



Chisinau, Republic of Moldova

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## **REPORT ON THE IMPLEMENTATION OF THE CONVENTION ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE REPUBLIC OF MOLDOVA IN RESPECT OF LAWYERS**

**62<sup>nd</sup> Session (September 2017)**

*The Association “Women – Lawyers of the Republic of Moldova” (FAM Association) is a professional, nongovernmental, apolitical, noncommercial, nonprofit association established in 2015 by a group of women – lawyers, defenders of human rights.*

*The idea of establishing the FAM Association has been voiced in the autumn of 2014, at the first National Forum of Women – Lawyers, which was organized under UN Women. However, the need to establish an association that would promote women-lawyers’ rights existed and was felt much earlier. One of the main objectives of the Action Plan within the Forum was to institutionalize this idea. And this was the cornerstone for the FAM Association and the first step to unite the women-lawyers for the purpose of promoting and defending their social, civil, economic, and professional rights and guarantees. On 27 March 2015, the Council of the Lawyers’ Union (Bar Association) of the Republic of Moldova, through unanimous vote, recognized the FAM Association as a component part of the Lawyers’ Union.*

*The main goal of the FAM Association is to defend the rights and interests of women-lawyers and intern women-lawyers. Although it is a young institution, the problems which the FAM Association tries to solve are old and complicate. The FAM Association intends to contribute to consolidating the role of women-lawyers for the purpose of integrating and*

*tackling the lawyer profession from the human rights' perspective. In its activity, the Association promotes and makes lobby for policies and systems based on the principle of equality of chances regarding the social, civil, economic, and professional protection of lawyers.*

## **INTRODUCTION**

1. The present report describes the violation of economic and social rights, especially the discrimination of women – lawyers and lawyers in general in the Republic of Moldova. The information provided in the Report refers to the non-fulfilment of commitments assumed by the Republic of Moldova for the purpose of implementing the principle of equality, preventing and combating discrimination, as well as ensuring equality of all the persons living in Republic of Moldova in the economic, social, and cultural areas.

2. The report refers to the failure of the Republic of Moldova authorities to create equal and nondiscriminatory conditions in the public systems of social insurance and health insurance, which would allow the lawyers from the Republic of Moldova to enjoy their social and economic rights, as well as social security including social insurance. The document provides as well suggestions and recommendations to be included in the Concluding Observations of the Committee for Economic, Social, and Cultural Rights regarding the rights of women-lawyers and lawyers in general in the Republic of Moldova.

3. The FAM Association enjoys this opportunity provided at the international level under the reporting procedure from August 2017 to the UN Committee for Economic, Social and Cultural Rights and submits this Alternative Report for the purpose of promoting the social rights of the lawyers and eliminating social inequity for lawyers.

4. *The present report is structured as following: (I) Current situation regarding lawyers' social insurance; (II) Current situation regarding lawyers' health insurance; (III) Current situation regarding lawyers' income tax; and (IV) List of suggestions and recommendations to be included in the Concluding Observations of the Committee on Economic, Social and Cultural Rights with the view to eliminate the discrimination of lawyers in the social, medical and tax systems.*

### **I. SOCIAL INSURANCE SYSTEM DISCRIMINATORY TO LAWYERS**

5. The lawyers in the Republic of Moldova do not enjoy and do not have access to a viable and efficient system of social insurance. Although formally the lawyers are considered to be socially insured persons, they benefit only from the minimum pension (alongside the uninsured persons) and death allowance.

6. Other social insurance benefits, such as the allowance in case of temporary loss of workability, childcare allowance, maternity allowance and other are not accessible for them. Hence, although the lawyers contribute to the social fund with the same amount as

the employee with the minimum salary per economy, they do not receive access to the same social insurance benefits.

7. The fact that the social security system is discriminatory towards lawyers was stated in a decision of the Council for Prevention and Elimination of Discrimination and Insuring Equality in 2014. Despite the decision which has recommended to the Ministry of Labor, Social Protection and Family to change the policy through granting to lawyers the whole package of social payments as in the case of other persons who pay the same amount of money for their social insurance, nothing changed.

8. According to the policy and legal framework in Republic of Moldova now, lawyers cannot afford to go on a sick leave, as they will receive no monetary support from the state, the lawyers cannot go on maternity, paternity leave and they cannot afford to go for a childcare leave as those social risks are not covered by the social insurance payments.

9. This situation is affecting disproportionately the women lawyers because they have the social role of main caregivers to their children and they are obliged to suspend their professional activity once they have a child. Having no income, they stay financially at the stake of their husbands or partners.

10. The problem derives from the fact that passing through a number of reforms since 1994, the lawyers' professional association never had the aim to create some private funds to be used to support lawyers in the risk situations provided in the public system of social insurance. But, at the same time, the lawyers are imposed on compulsory basis to participate in contributing to the social insurance and health insurance funds and transfer contributions to the public system of social insurance.

According to the official data of the Tax Inspectorate:

- In 2014, 1303 lawyers were registered as taxpayers and the annual contribution of every lawyer to social fund in 2014 accounted for 5,748 MDL;

The total input of the lawyers in 2014 – 7,547,124 MDL

- In 2015, 1202 lawyers were registered as taxpayers and the annual contribution of every lawyer to the social fund in 2015 accounted for 6,372 MDL;

The total input of the lawyers in 2015 – 7,659,144 MDL

- In 2016, 1068 lawyers were registered as taxpayers and the annual contribution of every lawyer to the social fund in 2016 accounted for 7,032 MDL and the health insurance policy was 4,056 MDL;

The total contribution of lawyers in 2016 – 7,510,176 MDL

11. **Conclusion to be drawn: Although the lawyers assume consciously and mutually the set obligation and pay the social insurance contribution, they do not benefit from the right to prevent, limit or eliminate the social risks provided by law, because authorities treat them as uninsured persons.**

12. **Hence, the authority managing the public system of social insurance – National Social Insurance Company, EXCLUDES in an illegal and unjustified way the LAWYERS FROM ALL THE FORMS OF SOCIAL PROTECTION PROVIDED THROUGH THE PUBLIC SYSTEM OF SOCIAL INSURANCE.**

13. **The women-lawyers are the most affected by these situations, because of this severe form of discrimination, they do not enjoy the social protection forms provided by the state and the monetary support provided through the social insurance system, to which they contribute on compulsory basis as provided in the legislation and from which other categories of taxpayers benefit in case of child birth, taking care of the child up to 3 years old, and for certain periods of temporary loss of workability.**

14. According to the discriminatory rule promoted and practiced by the National Social Insurance Company, the lawyers are provided from the public social insurance system only the minimum age-limit pension accounting for 961 MDL (46 EURO) and the one-time death allocation for 1000 MDL (47 EURO). **The lawyers are excluded** from all other protection forms established in the public system of social insurance, such as:

- allowance in case of sickness;
- maternity allowance;
- payment for family and support for children;
- allowance for temporary loss of workability, including the allowance for taking care of a sick child.

15. It should be mentioned that from 2006 to 2017, the amount of the compulsory contribution to the public system of social insurance paid by every lawyer individually insured based on the Contract increased with over 300%.

16. The same situation is registered in relation to the costs of the compulsory health insurance premiums paid by every lawyer individually insured based on the Contract, which has increased from 2009 to 2017 with over 142%. In 2009, a lawyer was imposed to pay the compulsory taxes and fees for an amount of 5 850, 60 MDL, while in 2017 this amount accounted for 12 768, 00 MDL (610 EURO). It should be mentioned that although exorbitant increase of the compulsory contributions to be paid by the free lancers occurred, the protection forms and benefits they enjoy remained intact.

17. The recent studies developed with the support of the United Nations Development Programme under the “Support for Justice Reform in Moldova” Project regarding the

taxation and the tariffs for justice related professions, revealed during the experts' meetings with the relevant authorities, such as the National Social Insurance Company (autonomous public institution administrating the public system of social insurance, which keeps the State Register of Individual Records in the public system of social insurance) that **“the biggest problem encountered by the National Social Insurance Company is the fact that especially the lawyers pay smaller (fixed) contributions, but request the highest possible benefits”**.

18. We do not agree with such an obviously mistaken and unfounded treatment, and besides the fact that it contradicts the official statistics and data, this treatment represents a serious form of discrimination – because it is promoted and practiced by a public authority.

## **II. WOMEN – LAWYERS DEPRIVED OF ACCESS TO HEALTH SERVICES IF THEY DO NOT SUSPEND THEIR LAWYER’S PRACTICE**

19. The lawyers and especially the women-lawyers are subjected to a serious form of discrimination from such public authorities as the Ministry of Health and the National Health Insurance Company. From their point of view, “the main problem occurs because of the extensive lobbying and different legislative challenges, especially from behalf of the lawyers, as these professionals have a better position than others, and these results in smaller health insurance premiums and/or bigger benefits”.

20. The national legal framework regarding the health insurance, especially that of lawyers, is represented by a number of laws and subsequent normative acts, which are contradictory and complicated, creating uncertainty and situations that block the real insurance of the lawyers when health insurance is needed, especially in case of the women-lawyers with children.

21. Apparently, it is provided that the lawyers are entitled to health protection from the State without discrimination and on equal basis, and the women-lawyers-mothers should benefit free of charge from healthcare services during the pregnancy/motherhood, together with children up to the school age.

22. According to the article 4 of the Law No. 1585 of 27.02.1998 on the compulsory healthcare insurance the Government should grant the status of an insured person by default to pregnant women and women who gave birth. Therefore, women lawyers, who are pregnant or just gave birth should benefit of medical assistance free of charge. Still, in order to do so, they should suspend their lawyer activity. The paradox is that the law of lawyers does not provide for the maternity grounds for suspending the lawyer’s license.

23. Therefore, women lawyers do not benefit from the discount form the medical insurance payments once they do not get pregnant, nor in the case they take care of their children.
24. In the same context, it is worth mentioning that by its decision of 15.04.2015, the Council on the Prevention and Elimination of Discrimination and Ensuring Equality revealed a number of drawbacks in the medical insurance of lawyers, in particular: 1) exclusion of lawyers from the category of persons who can buy the health insurance policy with discounts, according to the legal conditions, without any justified rationale; 2) lawyers – pregnant women, post-natal women and post-partum women may benefit from the free-of-charge health insurance policy only during the pregnancy, post-natal period and motherhood and only if they suspend their lawyer's license; 3) although it is paid for 12 months, the insurance policy is active for a much shorter period of time, if it was bought between 01 January and 31 March of every year; 4) women-lawyers do not benefit from the free-of-charge health insurance during the period of taking care of the child up to 3 years old, as compared to employed women, whose individual work contract is suspended due to the fact that they take care of children up to 3 years old.
25. Obliging women-lawyers to suspend their lawyer's license, when art.13 of the Law No. 1260 on Legal Profession does not provide for maternity, birth-giving and post-natal period to be grounds for suspension – and this is a discriminatory treatment based on the criterion of woman-lawyer's professional status. A woman-lawyer contributes to the compulsory health insurance fund by buying the insurance policy for a maximum price over a number of working years, before and after the birth of her child, and it is unjustified to deny the medical assistance when the insured risk occurs – maternity, child birth and post-natal period from the free-of-charge health insurance. *"The situation of the pregnant woman-lawyer is not equal to that of the unemployed pregnant woman, as the last one does not contribute to the compulsory health insurance fund, unlike the woman-lawyer. They are in different situations and they should be treated differently. The Council notes that the Ministry of Health and the National Health Insurance Company failed to explain to the Council the need and the legality of this approach towards pregnant women-lawyers. The Council called the hotline of the National Health Insurance Company and reconfirmed that the pregnant women-lawyers should submit the evidence of suspending her activity so as to benefit from the free-of-charge health insurance policy during the maternity, child birth, and post-natal period. An unjustified discriminatory treatment". (Decision of the CPEDEE dated 15.04.2015)*
26. **Hence, based on the analysis of the national legal framework, the Lawyer as a subject in the health insurance system is tackled by authorities as having the status of unemployed (uninsured) person. But the lawyer, especially the woman-lawyer contributes to the compulsory health insurance fund, by procuring the insurance policy for a maximum price during a number of working years, before and after the birth of the child, and the deny of medical assistance when the insured risk occurs is unjustified. The lawyers are paying a fixed amount of money for the health insurance by 31<sup>st</sup> of March each year.**

27. ***Ordinary employers pay to the healthcare insurance fund a percentage from their incomes, 4,5% is being paid from the employee's income and 4,5% is being paid by the employer. Whereas the lawyers are paying the full amount from their own income.***

28. ***For instance in 2017 the medium monthly salary was 5300 MDL (253 Euros) and employees having this income are paying for the medical insurance 477 MDL monthly (23 Euros). On the other hand, lawyers are obliged by the law to pay a fixed amount of money once at a time and it amounts to 4056 lei (194 Euros) per year.***

29. ***The fact is, the lawyers unlike the employees have no certainty about their incomes for the year to come. A lot of lawyers, especially young lawyers are struggling with getting money at the beginning of the year and to pay the medical insurance.***

30. The health insurance payments grow annually without any economic reasoning of assessing proportionally the revenues and expenditures. In 2007, the health insurance premium as a fixed amount paid by lawyers was about 600 MDL – an amount that increased gradually until 2017 up to 4056 MDL, without any justification or any provided services.

31. Starting from 2009 the lawyers do not benefit from the 50% discount from the health insurance premium amount, even though they pay for it alongside other social categories by the 31<sup>st</sup> of March of the respective year; they represent the only category taken out of the Annex No. 2 of the Law on Health Insurance Fund for 2017, without any rational justifications. Besides this, the lawyers are equated to bailiffs and notaries, who have different incomes and legal status.

32. Lawyers are not insured against the non-payment or refund of the amounts meant for the health insurance premiums in case of service provision contracts within projects (research, consultancy, training), having already the confirmation of payment for the health insurance policy, they have to pay for the health insurance premiums to the State two times.

33. Although they pay fully for the health insurance premium, the lawyers do not have the guarantee of benefiting from the respective premium for all the 12 months of the year, but only for 9 out of 12 months of the year, without being provided a proportional calculation between the provided service and the paid price (social inequity).

34. During the pregnancy and post-natal period, the women-lawyers are not exempted in a proportional way from the amount of the compulsory health insurance premium, if it has been paid already or is to be paid, although according to the law, the State provides free-of-charge health insurance to pregnant women and mother in the post-natal period.

35. Women-lawyers are not exempted proportionally from the paid amount of the health insurance premium in case of license suspension in relation to raising the child up to 3 years old/7 years old, including in the case of getting sick/being hospitalized with serious

diseases insured by the State through the Single Program of Compulsory Health Insurance.

### **III. DISCRIMINATORY SYSTEM OF TAX LIABILITIES FOR YOUNG LAWYERS**

36. According to the statistics and data provided by the State Tax Inspectorate, the majority of lawyers from the Republic of Moldova have an annual income not higher than 50 000 MDL (2390 EURO).

37. It should be mentioned that the majority of young lawyers who just joined the profession, have an income which is under the minimum salary set for the country – 2340 MDL (112 EURO). The same situation is registered for the lawyers providing state guaranteed legal assistance: their monthly income does not exceed the medium salary set for the country. The authorities do not provide to lawyers just and favorable conditions for performing their activity of defender.

38. Based on the fact that lawyers are freelancers, they pay all by themselves and from their own incomes for office management, incurring huge costs for rent, transport, telephony, necessary and binding conditions for providing qualitative legal assistance.

39. Lawyer's profession is one of the absolutely essential professions for the functioning of the democratic system and market economy; it is one of the professions related to the justice system and should be exercised freely and independently without any involvement or interference of central or local public authorities, as well as of other law-enforcement bodies, or other professions related to the justice system.

40. The interference and influence of the Republic of Moldova authorities is expressed by placing the lawyers in a less favored position in the public systems of social insurance and health insurance, and this fact contributes to and affects seriously the right to decent living and existence, the lawyer's and his/her family's quality of life, and all these have an impact on the independency and freedom of the lawyer's profession.

### **IV. RECOMMENDATIONS**

*The Committee for Economic, Social and Cultural Rights is called upon to encourage the Government of the Republic of Moldova to adjust the normative framework for the purpose of eliminating the discrimination of lawyers and women-lawyers in the systems of social insurance and health insurance, including in the tax area, especially through:*

1. Remove the discriminatory provisions and practices in respect of lawyers in their access to social protection payments. Through providing all the forms of social protection established in the public system of social insurance to lawyers especially women –lawyers.



2. Insure the treatment of women-lawyers and lawyers as medically insured persons and providing to them all the guarantees for ordinary employees, as well as for other persons who pay for the health insurance premiums.
3. Eliminate the discrimination of lawyers by decreasing the amount of the income tax and ensuring an equal treatment with that of the employees, whose shares of the income tax differ depending on the amount of their income.

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