



Size restriction to become a military doctor was discriminatory

In today's **Chamber judgment**¹ in the case of [Moraru v. Romania](#) (application no. 64480/19) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 14 (prohibition of discrimination) taken together with Article 2 of Protocol No. 1 (right to education) of the European Convention on Human Rights.

The case concerned an allegation of discrimination in the admission process to become a military doctor. In particular, the authorities had refused in 2018 to allow the applicant to sit the entrance examination for military medical school because of her size. She was 150 cm in height and weighed 44 kg. The Ministry of National Defence had argued that the law required all military personnel to carry out any mission and that that had meant being able to carry a standard soldier's kit weighing around 57 kg.

The Court found that the reasons for the applicant having been treated differently to other women – who had met the weight and height requirements – had not been “relevant and sufficient”. In particular, the domestic courts had accepted the MND's argument equating size with strength, without backing up their decisions with an assessment of the law or any research or statistics.

Even though size had recently been eliminated from the MND's list of selection criteria and that the applicant was now free to apply to the military academy of her choice, the Court accepted that she had nonetheless been at an unfair disadvantage when she had applied in 2018.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicant, Elena Moraru, is a Romanian national who was born in 1999 and lives in Geamăna (Romania).

In 2018 Ms Moraru applied to sit the entrance exam to study to be a military doctor in one of the two State-run universities. Her application was, however, refused because her weight and height were below the requirements set out by the Ministry of National Defence (“the MND”).

She brought an action in the courts, which was ultimately unsuccessful in 2019.

Essentially the courts accepted the MND's justification for the refusal, namely that the relevant domestic law required all military personnel, including doctors, to be able to carry a standard soldier's kit weighing approximately 57 kg. The restriction at issue therefore aimed to create a military force able to participate in any mission. The courts also found that the case raised no issue of discrimination on the basis of sex because the height and weight requirements were different for female and male candidates.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying on Article 14 (prohibition of discrimination) taken together with Article 2 of Protocol No. 1 (right to education), the applicant complained that she had been discriminated against on grounds of size, arguing that because of the restrictions she had not been able to prove her physical strength and suitability to become a military doctor.

The application was lodged with the European Court of Human Rights on 4 December 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Yonko **Grozev** (Bulgaria),
Pere **Pastor Vilanova** (Andorra),
Jolien **Schukking** (the Netherlands),
Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

Decision of the Court

First, the Court noted that Ms Moraru had not argued that the height and weight restrictions had been discriminatory on the basis of sex, but on the basis of size – the courts had moreover been categoric in confirming that.

That said, she had been treated differently to other females whose height and weight had met the relevant requirements set by law.

The Court had to decide therefore whether the authorities' reasons for such a difference in treatment had been "relevant and sufficient".

Overall, the Court found that the domestic courts, relying exclusively on the MND's arguments, had not provided any justification concerning the connection between a candidate's size and his or her strength. In particular they had made no assessment of the legal basis for the MND's assertions as regards the duties of a military doctor, and which ones in particular would require physical strength. Nor had they apparently backed up their decisions with any studies, research or statistical data, or any type of empirical evidence.

The Court therefore considered that the domestic authorities had failed to objectively and reasonably justify the disadvantage faced by the applicant in the admission process to study to be a military doctor, in violation of Article 14 taken together with Article 2 of Protocol No. 1.

Just satisfaction (Article 41)

The Court held that Romania was to pay the applicant 7,500 euros (EUR) in respect of non-pecuniary damage.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.