Greeks employed by allowing for justice to be served on a peer-to-peer basis.

So far, the protocol has proved successful in the private sector, particularly in cases related to the internet economy. Still, it is a powerful tool which also has a lot of potential applications in other areas. This is why, in order to guarantee that the justice aspirations of this application are met entirely, it is important to test its use in the public sector.

Clearly this is not an easy task, as in the public sector there are many barriers set to guarantee that the public good is not affected and that all citizens have access to a due process. While countries that adopt these protectionist strategies do so in order to assure citizens that their rights will not be violated, oftentimes these measures have the exact opposite impact.

The potential benefits of using Kleros as a tool to assist the Courts are many, mainly the speedy process and alleviation of the Court's workload, but also in the subsequent redistribution of its resources. This is because it will allow for judges to focus on cases which need a deeper understanding of subjective elements of the law. This in turn will allow for better rulings on controversial cases, which will result in better jurisprudence and doctrine which might eventually even impact the development of new laws.

Meanwhile, cases that would normally block up the Courts and which will not be useful for society as a whole because of the objectivity of the subject matter, will now be resolved in a faster way and using up less of the State's resources. An additional benefit for the parties is that they will have a final judgement much faster,

meaning that the payment will be received by the victim sooner and that it will better serve its compensatory purpose.

Even in the exceptional cases where it might be determined that there is no need to compensate, both parties will have received a final judgement fast enough that they will not have spent a great amount of money in lawyers or invested a great time in fighting the case.

Despite these benefits, there are a few obstacles and issues that must be addressed when looking at the implementation of the Kleros protocol in the public sector.

Firstly, there is a need to educate the judges and the population on this new instrument, presenting its many benefits as an additional tool to be used when it is deemed reasonable, but making it clear that it does not replace the power of the judges in their Courts. This will be especially important in Argentina because the use of jury trials is, with a few exceptions in some province's Penal Courts, not generally accepted.

The Courts will therefore need to adopt this technology and fully embrace it in order to be prepared to reap the benefits. They will need to work together with the technology, as the cases will still need to be screened before they are approved for Kleros. Furthermore, the evidence provided by the parties will need to be studied to determine its validity and be anonymized before being sent to the jurors.

It is also extremely important for the Courts to have the power to review the decisions, as the judges and lawyers will have the education needed to discern which cases have been ruled correctly by the jurors and can be approved and converted into final decisions and which may need additional review by a judge after all.

The application of the Kleros protocol may not be viable at first for cases where the custody of the child has been granted to another family member, as these may present more complicated situations that would require more potential voting options for the jurors.

Another very important matter is the confidentiality which must be prime in Family Law and this is why any personal information of the parties will need to be eliminated (anonymized) before the evidence can be sent to Kleros and the drawn jurors.

Even though at the beginning it may seem like all this reviewing actually represents an extra workload for the Courts, once the process is established and it begins to work smoothly it will very likely prove to be a great tool to relieve the Courts of tedious objective rulings.

As a conclusion, while in the future there may be many more interesting applications of Kleros in the public sector, it seems that parental civil liability is an

example of a low-hanging fruit adequate for the Courts to test the waters before embracing the use of this technology in more complex cases.

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