

CASE STUDY REGARDING THE PRIORITY APPLICATION OF THE INTERNATIONAL LAW RULE TOWARDS THE INTERNAL LAW RULE

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***Abstract:** Pornind de la principiul priorității de aplicare a normelor internaționale în dreptul intern în domeniul drepturilor și al libertăților fundamentale ale cetățenilor, legislatorul roman a făcut eforturi considerabile încercând o raliere a legialției interne la legislația comunitară. Prezenta lucrare reprezintă un studiu privind aplicarea cu prioritate a normelor internaționale în fața normelor dreptului intern.*

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Starting from the general principle in pursuance of the international normative regulation applicable to a specific field of the social life, all these being once ratified by a state that signed the normative international deed that involves the above mentioned, prevailing the application of the intern norm that regulates the same domain. The Romanian legislator tried in his legislative elaboration activity to respect this constitutional principle. In this way are notable the efforts of Romania to redeem the whole legislation with the European one.

This process is still long standing and it supposes a considerable effort and a very good knowledge of the treaties, conventions, agreements and other judicial deeds that have an international character.

The role of discovering and punishing those who don't apply this principle belongs to the internal and international judge instance.

On 27th June 2000, the Courthouse from Deva was named to solve the request of calling into judge, couched and named subsequent by the plaintiff V.R.M. contradictory with the County Military Center Deva, National Defense Minister and the Romanian

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State sit by the public Finance Minister. There was a demand to oblige them to pay 50.000.000 lei moral damages¹.

In the motivation of his own action, the plaintiff showed that on 25th June 1998 was recruited in the Romanian Military Forces by performing the compulsory military soldiering. He declared that he was fit from the medical point of view.

The plaintiff performed his first part of the military soldiering at UM 01719 Deva. From 22nd October 1998, he was moved to UM 01784 Râmnicu Vâlcea because of the Minister of National Defense internal needs.

The plaintiff got ill in this military unit because of the hard instruction conditions. This fact led to declare that he wasn't fit from military point of view so that he was pulled out from the military service. The defendants required repelling the action as being inadmissible. The Courthouse retained that the plaintiff's conscription was made under the rule of Art. 15 from Law nr. 46/1996² by a Commission made up within C.M.J. Hunedoara. After this he was medically examined in accordance with the art.16 from the same normative deed. At the conscription the medical examination was made according to the medical norm approved by the National Defense Minister and to the general rules nr. 25/1993 and 38/01.12.1996, through which is established the constitution of the medical commission and the way of the recruits' examination.

According to the Article 13, the medical examination is following the medical consultation made by specialist doctors all these being followed by the consultation made by a general doctor. Finally the conclusions upon the recruit's abilities are recorded in a special evidence sheet. In the article 16 and 17 it is shown that if the recruit needs supplementary specialty examinations, and all these involve special medical equipments that are not in the military center, he will be sent for this to special hospitals.

In the annex number 5 to the Common Order of the National Defense Minister – Healthcare Minister number 38/1996 are presented the medical materials and instruments used within the conscription commissions. Through all these, the most complex instruments are: equipment for measuring the blood pressure, stethoscope, otoscope, electrical optotyhipe and the ophthalmoscope. These instruments do not give to the doctor the possibility of discovering and diagnosing more complex diseases. So, after a summary and superficial medical checkup, just as it results from the declarations of the heard witnesses, the plaintiff was declared medically fit for military service.

The plaintiff was suffering by a congenital aorta disease in a quiescent stage. The disease allowed the physical effort. In the previous period the plaintiff was a football player in a sport club and later he worked as an unqualified worker on a building site, these both activities suppose intensive physical effort. He never complained of having throes or symptoms that made him thinking of suffering by aorta bisogmoidy. For this reason the plaintiff didn't declare that he was suffering by any heart disease at the medical checkup.

Subsequent to the recruitment, the plaintiff was distributed to the permanent guard service within the UM 01784 Vâlcea. Because of the hard working conditions and of breaking the military rules, the plaintiff got ill being diagnosed with profound pharyngitis trachea. The plaintiff's health condition was getting worse; this is the reason why he was

¹ *Civil sentence number 1862/2002 of Deva Courthouse*

² Law No. 46/1996 regarding the population preparation for defense published in the Official Journal number 120 from 12.06.1996

hospitalized several times in the Vâlcea County Hospital being diagnosed with mixed pneumonia. He left the hospital without being recovered.

Finally he was hospitalized in the Military Hospital in Pitești. The plaintiff was correctly diagnosed with congenital aortic disease, being considered incapable for military services. As a medication, the plaintiff made some repeated heart surgeries. From the point of view of the work capacity, he was integrated in the second grade of invalidity at the age of 22.

The medical expertise stated that the pulmonary infection got into the military soldiering constituted the start point of an endocardiac graft on the aortic valves, morphologically modified naturally, all these started the aortic deficiency. The experts affirm that the disease can be discovered only at the echocardiography examination. It couldn't be detected by using the stethoscope.

Having in view the principle of the priority application of the international law norm towards the internal norm, the fond instance observed that the Romanian law-maker didn't insure the law guarantee conditions for the citizen's health, creating the premises of a superficial medical examination and inadequate for detecting some serious diseases as it is the one of the plaintiff's. He requires more complex specialty investigations.

So, the provisions of the Law 46/1996 and of the two common orders don't guarantee and assure the citizen health right as it is stipulated in the article 12 from the International Pact regarding the economic, social and cultural rights ratified by the Romanian State³. Making a correct application of the principle applied above the fond instance obliged the defendants to pay moral damages.

The Hunedoara Courthouse didn't agree with the reasons of the action in order to be admitted and it annulled the sentence of the Law Court by motivating that the administrated evidence can't be retained a case connection between the pulmonary affection got during the military service and the cardiac congenital one. It was shown that the insufficient medical examination made at the conscription can't constitute a culpable fact for starting the plaintiff's congenital disease and his pain, accepting that a rigorous examination could have been led to declare him military incapable.

The Courthouse decision is criticized for the fact of not having in view that if in the normative deeds presented above, it would be assured for the plaintiff the conditions of a complete medical examination, the congenital disease would have been discovered, so that he couldn't be obliged to participate in the military service. So, the citizen health right would have been protected, not being so relevant the fact that the congenital disease could have been started subsequent discovering this. It is well-known the fact that after some superficial medical examinations with the opportunity of recruitment there are many young man who are recruited for the military service, this fact leading to many suicides, desertions and other accidents.

³ The International Pact regarding the economic, social and cultural rights ratified by Romania through the State Council Decree nr. 213 from 31st October 1974.

