

CASE – MOOT COURT COMPETITION 2009

1. X-land is a member of the European Union. It ratified The European Convention on Human Rights in 1995. The Convention was implemented as national law. The X-land has ratified all of the additional protocols to the Convention.
2. X-land has serious problems with rival ethnic groups who, for years have been fighting against each other. Several policemen have been injured in riots with protesters following the unrest between the two major ethnic groups Z and I. The two groups are often involved in violent demonstrations with massive damages as a result. The police arrest people frequently and every week several demonstrators are prosecuted for having participated in violent riots. Many citizens are afraid to walk the streets in fear of the sudden outbursts of violent riots.
3. On 14th May 2008, a boy named John is killed by a policeman during a demonstration. This evening, both the rival groups Z and I had been permitted to demonstrate. Violent riots were suddenly triggered in some parts of the demonstration. As a group of young men approached a mounted police officer, he raised his weapon and fired four warning shots. One of the gunshots bounced against a car and hit John in the stomach. He died on the spot. John's friends testified that John himself in no way had acted violently. John had not perceived that the demonstration had become violent. According to his friends, John had just passed the policeman shouting slogans unaware of the sudden outbursts of violence.
4. The police who killed John was prosecuted for misuse of office and negligent homicide. Both the District Court and Court of Appeal acquitted him to the charges. No leave of appeal was given in the Supreme Court. The only witnesses heard in the proceedings were three fellow police officers to the accused. They witnessed of the violent and chaotic situation at the time. The justification of the acquittal ruling was that the police officer had acted within his right of self-defence. The Court of Appeal stated that the police must have a considerable margin for calculation errors in the exercise of the official commitments as the police often face hostile situations and work under great stress. The Court concluded that regardless whether the accused policeman had acted within the powers granted by authority or not, he could still not be sentenced for the accused crimes since the shooting had been an act of self-defence. Moreover, it was unclear exactly how John had been killed and in what way he had approached the accused policemen. The Court stated, however, that the decisive condition for the rule of self-defence is whether a person truly and without unlawful negligence perceives a situation as an immediate threat. Peril is subjective and measured from what the defending party perceives as peril, not the actual peril. The Court held it beyond reasonable doubt that the accused policemen had acted in – at least – perceived self-defence. Considering the nature of the situation, and bearing in mind the violence and damages previously caused by the Z-group, the policeman also had reasonable grounds for his assessment of the situation. Furthermore, the demonstration had in fact turned illegal the very moment the riots began and thus ongoing demonstrators were violating the Order Act. For this reason, the police was under a duty to intervene. According to the Court, it could not be considered grossly careless to fire warning shots in the occurred

situation. The unfortunate outcome of the situation can't be blamed on the individual policeman.

5. Faced with the acquittal verdict, John's mother Maria Johansson directed claims against she Government of X-land for damages because of the psychological distress she suffered. As legal ground for the claim she referred to Article 2 of the European Convention on Human Rights since there were no other legal grounds for damages available in X-land's constitution. Although the policeman who shot John couldn't be sentenced under the provisions in the Penal Code, Maria Johansson held that the State has a positive obligation to prevent this kind of behaviour. A victim of the State's failure to protect the rights and freedoms laid down in the Convention must be rewarded compensation.
6. The District Court dismissed the claims on the ground that there is no legal basis for such claim against the State. The European Convention on Human Rights does not form the ground for compensation in a civil action against the State. According to X-land's law, compensation can be given to relatives of a person killed by misuse of office in the exercise of public authority. Since such crime is not established in the present case, however, there is no legal ground for the claim. The District Court added that it was indeed possible under the constitution for the state to award damages without an explicit legal ground. This would however require extraordinary reasons. The Court held that no such reasons had been shown in the present case.
7. Maria Johansson took her case to the European Court of Human Rights. According to Maria Johansson, the killing of John and the failure to convict the police and award her damages violated Article 2 and Article 13 of the Convention. She argued that the State had created the dangerous situation by granting permission for the two demonstrations at the same time, and that the police acted on a preconceived idea of John's intentions based on fear and dislike of the Z-group. This also raises the right set out in Article 14. Maria Johansson also claimed that the lack of effective and objective investigations of all the circumstances concerning the killing of John violated Article 2. Moreover, she argued that the right to freedom of peaceful assembly in Article 11 was violated since the police had no legal ground for intervention against John in the first place. The applicable provision in the Order Act is unpredictable and unclear, since it is impossible to determine whether a participation in a demonstration is lawful or not.
8. The Government contested any violation of the European Convention on Human Rights in respect of the death of John and the subsequent legal actions and investigations. The problems and conflicts between different ethnic groups in X-land oblige the State to take serious actions to protect public and private property and to secure the safety of people. The relevant provision in the Order Act is necessary to protect the people from violence and damage and the application of the provision is clear and predictable. The protection for the European Convention on Human Rights in X-land is sufficient since compensation is rewarded relatives in cases of unlawful killing.
9. The European Court of Human Rights declares that there are legal conditions for a trial in the European Court of Human Rights and invites the parties to develop their grounds and argumentation in one script. The parties are not bound by the articles invoked in the proceeding so far and may thus add or remove articles as they find suitable.

ANNEX 1 – RELEVANT LAW IN X-LAND

Penal Code

Section 14 – The Right of self-defence

An act committed by a person in self-defence constitutes a crime only if, having regard to the nature of the aggression, the importance of its object and the circumstances in general, it is unjustifiable. A right to act in self-defence exists against an initiated or imminent criminal attack on a person or property.

(...)

Section 20

A person who in the exercise of public authority by act or by omission, intentionally or through carelessness, disregards the duties of his office, shall be sentenced for misuse of office to a fine or imprisonment for at most two years.

(...)

Section 22

A person who through carelessness causes the death of another shall be sentenced for negligent homicide to imprisonment for at most two years.

Order Act

Section 3

Demonstration requires prior permission issued by the Order Authority. The permission is revoked immediately if the demonstration turns violent or causes damages. A person who demonstrates without permission shall be sentenced for crime against public order to a fine or imprisonment for at most six months.

Police Act

Section 1

It is the duty of the police to

prevent crime and other disturbances of public order or safety,

maintain public order and safety, prevent disturbances of the same and take action when such disturbances occur,

carry out investigations and surveillance in connection with indictable offences,

provide the public with protection, information and other kinds of assistance, whenever such assistance is best given by the police.

(...)

Section 7

A police officer may, in so far as necessary, use force in his exercise of public authority if he is attacked, threatened or hindered in his prevention of crime.

Damages Act

Section 5

The State shall award compensation to a person injured or damages to property caused by misuse of office, Penal Code Section 20. If such misconduct leads to death, the close relatives of the deceased shall have right to compensation for mental distress caused by the death.