THEMIS GRAND FINAL
28-31 October
Paris, France

TEAM ROMANIA

vs.

TEAM CZECH REPUBLIC

Case of H.

The applicant is a Supreme Court judge. He was the president of the Supreme Court between 1998 and 2003. Between 2006 and 2009 he was the Minister of Justice. Since 2009 he has again been the President of the Supreme Court.

The Supreme Court has been entered in the official register of the Statistical Office as a budgetary organisation, its activity being justice and the judiciary. For the purpose of national account-keeping it has been classified in the Statistical Register of Organisations as falling within the sector of central public administration. Its budget forms a separate chapter of the State budget in accordance with section 9(1)(f) of Law no. 523/2004 on Budgetary Rules in Public Administration ("the Public Administration (Budgetary Rules) Act 2004").

On 21 July 2010 the Minister of Finance instructed a group of auditors to carry out an audit at the Supreme Court pursuant to section 35a(1) of the Audit Act 2001. Its aim was to examine the use of public funds, efficiency of financial management, use of State property and to check on compliance with measures which had been indicated in the course of the preceding audit of 2009.

The applicant in his capacity as President of the Supreme Court did not allow the Ministry's auditors to carry out the audit on 29 July 2010, or on 2, 3 and 4 August 2010.

On 2 August 2010 the applicant asked the President of the Supreme Audit Office to carry out a check on how public funds were administered and used by the Supreme Court. The reply he received, dated 27 August 2010, stated that the Constitution guaranteed the independence of the Supreme Audit Office, and that it had no spare capacity for additional supervisory activities in 2010.

By letters dated 3 and 6 August 2010 the applicant informed the Minister of Finance that Ministry of Finance auditors lacked the power to carry out the audit. The applicant argued that it was the Supreme Audit Office which had the authority to supervise the administration of public funds by the Supreme Court.

By a decision issued on 11 August 2010, the Ministry of Finance fined the Supreme Court EUR 33.193,- for failure to comply with its obligations under the Audit Act 2001. On 29 September 2010 the Minister of Finance dismissed the objection to the decision on the fine lodged by the Supreme Court.

On 18 January 2011 the Regional Court quashed the decisios and returned the case to the Ministry of Finance. It held that the Supreme Court was the highest body within the ordinary judiciary, and that it did not engage in public administration. The relevant provisions of the Audit Act 2001 did not extend to it. Public funds administered by the Supreme Court formed a part of the budget approved by Parliament. Monitoring of the use of those funds lay therefore with the Supreme Audit Office. On 28 April 2011 the Supreme Court upheld the first-instance judgment.

In July and December 2011 the Supreme Court did not allow the Ministry of Finance to carry out an audit. Reference was made to the aforesaid judgments of the ordinary courts. On 27 February 2012 the Ministry of Finance fined the Supreme Court EUR 33.193,- on that account.

On 18 November 2010 the Minister of Justice initiated disciplinary proceedings against the applicant before the Constitutional Court. She did so upon a submission by the Minister of Finance and also following a notification by a police investigator who had dismissed the latter's criminal complaint against the applicant, while holding that the applicant's conduct might be qualified as a disciplinary offence. The submission indicated that the applicant had four times prevented a group of auditors from the Ministry of Finance from carrying out an audit at the Supreme Court. It was proposed that the applicant should be sanctioned by a reduction of his yearly salary by 70%, as by preventing the audit from taking place he had committed a serious disciplinary offence.

On 16 March 2011 the applicant maintained that he had acted in conformity with the law and the Constitution, as the relevant law could not be interpreted as allowing the Ministry of Finance to carry out an audit of the Supreme Court. The applicant submitted detailed arguments in support of that view. The Supreme Court was neither a public administration body nor a central authority within the meaning of the relevant provisions of the Audit Act 2001. The applicant also relied on the Venice Commission Report on the Independence of the Judicial System and on Constitutional Court decision of 20 September 2007.

On 17 March 2011 the Minister of Justice challenged three constitutional judges for bias, on the ground that they had had a personal relationship with the applicant for several years and that they had been nominated to posts in the judiciary and public administration by the same political party. She pointed out that there had been earlier decisions in which two of those judges had been excluded for similar reasons.

On 5 April 2011 the applicant challenged four different constitutional judges for bias. In particular, he argued that Judge G. had made negative statements about the applicant's professional skills in the context of the election of the President of the Supreme Court. The applicant noted that there had been statements in the Constitutional Court decision II. of 19 February 2003. That decision had been given by a chamber of the Constitutional Court which included Judge G. As regards Judge O., the applicant submitted that he had made several negative statements in the media about the applicant. Thus in 2000 that judge had stated, at the time as chairman of a parliamentary committee, that the way the applicant had acted as President of the Supreme Court was such that the interest of the judiciary would be best served by replacing him. In a different statement Mr O. had indicated that the applicant could be removed under the law in force and in compliance with the Constitution. In different proceedings involving the applicant a chamber of the Constitutional Court had excluded Judge O. The applicant further objected that Judge L. was a member of the same chamber to which Judges G. and O. belonged. Their relations were not neutral. Finally, Judge H. had been convicted of a criminal offence, that of failure to pay tax, and had ignored the document of 31 December 2007 in which the Constitutional Court had invited him to consider his position as a constitutional judge. The applicant had criticised Judge H. on several occasions earlier on that ground. He therefore feared that that judge would lack impartiality in his respect.

In reply to the applicant's objection all the judges stated that they did not consider themselves biased. Judge G. indicated that the decision on which the applicant relied contained no statements about his professional skills and that she had never made any such statements personally. Judge O. stated that his involvement in different proceedings concerning the applicant was not a relevant reason for his exclusion. Judge L. considered irrelevant the applicant's argument based on the fact that he belonged to the same chamber as Judges G. and O. Judge H. rejected the applicant's objection concerning his standing to act as a constitutional judge as unsubstantiated. He acknowledged that the applicant enjoyed freedom of expression, which included the freedom to make critical remarks about constitutional judges. Such criticism did not affect the ability of Judge H. to carry out his duties in an impartial manner.

On 10 May 2011 the Constitutional Court in plenary session found that the seven judges challenged by the parties were not excluded from dealing with the case. The fact that four of those judges (including Judges O. and H.) had earlier been excluded from other sets of proceedings involving the applicant could not affect the position. The Constitutional Court had found in particular that the determination of the disciplinary offence allegedly committed by the applicant was within the exclusive jurisdiction of its plenary session. Excessive formalism and overlooking the statements of the individual judges posed the risk that the proceedings would be rendered ineffective. Examination of the case by a plenary session of the Constitutional Court represented a guarantee that constitutional principles, including independence, would be respected. Furthermore, all the constitutional judges had pledged to decide cases independently and impartially, to the best of their abilities and conscience.

On 10 May 2011 the Constitutional Court declared the Ministry of Justice representation admissible.

On 13 June 2011 the applicant again challenged the constitutional judge, H. He argued that the Constitutional Court had excluded that judge in different proceedings, in which the applicant had been involved as President of the Supreme Court. The applicant further challenged the Minister's standing to initiate disciplinary proceedings against him. He relied on the Bratislava Regional Court judgment of 18 January 2011 and the Supreme Court judgment of 28 April 2011, and argued that he had not acted in a manner contrary to the law.

On 29 June 2011 **the Constitutional Court found the applicant guilty** of a serious disciplinary offence under section 116(2)(c) of the Judges and Assessors Act 2000. In particular, the applicant had failed to comply duly, conscientiously and in timely fashion with his obligations relating to court administration as laid down in section 42(2)(a) of the Courts Act 2004 and section 14(2)(a) in conjunction with section 35d(7) of the Audit Act 2001, in that he had four times prevented a group of auditors of the Ministry of Finance from carrying out an audit at the Supreme Court in July and August 2010. The Constitutional Court imposed a disciplinary sanction on the applicant under section 117(5)(b) of the Judges and Assessors Act 2000, which consisted of a 70% reduction of his annual salary, which corresponded to EUR 51.299.

In the reasons for its decision the Constitutional Court examined the case from the point of view of the principles of independence of the judiciary, independence of judges, and separation of powers. It held that any external audit in respect of the judicial branch of power had to be limited. Any such audit must have an unequivocal legal basis and a clearly defined scope. Those criteria had been met in the case under consideration. In particular, the Constitutional Court referred to sections 2(2) and 35a(1) of the Audit Act 2001, and noted that the National Statistical Office had entered the Supreme Court in the register of public administration bodies. That register had been established in accordance with rules applicable within the European Union pursuant to Council Regulation (EC) No. 2223/96. As an organisation using public funds the Supreme Court was therefore to be considered a public administration body within the meaning of section 2(2)(c) of the Audit Act 2001. At the same time, it was a central authority within the meaning of section 2(2)(p) of the Audit Act 2001, as it administered part of the State budget. The way the Supreme Court was financed and subsequent monitoring of how it used public funds did not therefore affect its independence as a judicial authority.

In respect of the above proceedings the applicant further submitted that one of the constitutional judges who had found him guilty of a serious disciplinary offence, Mr K., lacked impartiality. That judge had been an unsuccessful candidate in the election in which the applicant had been elected President of the Supreme Court. Mr K. had subsequently challenged that election before the Constitutional Court. The applicant had not challenged Judge K., as he had expected that the latter would withdraw, as he had in several other constitutional proceedings to which the applicant was or had been a party.

The applicant alleged a breach of his rights under **Article 6 § 1 of the Convention**, that his disciplinary case the judges of the Constitutional Court were not impartial, which in its relevant parts reads as follows:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an ... impartial tribunal established by law ...

Team ROMANIA will present all possible allegations of the applicant before the European Court based on Article 6/1 of the Convention

Team TEAM CZECH REPUBLIC will present the position of the Government before the same Court.