

CASE – MOOT COURT COMPETITION 2011

1. X-land had for a long time been a major power in the Central European region. For many years one of the most popular countries in Central Europe, the economy of X-land had been the most emerging and successful in the region. The economy had been heavily dependent on tourism, which had soared thanks to X-land becoming a member of the EU five years ago after being a candidate country for some time.
2. However, by the end of 2007, a suicide bomber hit one of the most popular markets, killing 43 people and injuring 130. Officials were not able to identify the bomber, nor could they suggest a motive. The attack led to political problems for the governing Conservative Party as reports about the attack spread around the world. The economy took a huge hit when tourism inevitably halted, and many shop owners and hotels had to close within just a few months.
3. By the end of 2008, as a result of a combination of the world financial crisis and increased government spending, X-land faced its most severe crisis ever. In an attempt to regain control, the governing Conservative Party implemented a bailout package offered by the EU and the IMF. The bailout package consisted of high-interest loans and demands from the EU and the IMF to dramatically cut government spending.
4. Protests were widespread when taxes were increased and the minimum wages were lowered. Several attempts by the government to boost the economy failed, and the unemployment rate climbed in 2009 to the highest in the EU by a wide margin. In December 2009, X-land's debt rating was decreased to a BB-, a junk status by Standard & Poor's. The stock market declined heavily in response to this announcement. Revisions in early 2010 showed increased deficit and debt levels, signalling a recession harsher than originally feared.
5. Mid 2010 the economy nevertheless started to recover. A creative new accounting practice by the government kept the numbers in black and also helped keep the EU and the IMF from making any more demands. Rising house prices due to foreign investors' acquisition of property led to a real estate boom, and during the last quarter of 2010, statistics showed that tourism had started to increase by large numbers. X-land was finally starting to recover from the horrible attack.
6. On January 12th 2011, a letter was delivered to the government headquarters. The letter contained an anonymous threat, stating that at 18.00 the next day, five more markets would blow up unless the Conservative Party immediately chose to step down from power and publicly announce a new election. The government, unsure of what to do and highly unwilling to cease power, immediately called for an emergency meeting with the Department of Defence, the Department of Justice and the National Police. Even after all resources had been mustered, no solution was to be found. Panic started to spread within the ruling party. X-land could simply not afford another attack. Not only would innocent people get killed, the fragile tourism industry would vanish, sending the country back to the poverty and misery it had experienced in the 20th century.

7. Early next morning the Chief of Police received a call from an unknown person, pointing out Miss L – a well-known business lawyer – as the mastermind behind the threats. Eager to act fast and save not only lives but also the future of the nation, the Chief of Police immediately carried out an arrest of Miss L.
8. Miss L was quickly brought to the police station. During the interrogation, some suspicions were raised against Miss L. However, Miss L continuously denied any involvement in the planned attacks, and she refused to collaborate any further without a lawyer. Being much aware of the urgency of the matter, and the short amount of time left to act, the Chief of Police felt that his options were quickly disappearing. Something had to be done. It was time to act.
9. On a sudden impulse, the Chief of Police told Miss L that he was going to order that she be injected with a drug that would cause her to tell the truth – a truth serum. However, he also told her with a malicious smile that the drug might have some side effects, suggesting it could cause pain, dizziness and anxiety, all unintentional of course.
10. Miss L, picking up the threat behind the Chief's words, felt frightened, distressed and very uncomfortable. Out of fear of being exposed to the measure she was threatened with, Miss L suddenly chose to disclose an address where she claimed the bombs and the bomb-makers were located.
11. The Police immediately searched the apartment at the address Miss L had given them, though nothing was to be found except various books and papers. The address had turned out to be same as the one of her private law office downtown.
12. However, at 18.00 when the bombs were supposed to go off, nothing happened. Everything remained peaceful and the Police, after having carried out an unsuccessful investigation, would later define the threat as a prank.
13. After Miss L later was released, and after being permitted to contact her lawyer, the Chief of Police told her – “Oh by the way, no truth serum exists, or has ever existed. And I had no intent to harm you in any way.”
14. A few months later, Miss L was charged with the crime of money laundering. Apparently the Police had seized evidence of money laundering – accounting books and transaction receipts belonging to her – during the search at the address she had disclosed to the Police. Links between the money laundering and some terrorist organizations were suspected, but it could never be firmly established.
15. Miss L claimed during the upcoming trials that the evidence against her should not be allowed in Court, due to the principle of “fruit of the poisonous tree”. The District Court would not listen to that argument and dismissed her claim. Miss L was sentenced to one year in prison. The Court of Appeal upheld the judgment and the Supreme Court did not grant notice of appeal.
16. Miss L also filed a police report regarding the threat she received by the Chief of Police. The Police dismissed her complaint, and consequently refused to start an investigation, claiming that “no unlawful conduct had taken place”.
17. Miss L later, with help from her lawyer, chose to lodge a complaint to the European Court of Human Rights. She claimed that X-land had violated her rights established in Article 3,

Article 6 and Article 8, when arresting her, threatening her with an unknown substance, searching her law office, and sentencing her to prison for money laundering using unlawful evidence.

18. Miss L claimed that the Chief of Police's treatment of her was in breach of Article 3, and that the investigation regarding this treatment had neither been serious nor effective in practice, also in violation of Article 3. Furthermore she claimed that the admission and use of evidence that had been obtained only as a result of a statement extracted from her in breach of Article 3, was a violation of her right to a fair trial in Article 6. Miss L also claimed that the carried out search at her law office constituted a breach of Article 8.
19. X-land replied and claimed that the application was manifestly ill-founded and that it should not be considered admissible. Furthermore X-land stated that no breach of Article 3, 6 or 8 had taken place. X-land claimed that the Chief of Police's conduct did not amount to a threat, and that the search at her law office had been carried out in accordance with the law. Additionally, X-land claimed that national security was threatened at the time, and that it should be taken into consideration. However, X-land admits that no derogation was made.
20. The European Court of Human Rights decided that conditions were at hand to try the case. The Court has now asked the applicant and the State to develop their grounds and arguments further in writing. The parties are not bound by the articles or arguments that so far have been evoked but are free to expand on or reduce their grounds as they see fit.

ADDENDUM

Relevant Code of Judicial Proceedings of X-land

Section 19 – Search of premises

- (1) If there is reason to believe that an offence punishable by imprisonment has been committed, houses, rooms, or closed storage spaces may be searched to look for objects subject to seizure or to detect other information of potential importance to the inquiry of the offence.
- (2) The premises of a person, other than one reasonably suspected of having committed the offence, may not be searched unless the offence was committed there, the suspect was apprehended there, or extraordinary reason indicates that the search will reveal an object subject to seizure or other information concerning the offence. A suspect's consent is not adequate to justify a search of his premises unless the suspect personally initiated the request for the search.
- (3) A search of premises may be ordered only if the reasons for the search outweigh the consequent intrusion or other detriment to the suspect or to another adverse interest.

Section 25 – Evidence

- (1) After evaluating everything that has occurred in accordance with the dictates of its conscience, the court shall determine what has been proved in the case.
- (2) All evidence that is relevant shall be admissible.