



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

**TEAM GERMANY**

**vs.**

**TEAM BULGARIA**

Mr. D is a citizen of the Fatherland Republic and works as a police officer at the Ministry of Internal Affairs in the capital of Fatherland.

In March 2020, he was arrested by the court of appeal of the capital, at the request of the prosecutor of the case, on the grounds that there were suspicions that he was part of a mafia organisation.

In April 2020, the case prosecutor sent the arrested police officer – Mr. D – to trial for allegedly committing the crimes that led to his arrest.

On the day on which the defendant Mr. D was sent to trial, the Minister of Interior and the Minister of Justice of the Fatherland Republic held a press conference in which, unequivocally, they identified the police officer – Mr. D – as the most influential leader of the mafia organization. Both ministers expressed their determination to eradicate the phenomenon of organised crime by dismantling such criminal gangs.

The case was assigned to the panel of judges consisting, inter alia, of Judge G and Judge M of the Court of Appeal in the state capital of Fatherland.

Judge G was seconded, with his consent, to work at the Court of Appeal, from one of its hierarchically inferior courts, by the Minister of Justice, with the possibility of extending the secondment if the Minister of Justice deems it necessary.

It should be noted that according to the legislation of the State of Fatherland, amended during 2019, judges may be temporarily seconded by the Minister of Justice from one court to another and, at the same time, the Minister may as well revoke the secondment. This legislative change was made in order to increase the responsibility of judges and the judiciary in general, which is at a low level of popularity in the public opinion in the state of Fatherland.

Furthermore, the Minister of Justice is not required to disclose the specific criteria for which he orders the secondment of a judge, but the law describes these criteria according to which the secondment is to work. Hence, secondment, with the consent of the judge, in order to exercise judicial or administrative duties may be ordered:

- to another court of the same or lower rank or, in duly justified cases, to a higher-ranking court, taking into account the rational use of the staff of ordinary courts and the needs arising from the workload of the various courts,
- for a specified period, which may not exceed two years, or for an indefinite period.

The proceedings were largely based on an electronic data collection, seized in the investigation phase by searching the personal computers, mobile phones and e-clouds of Mr D and also of other persons. Out of the big amount of data, the prosecution had done a thorough research of all data, flagged the relevant documents and these flagged documents were basis for the criminal proceedings. The defence had only access to the flagged data. Access to all data was denied because of data protection of (other) private interests.

In June 2021 defendant D was sentenced by the panel, consisting of, inter alia, Judge G and Judge M, to 8 years in prison for belonging to and leading a mafia group and for instigating several organised crime offenses by members of the group.

Defendant D appealed to the Supreme Court of the State of Fatherland against the decision. The main ground of appeal concerns his innocence regarding the criminal acts for which he was convicted. But Mr. D also invoked Judge G's lack of independence from the Minister of Justice, as well as his lack of impartiality because he was seconded at the court of appeal from a lower ranking court by the Minister of Justice. The same Minister who previously stated at a press conference in April 2020 that Mr. D was the leader of a mafia group.

The Supreme Court dismissed the appeal. With regard to the lack of independence and impartiality of Judge G, the Supreme Court recognises that Fatherland`s amended legislation, concerning the secondment, may be considered a violation of the separation of powers in the state, as provided by the State Constitution of Fatherland.

However, assessing this inaccuracy of the law under which Judge G was seconded by the Minister of Justice, the Supreme Court concluded that this fact does not undermine the judgement provided by the Judge G and the defendant`s conviction cannot be successfully challenged.

Mr. D. lodged a claim to ECHR. The applicant argued that he had not received a hearing by an impartial tribunal within the meaning of Article 6 § 1 and 2 of the Convention, the relevant parts of which provide:

*"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."*

*"2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."*

In addition, Mr D. argued that he had not access to all available documents, equality of arms was violated. If he had had access to all documents, there would have been also documents in his favour revealed. He had also sent other messages/e-mail to the other persons (whose communication files were also seized) and the prosecution had not properly investigated the facts speaking in his favour.

**TEAM GERMANY**: support the arguments of representatives of the applicant, Mr. D

**TEAM BULGARIA**: present the position of the defending state Fatherland

*Background:*

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