



THEMIS Grand Final Competition
(6 – 10 December 2021)

TEAM PORTUGAL

vs.

TEAM CZECHIA

Adam is citizen of country Braveland. This country is member of the Council of Europe.

In Braveland a pandemic causes severe death rate, followed by a compulsory vaccination. This compulsion was in line with fundamental rights and constitution (also by final decision of the constitutional court).

Accordingly, Mr Adam was vaccinated. Months later, he suffers from unclear medical problems.

He alleges partial disabilities caused by the compulsory vaccination and demands for compensation before the administrative authorities.

According to Braveland laws, the administrative authority must hear the disability commission and the administrative authority is obliged to follow the expert opinion of this commission. Members of the disability commission are selected and appointed by the Minister of Health of Braveland. There exist no legal selection criteria, the selection and appointment is done in discretionary manner by the Minister.

In Adam's case, the administrative authority (following the expert opinion of the disability commission) denied that the medical problems of Mr Adams were caused by the vaccination and denied compensation payments.

Mr Adam files a complaint with the administrative court of Braveland.

In the justice system of Braveland, the administrative courts are obliged to investigate all relevant facts ex officio (i.e. investigative system); also new facts must be investigated (decision ex nunc).

In case a judge needs certain expertise in a pending case, by procedural laws, the judge must select and appoint an expert who is registered in a specific expert list.

The president of the administrative court makes this list. The list is published on the website of the court. The only legal selection criteria are that this expert must be civil servant of Braveland, working in the administration of Braveland and must have expertise in the respective area of administrative law (i.e. doing his/her job in this requested area of specialization, like in our case: must be medical doctor).

The president of the court (who works also as a judge in this court) is selected and appointed by the government in free discretion (unlike the rest of judges of this court). The only selection criteria is that this person fulfils the general legal pre-conditions to become a judge and needs not have been appointed as judge beforehand. By law, the president of the court is bound to by orders of the government for all administrative decisions (i.e. managerial decision) within the court (i.e. to execute financial powers, control material resources, supervising all employees and designing internal organization of the court). With respect to the initiation of disciplinary proceedings against judges of this court, the president “can initiate them in case of reasonable suspicion”.

The preparation of the expert list is not listed to be a managerial task. However, also no legal remedies exist against the decision of the president (i.e. decision whom to list in the expert list).

Judge Eva is the judge in Adam’s case. In her private facebook account she has repeatedly taken the position to favour the vaccinations and that she is convinced that they are absolutely safe. In her position as chairperson of the national judge’s association, she has welcomed the final constitutional court decisions on constitutionality of the compulsory vaccinations and “liked” the decision via twitter, commenting it to be a clear and final judgement, which clarified the legal situation.

Judge Eva decides to hold an oral hearing and calls the chairperson of the disability commission to explain the expert opinion, which had been delivered before the administrative authority. Adam and his lawyer are present in the oral hearing and had the possibility to question and to interrogate the chairperson. However, the chairperson could not answer some questions; Adam and his lawyer requested to hear another expert. All parties to the case agreed and the judge adjourned the oral hearing to hear a second expert. She called an expert from the list (the expert list prepared by the president of the court ex ante). This expert, Doctor Sylvie, was the only expert with respect to the vaccination medical problems. Doctor Sylvie had posted in facebook and other social media (like Instagram and youtube) that the vaccination is safe and that all who claim to have side effects are “weaklings”. In addition, she and judge Eva are “friends” on facebook, but do not have close private contacts. Furthermore, Doctor Sylvie is not only civil servant, working for the government, but was also member in an expert commission advising the Minister of Health which vaccines to buy and how to organize the overall vaccination process.

The president of the court gave an interview to the media, mentioning that this is the first leading case (many others were pending) and that extreme budgetary consequences for the country would be at stake if compensation needed to be paid. Furthermore, he met Judge Eva and mentioned that he considers that she could receive an individual honorary title (“super-judge”) - which does not have any effect on remuneration. Such decisions lie in the president’s (discretionary) competence.

Sylvie provided a written expert opinion in our case. Judge Eva did not send the extensive and voluminous written expert opinion to the parties of the case (Adam and his lawyer and the representative of the administrative authority). She wanted to deliberate on the expert opinion and hand it out to the parties during the next oral hearing. Thus, she informed them beforehand accordingly and noted that the voluminous expert opinion is available as e-document in the e-cloud of the court (with access code, what is possible according to procedural laws). Being technically not advanced neither Adam nor his lawyer manage to access it.

Due to an unexpected pandemic situation, the next oral hearing had to take place in remote version. Only Doctor Sylvie and Judge Eva were present in the courtroom, the parties and the public participated via videoconference. Unfortunately, due to technical problems neither Adam nor his lawyer could access all parts of the hearing. It remained unclear if the technical problems were caused by Adam, his lawyer or by the IT management of the court. Thus, the interrogation of the second expert was not fully possible; however, main parts of the open questions of the first “expert” were answered.

By the end of the oral hearing, judge Eva pronounced her judgement and gave reasons why she finds the second expert opinion (in combination with the first) plausible. The judgement referred only to the expert opinion as the expertise was the (only) dominant evidence in the judicial proceedings. Eva is promoted by decision of the court president.

Adam gets access to the case files. There he discovers that in main parts the written expert opinion refers to further medical studies, which were not elaborated in further detail by Doctor Sylvie in her expert opinion. She only noted that she had access to these medical studies and due to business secret, she cannot elaborate the specific medical studies, however, summarizing the results only. After summarizing results, she concluded that there were no problems. He also found out about the interview of the president to the media, that promotions lie in the competence of the court president and that Eva was promoted to be “super-judge” briefly after having delivered the judgement.

Against the judgement of Eva no further legal remedies are available in Braveland.

Before ECtHR Adam alleges that judge Eva was neither independent nor impartial judge in this case (promotion, her public remarks and facebook remarks as well as to “be friend with” expert Sylvie) , that equality of arms was not granted (list of experts fixed by the court president, he had not proper access to the expert opinion, no proper interrogation, no access to all documents) and that expert Sylvie was not impartial and that he could not properly participate in the oral hearing.

Team PORTUGAL - support the arguments of representatives of Adam

Team CZECHIA - support the arguments of the defending state Braveland

Legal Background:

The Republic of Braveland ratified the European Convention on Human Rights in 1999. It is not an EU member state.