



# Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General  
17 December 2019

Original: English

## Committee on the Elimination of Discrimination against Women

### Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 104/2016<sup>\*,\*\*</sup>

<i>Communication submitted by:</i>	Natalia Ciobanu (not represented by counsel)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Republic of Moldova
<i>Date of communication:</i>	3 May 2016 (initial submission)
<i>References:</i>	Transmitted to the State party on 15 June 2016 (not issued in document form)
<i>Date of adoption of views:</i>	4 November 2019

\* Adopted by the Committee at its seventy-fourth session (21 October–8 November 2019).

\*\* The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Nicole Ameline, Gunnar Bergby, Marion Bethel, Louiza Chalal, Esther Eghobamien-Mshelia, Naéla Mohamed Gabr, Hilary Gbedemah, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Elgun Safarov, Wenyan Song, Genoveva Tisheva, Franceline Toé-Bouda and Aicha Vall Verges.



## Background

1. The author of the communication is Natalia Ciobanu, a Moldovan national born in 1956. She claims that the Republic of Moldova has violated her rights under article 3 and article 11 (2) (c) of the Convention. Although the author does not invoke article 11 (1) (e) of the Convention specifically, the communication also appears to raise issues under that provision. The Optional Protocol entered into force for the Republic of Moldova on 31 May 2006. The author is not represented by counsel.

## Facts as submitted by the author

2.1 The author had been gainfully employed since 1973. On 9 January 1992, she gave birth to a daughter who, on 11 May 1993, was diagnosed with a first-degree disability.<sup>1</sup> Given her precarious state of health, and as she suffered from frequent seizures and convulsions, the author's daughter needed the author's permanent assistance and care. Although doctors urged the author to place her child in a residential institution, she decided to personally provide care for her. Shortly thereafter, the author resigned from her job. During the period when she cared for her daughter, the State party provided no alternatives to institutionalization for children with disabilities.

2.2 The author's daughter passed away on 22 February 2012, shortly before the social service of "personal assistant" was introduced in the Republic of Moldova by Act No. 60 of 30 March 2012 on the Social Inclusion of Persons with Disabilities.

2.3 On 18 June 2013, the author submitted documents to the branch of the National Social Insurance Office for the Buiucani district of Chisinau,<sup>2</sup> confirming her contributions to the social insurance fund and requesting to be paid her retirement (old-age) pension.<sup>3</sup> Her monthly pension as calculated by the branch amounted to 590.22 lei.<sup>4</sup> In response to the author's query as to why her pension was so low, she received a letter from the branch, dated 12 May 2014, explaining that her contribution period did not include the period of care for her child, starting from 1 January 1999, when Act No. 156-XIV of 14 October 1998 on Public Social Insurance Pensions entered into force.<sup>5</sup> In the author's case, only the period from 5 November 1993 to 31 December 1998 was taken into account.

2.4 On 25 November 2013, the author and two other women, who also provided care for their children with severe disabilities, complained to the Council for the Prevention and Elimination of Discrimination and for Ensuring Equality (Equality Council), claiming that they were discriminated against on the grounds of their association with their children with severe disabilities and asking for the Act on Public Social Insurance Pensions to be amended. On 13 February 2014, the Equality Council found that the facts set out in the complaint "represented discrimination by association of plaintiffs with their children with severe disabilities in realizing the right to a social insurance pension", as defined in article 1 (1) and (2), read in conjunction with article 8 (c), of Act No. 121 of 25 May 2012 on Ensuring Equality.

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<sup>1</sup> A first-degree disability is the most advanced of the three existing degrees of disability and implies that the person concerned requires constant assistance and care by a third party.

<sup>2</sup> The State authority in charge of keeping records of social insurance pensions.

<sup>3</sup> This pension is also known as a "social insurance pension" and requires a period of at least 15 years of contributions in order to be eligible to benefit from it.

<sup>4</sup> Approximately €27.

<sup>5</sup> Reference is made to article 50 (1) (d) of the Act on Public Social Insurance Pensions, according to which periods of care for a person with a first-degree disability, for a disabled child until the age of 16 years or for a person above the age of 75 years, are to be included in the contribution period for the purpose of calculating the social insurance pension only prior to the entry into force of the said Act.

The Council recommended that the then Ministry of Labour, Social Protection and Family (currently, the Ministry of Health, Labour and Social Protection) make the appropriate provisions necessary to achieve positive transitional measures for persons who provided care for persons with severe disabilities from 1 January 1999 to the introduction of the social service of “personal assistant” (see para. 2.2 above), so that the period starting from 1 January 1999 would be included in the calculation of the social insurance pension contribution period. The Ministry has taken no measures to implement the Council’s recommendation.

2.5 On 26 May 2014, the author filed a lawsuit in the Court of the Centru District of Chisinau against the Ministry, the National Social Insurance Office and the local branch of the Office, seeking recognition of discrimination in access to social insurance and social protection services, as compared with parents who had decided to place their children with disabilities in residential institutions and who could therefore work and secure their contribution periods.<sup>6</sup> On 12 September 2014, the court dismissed the lawsuit as groundless. The judgment was upheld by the Chisinau Court of Appeal on 14 May 2015. The author’s appeal against that decision was found inadmissible by the Supreme Court of Justice on 2 December 2015. The author submits, therefore, that she has exhausted all available and effective domestic remedies.

### **Complaint**

3.1 The author claims that her rights under article 3 of the Convention have been violated, since the social security system currently in place in the Republic of Moldova discriminates against women who provide care for children with severe disabilities. Thus, according to the national legislation, persons who have provided care for children or other family members with severe disabilities since 1 January 1999, when the Act on Public Social Insurance Pensions entered into force, receive no social insurance pension for the respective period. Given that, in Moldovan society, the woman is perceived as the main caregiver for a child with disabilities, it is usually women who are excluded from the social security system. Such women are therefore dependent on their husbands, not only during the period when they provide care for children with severe disabilities, but also when they no longer provide care for them, since they do not benefit from the social insurance pension for the caregiving period. Moreover, husbands often leave the family “once they learn how it is to live with and take care of a severely disabled child”.

3.2 In that context, the author argues that the State party did not ensure the existence of a legal framework that would contribute to the social and economic development of women who have children with severe disabilities in their care. Those women are socially excluded, along with their children, because there are no social alternatives for care provision, and when those women reach retirement age, they do not receive sufficient resources to cover their basic needs. According to statistics, the minimum for subsistence in the Republic of Moldova is 1,700 lei per month,<sup>7</sup> whereas the author’s pension is 590.22 lei. Thus, not only are those women unable to work while caring for their children with severe disabilities, owing to the lack of alternatives provided by the authorities, but they are also condemned to a life below the poverty line when they reach retirement age.<sup>8</sup> Just as thousands of other women in patriarchal societies, the author has been unable to be gainfully employed because she was caring for her child. She did not give up her child and exempted the State from the care-

<sup>6</sup> Decisions of the courts are available on file only in the original language.

<sup>7</sup> Approximately €76.

<sup>8</sup> The author also refers to articles 2 (2) and 9 of the International Covenant on Economic, Social and Cultural Rights, as well as to general comment No. 19 (2007) of the Committee on Economic, Social and Cultural Rights on the right to social security.

related expenses of institutionalization and, after 20 years of providing care, the State party has refused to recognize that work as such and has deprived her of her right to a social insurance pension for the period spent as a caregiver.

3.3 The author also claims that her rights under article 11 (2) (c) of the Convention have been violated, since the State party has failed to provide social support services for women who have children with severe disabilities, so that they could have the opportunity to work and to accumulate a sufficient social insurance pension to live a decent life. Unlike men, who usually have the opportunity to work even if they have a child with disabilities, women are compelled to care for such children or to institutionalize them. Those who, as the author did, choose to provide care for their children cannot benefit from the social insurance pension correlated with the minimum for subsistence.

3.4 The author considers that, by not including her caregiving period in the calculation of the contribution period, the State party has refused to recognize the importance of domestic work and childcare. She adds that, from a social perspective, children with disabilities, and especially their parents, are perceived as “consumers of indulgences and benefits”. The author argues, however, that, as a result of her decision not to institutionalize her child, the State party saved, annually, between 35,000 and 85,000 lei.<sup>9</sup> According to estimates, maintaining a person in a residential institution costs between 50,000 and 100,000 lei,<sup>10</sup> whereas the State party gives only 15,000 lei<sup>11</sup> in allowances and other payments for persons with disabilities who are not institutionalized. Owing to the absence of alternative care for persons with disabilities from 1999 to 2013,<sup>12</sup> the necessary care was provided by their mothers. In that context, women caregivers were unable to work because the State party did not ensure the existence of personal assistants for their children, nor do they benefit from the social insurance pension for the period of caregiving.

#### **State party’s observations on the merits**

4.1 On 27 March 2017, the State party submitted its observations on the merits.

4.2 The State party submits that, according to article 5 (2) of the Act on Public Social Insurance Pensions, the following non-contribution periods are counted towards the social insurance calculation: (a) the period of full-term or reduced-term military service; (b) the period of childcare for children under the age of 3 years carried out by one of the parents or by the guardian, in the event of the death of both parents; and (c) the period during which the insured person has received compensation for a temporary inability to work, unemployment benefits or an allowance for integration or reintegration into the workforce. Pursuant to article 50 (1) (d) of the Act, the contribution periods also include periods of care for a person with a first-degree disability, for a disabled child until the age of 16 years, that took place before 1 January 1999.

4.3 The State party submits that the improvement of the existing social security system is one of the main priorities of the Ministry of Labour, Social Protection and Family. Thus, in the context of reforming the system of social security pensions, the Act on Public Social Insurance Pensions and other normative acts were to be amended at the Ministry’s initiative in order to include the periods of care for a person with

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<sup>9</sup> Approximately €1,560 and €3,788, respectively.

<sup>10</sup> Approximately €2,400 and €4,500, respectively.

<sup>11</sup> Approximately €675.

<sup>12</sup> The social service of “personal assistant” came into effect in Chisinau, where the author lives, pursuant to decision No. 5/5 of 30 May 2013 of the Municipal Council of Chisinau.

severe disabilities that took place after 1 January 1999 in the contribution period of a family member who provided such care.

4.4 In the context of social protection for parents of children with disabilities who have already reached the age of 18 years, the Ministry has initiated the development of social services for persons with disabilities. Furthermore, under the Act on the Social Inclusion of Persons with Disabilities, the service of “personal assistant” was established for persons with severe disabilities who require nursing care and need to be accompanied and permanently supervised by another person through the process of their integration in society. Any person, including family members or relatives of the person with disabilities, can be employed as a personal assistant.

#### **Author’s comments on the State party’s observations on the merits**

5.1 On 15 August 2017, the author submitted her comments on the State party’s observations. She stated that, since the submission of those observations, the legal framework on social security pensions had changed in the Republic of Moldova, in particular concerning the rights of parents providing care for their children with severe disabilities, namely that, starting from 1 January 2017, parents who provide care for their children with severe disabilities receive a pension until the latter reach the age of 18 years.

5.2 The author submits that the aforementioned amendments do not have retroactive effect. They therefore apply to parents providing care for their children with disabilities only as from 1 January 2017, and the period between 1 January 1999 and 31 December 2016 is not counted towards the contribution period for the purposes of calculating the social insurance pension. Moreover, the provision in question applies to parents providing care for their children with disabilities only until the latter reach the age of 18 years, with the period of care thereafter not included.

5.3 The author argues that the amendments have not remedied her specific situation or that of thousands of other women who have found themselves in a similar situation in the Republic of Moldova. To illustrate the gravity of the situation, she submits that, according to the data from the National Social Insurance Office, there were 4,401 children in need of permanent and home-based supervisory care in the Republic of Moldova, with 12,530 individuals over the age of 18 years also requiring permanent home-based care. The author refers to the existence of approximately 6,000 women who provided constant care for their children with severe disabilities and whose work was not recognized by the authorities of the State party for the purpose of the social insurance pension. The author therefore argues that the Republic of Moldova has no special social security policies for parents of children with disabilities, except that, starting from 1 January 2017, they are entitled to receive a minimum social insurance pension for the periods when they provided care for their minor children with disabilities.

5.4 The author reiterates her initial argument that the lack of social security policies for parents of children with disabilities disproportionately affects women. She adds that cultural factors make women the main caregivers for their children in Eastern European societies characterized by profound patriarchal patterns. Having children with disabilities undermines women’s prospects for fulfilling their lifetime potential to a greater extent than is the case for men. Although the authorities have an obligation to eliminate such historically and culturally formed differences, the Republic of Moldova took no measures to promote equality in the context of childcare. The author also submits that, in addition to being discriminated against on the grounds of their association with children with disabilities, women in the Republic of Moldova also face social stigma as being responsible for their children’s disability.

5.5 The author submits that having a child with a disability affects the physical and mental health of the woman, as well as her private life. Men have opportunities to realize their professional potential and to benefit from a more adequate pension, whereas women are condemned to live their lives as caregivers or personal assistants for their children with disabilities, with no prospects of personal or professional development. The lack of special educational programmes and the insufficient number of personal assistants receiving financial support from the State through the payment of wages for the provision of care for children with disabilities demonstrates that the authorities of the State party discriminate against women only because they happened to have a child with severe disabilities, effectively leaving them on the periphery of its policy framework. The author adds that the institution of personal assistant in its current form does not adequately respond to the needs of persons with disabilities and their parents, in particular mothers, because the number of persons with disabilities requiring constant support is 10 times higher than the number of personal assistants receiving financial support from the State. Therefore, the existing gap in State-supported care services is being filled by women providing care for their children with disabilities free of charge.

5.6 In the light of the foregoing, the author requests the Committee to consider the communication on its merits and to determine that: (a) there was a breach of the Convention by the State party; (b) the State party did not fulfil its human rights obligations vis-à-vis women who provided care for their children with severe disabilities from 1 January 1999 until now; and (c) the State party should remedy the violation of her right not to be subjected to discrimination by taking into account, for the purpose of calculating her social insurance pension, the entire period when she provided care for her daughter with severe disabilities.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 72 (4), it is to do so before considering the merits of the communication.

6.2 With regard to article 4 (1) of the Optional Protocol, the Committee notes the author's assertion that she has exhausted all available and effective domestic remedies. In the absence of submissions from the State party to the contrary, the Committee accepts that the author has exhausted all remedies and considers that the requirements of article 4 (1) do not preclude it from considering the merits of the communication.

6.3 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.4 The Committee notes that, in relation to article 4 (2) (e) of the Optional Protocol, the facts on which the present communication is based commenced before the entry into force of the Optional Protocol for the State party, on 31 May 2006, but after the entry into force of the Convention for the State party, on 31 July 1994. However, given that those facts continued after the entry into force of the Optional Protocol for the State party, and having regard to the fact that the exhaustion of domestic remedies also occurred after its entry into force for the State party, the Committee considers that it is not precluded from examining the communication on the basis of article 4 (2) (e) of the Optional Protocol.

6.5 The Committee further notes that the State party has not challenged the admissibility of the communication. Although the author does not invoke article 11

(1) (e) of the Convention specifically, the facts as presented in the communication also appear to raise issues under that provision. Accordingly, the Committee declares the communication admissible as raising issues under article 3 and article 11 (1) (e) and (2) (c) of the Convention and proceeds with its consideration of the merits.

*Consideration of the merits*

7.1 The Committee has considered the present communication in the light of the information made available to it by the author and the State party, as provided in article 7 (1) of the Optional Protocol.

7.2 The author asserts that the State party has violated her rights under article 3 and article 11 (2) (c) of the Convention, by not taking into account, for the purpose of calculating her social insurance pension, the entire period when she provided permanent care for her daughter with severe disabilities in the home setting instead of placing her in a residential institution, starting from the entry into force of the Act on Public Social Insurance Pensions on 1 January 1999 until her daughter's death on 22 February 2012. She argues in particular that, owing to the roles traditionally attributed to women in the Moldovan society as the main caregivers for their children with disabilities, the State party should have ensured the existence of a legal framework that would contribute to the social and economic development of women who have children with severe disabilities in their care, thus allowing them to combine childcare obligations with work responsibilities.

7.3 The issue before the Committee, therefore, is whether, by excluding from the contribution period, for the purposes of calculating the social insurance pension, the period starting from the entry into force of the Act on Public Social Insurance Pensions on 1 January 1999, when the author was providing permanent care for her daughter in the home setting, the State party has violated her rights under article 3 and article 11 (1) (e) and (2) (c) of the Convention, given that she was, in practice, left without any alternative care facilities for her child, aside from placement in a residential institution, that would have allowed her to combine childcare obligations with work responsibilities.

7.4 The Committee notes the author's assertion that she had the reasonable expectation that, in her old age, she would receive a sufficient social insurance pension after 20 years of providing care in the home setting for her daughter instead of placing her in a residential institution. The Committee also notes that it was only on 12 May 2014, after her query to the local branch of the National Social Insurance Office as to why her pension was so low, that the author was informed that her contribution period did not include the period of care for her child with a first-degree disability, starting from 1 January 1999, when the Act on Public Social Insurance Pensions entered into force. As transpires from the information available on file, between 1999 and 2014, the author was not aware of the aforementioned change in legislation that affected the way in which the contribution period was calculated, thereby negatively affecting the amount of her monthly pension.

7.5 The Committee also notes the State party's acknowledgement that the improvement of the existing social security system remained one of the main priorities of the Ministry of Labour, Social Protection and Family. It also notes, however, that positive changes in the legal framework on social security pensions, such as the establishment of the State-funded service of personal assistant for persons with severe disabilities who require constant care, which would, starting from 1 January 2017, count towards the calculation of the social insurance pension of parents for the periods when they provided care for their children with disabilities, did not include transitional measures for persons, such as the author, who provided

such care from 1 January 1999 until the entry into force of the above-mentioned legislative developments.

7.6 The Committee observes in that connection that the right to social security, including in cases of the social insurance (old-age) pension, is of central importance in guaranteeing human dignity. The right to social security carries significant financial implications for States, but the latter should ensure the satisfaction of, at the very least, minimum essential levels of that right. Among other things, they are required to ensure access to a social security scheme that provides a minimum essential level of benefits, without discrimination of any kind. States should provide non-contributory old-age benefits, social services and other assistance for all older persons who, when reaching the retirement age prescribed in national legislation, have not completed a qualifying period of contributions or are not otherwise entitled to an old-age insurance-based pension or other social security benefit or assistance and who have no other source of income. Non-contributory schemes must also take account of the fact that women are more likely to live in poverty than men; that they often have sole responsibility for the care of children; and that it is more often they who have no contributory pensions.

7.7 The Committee notes that States parties have a large margin of appreciation in adopting the measures that they consider necessary to ensure that everyone enjoys the right to social security, with a view to, *inter alia*, ensuring that retirement pension systems are efficient, sustainable and accessible for everyone. States may therefore establish requirements or conditions that claimants must meet in order to be eligible for social security schemes or to receive a retirement pension or other benefit, provided that the conditions are reasonable, proportionate and transparent. In general, those conditions should be communicated to the public in a timely and sufficient manner so as to ensure that access to retirement pensions is predictable, in particular when the measures adopted by the States parties are regressive in character and no transitional arrangements are put in place to offset the negative consequences thereof.

7.8 The Committee further observes that, although everyone has the right to social security, States should give special attention to those individuals and groups who traditionally face difficulties in exercising that right, such as women. The Committee recalls that, under the Convention, any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field is prohibited. Indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Convention rights as distinguished by prohibited grounds of discrimination.

7.9 The Committee considers that States must therefore take effective measures, and periodically revise them when necessary, to fully realize the right of all persons without any discrimination to social security, including the social insurance pension. They must also take steps to ensure that, in practice, men and women enjoy their political, economic, social, cultural and civil rights on a basis of equality; consequently, their public policies and legislation must take account of the economic, social and cultural inequalities experienced in practice by women. States must therefore at times take measures in favour of women in order to attenuate or suppress conditions that perpetuate discrimination.

7.10 The Committee affirms that States must review restrictions on access to social security schemes to ensure that they do not discriminate against women in law or in practice. In particular, States must bear in mind that, because of the persistence of stereotypes and other structural causes, women spend much more time than men in



unpaid work, including providing care for children both with and without disabilities. States should take steps to eliminate the factors that prevent women from making equal contributions to social security schemes that link benefits with contributions or ensure that schemes take account of such factors in the design of benefit formulas, for example by considering periods spent, especially by women, taking care of their children, both with and without disabilities, and adult dependants.

7.11 The Committee notes, in addition, that the author is an older person who is in a critical economic situation after having provided care for her severely disabled (and now deceased) daughter for 20 years and that the intersection of the alleged gender discrimination and discrimination on the grounds of her association with her disabled child makes her particularly vulnerable to discrimination in comparison with the general population in the Republic of Moldova.

7.12 The Committee takes note of the author's allegations (see paras. 3.1, 3.2 and 5.4 above) to the effect that the lack of social security policies for parents of children with disabilities disproportionately affects women. She submits that "cultural factors make women the main caregivers for their children in Eastern European societies characterized by profound patriarchal patterns", and in the Republic of Moldova in particular. Having children with disabilities "undermines women's prospects for fulfilling their lifetime potential to a greater extent than is the case for men". Such women are therefore "dependent on their husbands, not only during the period when they provide care for their children with severe disabilities, but also when they no longer provide care for them, since they do not benefit from the social insurance pension for the caregiving period".

7.13 The Committee considers that, when relevant information is presented in a communication indicating, *prima facie*, the existence of a legal provision that, although formulated neutrally, might in fact affect a much higher percentage of women than men, it is for the State party to show that such a situation does not constitute indirect discrimination on the grounds of gender. According to publicly available information on the State party, among persons of working age outside the labour market, those engaged exclusively in unpaid domestic care work, including care for children with and without disabilities, are almost entirely female.<sup>13</sup>

7.14 In the present case, the State party indirectly refers in its observations to the gender neutrality of the Act on Public Social Insurance Pensions, by enumerating a list of non-contributing periods that are counted towards the social insurance calculation, which appear neutral at face value (see para. 4.2 above). Nevertheless, the State party has not provided any explanation or justification as to why, pursuant to article 50 (1) (d) of the Act, periods of providing care for persons with disabilities, including children up to 16 years of age, were included in the social insurance calculation only until 31 December 1998. In that connection, the Committee notes with particular interest that the period of the full-term or reduced-term military service, which is still mandatory for men in the Republic of Moldova, continued to be counted towards the social insurance calculation even after 1 January 1999, when persons providing care for children with severe disabilities, such as the author, were excluded from the social security scheme established by the same Act.

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<sup>13</sup> See, for example, Republic of Moldova, National Bureau of Statistics, "Analytic note: the importance of unpaid work in Moldova", prepared with the support of the United Nations Development Programme, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the Government of Sweden, within the framework of the joint United Nations project entitled "Strengthening the national statistical system". Available at [http://statistica.gov.md/public/files/publicatii\\_electronice/Utilizarea\\_timpului\\_RM/Note\\_analitice\\_eng/07\\_brosur\\_ENG.pdf](http://statistica.gov.md/public/files/publicatii_electronice/Utilizarea_timpului_RM/Note_analitice_eng/07_brosur_ENG.pdf).

7.15 The Committee considers, therefore, that the State party has failed to demonstrate that the exclusion, starting from 1 January 1999, of persons providing care for children with severe disabilities from the social security system did not constitute indirect discrimination against women, given the fact that they, as in the author's case, were the primary caregivers for their children with disabilities and had no supporting social services to enable them to combine childcare obligations with work responsibilities. In the absence of a personal monthly income, women providing care for their children with disabilities, such as the author, were effectively deprived of the opportunity to contribute to the social insurance fund, thus leaving them destitute in old age. Furthermore, the Committee is of the view that the state of vulnerability and insecurity of the author resulting from her exclusion, beginning in 1 January 1999, from the social insurance pension for the caregiving period has restricted her economic autonomy and prevented her from enjoying timely equal economic opportunities. Accordingly, the Committee concludes that the State party has denied the author equality in respect of the right to social security in cases of retirement and old age and has failed to provide her with any other means of economic security or any form of adequate redress, thereby failing to discharge its obligations under article 3 and article 11 (1) (e) of the Convention.

7.16 Furthermore, in the light of the foregoing considerations and in the absence of sufficient explanations from the State party refuting the author's allegations, the Committee considers that the State party's failure to take all appropriate measures, including through legislation, to ensure the full development and advancement of women providing care for their children with disabilities in a society that traditionally attributes caregiving responsibilities to women, affected the author adversely and therefore constitutes indirect gender-based discrimination against her and a violation of the obligation of the State party, under article 11 (2) (c) of the Convention, to guarantee women the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

8. Acting under article 7 (3) of the Optional Protocol to the Convention, and in the light of the above considerations, the Committee is of the view that the State party has failed to fulfil its obligations and has thereby violated the author's rights under article 3 and article 11 (1) (e) and (2) (c) of the Convention. The Committee therefore makes the following recommendations to the State party:

- (a) Concerning the author of the communication:
  - (i) Recalculate the author's social insurance pension, taking into account the entire period, starting from the entry into force of the Act on Public Social Insurance Pensions on 1 January 1999 until the death of her severely disabled daughter on 22 February 2012, when she provided permanent care for her in the home setting;
  - (ii) Award the author adequate compensation for the violations suffered during the period in which she was denied her right to her social insurance pension, commensurate with the non-contributing periods that should have been counted towards the social insurance period;
  - (iii) Provide the author with adequate compensation for the moral damages suffered owing to the lack of support services provided to her as a parent caring for her disabled child who had to end her employment activities;
  - (iv) Reimburse the author for the legal costs reasonably incurred in the processing of the present communication;

(b) General: given that the State party has already amended the Act on Public Social Insurance Pensions and has ensured that, starting from 1 January 2017, the periods of providing care for children with severe disabilities are counted towards the

social insurance pension of their parents, thus preventing similar violations from reoccurring in the future, but that no compensation is made possible for women, such as the author, who provided care for their children with severe disabilities in the home setting between 1 January 1999 and 31 December 2016. The State party should take measures, including legislative ones, to ensure that the situation of such women is remedied within a reasonable time. The State party is also invited to ensure the availability of adequate support services to allow mothers of severely disabled children to remain in employment.

9. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and shall submit to the Committee, within six months, a written response, including information on any action taken thereon. The State party is requested to publish the Committee's views and recommendations and to have them widely disseminated in order to reach all relevant sectors of society.

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