

# **THEMIS Competition**

10<sup>th</sup> Edition, 26-28 October 2015

Grand Final

Bucharest, Romania

In 2003 Edith alleged that the applicant, who is actually an Austrian had raped her. He had offered to drive her home from the bar where she worked as a waitress in Dublin, Ireland, but had then driven into the nearby woods and raped her in his car. She had then asked him to drive her to a particular night-club, where he had dropped her off and left. The applicant was arrested on the same evening and Edith identified him as her rapist.

Edith was examined by a doctor who found no injuries on her body or genitals. She was also questioned by the investigating judge. The applicant was also taken to a doctor and the doctor found abrasions on his right upper arm and elbow and his right knee.

The applicant was questioned by an investigating judge. He admitted to having had sexual intercourse with Edith in his car but argued that it had been consensual. He contended that the abrasions on his right arm and leg were the result of friction during the intercourse. After the questioning, actually in absence of a defence lawyer, the applicant was released.

In 2005, the Public Prosecutor's Office indicted the applicant on charges of rape. At the hearing in 2008, the applicant pleaded not guilty. Edith although properly summoned, failed to appear. Edith stated that she was living abroad and asked for an adjournment. The trial was adjourned to a later date, when again Edith failed to appear, as she was living abroad. The authorities ordered the police to search for Edith's whereabouts and to establish her exact

address on several occasions and attempted to summon her at the addresses abroad by using the means of international legal assistance. However, they didn't fine her for non-attendance, nor did they attempt to reach her by telephone. After several adjourned hearings, on 17 August 2009 a hearing was held at which the applicant pleaded not guilty.

The Deputy Public Prosecutor asked the trial court to admit in evidence the written record of Edith's oral statement given to the investigating judge.

The defence opposed that request, arguing that given the gravity of charges against the applicant it was necessary to question Edith at the hearing. On 21 October 2009 the Regional Court requested that Edith be summoned to a hearing by means of international legal assistance in criminal matters through the authorities in Belgium. This was not possible.

The applicant was found guilty on the charges of rape and sentenced him to two and a half year's imprisonment. The criminal conviction contained an order for the applicant's expulsion from Ireland.

His appeals were rejected. The applicant complained that he had not had an opportunity to examine Edith and that his conviction had been based to a decisive extent on her evidence.

Moreover, serving his imprisonment in Dublin, Ireland, the applicant complained that his transfer to Austria from Ireland with a view to serving the remainder of his sentence in that country resulted in a *de facto* ten-month increase in his term of imprisonment.

**Please answer the following questions:**

**I. What issues are raised in this scenario under the umbrella of Article 6 of the Convention?**

**II. What is the relevance of the fact that the crime was of a sexual nature and what is the Strasbourg Court's approach to sexual crimes?**

**III. Do you think the Court would find a violation or no violation of Article 6 § 3 (d) in conjunction with Article 6 § 1?**

**IV. As to the circumstances of the execution of the applicant's prison sentence, is Article 6 § 1 applicable?**