

THEMIS Competition

10th Edition, 26-28 October 2015

Grand Final

Bucharest, Romania

Debate topic Italy 3- France 4

In September 2000 the applicant was convicted of the manslaughter of her baby son on the basis of medical evidence that the boy's injuries were consistent with "shaken baby syndrome" (also known as "non-accidental head injury" – "NAHI").

On appeal she claimed that new medical evidence suggested that the injuries could be attributed to a cause other than NAHI. In July 2005 the Court of Appeal (Criminal Division) quashed her conviction on the grounds that it was unsafe after finding that the new evidence might have affected the jury's decision to convict. The prosecution did not apply for a re-trial given that the applicant had already served her sentence and a considerable amount of time had passed.

The applicant lodged a claim with the Secretary of State under section 133 of the Criminal Justice Act 1988 ("the 1988 Act"), which provides that compensation shall be paid to someone who was convicted of a criminal offence but has subsequently had that conviction reversed on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice. Her claim was refused. An application for judicial review of that decision was dismissed by the High Court, which concluded that the Court of Appeal (Criminal Division) had only decided that the new evidence,

when taken with the evidence given at trial, “created the possibility” that a jury “might properly acquit” the applicant. The Court of Appeal subsequently dismissed an appeal by the applicant after noting that the acquittal decision did “not begin to carry the implication” that there was no case for her to answer, so that the test for a “miscarriage of justice” had not been made out.

In her application to the Strasbourg Court, the applicant alleged that the reasons given in the decision not to award her compensation had violated her right to be presumed innocent.

What issues arise, if any, in the abovementioned scenario concerning Article 6 of the Convention?

Italy 3: Indicate as many arguments on behalf of the applicant which shows violation of Article 6 and provide a well-grounded reasoning;

France 4: Set up arguments from the Government's point of view opposing all the possible assessments of the applicant concerning any violation of Article 6.