

Strasbourg, 19 November 2024

CDBIO/INF(2024)8

STEERING COMMITTEE FOR HUMAN RIGHTS IN THE FIELDS OF BIOMEDICINE AND HEALTH (CDBIO)

Developments in the field of bioethics in the Decisions of the European Committee of Social Rights (ECSR)

Document prepared by the Secretariat
based on the terms of the official documents published by the ECSR

*Paragraphs in blue indicate unofficial translations,
made using automatic translation software.*

Contents

Pending decisions on the merits involving article 11 and/or 13 of the European Social Charter	4
Amnesty International and Médecins du Monde – International v. Sweden.....	4
Eurochild v. Bulgaria	4
Amnesty International v. Greece	5
Open Society European Policy Institute (OSEPI) v. Bulgaria	5
Decisions on the merits	6
Decisions involving article 11.....	6
Validity Foundation – Mental Disability Advocacy Centre v. Czechia,.....	6
Validity Foundation – Mental Disability Advocacy Centre v. Finland, Complaint.....	8
European Disability Forum (EDF) and Inclusion Europe v. France.....	8
Decisions involving article 13.....	9
Finnish Society of Social Rights v. Finland.....	9
European Roma Rights Centre (ERRC) v. Belgium	10

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.

Article 13 – The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Pending decisions on the merits involving article 11 and/or 13 of the European Social Charter

Amnesty International and Médecins du Monde – International v. Sweden

(Complaint No. 227/2023)

Pending

Registered on 19 June 2023

– Article 11 (Right to protection of health), **Article 13** (Right to social and medical assistance), **Article E** (Non-discrimination) – **denial of access to necessary healthcare for migrants and Roma people**

The complaint was registered on 19 June 2023. It relates to Articles 11 (the right to protection of health) and 13 (the right to social and medical assistance) as well as Article E (non-discrimination) in conjunction with each of the aforementioned provisions of the revised European Social Charter. The complainant organisations allege that in Sweden, EU migrants, including vulnerable Roma citizens of other European Union countries, are being routinely denied necessary healthcare, have been billed the full amount for necessary healthcare, or have had to abstain from necessary healthcare out of fear for costs, in breach of the aforementioned provisions of the Charter.

Eurochild v. Bulgaria

(Complaint No. 221/2023)

Pending

Registered on 14 February 2023

–Article 11 (Right to protection of health), **Article 13** (Right to social and medical assistance), **Article E** (Non-discrimination), **Article 14** (The right to benefit from social welfare services), **Article 17** (The right of children and young persons to social, legal and economic Protection), **Article 27** (The right of workers with family responsibilities to equal opportunities and equal treatment), **Article 30** (The right to protection against poverty and social exclusion) - **lack of early childhood education and care treatment**

The complaint was registered on 14 February 2023. It relates to Articles 11 (the right to protection of health), 13 (the right to social and medical assistance), 14 (the right to benefit from social welfare services), 17 (the right of children and young persons to social, legal and economic protection), 27 (the right of workers with family responsibilities to equal opportunities and equal treatment) and 30 (the right to protection against poverty and social exclusion) as well as Article E (non-discrimination) in conjunction with each of the aforementioned provisions of the revised European Social Charter. Eurochild alleges that due to a lack of a specific legal framework or National Strategy for the Child that sets the standards for early childhood development, the Bulgarian State has not ensured the implementation of effective, accessible and affordable early childhood education that is focused on the interests and needs of young children, in violation of the invoked Charter provisions.

Amnesty International v. Greece

(Complaint No. 217/2022)

Pending

Registered on 2 November 2022

– **article 11§1** (Right to protection of health), **Article E** (Non-discrimination) – **austerity measures worsening access to healthcare**

The complaint was registered on 2 November 2022. It concerns Article 11§1 (the right to protection of health) and Article E (non-discrimination). Amnesty International alleges that Greece is in violation of Article 11§1, read alone or in conjunction with Article E of the Charter, because austerity measures have worsened the accessibility and affordability of health care in Greece, with a particular disproportionate impact on certain marginalized groups. Amnesty International maintains that these impacts continue to be felt in Greece's response to the COVID-19 pandemic.

Open Society European Policy Institute (OSEPI) v. Bulgaria

(Complaint No. 204/2022)

Pending

Registered on 25 January 2022

– **Article 11** (Right to protection of health), **Article E** (Non-discrimination), - **failure to protect specific groups of persons during the pandemics by not guaranteeing them an emergency/priority access**

The complaint was registered on 25 January 2022. It concerns Articles 11 (the right to the protection of health) and Article E (non-discrimination) in conjunction with this provision of the revised European Social Charter. OSEPI alleges that, in the context of the Covid-19 pandemic and distribution of Covid-19 vaccines, Bulgaria has failed to protect the right to protection of health of older adults and persons with underlying medical conditions, by not providing them with a priority and effective access to Covid-19 vaccines, by failing to develop a communication campaign and strategy about Covid-19 vaccines and by failing to provide guidance and training to health care staff in breach of the above-mentioned provisions of the Charter. OSEPI further requests the Committee to indicate to the Bulgarian Government immediate measures in order to avoid the irreparable harm or injury of having a significant additional number of old persons and people with health conditions in Bulgaria dying or contracting serious disease because of Covid-19 without having been vaccinated.

Decisions on the merits

Decisions involving article 11

Article 11 – The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed *inter alia*:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents

Validity Foundation – Mental Disability Advocacy Centre v. Czechia,

(*Application No. 188/2019*)

Adoption: 17 October 2023

Publicity: 14 February 2024

The complainant, Validity – Mental Disability Advocacy Centre (thereafter “Validity”), alleges that the use of netted cage-beds in healthcare settings constitutes a violation of the right to protection of health under Article 11§1 of the 1961 Charter and a violation of the right to social protection of older persons under Article 4§3 of the 1988 Additional Protocol.

Validity Foundation presents common arguments for both provisions invoked, namely Article 11§1 of the 1961 Charter and Article 4§3 of the 1988 Additional Protocol, highlighting specific aspects related to the individual rights.

It submits that the isolation in a netted cage-bed causes inevitable physical and mental suffering, accentuated by the prolonged periods for which people are usually restrained in them and the particular characteristics of the victims. This is especially so for older persons. The harm caused by the use of netted cage-beds includes severe deprivation of personal liberty, great psychological pressure exerted upon the person, restraint and seclusion which worsens individual mental health, humiliation, and often deprivation of food and water and/or opportunities to use the bathroom. Validity further asserts that the use of netted cage-beds lacks any therapeutic purpose, and the purposes which are usually cited for their use by the staff, including punishment of the person or isolation of restless individuals, have no legitimacy.

Validity argues that the use of such restraints interferes both with the right to health and human dignity, and any interference with human dignity strikes at the very essence of the European Social Charter. Validity stresses that, in particular, the use of netted cage-beds against older persons and persons with psychosocial disabilities (i) lacks any legitimate purpose; (ii) inflicts serious emotional and psychological distress; and (iii) as an involuntary or coercive measure, can impair psychological health and prevent improvement.

The respondent Government presents arguments covering both provisions of the Charter invoked by Validity, namely Article 11§1 of the 1961 Charter and Article 4§3 of the 1988 Additional Protocol, highlighting specific aspects related to individual rights.

The Government relies on data collected between 2017 and 2020 to assert that the number of netted cage-beds and the number of their uses are gradually being reduced. It argues that the evolution of the legislation and practice described in its submissions on the merits illustrates the progressive realisation of the right to protection of health and the right of older persons to social protection within a reasonable time.

The Committee refers to previous decisions stating that “health care is a prerequisite for the preservation of human dignity”, (FIDH v. France, Complaint No. 14/2003), and that respect for physical and psychological integrity is an integral part of the right to the protection of health guaranteed by Article 11 (Transgender Europe and ILGA Europe v. Czech Republic, Complaint No. 117/2015).

The Committee states that a human rights-compliant approach to mental health requires as a minimum the following elements: a) developing human rights-compliant mental health governance through, inter alia, mental health legislation and strategies that are in line with the Convention on the Rights of Persons with Disabilities and other relevant instruments, best practice and evidence; b) providing mental health in primary care community-based settings, including by replacing long-stay psychiatric hospitals with community-based non-specialised health settings; and c) implementing strategies for promotion and prevention in mental health, including campaigns to reduce stigmatisation, discrimination and human rights violations

It recalls that Article 11 imposes a range of positive and negative obligations and that the use of netted cage-beds negatively impacts on the health of the persons confined and constitutes an interference with the right to health. In such cases, States must eliminate the interference.

Regarding article 4§3 of the 1988 Additional Protocol, the Committee considers that the use of netted cage-beds is not consistent with the State’s obligations to ensure the enjoyment of the basic rights of older persons under Article 4§3 of the 1988 Additional Protocol, such as the right to autonomy, the right to privacy, the right to personal dignity, the right to be protected against abuse and neglect.

But in the case at hand, the Committee notes that, after the submission of Validity’s complaint, the Czech authorities amended the legislation removing netted cage-beds from the list of permitted means of restraint in healthcare settings. Since the impugned measure was abolished and the use of netted cage-beds is no longer permitted, **the Committee holds that there is no violation of Article 11§1 of the 1961 Charter and no violation of Article 4§3 of the 1988 Additional Protocol.**

**Validity Foundation –
Mental Disability Advocacy Centre v. Finland, Complaint**

(Application No. 197/2020)
Adoption: 22 March 2023,
Publication : 25 August 2023.

Validity alleged that some measures taken by the Government to tackle the Covid- 19 pandemic in spring 2020 violated the rights of persons with disabilities under Article 11 (the right to health), Article 14 (the right to social services), and Article 15 (the right to independence and inclusion in the community) as well as Article E (nondiscrimination) in conjunction with each of the invoked provisions of the Charter.

In its decision on the merits, adopted on 22 March 2023, the ECSR concluded:

- unanimously that there is no violation of Article 11§§1 and 3 of the Charter;
- unanimously that there is no violation of Article E taken in conjunction with Article 11§1 and 3 of the Charter;
- by 13 votes against 1 that there is no violation of Article 15§3 of the Charter.

European Disability Forum (EDF) and Inclusion Europe v. France

(Application No. 168/2018)
Adoption: 19 October 2022
Publicity : 17 April 2023.

EDF and Inclusion Europe alleged that, by failing to implement measures to guarantee sufficient and effective access for persons with disabilities to personal assistance, services and facilities, including those necessary for the inclusion of children with disabilities into mainstream education, France does not respect the right of persons with disabilities to live an independent life within the community, social integration and full participation in the life of the community in violation of Article 15§3 of the Charter.

According to the complainant organisations, this situation also prevents the effective enjoyment by persons with disabilities of the right to benefit from social welfare services (Article 14§1), the right to protection from poverty and social exclusion (Article 30), the right to housing (Article 31§1 and 3) and the right to protection of health (Article 11§1).

Moreover, EDF and Inclusion Europe alleged that, in the absence of effective access for persons with disabilities to an independent life within the community, many families are placed in a vulnerable situation in violation of both their right to social, legal and economic protection (Article 16) and the right of workers with family responsibilities (namely those who support their disabled family member(s)) to equal opportunities and equal treatment (Article 27§1).

Lastly, the complainant organisations also alleged that the lack of effective access for persons with disabilities to an independent life within the community constitutes discrimination in violation of Article E of the Charter, in conjunction with each of the substantive articles that they invoke except Article 30.

In its decision on the merits, adopted on 19 October 2022, the ECSR concluded:

- unanimously that there is a violation of Article 15§3 of the Charter;
- unanimously that there is a violation of Article 15§1 of the Charter;
- unanimously that there is a violation of Article 11§1 of the Charter;
- unanimously that there is a violation of Article 16 of the Charter.

The Committee of Ministers adopted Recommendation CM/RecChS(2023)411 on 6 September 2023.

Decisions involving article 13

Article 13 – The right to social and medical assistance

With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from adiminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

Finnish Society of Social Rights v. Finland

(Application No. 172/2018)

Adoption: 14 September 2022

Publicity : 15 February 2023.

The Finnish Society of Social Rights alleged that the minimum level of several social security and social assistance benefits and the labour market subsidy is in breach of Article 12§1 and 3 (right to social security) and 13§1 (right to social and medical assistance) of the Charter.

In its decision on the merits, adopted on 14 September 2022, the ECSR concluded:

- unanimously that there is a violation of Article 12§1 of the Charter;
- unanimously that there is no violation of Article 12§3 of the Charter;
- unanimously that there is a violation of Article 13§1 of the Charter.

The Committee of Ministers adopted Recommendation CM/RecChS(2023)17 on 14 June 2023.

European Roma Rights Centre (ERRC) v. Belgium

(Application No. 185/2019)

Adoption : 8 December 2022

Publicity : 16 June 2023

ERRC alleged that, following a large-scale search operation carried out by the Belgian police on 7 May 2019 targeting nineteen halting sites for Travellers throughout Belgium, many families belonging to this community, including children, elderly and disabled persons, had their caravans, vehicles and property seized and their bank accounts frozen.

These actions were based on a suspicion that the persons concerned were all involved in criminal activities. ERRC alleged that with these actions the Belgian authorities have deprived the persons concerned of social, medical, legal and economic protection and assistance in violation of Articles 1§2 (the right to work), 11§1 (the right to the protection of health), 12§1 (the right to social security), 13§1 (the right to social and medical assistance), 15§3 (the right of persons with disabilities to independence, social integration and participation in the life of the community), 16 (the right of the family to social, legal and economic protection) and 17 (the right of children and young persons to social, legal and economic protection) of the Revised European Social Charter. ERRC also considered that this operation amounted to ethnically targeted collective punishment, in breach of Article E (non-discrimination) in conjunction with each of the aforementioned provisions of the Charter.

In its decision on the merits, adopted on 8 December 2022, the ECSR concluded:

- by 10 votes against 4 that there is no violation of Article 13§1 of the Charter;
- by 9 votes against 5 that there is a violation of Article E taken in conjunction with Article 16 of the Charter.

A separate dissenting opinion and a separate concurring opinion were appended to the decision.

The Committee of Ministers adopted Recommendation CM/RecChS(2023)513 on 18 October 2023