

TO THE EUROPEAN COURT OF HUMAN RIGHTS

The claimant in this procedure is MR. _____, with D.N.I. (National ID card) number _____, born in San Martín de Moreda, in the province of _____ (Spain) on _____, of Military profession Sergeant Major of the Civil Guard, with address at _____, C/ _____, n. _____ (_____, Spain), who acts on his own behalf and right and who will be represented in the actions carried out before this Court, all of them, by Mr. Antonio Suárez-Valdés González, lawyer of the Bar Association of Madrid (*Ilustre Colegio de Abogados de Madrid*), 52.396, with address for notification purposes at C/ Bravo Murillo 101 – PL 11 – 28020 – Madrid, Spain, FAX nr: +34 91.535.77.71, and email address asuarez@suarezvaldes.es (It is expressly requested to send any notification to the address of the lawyer).

This procedure accuses the SPANISH STATE, as subscriber to the Convention for the Protection of Human Rights and Fundamental Freedoms, after having ratified it on the 26th of September, 1979.

By virtue of the aforementioned, before this High Court in accordance with the law, I hereby state:

In my legal capacity, I lodge this claim on behalf of my clients bringing a **LAWSUIT FOR VIOLATION OF THAT WHICH IS STIPULATED IN THE CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS.**

We thereupon proceed to relate the facts of the case and detail the fulfilment of the procedural requirements demanded for the admission of the present lawsuit.

FIRST. SUCCINCT STATEMENT OF THE FACTS OBJECT OF THE CLAIM

The appellant is a Sergeant Major of the Civil Guard (“Guardia Civil”, Spanish Police Corps), who is suffering a depressive-anxiety disorder as a result of work related stress suffered in his last position, not being suitable for service and with a disability degree of 40%, as appears in the medical report of the *Junta Médico-Pericial Ordinaria* (Ordinary Medical Advisory Commission).

The appellant rendered his police service without a break normally and in an uninterrupted manner for the whole of the assigned postings, as can be gathered from examining his service record, which includes destinations in the Basque Country (province of Álava), in antiterrorist units such as G.A.R. (Rural Action Group) and in the intervention unit GRS (Security Rural Group), which he carried out to complete satisfaction, said service discarding the existence of any kind of previous psychological vulnerability. The appellant spent his professional life trying to obtain a posting in his homeland, León, and finally got it in May 2005. Nevertheless, as consequence of the stress the agent underwent in his assignment at GATI (Information Technologies Support Group) in León in which he performed delicate IT functions - due to the lack of means together with pressure from the top - he suffered burn-out topped by his

compulsory transfer to Valencia, which the appellant identified as a punishment for his continuous reporting of the lack of means by which his work was carried out. Said situation ended up overwhelming him and despite his attempts to endure, it finally caused his sick leave on the 6th of February, 2006. The appellant had never had in his service record or medical history, any psychological leave registered prior to February 2006.

With a date 17/07/2009 it was agreed by the Deputy Secretary for the Ministry of Defence to declare the permanent disability of this agent beyond the course of his duties, taking as grounds the incorrect report included in the minutes 259/08, passed on 24/07/2008 by the Ordinary Medical Advisory Commission nr. 41 of the Health General Authority of the Spanish Ministry of Defence, without even carrying out a brief medical examination of said agent and ruling, in an absolutely surprising way, that the anxiety disorder suffered by the appellant that disables him for performing the due functions of his corps an rank has developed as a consequence of a supposed robbery attempt and a supposed sexual assault suffered by the agent in 1992 in Barcelona, when the appellant had never been in that city at any time in his life.

Since then, the following vicissitudes have taken place in the procedure:

A) Having presented the appropriate Administrative Litigation requesting recognition of the right of the appellant to have acknowledged the permanent disability from service that had been declared by court decision of the Deputy Secretary for the Ministry of Defence, with a date 17/07/2009, as derived from active service, was sent with the number of Abridged Proceedings 344/2008, to the Central Administrative Litigation Court Nr. 2 of Madrid (Spain), said Court passed a sentence on January 13th, 2010 by which it was agreed “TO ESTIMATE THE ADMINISTRATIVE LITIGATION APPEAL, VERSUS THE COURT DECISION OF 17/07/2009 OF THE MINISTER OF DEFENCE, WHO DECLARES THE APPELLANT IN SITUATION OF DISABILITY FOR THE SERVICE DUE TO INSUFFICIENT PSYCHOPHYSICAL CONDITIONS, BEYOND THE COURSE OF HIS DUTIES, AND, BY VIRTUE THEREOF, I COME TO DECLARE THE NULLITY OF IT, FOR NOT BEING ACCORDING TO LAW, ORDERING THE ADMINISTRATION TO OBSERVE THE PRESENT DECLARATION, HAVING TO ACKNOWLEDGE THE DISABILITY FOR SERVICE OF THE AGENT DERIVED FROM ACTIVE SERVICE, WITH THE INHERENT EFFECTS, SINCE THE 11TH OF NOVEMBER 2008”.

In this sense during the trial it was pointed out that neither in the year 1992 had the appellant had a posting to Barcelona nor, during that year, had he suffered from any kind of psychological leave which could have caused the decision of the Commission, nor suffered any robbery attempt, nor of course supposed sexual assault, being that extreme a glaring error which the minutes commit, mistaking the patient, as neither in that year nor in previous or later years had the agent set foot in said locality. Furthermore and this is definitive, the appellant did not have any kind of psychological leave on his service record before February 2006.

In this sense this party requested through others that the defendant offer evidence to prove that which is reported by the appellant in said sense, his Honour having agreed in requiring the appropriate reports and with the documentation provided that all this confusion be clarified, as a report is included from the Ordinary Medical Advisory Commission of the Health General Authority with a date 17/07/2008 which states that the origin of the pathology of the agent is of traumatic aetiology, without pointing to any relation with a robbery or anything similar. This report was written without even carrying out a single medical examination of the agent. But the

most significant part of the documentation provided is the fact that a report by the Lieutenant Colonel Instructor appears in it with a date 11/11/2008 admitting that in the minutes 259/08 there has been a mistake referring to the aetiology of the pathology that should have been rectified, having involuntarily taken the data from the minutes of 258/08.

As a reinforcing rule the judge referred to Art. 47.2 of the legislative Royal Decree 670/87, of 30th of April, through which the Rewritten Text of the Law of Passive Classes of the State was approved, and which establishes the regulation of extraordinary pensions and their *de facto* causes, stating that the permanent disability from service or personnel disability will initiate an extraordinary retirement pension: *As long as it happens, by accident or illness, in the course of the duty or as consequence of the active service.* In case of illness being the cause of disability, this must be recorded as contracted directly in the course of the duty or as direct consequence of the nature of the service carried out. In section 4 of this precept in the account provided by the Law 14/2000, of 28th of December, of Fiscal, Administrative and of Social Order Measures, according to which: ***Call of duty will be presupposed, excepting proof against it, when the permanent incapacity or the death of the civil servant has occurred at work, in work time and on work location.*** Regarding the cause effect relationship between the service rendered and the illness that initiates the disability, the sentences of the *Audiencia Nacional* (Spanish National High Court) have repeatedly declared that: *The existence of a cause effect relationship, as constitutive element of the right expected, must be sufficiently proven by the claimant (...)*, and it must be done in the terms required by Art. 47.2 of the Rewritten Text of the Law of Passive Classes of the State, which in order to acknowledge the extraordinary pension, demands for the disability to be caused by accident or illness during active service or as a consequence of it.

B) The Public Prosecutor gave notice of appeal against this sentence. By providence passed with a date of 5th of February, 2010, said notice of appeal given by the Public Prosecutor was admitted to procedure, giving to the appealing party the mandatory contesting formalities for the appeal, and being lodged the 18th of March 2010 in the appropriate time and manner a text in opposition to the notice of appeal given by the defendant, established in the Article 85.2 of the Law 29/1998, of 13th of July, Regulatory of the Administrative Litigation Jurisdiction.

C) With a date of 16th of June 2010 the Administrative Litigation Chamber, Fifth Section, of the Spanish Supreme Court dictated a sentence in the notice of appeal 72/2010, which estimates partially the appeal given by the Spanish Public Defender Office against the Sentence of the Central Court of the Administrative Litigation Chamber nr. 2, dated 13th of January 2010, in the Abridged Procedure nr. 344/2008, by which the administrative litigation presented by this party is considered, against the resolution of the Minister of Defence dated 17th of July 2009, and it is agreed to declare the permanent disability due to insufficient psycho-physical conditions, as occurred in the call of duty and with effect from the 11th of November 2008; partially revoking it, **in the sense of declaring the permanent disability for service due to insufficient psycho-physical conditions, outside the call of duty**, confirming the rest of the declarations of the said sentence.

In point two of the holdings of law of said sentence, despite the fact that the civil doctors - whose medical reports are stated - , the expert acting in the hearing of the trial and the very Medical Courts of the Ministry of Defence had confirmed the responsive nature of the pathology suffered by the claimant, the Spanish National High Court

ignoring all probative elements in the procedure and without any other proof in which to hold its declaration, refers that *it can not be catalogued as call of duty for the purpose of permanent disability due to insufficient psychophysical conditions, the disorder of psychiatric nature whose cause of stress stems from the vicissitudes typical of the military career... such as suspension of posting..... In the same way, as a general rule we have established that one thing is what triggers the first symptoms of mental illness, which logically has to be described as an stressful element, and another thing is to say that this suffering evolves because of the special intrinsic conditions of the person suffering a stressful situation, who given his personality determines the creation of a disabling disease, as in these cases the appearance of a disabling disease doesn't derive from that particular situation of service, but from the very endogenous nature of the person; its aetiology is basically dispositional, which means, depending on the constitutional features of the individual, whose clinical dysfunction when facing the demands of the environment is unpredictable... it is the psycho-vulnerability of the patient that determines the existence of the chronic suffering that generates the illness and due to that it is not feasible to project the legal concept of call of duty on these assumptions.*

Said decision on the supposed existence of a psycho-vulnerability in the appellant which would predispose the development of a pathology or about the endogenous nature of the aetiology of the pathology suffered by the agent constitutes a real invention by the **Administrative Litigation Chamber, Fifth Section, of the Spanish Supreme Court**, which invents a series of data that do not appear stated in the procedure, contradicting the repeatedly referred responsive nature of the pathology of the agent, expressing its outdated opinion of understanding that all disabling psychiatric pathologies have a dispositional or endogenous aetiology, having its final cause in the specific psycho-vulnerability of the individual, a criterion completely against the most modern psychiatric theories and the reality of the police tasks of the claimant, who rendered normal service in his police corps for 25 years, subject to the highest levels of stress.

D) In writing presented with a date of 1st of September 2010 by the General Attorney of the Spanish Court, Mr. Javier Freixa Iruela, in the name and representation of Mr. , brought **nullity of procedural steps** of the referred procedure, appealing to the Article 241.1 of the Judiciary Organic Law, requesting literally: "that considering the present writing and accompanying documents, I hereby request to admit and consider them lodged, in appropriate time and manner, NULLITY OF PROCEDURAL STEPS against the sentence with a date 16/06/2010, on the notice of appeal given by the Spanish Public Defender Office against the sentence pronounced with a date 13th of January 2010 for the appeal processed before the Administrative Litigation Chamber, Fifth Section, of the Spanish Supreme Court, with Appeal Pleading reference number 72/2010, passing on that day a resolution, after the appropriate legal requirements, by which it should be acknowledged the nullity of it reinstating the actions to the moment immediately before its verdict". Finally, said nullity of procedural steps, was dismissed by the Providence with a date of 2nd of November 2010.

E) With a date of 15th of December 2010, the appellant gave appeal for legal protection before the Spanish Constitutional Court, which resolved the 11th of April, 2011, not to admit the appeal due to lack of constitutional relevance. Said court order is not

impeachable; having notified this party with a date 18th of April 2011, the moment from which the maximum deadline to bring the present appeal would start counting.

The agent **started his sick leave on 06/02/2006**. A document was sent to the Human Resources Service of the Civil Guard with a date of **14/03/2008**, in which the order given by the **Head of the Personnel Department** of said Corps was stated, in the sense of arranging those things necessary for the proceedings of opening a file on insufficiency of psycho-physical conditions of the agent, he having been on sick leave for more than two years, according to that established in Art. 97.2 of the Law 42/1999, of 25th of November. **This party was notified of the procedure of opening a file on insufficiency of psycho-physical conditions with a date of 07/05/2008**. This party understands that the **maximum deadline for resolution** of said file is **3 months**, despite that which said Communication states, as the ruling that applies to these kinds of files is that established in Art. 44.1 of the Law 30/1992, regarding Art. 42.3 of the same legal text and in the 1st Temporary disposition of the Law 42/1999, of 25th of November.

Acknowledging receipt of the order of initiation with a date of **15/04/2008**, by the Examining **Commander** of the file of insufficiency of psycho-physical conditions assigned to the declarant, **the suspension of the deadline** of the consecutive steps of the procedure **was agreed in the same act**, according to that established in Art. 45.2.c) of the Law 30/1992, of 26th of November, **awaiting a medical report from the Medical Advisory Commission of military health**, without indicating the understood deadline during which the processing of the file was pending, by which, due to the valid general rule in these cases a deadline of three months will have to be estimated as agreed, as the rule does not allow the examiner to interrupt said deadline, according to that established in Art. 42.5.c) of the Law 30/1992, of 26th of November.

The **Medical Advisory Commission nº 41** issued **certificate number 259/08** with a date of **24/07/2008**, by which the agent is diagnosed as having a pathology which consists of an **Anxiety Disorder, of exogenous aetiology (267-A)**, with a coefficient 5 assigned, **ruling that the pathology he suffers disables him permanently for service as Civil Guard** and completely from the typical functions of his corps, rank or career.

The Medical Advisory Commission nº 41 without even carrying out a simple medical examination of the agent declared, in a completely surprising manner, that the anxiety disorder the appellant suffers, and which disables him from the tasks that are typical of his corps and rank, has developed as a consequence of a supposed robbery attempt and a supposed sexual assault, suffered by the agent in 1992 in Barcelona, when the appellant had never been in that city in his life. Of course, neither has the appellant ever been sent to Barcelona, nor had he even visited that city in that year, nor suffered during that year any psychological leave that could cause the decision of the Commission, nor has he suffered any robbery attempt or sexual assault being said extreme fabrication or blatant transcription error of the minutes in which they had confused patients, as neither in that year or the ones before or the ones after had the agent set foot in said locality. Furthermore, this is definitive: The appellant did not have any record of psychological leave in his service prior to February 2006.

In this sense this party requested through others that the defendant provide evidence to prove that which was reported by the appellant in said sense, his Honour having agreed in requiring the appropriate reports; and with the documentation provided it is clear, as the report from the Medical Advisory Commission of the Health General Authority with a date of 17/07/2008

states, that the origin of the pathology of the agent is of traumatic aetiology, without pointing to any relationship to a robbery or anything similar. This report was made without even carrying out a single medical examination of the agent. But the most significant part of the documentation provided is the fact that in it a report by the Lieutenant Colonel Instructor appears with a date of 11/11/2008 **admitting that in the minutes 259/08 there has been a mistake** referring to the aetiology of the pathology that should have been rectified, having involuntarily included the data from the minutes 258/08.

Aside from this fact, the medical advisory commission nr. 41 issued new minutes with a date of 25/11/2008 in which **the reference to the robbery had been eliminated and stated that the aetiology of the pathology was traumatic**, without establishing a relation to any fact in particular, a point that is absolutely incongruous, as the **traumatic kind of pathology necessarily has to appear associated with a concrete fact or situation**.

As we have said, we contribute the following series of medical reports in order to prove both the existence of the illness suffered by the appellant and its exogenous nature, or similarly that the pathology the agent suffers bears a cause-effect relationship with the activity of his job:

Reports issued by the psychiatrist M^a Encina Bravo Díaz Caneja, with dates 03/07/2008 and 23/05/2006, by which the appellant is diagnosed with a mixed adaptation-depressive disorder as a reaction to a stressful situation at work.

Report issued by the psychologist Israel González Barn, with a date of 07/07/2008, in which the appellant is diagnosed with a depressive-anxiety disorder as a reaction to a work problem.

Expert report consisting of the psychiatric treatment of the agent carried out by Dr. of Psychiatry María Luisa Zamarro Arranz and ratified before the Central Administrative Litigation Court Nr. 2, through which it was unquestionably proven that the pathology suffered by the agent bears a cause-effect relationship with his service as Civil Guard.

SECOND. ARTICLE OF THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS THAT THIS PARTY CONSIDERS INFRINGED BY THE CONTESTED RESOLUTION.

The claimant considers, regarding the first of the aspects debated in this act before the Court, that the sentence with a date of 16th of June 2010 passed by the Administrative Litigation Chamber, Fifth Section, of the Spanish Supreme Court in answer to the appeal 72/2010, by which the first appeal given by the Public Attorney's General Office is estimated partially against the sentence of the Central Administrative Litigation Court Nr. 2, with a date of 13th of January 2010, in the Brief Procedure nr. 344/2008, which estimates the administrative litigation appeal lodged by this party against the court decision of the Minister of Defence of 17/09/2009, which agrees to declare the permanent disability due to insufficient psychophysical conditions in the call of duty and with effect from 11th of November 2008, partially revoking it, in the sense of declaring the permanent disability for the service due to an insufficiency of psychophysical conditions, beyond the call of duty, confirming the rest of the pronouncements of said sentence, infringes greatly Article 6 of the European Convention of Human Rights stipulates which says: 1 Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, which will decide the lawsuits over their rights and obligations of a civil