



**THEMIS Grand Final Competition**  
(6 – 10 December 2021)

**TEAM SERBIA II**

**vs.**

**TEAM ROMANIA**

Mr. Spartacus is a citizen of the Republic of Neverland, being the administrator and main shareholder of a construction company.

He was prosecuted, along with defendants Mr. Hannibal and Mr. Antonius, by the specialized anti-corruption prosecutor's office of the Republic of Neverland for allegedly committing corruption offenses.

The accusations brought by the prosecutors are related to the fact that, during a public procurement procedure regarding the construction of a highway in Neverland, as a representative of his company participating in the public procurement procedure, Mr. Spartacus bribed with the amount of 100,000 Euro a senior official of Ministry of Transport, member of the ruling party (Mr. Hannibal) as well as a politician (Member of Parliament), him also a member of the ruling party in Neverland (Mr. Antonius), the bribe for the latter being in the amount of 150,000 Euros .

Ms. White is a criminal judge at the Court of Appeal in the capital of the Republic of Neverland.

The case concerning the three defendants, Mr. Spartacus, Mr. Hannibal and Mr. Antonius, was assigned to Judge White, who is competent to try corruption cases in the first instance with great damages.

The media in the Republic of Neverland debated at length the allegations brought by the anti-corruption prosecutors to the three defendants.

Mr. Blue is a senior editor at one of the leading online publisher in the Republic of Neverland.

He wrote an editorial, three days before the first trial of the case in which Ms. Spartacus, Mr. Hannibal and Mr. Antonius. In this editorial, Mr. Blue criticizes the ruling party, especially accusing its representatives of frequently resorting to acts of corruption to increase their personal wealth. In this context, in the same editorial, he stated that Mr. Hannibal and Mr.

Antonius are corrupt people and they should be sentenced to severe punishments for the acts of corruption for which they are accused.

The editorial was also published by Mr. Blue on his personal Facebook page, for which he received hundreds of likes from his followers. Among those who liked, without accompanying the like with any comment, was Ms. White.

At the first court hearing, Mr. Spartacus, through his lawyers, filed a request for recusal addressed to the President of the Court of Appeal where Ms. White is a judge in order for the President to rule on the recusal under the provisions of the Neverland Criminal Procedure Code. The main reasons invoked by the defendant Mr. Spartacus in the request for recusal are that of the violation of the presumption of innocence by Judge Ms. White, as well as the fact that Judge Ms. White is not impartial and thus violates the provisions of art. 6 para. 1 of the European Convention on Human Rights.

The President of the Court of Appeal rejected the request for recusal, without giving any reasons for his decision in rejecting the request.

In addition, for all judges of Neverland, full immunity for all legal opinions expressed in judicial decisions is guaranteed, unless a criminal offence has been committed. Recently an additional amendment in the criminal code has been added, ordering that it is an offence for any judge to issue an arbitrary decision which causes damage or which bestows a favor on another person.

Mr. Spartacus lodged a claim to ECHR. In this complaint the applicant raised the following arguments:

- The President of the Court of Appeal did not state the reasons for the decision of rejecting the application for recusal, so that Mr Spartacus is not in a position to know the reasoning behind that solution.
- That Mr Spartacus does not benefit from the presumption of innocence, violated by Judge Ms. White, nor the guarantee of this judge to be impartial in judging his case.
- That both judge White and the president of the court were not independent judges because of wilful possibility to be criminally charged for “arbitrary decisions”.

**TEAM SERBIA II:** support the arguments of representatives of the applicant, Mr. Spartacus

**TEAM ROMANIA:** present the position of the defending state Neverland

*Legal Background:*

**The Republic of Neverland ratified the European Convention on Human Rights in 1992. It is not an EU member state.**

**Criminal Procedure Code of the Neverland Republic:**

- art. 43 paragraph 1, lit. d provides that *‘the judge is incompatible if ...d) there is a reasonable suspicion that the judge’s impartiality is impaired’*
- art. 52 provides that: *‘If an incompatible judge did not give an abstention statement, the parties, the main subjects or the prosecutor may file a challenge to disqualify as soon as they learn of the existence of such state of incompatibility’*
- art. 54 paragr. 1 provides that: *‘The abstention or challenge to disqualify of a judge shall be ruled on by the President from the same court’*
- art. 54 paragr. 5 provides that: *‘A court resolution deciding upon an abstention or challenge to disqualify is not subject to any avenue of appeal’*
- art. 92a para. 2 of the Constitution provides for immunity for „the legal opinion expressed on the decision unless a criminal offence has been committed “.
- art. 174 para. 5 of the criminal code says that it is an offence for any judge to issue „an arbitrary decision causing damage to or bestowing a favour on another person “.