



## **THEMIS Grand Final Competition**

(08 – 11 October 2019)

**TEAM FRANCE**

**v.s.**

**TEAM CZECHIA**

The applicant, Mr X, is a national of country Z- member of EU, serving as a judge in his home country. In 2015 he was nominated, in accordance with the domestic law, by the Minister of Justice as a President of District Court for a 5-year term. At that time the reasons for dismissal of presidents of courts were only of exceptional nature (health reasons, resignation etc.) and all of them were exhaustively listed in the Law on Judicial Power.

In 2018 the Law on Judicial Power was amended, *inter alia*, allowing the Minister of Justice to dismiss presidents of courts before the end of term. Mr X was dismissed on 10 June 2018. The MoJ's decision had no reasoning and Mr X's request for the decision to be reasoned was rejected. According to the information sent to Mr X by MoJ, the decision of the Minister of Justice could not be appealed against, therefore it needs no reasoning.

Mr X filed a claim to the district court, asking for re-instalment to a position of the president of court. His claim was rejected as, according to the district court, it was of an administrative, not civil (labour law) nature. Mr X's appeal against the District Court's decision was also rejected by the Court of Appeal. The Court of Appeal did not share the court of first instance's view on the nature of the claim, though. The reason for rejection was that, according to the Law on Judicial Power, the appeal against the decision of the Minister of Justice was not possible.

Mr X filed the cassation appeal to the High Court, claiming that he was deprived of the, constitutionally guaranteed, right to fair trial for, at least, two reasons: firstly, he was deprived of the right to be heard in two instances due to the fact that the second instance court's reasoning was different, therefore the decision of the first instance court should have been quashed and the case should have been heard again; secondly, the decision of the second instance court deprived him of the right to court, as his claim could be examined neither by an administrative body, nor by common courts. The cassation appeal was rejected by the High Court *in camera*, in one-judge panel presided by the president of the High Court and the decision had a very simplified reasoning (a schematic formula, copy-pasted in all similar cases, without legal analysis). The newly amended domestic law (Code of Civil Procedure) allowed the *in camera* examination of a case by a one-judge panel in cases when the cassation appeal was manifestly ill-founded.

In his claim lodged to the ECHR, the applicant raised the same arguments as in cassation appeal, as well as complained about lack of the reasoning of the High Court's decision, which made the impression that the decision was arbitrary. He also raised an argument that the President of the High Court was solely responsible for assigning cases in the High Court and there was no transparent system of assigning cases. Furthermore, the case was assigned to the President of the High Court himself, whereas he had been nominated as President of High Court in 2018, replacing the previous president, who had been dismissed on the same legal basis as Mr X.

**Team FRANCE:** support the arguments of representatives of the applicant

**Team CZECHIA:** present the position of the defending state Z