



Republic of Moldova

CONSTITUTIONAL COURT

JUDGEMENT

ON CONSTITUTIONAL REVIEW

**of point 3 of the Annex No. 2 to the Law No. 1593–XV of 26
December 2002 on the Amount, Procedure and Terms of Payment of
Mandatory Health Insurance Fees**

(Complaint No. 8a/2015)

CHISINAU

19 June 2015

In the name of the Republic of Moldova,
the Constitutional Court composed of:
Mr. Alexandru TĂNASE, *President*,
Mr. Aurel BĂIEȘU,
Mr. Igor DOLEA,
Mr. Victor POPA, *judges*,
with the participation of Mrs. Aliona Balaban, *registrar*,
given the complaint lodged on 4 March 2015
and registered on the same date,
having examined the complaint referred to in a plenary public sitting,
given the file documents and proceedings,
deliberating in closed plenary sitting,

Delivers the following Judgement:

PROCEEDINGS

1. The case originates in the complaint lodged with the Constitutional Court on 4 March 2015, according to articles 135 para. (1) let. a) of the Constitution, 25 let. g) of the Law on Constitutional Court and 38 para. (1) let. g) of the Constitutional Jurisdiction Code by the Members of Parliament Alla Dolința, Igor Dodon, Vasile Bolea and Grigore Novac, on the review of constitutionality of point 3 of the Annex No. 2 of the Law No. 1593–XV of 26 December 2002 on amount, modality and deadlines for paying the mandatory health insurance premiums.

2. The authors of the complaint claimed that point 3 of the Annex No. 2 to the Law No. 1593-XV of 26 December 2002, which provides for mandatory contributions to the mandatory health insurance by the persons which are not employed, contravenes articles 36, 46, 47, 54 and 58 of the Constitution, art. 1 of the Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as “European Convention”).

3. Based on the Constitutional Court Decision of 2 June 2015, the complaint was declared admissible, without prejudicing the merits of the case.

4. In the process of reviewing the complaint, the Constitutional Court requested the opinions of the President of the Republic of Moldova, Parliament, and Government.

5. The authors of the complaint were not present at the public hearing of the Court. The Parliament was represented by Mr. Sergiu Bivol, Head of the Private Law Unit under the General Legal Division of the Parliament’s Secretariat. The Government was represented by Mr. Mircea Buga, Minister of Health, and Mr. Andrei Șveț, Head of the Legal Division of the Ministry of Health.

IN FACT

6. The Law on Health Protection No. 411-XIII of 28 March 1995 provides the citizens of the Republic of Moldova, regardless of their own revenues, equal possibilities to obtain qualitative and timely in the system of mandatory health insurance.

7. For enforcing the Law No. 411-XIII of 28 March 1995, of 27 February 1998 the Parliament adopted the Law No. 1585-XIII on ensuring mandatory health insurance.

8. The Law No. 1585-XIII of 27 February 1998 on ensuring mandatory health insurance represents an autonomous system, guaranteed by the state, of financial protection of the population in the area of health protection by establishing the principle of solidarity, from the insurance premiums, of some funds intended to cover treatment costs conditional upon the occurrence of insured events (disease or impairment).

9. According to art. 17 para. (1) of the Law No. 1585-XIII, the assured shall pay to the insurer for taking over the person's insured risk, according to the provisions of the legislation, *the mandatory health insurance premium*, which represents a fixed amount or percentage contribution to the salary and to other remunerations.

10. On 26 December 2002, based on the Law No. 1585-XIII of 27 February 1998, the Parliament adopted the Law No. 1593-XV on the Amount, Procedure, and Terms of Payment of Mandatory Health Insurance Fees.

11. According to art. 4 of the Law No. 1593-XV of 26 December 2002, the payers of the mandatory health insurance premiums in the form of *percentage contribution to the salary and other remunerations* are provided in Annex No. 1, and Annex No. 2 covers the categories of payers of the mandatory health insurance premiums *in a fixed amount, which is insured individually*.

12. Point 3 of Annex No. 2 provides as payers of the mandatory health insurance premiums and "*other citizens of the Republic of Moldova who are not employed and are not part of any of the listed categories and are not insured by the Government, according to art.4 para. (4) of the Law on Mandatory Health Insurance, who prove that they have stayed in the Republic of Moldova for at least 183 days (during the budgetary year).*"

RELEVANT LEGISLATION

A. National legislation

13. The relevant provisions of the Constitution (M.O., 1994, No. 1) are as follows:

Rights to Health Protection

- “(1) The right to health protection is guaranteed.
- (2) The minimum health insurance provided by the State shall be free of charge.
- (3) The structure of the national health security system and the means aimed at protecting the physical and mental health of the individual shall be provided for by organic law.”

Article 46

Right to Private Property and Its Protection

- “(1) The right to possess private property and the debts incurred by the State are guaranteed.
- (2) No one may be expropriated except for a matter of public utility, as established by the law, against a fair and previously determined compensation.”

Article 47

Right to Social Assistance and Protection

- “(1) The State shall be bound to take actions in order that every person has a decent standard of living that would ensure him/her and his/her family members health protection and welfare including food, clothing, shelter, medical care, as well as necessary social services.
- (2) All citizens have the right to be insured in case of: unemployment, disease, disability, widowhood, old age or other situations where, due to causes beyond one’s control, one loses the source or means of obtaining the necessities of life.”

Article 54

Restrictions on the Exercise of Certain Rights or Freedoms

“[...]

- (2) The exercise of the rights and freedoms may not be subdued to other restrictions unless for those provided by the law, which are in compliance with the unanimously recognized norms of the international law and are requested in such cases as: the defense of national security, territorial integrity, economic welfare of the country, public order aiming at preventing mass riots and crimes, protection of the rights, freedoms and dignity of other persons, prevention of disclosing confidential information or the guarantee of the power and impartiality of justice.

[...]

- (4) The restriction has to be proportionate to the situation that caused it and shall not affect the existence of the right or freedom.”

Article 58

Financial Contributions

- “(1) Citizens have the obligation to contribute by way of duties and taxes to public expenditures.
- (2) The system of legal taxation must ensure a fair distribution of the tax burdens.
- (3) Any other dues are prohibited, save for those determined by the law.”

14. The relevant provisions of the Law on Health Protection No. 411-XIII of 28 March 1995 (M.O., 1995, No. 34, art.373) are as follows:

Article 20
Right to healthcare

“(1) The citizens of the Republic of Moldova, regardless of their own incomes, are provided equal possibilities to obtain timely and qualitative healthcare in the system of mandatory health insurance. The mandatory health insurance represents a system, guaranteed by state, for protecting the interests of the population in the area of health protection by establishing from the insurance premiums of monetary funds meant to cover the costs for treatment of conditions determined by occurrence of insured events (disease or impairment).

(2) The State, in line with the provisions of the Constitution, guarantees the minimum free-of-charge health insurance for the citizens of the Republic of Moldova, which covers:

a) anti-epidemic prevention measures and medical services within the limits of the national programs envisaged in the state budget;

b) medical assistance in case of medical-surgical emergencies with vital danger, when one or more interventions are necessary through the prehospital urgent healthcare service, primary healthcare provided by the family doctor, as well as through the medical-sanitary institutions of outpatient or inpatient type, within the limit of the means of the mandatory health insurance funds and the means of the state budget for the respective year;

c) prehospital urgent healthcare, primary healthcare, as well as specialized outpatient and inpatient healthcare in case of socially-conditioned diseases with major impact on public health, according to a list set by the Ministry of Health;

d) healthcare, provided in the Single Programme of Mandatory Health Insurance, the insured persons, including the unemployed ones, for whom the payer of the mandatory health insurance premiums is the state;

e) dental medical assistance in full volume, except for prostheses and dentary recovery, provided to the children aged up to 12 years;

f) covering the costs for breast exoprotheses and breast implants for rehabilitation of patients with malignant tumors;

g) covering the costs for individual prostheses and consumables necessary for surgery and prosthetic rehabilitation of patients with malignant tumors of the head, neck and locomotor system from the mandatory health insurance funds managed by the National Health Insurance Company.

(3) Healthcare provided in para. (2) let. b)-g) is fulfilled within the limits of the financial means of the mandatory health insurance funds, established according to the legislation in force.”

15. The relevant provisions of the Law No. 1585-XIII of 27 February 1998 on Mandatory Health Insurance (M.O., 1998, No. 38-39, art.280) are as follows:

Article 3 Insurance object

“The object of mandatory health insurance is the insured risk, related to the costs for providing the necessary volume of medical and pharmaceutical assistance, envisaged in the Single Programme.”

Article 4 Insurance subjects

“(1) The subjects of the mandatory health insurance are:

- a) insurant;
- b) insured person;
- c) insurer;
- d) provider of medical services.

(2) The insurant is the individual or legal entity obliged by law to insure his/her own risk to get sick and/or the risk to get sick of other categories of persons whose insurance is under his/her competence.

(3) The insurant for the employed persons (employees) is the employer.

(4) The Government is the insurant for the following categories of unemployed persons with domicile in the Republic of Moldova and under the records of the competent institutions of the Republic of Moldova, specified in para. (9), except for the persons obliged by law to insure themselves individually:

- a) children of preschool age;
- b) students from primary, gymnasium, lyceum, and general secondary education;
- c) students from vocational secondary education;
- d) students from specialized secondary education (colleges) with full-time studies;
- e) students from university education with full-time studies, including the ones studying abroad;
- f) residents of compulsory post-graduate education and PhD students in day-courses, including the ones who study abroad;
- g) children not enrolled in education until turning 18 years old;
- h) pregnant women, post-natal women, and women who have recently given birth;
- i) persons with severe, pointed, and medium disabilities;
- j) pensioners;
- k) unemployed persons registered with territorial employment agencies;
- l) persons who provide home care to persons with severe disabilities who need care and/or permanent supervision from another person;
- m) mothers with four and more children;
- n) persons from deprived families who benefit from social assistance according to Law No.133-XVI of 13 June 2008 on Social Assistance;
- o) foreigners benefiting from a protection form included in an integration program, during the period of its implementation.

(5) The insurant and the payer of insurance premiums for the compulsory health insurance for the non-employed persons, who are not specified in par. (4), are the respective persons themselves.

(6) Insured persons may be citizens of the Republic of Moldova and foreigners, under the conditions set in art.4 par.(4) let. o) and art.9.

(7) The National Health Insurance Company and its territorial agencies (branches) is the insurer in the mandatory health insurance system.

(8) The health services providers from the mandatory health insurance system, hereinafter referred to as health services providers, are the medical-sanitary institutions, organizations (institutions) specialized in providing home care, including palliative care, which have concluded contracts for health care provision (health services provision) with the National Health Insurance Company or its territorial agencies (branches).”

Article 5

Organization principles of the mandatory health insurance

“(1) The mandatory health insurance system is organized and operates based on the following principles:

a) *singularity principle*, according to which the state organizes and guarantees the mandatory health insurance system based on the same legal norms;

b) *equality principles*, according to which all the participant of the mandatory health insurance system (payers of mandatory health insurance premiums, health services providers, health care beneficiaries) are insured non-discriminatory treatment, from the viewpoint of the rights and obligations provided by the law;

c) *solidarity principle*, according to which the payers of the mandatory health insurance premiums pay the respective conditions depending on the incomes, while the insured persons benefit from health care depending on the needs;

d) *compulsoriness principle*, according to which, individuals and legal entities, according to the law, are obliged to participate in the mandatory health insurance system, while the right for health insurance are exercised in correlation with the fulfillment of the obligations;

e) *contribution principle*, according to which the health insurance funds are established based on the insurance premiums paid by the payers set by the legislation;

f) *repartition principle*, according to which the fulfilled funds of the mandatory health insurance shall be redistributed for paying the obligations incurred by the mandatory health insurance system, according to the law;

g) *autonomy principle*, according to which, the mandatory health insurance system is self-administrated, according to the law, and the health services providers who provide health care in the respective system act based on the self-financing and non-profit principles.

(2) The mandatory health insurance for employed persons shall be carried out from the employees’ and employers’ means.

(3) The mandatory health insurance for non-employed persons, listed in art.4 par.(4) shall be carried out from the state budget means.

(4) In case of the uninsured persons, the costs for pre-hospital emergency health care, for primary health care, and for specialized out-patient and in-patient health care in case of socially-conditioned diseases with major impact on public health are covered from

the mandatory health insurance funds' means, according to the list established by the Ministry of Health.”

Article 6 Mandatory health insurance policy

“(1) The quality of insured person shall be confirmed by the insurer’s issuance, according to the law, of a mandatory health insurance policy, based on which the insured person benefits from the integral volume of health care, stipulated the Single Program and provided by the health services providers.

(2) The insurance policy shall be a document of strict record keeping and shall be issued by the insurer based on:

- a) the lists of nominal record keeping of the employed insured persons, which are submitted and updated by the employers;
- b) the lists of nominal record keeping of the persons insured by the state, which are submitted and updated by the competent institutions, indicated in art.4 para. (9);
- c) identity documents and other documents certifying the right to obtain the insurance policy to the persons obliged by law to get insured individually.

(3) The model of the mandatory health insurance, the way it is issued and the way the records are kept about the insurance policies shall be approved by the Government.

(4) The action of the mandatory health insurance shall end when the quality of insured person is lost, in the following cases:

- a) the person insured by the state loses the right to residence in the Republic of Moldova;
- b) the validity of the policy expires;
- c) the insured person dies.

(5) The action of the mandatory health insurance shall be suspended in the following cases:

- a) the insured person is erased by the employer or the competent institution, set in art.4 par. (9), from the nominal record keeping;
- b) the activity of the unit is suspended, on legal basis;
- c) the person is enrolled in the military service;
- d) the person is granted during a calendar year a unpaid leave for a duration larger than 60 calendar days.”

Article 16 Mandatory health insurance funds

“(1) For the purpose of carrying out the mandatory health insurance, the National Health Insurance Company established and manages the following funds from the accumulated means:

- a) the fund for paying for the health services;
- b) the reserve fund of mandatory health insurance;
- c) the fund of prophylaxis measures;

- d) the fund for development and modernization of public health services providers;
- e) the administration fund of the mandatory health insurance system.
[...].”

Article 17 Mandatory health insurance premiums

“(1) The mandatory health insurance premium represents a fixed amount or a percentage-based contribution to the salary and other recompenses to be paid by the insurant to the insurer for taking over the insured risk of the person, according to the provisions set in the legislation.

(2) The mandatory health insurance premiums shall be established as financial contributions in sufficient amounts to fulfill the Single Program and for the insurer to carry out its activity.

(3) The amounts of the insurance premiums established in fixed amounts and a percentage-based contribution to the salary and other recompenses shall be set annually in the law on mandatory health insurance.

(4) The amount of the insurance premium as a fixed amount shall be calculated by applying the insurance premium in the form of percentage-based contribution to the annual average salary, forecasted for the respective year based on the macroeconomic indicators.

(5) The payment of the mandatory health insurance premiums for the employed population shall be carried out from the contributions paid by the employee and employer.

(6) The participation of the employee to the premium payment shall be determined on a differentiated way, depending on the amount of his/her salary, and shall start from the moment the work contract is concluded.

(7) The amount, way, and deadlines for paying the insurance premiums shall be set by law.”

16. The relevant provisions of the Law No. 1593-XV of 26 December 2002 on the Amount, Procedure and Terms of Payment of Mandatory Health Insurance Fees (M.O., 2003, No. 18-19, art.57) are as follows:

Article 4

“(1) The categories of payers of the mandatory health insurance premiums as percentage contribution to the salary and other remunerations are set in Annex No. 1.

(2) The categories of payers of the mandatory health insurance premiums as fixed amount, who are insuring themselves individually, are set in Annex No. 2.”

Article 5

“The amount of the mandatory health insurance premiums is calculated by the Ministry of Health, according to the provisions of art.17 of the Law on Mandatory Health Insurance and is approved annually through the Law on Mandatory Health Insurance Funds.”

Annex No. 1
Categories of payers of mandatory health insurance premiums as percentage
contribution to the salary or other remunerations

“1. Employers.

2. Employees, including:

a) persons holding elective positions or who work in trade-unions or employers' organizations, in executive, legislative and law enforcement authorities;

b) persons employed in projects, international institutions and organizations, which carry out their activity on the Republic of Moldova, regardless of the financing source for their activities, if the international agreements do not stipulate otherwise;

c) persons who perform their activity in public associations and organizations, registered in line with the legislation in force;

d) citizens of the Republic of Moldova employed in embassies, consular offices, and other permanent missions located on the territory of the Republic of Moldova;

e) persons employed by individual entrepreneurs and other employers-natural persons;

f) persons employed by public notaries, bailiffs and lawyers.

3. Units, regardless of their ownership type and legal organization form, individuals, public notaries, bailiffs and lawyers who pay other remunerations to natural persons or for their benefit.

4. Individuals who receive other remunerations.

Annex No. 2
Categories of payers of mandatory health insurance premiums in fixed
amount, who insure themselves individually

“1. Unemployed individuals with domicile in the Republic of Moldova, who feet one of the following categories:

a) owners of agricultural land plots, except for gardens and land plots for vegetable growing, regardless of the fact if these land plots were or not rented out or given into use based on contract, except for the owners with severe, pronounced, or medium disabilities, or pensioners;

b) founders of individual enterprises, except for pensioners or persons with severe, pronounced or medium disabilities;

c) individuals who rent out or given into use, based on contract, agricultural land plots, except for gardens and land plots for vegetable growing;

d) holders of entrepreneurship patents, except for the holders – pensioners or holders with severe, pronounced or medium disabilities;

e) individuals who rent out transportation units, premises, equipment, and other material goods, except for agricultural land plots, except for gardens and land plots for vegetable growing.

2. Unemployed public notaries, bailiffs and lawyers, regardless of the legal form of their activity organization, who have obtained the license in the way established in the law.

3. Other citizens of the Republic of Moldova who are not employed and are not part of any of the listed categories and are not insured by the Government, according to art.4 para. (4) of the Law on Mandatory Health Insurance, who provide evidence of staying in the Republic of Moldova for at least 183 days (during the budgetary year).”

17. The relevant provisions of the International Pact on Economic, Social, and Cultural Rights (adopted by the General Assembly of the United Nations on 16 December 1966 and ratified by the Republic of Moldova via the Parliament Decision No. 217-XII of 28 July 1990) are as follows:

Article 9

“The States Parties to the present Pact recognize the right of everyone to social security, including social insurance.”

Article 12

“1. The States Parties to the present Pact recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Pact to achieve the full realization of this right shall include those necessary for:

(a) The provision for the decreasing mortality of newborns and of infant mortality, as well as, for the healthy child development;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

18. The relevant provisions of the Universal Declaration of Human Rights, adopted in New York on 10 December 1948, joined by the Republic of Moldova via the Decision No. 217-XII of 28 July 1990 (Veștile No.8/233, 1990), are as follows:

Article 25

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

IN LAW

19. Having examined the content of the complaint, the Court notes that it refers, in essence, to payment of mandatory health insurance premiums.

20. Thus, the complaint refers to a set of interconnected constitutional elements and principles, such as the right to health protection and the right to social assistance and protection.

A. ADMISSIBILITY

21. According to its Decision of 2 June 2015, the Court held that based on article 135 para. (1) let. a) of the Constitution, article 4 para. (1) let. a) of the Law on Constitutional Court and article 4 para. (1) let. a) of the Constitutional Jurisdiction Code, the Constitutional Court is competent to review the constitutionality of laws.

22. Article 25 let. g) of the Law on Constitutional Court and article 38 para. (1) let. g) of the Constitutional Jurisdiction Code provide the Member of Parliament with the right to lodge complaints with the Constitutional Court.

23. The prerogative the Court was endowed with through article 135 para. (1) let. a) of the Constitution implies the establishment of legislative norms' compliance with the Constitution, taking into account the principle of Constitution's supremacy.

24. The Court notes that the authors of the complaint contested the provisions of point 3 of Annex No. 2 of the Law No. 1593-XV of 26 December 2002, invoking the alleged violation of articles 36, 46, 47 and 58 of the Constitution.

25. To give explanations to the requirements of the complaint's authors, the Court will examine the compliance of the mechanism of payment of the mandatory health insurance premiums, set by law, with the constitutional standards.

26. The Court holds that the contested provisions were not subject to any previous constitutional review.

27. Hence, the Court notes that the complaint cannot be rejected as inadmissible and there is no reason to suspend the proceedings in line with the provisions of article 60 of the Constitutional Jurisdiction Code.

28. To elucidate the compliance of the contested provisions with the constitutional norms, the Court will operate, especially, with the provisions of articles 36, 46 and 47 combined with article 58 of the Constitution. As well, the Court will analyze the object of the complaint in the light of international norms and its own case-law.

B. THE MERITS

I. THE CLAIMED VIOLATION OF ARTICLES 36, 46 AND 47 COMBINED WITH ARTICLE 58 OF THE CONSTITUTION

29. The authors of the complaint consider that point 3 of Annex No. 2 to the Law No. 1593-XV of 26 December 2002 contravenes art. 36 of the Constitution, according to which:

“(1) The right to health protection is guaranteed.

(2) The minimum health insurance provided by the State shall be free of charge.

[...]”

30. At the same time, the authors mention that the contested provisions are in contradiction with article 46 of the Constitution, according to which:

“(1) The right to possess private property and the debts incurred by the State are guaranteed.

[...]”

31. As well, the authors support that the contested provisions contravene article 47 of the Constitution, according to which:

“(1) The State shall be bound to take actions in order that every person has a decent standard of living that would ensure him/her and his/her family members health protection and welfare including food, clothing, shelter, medical care, as well as necessary social services.

(2) All citizens have the right to be insured in case of: unemployment, disease, disability, widowhood, old age or other situations where, due to causes beyond one's control, one loses the source or means of obtaining the necessities of life.”

32. As well, the authors of the complaint consider that the contested norm contradicts the provisions of article 58 of the Constitution, according to which:

“(1) Citizens have the obligation to contribute by way of duties and taxes to public expenditures.

(2) The system of legal taxation must ensure a fair distribution of the tax burdens.

(3) Any other dues are prohibited, save for those determined by the law.”

Arguments of the complaint authors

33. According to the complaint authors' opinion, obliging the unemployed persons, according to point 3 of Annex No. 2 of the Law No. 1593-XV of 26 December 2002, to pay the mandatory health insurance premiums prejudices the right to health, set forth in article 36 of the Constitution, as it represents a barrier for the vulnerable persons to medicine of quality.

34. The complaint also states that the fact that unemployed persons obliged to pay the contribution to the mandatory health insurance funds affects the financial situation of the citizens, because of the incapacity to pay or because these payment is exaggerated in relation to the real payment possibilities of the citizen.

35. As well, the authors mention that the state has exceeded its margin of appreciation when setting the payment obligation according to point 3 of Annex No. 2 of the Law No. 1593 - XV, hence this obligation contravenes art. 58 of the Constitution.

1. Arguments of authorities

36. The President of the Republic of Moldova, in its written opinion, mentioned that the contested provisions do not exceed the constitutional framework and are in line with the principles governing the system of mandatory health insurance.

37. As well, the Parliament, in its written opinion, mentioned that the regulations of point 3 of Annex No. 2 to the Law No. 1593 of 26 December 2002 on the Amount, Procedure and Terms of Payment of Mandatory Health Insurance Fees are in line with the supreme values guaranteed by the Constitution.

38. In its opinion, the Government mentions that exclusion of the obligation to pay the health insurance premium for the category of payers set forth in point 3 of Annex No. 2 will condition the compromising of the mandatory health insurance system's functionality, which currently is the main source for financing health protection in the state. In this way, the mandatory health insurance system risks to become non-functional from financial point of view, by reducing the number of people contributing to the mandatory health insurance funds and increasing the number of beneficiaries of health services.

3. Finding of the Court

3.1. General principles

39. The Court holds that the right of every citizen to health protection is guaranteed by art. 36 of the Constitution. According to art. 36 para. (2) of the Constitution, the minimum of the health insurance provided by the state is free of charge.

40. In Judgement No. 2 of 28 January 1999, the Court has stated that "according to the Constitution, it is namely the State that through its public authorities is the guarantor of this constitutional right of the citizens. The State sets and ensures the provision of a minimum free-of-charge medical assistance."

41. As well, according to art. 47 of the Constitution, the State is bound to take actions in order that every person has a decent standard of living that would ensure him/her and his/her family members health protection and welfare including food, clothing, shelter, medical care, as well as necessary social services.

42. The right to a living level corresponding to health insurance also derives from art. 25 para. (1) of the Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights.

43. Thus, the International Pact on Economic, Social and Cultural Rights recognizes in art. 9 the right of everyone to social insurance, and according to art. 12 para. (2) let. d) of the Pact, the steps to be taken by the States Parties to achieve full realization of this right shall include measures necessary to create the conditions which would assure to all medical service and medical attention in the event of sickness.

44. In its Judgment No. 28 of 14 December 2004, the Court states that according to the legal framework, the right to health protection, being one of the fundamental human rights, is ensured through preserving the genetic fund of the country, by creating life and work conditions, by guaranteeing qualified medical assistance, provided in line with modern medical exigencies, as well as by legal protection against the damages caused to health. Health protection of the population in the Republic of Moldova represents an area of vital importance and special public interest, which obliges the State to take measures for ensuring its viability, modernization, and development.

45. The Court holds that the medical system in the Republic of Moldova functions based on the mandatory health insurances.

46. According to the Law on Health Protection No. 411-XIII of 28 March 1995, the mandatory health insurance represents a system, guaranteed by the State, for defending the interests of the population in the area of health protection by establishing from the account of health insurance premiums of monetary funds meant to cover the costs for treating the conditions determined by occurrence of insured events (disease or impairment).

47. The Court notes that the international practice knows three models for financing health systems, and namely: *Beveridge model* – in which the main financing source is represented by general taxes; *Bismarck model* – system of social and health insurances collected based on income-based contributions; *Semashko model* – financed fully from the state budget, the State having the monopoly on all the health services, and the medical services being free of charge for the entire population.

48. The *Semashko* model was characteristic for the countries of Central and Eastern Europe during several decades, being abolished in the '90, when new economic and political reforms started.

49. Currently, the countries from Europe have organized their health system based on the other two models *Beveridge and Bismarck*, every country adjusting its system to its own realities and needs.

50. The Court mentions that the mandatory health insurance system in the Republic of Moldova is regulated by Law No. 1585-XIII of 27 February 1998 on Mandatory Health Insurance and was enforced through the Law No. 1593-XV of 26 December 2002 on the Amount, Procedure and Terms of Payment of Mandatory Health Insurance Fees.

51. The system of mandatory health insurance, according to the existing regulations, is organized and functions based on: *principle of singularity, equality, solidarity, compulsoriness, contribution, and repartition.*

3.2. Application of principles in the given case

52. Taking into account the principles governing the system of mandatory health insurance, the Court holds that the *principle of compulsoriness and the principle of solidarity* are essential for this system and are manifested through the fact that the entire society should contribute to protection of population health.

53. The Court holds that the *principle of compulsoriness* represents a modality of making the citizens accountable for assuming themselves the risk which may occur in case of health condition worsening, having the obligation to participate in the system of mandatory health insurance with a contribution, in the financial coverage of the costs related to occurrence of the insured events.

54. At the same time, the Court mentions that the principle of *solidarity* represents the foundation of organization and operation of the system of health social insurance. Hence, due to the solidarity of those who contribute, this system may fulfill its main objective, *to ensure the minimum free of charge medical assistance for the population*, including for those persons who have no possibility to contribute to establishing the health insurance funds.

55. In its Judgement No. 13 of 14 June 2011, the Court established that according to the principle of social solidarity, any able bodied person has the obligation to contribute to social insurance of unable people, including by paying from the salary and other revenues the premiums of mandatory health insurance.

56. The Court holds that for guaranteeing the right to health protection and for the purpose of fulfilling the mandatory health insurance, it is necessary for *mandatory health insurance funds to exist.*

57. According to art. 3 of the Law No. 1585-XIII of 27 February 1998, the object of the mandatory health insurance is the *insured risk*, related to the costs for providing the necessary medical and pharmaceutical assistance.

58. In this respect, the Court notes that through the system of mandatory health insurance, the State *insures the risks* of the costs related to citizens getting sick, through anticipated collection of necessary funds.

59. In this context, the Court reveals that the health insurance funds are established based on the insurance premiums paid by the payers set in the legislation.

60. According to art. 3 of the Law No. 1593-XV of 26 December 2002, payers of the mandatory health insurance premiums are: individuals or legal entities, including central or local public administration authority, which have the *obligation* to pay the insurance premiums in the way, set by the law.

61. The Court holds that the *mandatory health insurance premium*, according to art. 17 para. (1) of the Law No. 1585-XIII of 27 February 1998, represents *a fixed amount* or a *percentage contribution* to the salary and other remunerations, which the insurant is obliged to pay to the insurer for taking over the person's insured risk, according to the legislation provisions. Paragraph (3) of this article stipulates that the amount of the insurance premiums in fixed amounts or in percentage contribution to the salary or other remunerations is set annually *in the Law on Mandatory Health Insurance Funds*.

62. The Court mentions that Annex No. 1 of the Law No. 1593-XV of 26 December 2002 established the categories of payers of mandatory health insurance premiums in the *form of percentage contribution* to the salary and to other remunerations, and Annex No. 2 included the categories of payers of mandatory health insurance premiums *in fixed amount*, which are insured individually.

63. According to point 3 of Annex No. 2 to the contested law, the payers of the health insurance premiums in fixed amount are also the *unemployed persons, which prove their stay in the Republic of Moldova for at least 183 days (during the budgetary year)*.

64. The Court notes that while point 3 of Annex No. 2 to the Law No. 1593-XV of 26 December 2002, the payers of the health insurance premiums are also the unemployed persons, through art. 4 of the Law No. 1585 of 27 February 1998 a wide category of persons, including from the *category of those unemployed are exempted from this obligation*, and namely: pensioners; unemployed registered with the territorial employment agencies; persons who provide home care to a person with severe disability, who needs care and/or permanent supervision from another person; mothers with four and more children; persons from deprived families, who benefit from social assistance, etc. For these categories of persons – the Government is the insurant and the mandatory health insurance of these persons is fulfilled from the state budget, according to art.5 para.(3) of the cited law.

65. Hence, the unemployed persons who do not have financial means and who are under the incidence of art. 4 of the Law No. 1585-XIII of 27 February 1998 are insured by the State.

66. As well, the Court underlines that according to the Law on Mandatory Health Insurance Funds for 2015, the unemployed persons, payers of fixed amounts, benefit from a discount of 50% from the amount, if they pay in the first 3 months since the entry into force of the law.

67. The Court holds that according to the Constitution, besides the fundamental rights, the citizens also have fundamental obligations. Thus, according to art. 58 of the Constitution, the citizens have the obligation to contribute by way of duties and taxes to public expenditures, and the constitutional principle of fair positioning of the fiscal tasks imposes the citizens to incur public expenditures.

68. In this respect, the Court mentions that the legislator, according to the constitutional and legal provisions, has the freedom to set the contributions by citizens. At the same time, it should be noted that in this case, due to no payment of this contribution, the person cannot acquire the position of insured and cannot benefit from minimum free of charge medical assistance.

69. Hence, to benefit from medical assistance in the volume provided according to the Single Program of Mandatory Health Insurance, the person should contribute to the mandatory health insurance system according to the law and the principle governing this system.

70. The social nature of the State implies the establishment of a political system, which would allow adopting certain adequate measures for redistribution of goods according to the principles of social fairness, for all the members of the society to have a guaranteed minimum of social insurance, according to art. 47 of the Constitution.

71. As well, the Court reiterates that the **obligation of contribution to the health insurance fund stems from the principle of solidarity**, on which the public system of social insurance is established, as a manifestation of the social state.

72. The Court holds that one of the main resources which allow the public health insurance system to fulfill its main objective – to ensure a minimum of medical assistance for the population, including for those categories of persons, who do not have the possibility to contribute to the establishment of the health insurance funds, for whom the Government is the insurant, is the contribution of the insured people to this system. Hence, the principle of solidarity, which is applied to this system, imposes and justifies the obligation to pay the contribution by the unemployed persons who do not prove lack of income.

73. The Court underlines that by exempting the persons from paying the mandatory health insurance premium, a disproportional burden will be established for the employed persons, payers of the health insurance premium as percentage contribution to the salary.

74. As well, the Court establishes that the complaint authors' argument that by obliging the unemployed persons to pay the mandatory health insurance premiums, their property right provided by art. 46 of the Constitution is violated cannot be supported.

75. The Court holds that protection of property right cannot be invoked to refuse the fulfilment of the obligation provided in art. 58 of the Constitution.

76. Thus, in the light of these constitutional provisions, the legislator is competent to set the legal framework for exercising the attributes of the property right, so as not to be in contradiction with the legitimate general interests or with the particular interests of other law subjects, hence establishing the reasonable limitations in its use, as a subjectively guaranteed right.

77. In this respect, the European Commission, in the Case *Wasa Liv Ömsesidigt, Försäkringsbolaget Valands Pensionsstiftelse and a group of about 15000 persons against Sweden*, hold that the provisions of art. 1 of the

Additional Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, referring to protection of property, recognize the competence of the national authorities to decide levying taxes and other fees or contributions, according to the assessment of political, economic and social needs. Thus, obliging a taxpayer to pay a tax or another contribution can be contrary to the right to respect of his/her goods, only if the interested person would be obliged to admit an impossible burden.

78. The Court appreciates that the obligation to contribute to the mandatory health insurance funds with a share-part from the income cannot be considered as representing, per se, a violation of the constitutional provisions related to the property right.

79. The Court holds that the legitimate aim established by law is to fulfill the main objective of the health social insurance system – to ensure a minimum medical assistance for the population.

80. In the light of the above-mentioned, the Court holds that as the aim pursued through the contribution to the health insurance budget was the insurance of continuous access of the population to medical services, the contested provisions do not contravene the provisions of art. 36, 46 and 47 of the Constitution.

Deriving from these reasons, based on art. 140 of the Constitution, art. 26 of the Law on Constitutional Court, art. 6, 61, 62 let. a) and 68 of the Constitutional Jurisdiction Code, the Constitutional Court

DECIDES:

1. *To reject* the complaints of the Members of Parliament, Alla Dolință, Igor Dodon, Vasile Bolea and Grigore Novac.

2. *To recognize* constitutional point 3 of Annex No. 2 to the Law No. 1593-XV of 26 December 2002 on the Amount, Procedure and Terms of Payment of Mandatory Health Insurance Fees.

3. The Judgment of the Constitutional Court is final, cannot be appealed, shall enter into force on the date of passing, and shall be published in the *Official Gazette of the Republic of Moldova*.

President

Alexandru TĂNASE

Chisinau, 19 June 2015
JCC No. 18
Casefile No. 8a/2015