

REGIONAL ROUND 2023 MOOT COURT CASE

BACKGROUND FACTS

The Applicants are Ms. Claire Perret, Mr. Andrew Right and Ms. Cate Hutting, nationals of State A. They claim that the State of FREELANDIA (hereinafter – FREELNADIA) violated their rights by withdrawing scholarships resulting in significant disadvantages for them.

FREELANDIA is a member of the European Union and has signed and ratified the European Convention on Human Rights (ECHR) and all its protocols. It currently sits on the United Nations Human Rights Council and is a state party to most of the major UN treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). FREELANDIA is universally known for having the most prestigious universities attracting many students from all over the world.

GLOBAL TALENT FOUNDATION (hereinafter – FOUNDATION) is a 100% FREELANDIA-funded foundation, the main aim of which is to establish cultural and educational connections between countries as well as help talented young people from all over the world to realize their potential. To do so, in 2000, the FOUNDATION started to provide scholarships for nationals of all internationally recognized states outside the EU to pursue master's degrees in FREELANDIA's public universities. The FOUNDATION usually works on the premises of FREELANDIA's Embassies in the respective states. Applications for scholarships can be submitted to embassies, and Embassy staff can provide assistance with the application process.

State A is a developing country covering an area of 100,000 square kilometres. State A is bordered by FREELANDIA to the south and east. It has a population of more than 28 million people. For the past ten years, State A has developed strong economic connections with the European Union (FREELANDIA, in particular) and academic and research cooperation. According to State A's statistics, every year, around 150,000 students and 2,000 professors go to study and research abroad, mainly in EU countries. State A is also bordered by State B to the north and west. State B is also a developing country covering 30,000 square kilometres and having a population of around 8 million.

In 1982, State A and FREELANDIA had a disagreement over a territory belonging to FREELANDIA since 1953 but belonging to State A before that. The territory's status was set by the peace agreement concluded in November 1953. The disagreement was resolved on a diplomatic level, and the result of the negotiations was formed officially. For 70 years, the relationships between countries were peaceful. Besides, several generations of countries' leaders were committed to developing strong cooperation on multiple levels. This resulted, inter alia, in the concluding a Treaty on Legal Assistance and Legal Relations in Civil, Family and Criminal cases in 1992 and an Agreement for Educational Cooperation in 2000. Since then, both countries have built criminal law cooperation that allowed them to extradite persons in a simplified and easier way as well as to build cooperation between both countries' prosecutor offices to investigate cross-border crimes and crimes involving their nationals. At the same time, the Agreement for Educational Cooperation allowed students from both countries to go for short study visits.

CIRCUMSTANCES OF THE CASE

On August 23, 2022, the FOUNDATION awarded 20 national of State A full scholarships to study at a master's level in FREELANDIA's most prestigious universities. All the scholarship awardees were required to confirm the acceptance of offers by signing the scholarship letters and paying 500 EUR as an administrative fee. All of the students complied with the requirements of the FOUNDATION.

On September 15, 2022, after failed negotiations involving the EU members, State A invaded the territory of State B by sending armed troops to some regions of State B, establishing occupation of these territories. State A invoked Art. 5 UN Charter and pre-emptive self-defence. For the following months, the world was shocked by the atrocities of war. Independent NGOs both in the EU and State B published numerous reports claiming the grave violations of international humanitarian law committed by State A. While the UN Security Council blocked the resolution condemning the actions of State A, revoking the veto right of one of the permanent members, the UN General Assembly voted almost unanimously in favour of condemning the actions of State A, with only five states supporting its actions. The EU member states tried to initiate peace negotiations, but both parties of the armed conflict refused to participate. Following this development, the EU decided to impose several packages of sanctions. Sanctions included targeted restrictive measures (directed against high-ranking state officials), economic sanctions and visa measures. The sanctions aimed to impose severe consequences on State A for its actions and to thwart its ability to continue the war effectively. Other states and companies joined the sanctions effort. The global payment networks banned State A citizens from using their bank cards. Besides, State A banks were prohibited from making or receiving international payments using the SWIFT system.

On September 20, 2022, the FOUNDATION representatives invited 20 nationals of State A to FREELANDIA's Embassy in the capital of State A. They were instructed to be at the Embassy at 9.00 am sharp. When all of the fellows arrived, the Embassy personnel told them that the person, who was supposed to talk with them, would come later, so they needed to wait. At the same time, they collected their mobile phones as it was prohibited to use them on the premises of the Embassy. They were escorted to a small room with no windows, where they waited for several hours. When some people tried to leave and reschedule the meeting, the Embassy personnel and security officers told them they could not leave until they had a conversation with their colleagues who were already on their way. They were asked to return to the room and wait. Some of them protested and stressed that they needed to leave, but to no avail. Finally, at 6.00 pm, they were allowed to leave the room and have a conversation with the FOUNDATION representative.

During the conversation, FOUNDATION's representatives informed that the scholarships were withdrawn immediately due to the invasion and occupation of the territories of State B. The same day, FOUNDATION issued a public statement regarding the withdrawal of scholarships for nationals of State A. It also expressed deep concern about the current situation and offered support to the citizens of State B, saying that they are discussing distributing the funds first allocated to citizens of State A to citizens of State B as a sign of solidarity and support.

The nationals of State A who were denied scholarships led by Ms. Claire Perret, Mr. Andrew Right and Ms. Cate Hutting wrote a joint letter to the Board of FOUNDATION, asking them not to blame their government's wrongful decisions on them. Ms. Claire Perret, Mr. Andrew Right and Ms. Cate Hutting also wrote individual e-mails stating that they did not support the actions of their government. In fact, some affected persons, including Claire Hutting, took part in

anti-war protests and were detained by the police. Since, for some of the nationals of State A, the denial of scholarships created a significant disadvantage, they wanted the FOUNDATION to know that. That is why some wrote long letters explaining the situation and enclosed supporting documents.

Ms. Claire Perret, a 23-year-old woman, explained that she quit her stable job at the public hospital the day after the scholarship results were announced to pursue a master's degree in neuroscience. She relied on the scholarship, therefore, has no means of living. It would be very difficult for her to get her job back as the management was unhappy that she left for her studies in a foreign state. Besides, Ms. Perret emphasized that in the award letter she received from the Board, it was expressed that Ms. Perret is a student of high potential who is not only bringing good to people and society but also will be able to change the approaches to neuroscience and brain operations by using techniques for bolder exploratory brain mapping. Lastly, Ms. Perret highlighted that it is vital for her to study at FREELANDIA, the only university providing a special master's program on advanced exploratory brain mapping.

Mr. Andrew Right, a 30-year-old man, explained that he took a sabbatical from his position as an international law professor in order to pursue a second master's in human rights research. His full-time university position gave him draft deferment, so he could not be mobilized and join the regular State's A army. Currently, he could be mobilized and sent to the war. In addition to expressing his anti-war position, Mr. Right signed several anti-war petitions.

Ms. Cate Hutting, a 45-year-old woman, explained that she is a professional sign language interpreter. After receiving news about the scholarship's withdrawal, she experienced a transient ischemic attack that resulted in right arm paralysis. Currently, she is not able to perform sign language interpretations.

FOUNDATION replied that the government of FREELANDIA made this decision, which is final.

They also mentioned that if the situation ceased, all selected scholarship awardees would be long listed for the 2024 scholarship selection. However, it will be discussed further.

Ms. Claire Perret, Mr. Andrew Right and Ms. Cate Hutting created a chat to coordinate their actions. First, they tried to raise public attention to the situation. Some of the foreign press, including FREELANDIA media, published their story. One of the articles published by FREELANDIA's prominent media outlet included a quote from the Minister of Education of FREELANDIA, who stated:

"I would like to emphasize that the Foundation's decision is not based on nationality but on citizenship or affiliation with State A. It does not concern those who have a residence permit from another State. There are two main reasons why we decided to withdraw the scholarships. First, it is a sanction with which we show that we oppose the policies of these countries. Secondly, we must consider that Europe's security situation has drastically changed. The university cannot control the students' attitudes and views or consider them in its decisions. At the same time, there is no reliable and accurate data on the attitudes of the State's A population, but it is clear that many people in State A support the war. Besides, there were instances before when we suspected the suspicious activities of exchange students. Therefore, we have discretion in this case, and we cannot be sure that the authorities of these countries will not take the opportunity to send people who aim to use their stay in FREELANDIA for purposes other than open academic education".

Following this publication, on October 5, 2022, the anonymous Twitter account posted a link for allegedly leaked official documents stating that since 2010 FREELANDIA identified 15 persons under cover of exchange students or interns who were conducting surveillance activities on FREELANDIA's soil. The document was printed on the letterhead of the Office for Foreign Affairs of FREELANDIA. The primary objective of the surveillance was to collect information concerning FREELANDIAN domestic and foreign policy in order to advance State A's political and economic interests in the region. On October 15, 2022, one of the prominent newspapers in FREELANDIA published an investigation concerning an intern from State A undertaking a 6-month traineeship in one of the EU agencies. According to the newspaper's piece, the intern was deported, and FREELANDIA decided not to make it public so as not to deteriorate relations with State A. The investigation did not confirm or deny that the Twitter account had published reliable data. It rather stated that the leaked documents needed to be verified. Following this publication, the Twitter account was deleted on October 16, 2022.

Despite all of the efforts, nothing changed. A group of students published a petition signed by the affected group and other people, including professors at the universities in FREELANDIA, some of whom did not agree with this situation. These actions did not bring any results. On November 1, 2022, Ms. Perret wrote an e-mail to the Head of the FOUNDATION asking about the possibility of appealing against this decision. Ms. Perret also mentioned that the administrative fee should be returned if the FOUNDATION decides not to proceed with their scholarships.

It took a while for the Head of the FOUNDATION to answer Ms. Perret. Finally, on November 17, 2022, the Head of the FOUNDATION informed that there was no appeals procedure. He also mentioned that FREELANDIA has the freedom to determine how to distribute state funds that are the taxpayers' payments. The Head of the FOUNDATION suggested that the students go to the court of FREELANDIA and try their cases there if they believe in having a case. In conclusion, the Head of the FOUNDATION stated that they did not have the capacity to review each personal case as their available resources were directed to help State B's students. He mentioned that he found it alarming that in the face of war and atrocities, students were more concerned about their studies rather than protesting against their government's decision. Lastly, the Head of the FOUNDATION informed Ms. Perret that administrative fees could not be returned since all State A's banks are under sanctions.

On November 18, 2022, a group of affected persons went to State A's prosecutor's office to report on fraud and restriction of liberty committed by FREELANDIA state agents. However, the prosecutor's office declined to pursue the complaint or file charges based on diplomatic and consular immunity.

Following the continuation of invasion and bombings causing deaths of civilians, on November 12, 2022, most states decided to close their borders to citizens of State A except for when they need to visit relatives, for medical reasons or if people come for study, work or research. This decision greatly affected Schengen visas banning people who do not have legal grounds to enter FREELANDIA. Besides, on December 28, 2022, an article in a credible newspaper based on the Migration Agency data was published stating that since October 10, 2022, only 2% of all visa applications were approved for citizens of State A. While unable to travel to FREELANDIA, Ms. Claire Perret, Mr. Andrew Right, and Ms. Cate Hutting tried to find legal representation in FREELANDIA to go to the national court. However, it was impossible because their banks were banned from foreign payments, so they could not pay their lawyers.

State A's media highly discussed the development of FREELANDIA's scholarship and migration issues. It was used as a clear example of how the neighbouring states contradict their preached values: freedom, human rights and democracy. In his Facebook post, the Minister of Education of State A expressed joy over the decision of FREELANDIA. He said:

"Our friends in FREELANDIA actually did us a great favour by banning our students from their universities and cutting all the financial support. I have always been opposing having Agreement for Educational Cooperation in place. After exchange visits, students who returned from FREELANDIA came back poisoned by the hostile values. I am convinced that 99% of those protesting the war took advantage of the Agreement for Educational Cooperation and visited the EU states. I am happy that all students with great potential in science, research and humanities will be able to stay home and push forward our own academia. I truly believe that the efforts of some of them even help us to win the war".

THE CASE

As a last resort, the Applicants turn to the European Court of Human Rights, claiming that their rights under the convention have been violated by FREELANDIA. They argue that they met all the criteria for the scholarship and were fairly awarded the funding but are now being discriminated against. There has been no individualized assessment of their situations, but rather the state has enacted a blanket ban that unrightfully affects them. They also argue that the embassy personnel acted wrongfully when they were not allowed to leave the Embassy and were held there against their will. They also argue that they should have had the possibility to challenge the decision to revoke their scholarships.

FREELANDIA denies that it has committed any violations, arguing that the state has the authority to determine its policies governing educational and migration issues. In any case, FREELANDIA had reasonable grounds to believe that the Applicants posed a threat to national security and withdrawal of the scholarships was necessary and proportionate. FREELANDIA claims the local remedies were freely available for Applicants.