

National Social Insurance House Obligated to Pay Social Allowances for Disabled Persons Deprived of Liberty

The Decision of the Civil and Administrative Litigation College of the Supreme Court of Justice of 13 April 2017^[1] declared inadmissible the appeal of the National Social Insurance House against the Decision of Chisinau Court of Appeal of 16 December 2016 contesting the Decision issued by the Council on the Prevention and Elimination of Discrimination and Ensuring Equality on the case of Machina Tatiana v. Department of Penitentiary Institutions, Penitentiary No 13, National Social Security House.

Thus, the Decision No 155/14 of 11 December 2014, issued by the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (hereinafter referred to as the CPEDEE) on the case of Machina Tatiana v. Department of Penitentiary Institutions, Penitentiary No 13, National Social Insurance House^[2], on discrimination by refusal to provide a reasonable accommodation on the basis of disability, remains valid, and the recommendations should be performed by the subjects in charge, including by the National Social Insurance House.

By its Decision No 155/14, CPEDEE declared discriminatory Article 6(10) of the Law on State Social Allowances for certain categories of citizens, namely for disabled persons deprived of liberty in the penitentiaries not adjusted to this category of prisoners, considering that the social allowance is paid with the purposes to eliminate the barriers encountered by the disabled complainant, and the lack of a reasonable accommodation of the place she is detained supports

the need of receiving this allowance, though if the complainant was reasonably accommodated in the penitentiary, the need to pay the social allowance would have been declined. The Court also stated that if the complainant was not restricted by the lack of reasonable accommodation in common and independent exercise of daily maintenance and care action, the need to pay the allowance would have been declined, but the situation of the complainant is completely different.

The Supreme Court of Justice stated the following: *The arguments invoked under the appeal, according to which the lower courts ignored the main legal rule regulating the subject of matter, and, namely Article 6(10) and Article 7(1) of the Law on State Social Allowances for certain categories of citizens, cannot be considered, given that the purpose of the social allowance is to eliminate the barriers encountered by the disabled persons. Thus, considering the lack of reasonable accommodation for Machina Tatiana in the Penitentiary No 13, the public authority in charge of establishing the social allowance and its method of payment, the recurrent disregarded the purpose of the Law No 499, namely, to care, accompany and supervise. The lack of a reasonable accommodation of the place she is detained supports the need of receiving this allowance, but, if Machina Tatiana was reasonably accommodated in the penitentiary, the need to pay the social allowance would have been declined.*

Against this background, even if the plaintiff was released from the penitentiary on the grounds of her disability, she still does not receive social allowances that should be paid through the National Social Insurance House under Article 6(10) and Article 7(1) of the Law on State Social Allowances for certain categories of citizens. During January – March 2017, Promo-LEX Association received similar complaints from disabled persons detained in penitentiaries and psycho-neurological institutions, who do not receive any social payments for the same reasons as the prisoner Machina Tatiana.

Also, during the same period, Promo-LEX received several complaints from prisoners with mobility impairments, who complaint about the lack of reasonable accommodation of the penitentiary infrastructure for persons with mobility impairments.

In these circumstances and considering the Decision of the Civil and Administrative Litigation College of the Supreme Court of Justice of 13 April 2017, Promo-LEX Association reminds the National Social Insurance House and the Department of Penitentiary Institutions about the need to execute the CPEDEE Decision of 11 December 2014 on the case No 155/14, by which the following were decided:

- National Social Insurance House should recommend the adjustment of the legislation, considering the CPEDEE finding – Article 6(10) of the Law No 499 of 14 July 1999 on State Social Allowances for certain categories of citizens is discriminatory in relation to disabled persons deprived of liberty in penitentiaries not adjusted for this category of prisoners;
- National Social Insurance House should resume the payment of social allowances to disabled persons detained in penitentiaries, hospitalised in psycho-neurological institutions, etc.;
- Ministry of Justice and Department of Penitentiary Institutions should provide reasonable accommodation for all penitentiaries where disabled persons are detained.

For more details, please contact: Tatiana Pascovschi, Promo-LEX Communication Officer: GSM 060804022, Tel./Fax (+373 22) 45-00-24, e-mail: tatiana.pascovschi@promolex.md

[1]http://jurisprudenta.csj.md/search_col_civil.php?id=36030

[2] CPEDEE, Decision No 155/14 of 11 December 2014, available at:

http://egalitate.md/media/files/files/decizia_nr__155_depersonalizat_1273504.pdf