

THEMIS Competition

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Grand Final

Bucharest, Romania

Debate topic Romania 2 - France 2

The applicant worked as a prosecutor at the material time. The Public Prosecutor's Office proposed that the applicant be transferred to another prosecutor's office, as a result of which he would be demoted and his earnings would decrease. The applicant contested the proposal on the ground that there was no reason for his transfer and demotion. The Prosecutor's Office Council endorsed the proposal and the applicant took up his new functions as prosecutor, meanwhile his basic remuneration was halved.

The applicant lodged a constitutional appeal with the Constitutional Court against the presidential decree which justified such kind of transfers. The Constitutional Court declared the complaint inadmissible.

Subsequently, the applicant challenged his transfer before the domestic court. He argued that the transfer and demotion were against the law and adversely affected his career, income and related expenses. The Court of Appeal found in the applicant's favour and quashed the presidential decree.

The Public Prosecutor's Office appealed to the Supreme Court, which quashed the Court of Appeal's judgment, and discontinued the case.

The applicant appealed to the Constitutional Court, which quashed the Supreme Court's decision and found that the

presidential decree should be amenable to judicial review. Since the Supreme Court had not examined the merits of the Public Prosecutor's Office's appeal, the case was remitted for a determination of the merits.

During the resumed proceedings, the Supreme Court held a hearing and quashed the Court of Appeal's judgment and dismissed the applicant's claims. Of the 10 judges of the Supreme Court who voted against the case, 8 had been members of the bench which formerly had dismissed the case. The applicant appealed to the Constitutional Court afresh and challenged the decision. The Constitutional Court, by means of a reasoned decision, rejected the applicant's appeal and found that the examination by the Supreme Court Joint Benches had been by a tribunal established by law. It found that the applicant's claim regarding the lack of impartiality of the Supreme Court's Joint Benches in the rehearing proceedings was ill-founded.

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

Romania 2: Indicate as many arguments on behalf of the applicant which shows violation of Article 6 and provide a well-grounded reasoning;

France 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.