

THEMIS Competition

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Grand Final

Bucharest, Romania

Debate topic Romania 1 - Poland 2

The applicant is a limited partnership company, founded in 1986, was running a restaurant in Helsinki and rented the restaurant premises from an insurance company, 'KHS'. In 1994 it was offered the opportunity to rent more premises, which would be renovated to be suitable for restaurant use. When the renovation was finished, the applicant company found that there were excessive toilet facilities and that part of the planned restaurant facilities were missing, especially those planned to be built in the cellar. The applicant company paid 42,200 euros for the renovation expenses and the monthly rent was raised considerably. The amended rent contract had been signed before the extension work commenced.

In 1997 the applicant company instituted civil proceedings against 'KHS' before the „Housing Court” (Division of the Helsinki District Court). The applicant company claimed that there had been a breach of the rent contract, as the newly renovated facilities did not correspond to the original plan, on the basis of which the applicant company had signed the amended rent contract. 'KHS' disagreed with the applicant company, arguing that even though there had originally been a plan to build restaurant facilities in the cellar, it had later proved to be impossible to build such an extension and that the

applicant company had been aware of this before signing the contract.

The Housing Court found for the insurance company, rejecting the applicant company's claim for compensation in accordance with the Act on Commercial Leases, which had been adopted in February 1995.

The applicant company appealed to the Helsinki Court of Appeal, requesting that the District Court's decision be quashed, but the appellate court upheld the first-instance court's decision without an oral hearing. One of the members of the Court of Appeal, X.Y. was a member of the Finnish parliament at the time. He had been an expert member of the Court of Appeal since 1974. From 1987 to 1990 and from March 1995 to 1998 he was also a member of parliament.

Subsequently, in February 1998, the applicant company applied to the Supreme Court for leave to appeal, complaining about the lack of independence of Judge X.Y., who had both legislative functions as a member of parliament and judicial functions as a member of the Court of Appeal. Finally, the Supreme Court refused the applicant company leave to appeal in May 1998.

The applicant company alleged that the group of insurance companies to which its adversary belonged offered funding and inexpensive lease contracts to members of parliament and that because of this the judge in question was partial.

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

Romania 1: Indicate as many arguments on behalf of the applicant which shows violation of Article 6 and provide a well-grounded reasoning;

Poland 2: Set up arguments from the Government's point of view opposing all the possible assessments of the applicant concerning any violation of Article 6.