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**Alternative Report
of the Council for Preventing and Eliminating Discrimination
and Ensuring Equality to the CEDAW Committee
in relation to the sixth periodic report
of the Republic of Moldova**

Statement of Interest

The Council for Preventing and Eliminating Discrimination and Ensuring Equality (Equality Council) is an autonomous public authority having mission to prevent and protect against discrimination, to ensure equality, to promote equal opportunities and diversity.

The Equality Council examines complaints and adjudicates them by adopting a decision that is enforceable. It also issues advisory opinions regarding compliance of draft laws and existing legislation to non-discrimination standards.

During the reporting period Council found discrimination on the grounds of sex/gender in 18% of cases, sex/gender being the second most frequent ground after disability, in areas such as employment, access to goods and services available to the public, human dignity, exercise of parental rights and access to justice.

The present information was drafted based on the body of decisions and consultative opinions issued by the Council.

National machinery for the advancement of women

Despite the existence of a regulatory framework on prohibition of discrimination, legal framework does not grant effective remedies for victims of discrimination.

The institutional framework also affects the effectiveness of the remedies for victims of discrimination. The Council has no adequate number of staff, as the remuneration of personnel within the administrative staff is less than of other civil servants from independent public authorities and ministries. The full independence of the Council is jeopardized by the institutional financial dependence on the Ministry of Finance.

Administrative Offences Code does not penalize all forms of discrimination. The instigation to discrimination, harassment and victimization even though regulated by the Law 121 are not sanctioned by the Code. The Council's competences are limited at stating the existence of discrimination with no possibility to apply fines. This remains the prerogative of the Courts.

Recommendations:

- **To improve existing legal framework on equality.**
- **To improve institutional framework by ensuring the appropriate and independent financing of the Council.**
- **To increase the number of staff and salaries of the staff up to the level appropriate for the human rights protection institution.**
- **To grant Council with the appropriate investigation and sanctioning powers.**

Stereotypes and harmful practices

The number of incitement to discrimination cases against women increased in 2019. Although anti-discrimination legislation prohibits sexism, there is no way to sanction it. The legal framework, as it is shaped now, also makes impossible to sanction sexist advertising due to ineffective mechanism of ascertainment of contravention.

The preventive mechanism is also not assured. The placement of an advertising message is accompanied only by verification of its correctness in linguistic and architectural terms. The local public authority issuing the placement authorization is not required to verify its compliance with the principle of non-discrimination.

Recommendations:

- **To take actions to sanction incitement to discrimination (sexist speech).**
- **To adopt measures to prevent and combat sexist advertising.**

Participation in political and public life

Although State indicates an increase in the number of women in the decision-making process in the reported period, the Council notes that there are still provisions that discourage women from access to public or elective positions. Existing legislation states that the term of office of the mayor, deputy mayor, district president and vice-president cease before the term in case of impossibility to exercise duties for more than 4 consecutive months, including due to illness.

This seemingly neutral provision does not take into account the reasons for the impossibility of exercising duties, namely, a woman being on maternity leave, which has a duration of at least 126 days. In such a situation, a woman being an official person, local elected person, who gave birth to a child and is on maternity leave, runs the risk that her mandate will be terminated due to her impossibility to exercise it. On the other hand, a woman who is in any position other than the elective at the local level in the event of maternity is suspended from her employment relationship and, after the expiry of her maternity leave, may return to her previous job. The existence of these provisions discourages women of reproductive age from access to elective positions at the local level¹.

Recommendations:

- **To take measures to remove legislative barriers to promote women in the decision-making process.**

¹ http://egalite.md/wp-content/uploads/2016/04/Aviz_ales-local.pdf

Employment

Professions forbidden for women

In the Decision No. 273/2015², the Council found that the Government Decision No. 624/1993 on the approval of the List of industries, occupations and work with heavy and harmful working conditions where the use of female labor is prohibited and the Standards of maximum permissible weights for women in manual lifting and transport of loads prohibits the employment of women in 29 fields of the economy considered by the state harmful to women because of 'the role they have in procreation'.

Recommendations:

- **To eliminate legal barriers based on sex stereotypes in employment.**

Pay-gap

In its report, State mentions that wage discrepancy between women and men ranges from 0.4% in education to 41.4% in financial and insurance sector and legal provisions was approved to prohibit such form of discrimination so the violation of the principle of equal payment for equal work or work of equal value is considered an act of discrimination (points 241-245). At the same time, Council notes that a clear definition of these principles does not exist in the national legislation, so it could hardly be properly applied.

Council notes that assessment of the positions and professions through the principle of equal payment for equal work and work of equal value is specified in the Action Plan for the Implementation of the Strategy for Ensuring Equality Between Women and Men for 2017-2019, but concrete measures to achieve it are not foreseen. Moreover, according to the 'Gender Equality Index 2019' the gender gap among employed persons not only persists, but even increased in 2019³. The study concludes that public policies aimed at providing equal opportunities for women and men in the labor market do not achieve the desired effect.

Recommendations:

- **To reduce the wage discrepancy between women and men, especially in private sector.**
- **To introduce in Labor Code notions of equal payment for equal work and work of equal value.**

² http://egalitate.md/wp-content/uploads/2016/04/decizie_273_2015_depersonalizat_6154520-1.pdf

³ see page 4 of the Study 'Gender Equality Index 2019'

http://www.progen.md/files/1347_indexul_egalitatii_de_gen_2019_final.pdf

Dismissal of the elderly, which disproportionally affects women's pension

Since the legislator amended the Labor Code by providing to employers the possibility to dismiss the person who has established his/her retirement pension, the Council has registered a wave of complaints on the employers' abusive application of this legal provision. Out of all complaints that invoke discrimination in employment on the grounds of retiree status, 64% are women. The Council notes that, according to the official data provided by the NBS, the⁴ wage disparity between women and men remains at 12%, which directly results in a lower pension for women compared to men. The official data⁵ report in 2017 a difference of 19% between the average retirement pension for women (1362.8 MDL = 68 EUR) compared to men (1682.4 MDL = 84 EUR). In such a situation, a woman in the retirement age has to work after she had exercised her pension right, in order to have an income that will provide her with a minimum needed.

Moreover, the National Employment Strategy for 2017-2021⁶, approved by the Government, provides for increase in the employment rate for people aged 55-64 from 41.4% in 2015 to 45.6% in 2021 as a major target of the strategy.

Council notes that this incoherence of public policies leads to discrimination against women. In 2018, discrimination in employment on the grounds of retiree status was found in 46%, sex/gender including maternity - in 15%⁷.

Recommendations:

- **To amend legislation in order to avoid discrimination against employed pensioners.**

Sexual harassment in the workplace and in educational system

Although State reported drafting in 2019 a Law to combat sexual harassment in workplace and in education, Council notes that this draft Law applies a very narrow definition of sexual harassment, covering just criminal aspect. This unjustified narrowing of definition contradicts international standards, for instance, Istanbul Convention. In its advisory opinion Council states that criminal definition of sexual harassment makes it inapplicable for the majority of real-life situations.

Recommendations:

- **To amend legislation in order to allow gradual sanctioning of sexual harassment cases in all domains of life.**

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http://statbank.statistica.md/pxweb/pxweb/ro/50%20Statistica%20gender/50%20Statistica%20gender_GEN01/GEN012700sal.px/table/tableViewLayout1/?rxid=9a62a0d7-86c4-45da-b7e4-fecc26003802

⁵ <http://www.statistica.md/newsview.php?l=ro&idc=168&id=6141>

⁶ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=369765>

⁷ see p. 11,12 of the General Report on the Situation in the Field of Prevention and Combating Discrimination in the Republic of Moldova, 2018 http://egalitate.md/wp-content/uploads/2016/04/raport-CPEDAE-2018_final.pdf

Health

Access to the free health insurance for uninsured women with children under age of 2

The national compulsory healthcare insurance policy establishes support measures for certain vulnerable groups to ensure their access to public healthcare. According to the provisions of Law on compulsory healthcare insurance, the Government acts as an insurer for several categories of persons, such as children, pupils, students, persons with disabilities, women during pregnancy, birth or the post-natal period, officially registered unemployed persons, persons taking care of a person with severe disability who requires permanent care from another person, mothers with four or more children, social assistance recipients, foreigners receiving a form of protection included in an integration program, living organ donors.

In its Decision Council stated if the person was not employed until pregnancy, birth or the post-natal period, she would benefit from free health insurance from the state, but after the post-natal period, even if the child is insured by the state, his/her mother will remain outside the health insurance system because the legislation does not consider this category of people eligible to free medical insurance. Thus, unemployed uninsured persons who take care for children up to 2 years of age, most often mothers (about 90%), do not benefit from this state support, although the situation of this category is comparable to situation of persons who take care of a person with severe disability⁸.

Recommendations:

- **To ensure free access to the healthcare system for uninsured persons who take care of a child under the age of 2.**

Abortions and free healthcare

In the Final Comments (2017) on the implementation of the International Covenant on Economic, Social and Cultural Rights, the UN Committee on Social Economic and Cultural Rights has expressed concern that Compulsory Healthcare Insurance does not cover abortion services, which contributes to an increased number of clandestine abortions.⁹

Recommendation:

- **To include abortion medical services in the list of services covered by Compulsory Healthcare Insurance.**

⁸ http://egalitate.md/wp-content/uploads/2016/04/Draft_Decizie_65_2017_constatare_votat_sem.doc.pdf

⁹ UN Committee on Economic, Social and Cultural Rights (2017). See the final comments on the Review of the Periodical Report of the Republic of Moldova, para. 62-63

Economic and social benefits

Rights of caregivers of persons with disabilities

Since in the Republic of Moldova caregivers for people with disabilities are predominantly women, pension rights of caregivers are also a matter of gender discrimination. Until 1 of January 1999, the pension system included the period of care for a person with severe disabilities in the contributory period of the family member who provided care. After that date, more precisely with the entry into force of the new Law on the public pension system on 01.01.1999, the period of care of a person with severe disabilities was no longer counted as a contributory period.

With the approval of the Law on the social inclusion of persons with disabilities, in 2013, the 'Personal Assistance' Service was set up. It provided the possibility to legalize status of the caregivers of persons with severe disabilities by employing as a personal assistant. The period of this employment is considered contributory and is taken into account when establishing the retirement pension. In its Decision Council stated, that non-inclusion of the period of care for a person with severe disabilities as contributory is discrimination on the grounds of gender in exercising the retirement pension right, since 75% of personal assistants are women¹⁰.

As of 1 January 2017, the period of care of a person with severe disabilities under the age of 18 (until the employment as a personal assistant) was assimilated to the contributory period by the amendments to the Law on the public pension system. Unfortunately, persons who have established their retirement pension after 1 January 2017 can only enjoy that amendment. At the same time, the Council considered that the introduced amendment discriminates by association on the grounds of disability and age against persons who care for a person with severe disability over the age of 18 because that period was not assimilated to the contributory period. The situation of those who take care of an adult with severe disability is worse because if they are not employed as Personal Assistant, their contributory period is not taken into account and they do not get any additional allowances as in case of those who take care of children with disabilities.

Recommendations:

- **To amend legislation in order to recognize the period of care of a person with severe disabilities between 1999 and 2016 as a contributory period.**
- **To increase the number of persons with severe disabilities covered by the 'Personal Assistance' Service.**

¹⁰ Decision of 29.01.2016 with regard to case 321/2016 http://egalitate.md/wp-content/uploads/2016/04/decizie_321_2015_depersionalizat_9202256.pdf.
Decision of. 20.11.2018 with regard to case 85/2018 http://egalitate.md/wp-content/uploads/2016/04/Decizie_constatare_85_2018.pdf

Calculation of the average assured income for non-contributory periods and its impact on women's old-age pension rights

Another acute problem faced by women in the exercise of their retirement pension right is the determination of the average assured income for non-contributory periods assimilated to the contributory period.

Law on the public pension system provides that when calculating the average assured income for the non-contributory period of care for a child up to the age of 3 years the monthly minimum wage for the country at the time of calculating the pension will be taken into account. The same provisions indicates that the average monthly salary for the country will be taken into account at the time of calculating the pension for the period of contract military service or other service assimilated to it (if it is not possible to establish the pension under the conditions of the Law on retirement insurance of the military and persons from command staff and private corps of the bodies of the internal affairs), as well as periods of non-contributory activity in the position of judge and prosecutor before 31.12.2005.

Examining the above-mentioned provisions, Council found that they were discriminatory towards women, as about 90% of beneficiaries of the partially paid leave for care for the child up to 3 years of age are mothers (women)¹¹ and 80% of persons performing military service by contract or other service assimilated to it are men¹². These provisions create a substantial gap in the amount of retirement pensions granted to women and men¹³.

Recommendations:

- **To eliminate the gap between the amounts of retirement pensions established for women and men by calculating contributions for non-contributory periods based on average salary and not the minimum one.**

Social guaranties and medical insurance for women in certain professions

Even though State reports the existence of non-discriminatory legal provisions in terms of guaranteeing the right to work equally to women and men, some normative acts or practices discourage women from practicing certain professions. An eloquent example is the profession of lawyer that does not provide too many social guarantees for women. The Council examined in 2014 a number of complaints about the existence of discriminatory provisions for lawyers regarding their compulsory social and medical insurance. Although lawyers are considered employed persons and are subjects of compulsory social insurance under the Law on public social security system, the female lawyers can receive maternity allowance and allowance for care of a child up to the age

¹¹ p.63 of the Annual Social Report for 2017 https://msmps.gov.md/sites/default/files/raport_social_anual_2017_1.pdf

¹² Women's profile in the decision-making process (in some professional areas)
https://www.md.undp.org/content/dam/moldova/docs/Publications/prof_009_funct_ROM-2016_new.pdf

¹³ Sixth periodic report submitted by the Republic of Moldova under article 18 of the Convention, due in 2017, p.130

of 3 only in the amount of allowances calculated for uninsured persons (according to the Regulation on the method of establishing and paying allowances to families with children approved by the Government).

Because they are paying social security premiums in fixed rates, lawyers are not entitled to illness allowance, maternity allowance, benefits for the care of a sick child. Considering the fact that only women can be on maternity leave, mothers are staying with a sick child in most cases, female lawyers are deprived of the social benefits listed above, although they have paid the social security. Thus, the legislative system creates a discouraging practice for women to profess advocacy as an independent profession.

A similar situation of social insurance also occurs in the case of compulsory health insurance, which every lawyer must purchase individually and compulsorily every year between 1 January and 31 March, irrespective of his/her income. The discriminatory situation occurs when a female lawyer, during pregnancy, birth or the post-natal period, can be classified as a person with health insurance paid by the state, only if she suspends her activity, although such a clause (maternity) is not provided for in the conditions of suspension of professional advocacy. Thus, although the female lawyer is in the category of persons insured compulsorily, she is treated as an uninsured person who has not contributed to the health insurance system. The Council noted¹⁴ that the situations of those two categories of pregnant women are different and should be treated differently.

Another discriminatory situation for female lawyers is the exercise of the right to benefit from free health insurance during care for the child up to 3 years of age, compared to female workers whose individual employment contract is suspended because they take care of a child up to 3 years of age. An employed person is insured during this 3-year period by the state but a lawyer, although his/her license is suspended, has to buy a medical insurance policy every year. In such case, the lawyer is treated as a previously uninsured person without an objective and reasonable justification, even if he/she paid health insurance annually. Given that both woman and man can be on leave to care for the child up to 3 years of age, the discriminatory provisions affect the exponents of the lawyer's profession in general. However, it still disproportionally affects women since they are taking the child-care leave in most cases.

Recommendations:

- **To ensure the right to social protection for lawyers, especially women.**
- **To ensure the equal and non-discriminatory right of female lawyers to health insurance.**

¹⁴ http://egalitate.md/wp-content/uploads/2016/04/decizie_cauza_060_avocatii_versus_ms_si_cnam_2_3963072.pdf