

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX**

**DECISION ON THE MERITS**

**Adoption: 5 December 2018**

**Notification: 18 December 2018**

**Publication: 19 April 2019**

**European Roma Rights Centre (ERRC) v. Bulgaria**

Complaint No. 151/2017

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 303<sup>rd</sup> session in the following composition:

Giuseppe PALMISANO, President  
Monika SCHLACHTER, Vice-President  
Karin LUKAS, Vice-President  
Eliane CHEMLA, General Rapporteur  
Birgitta NYSTRÖM  
Petros STANGOS  
József HAJDU  
Krassimira SREDKOVA  
Raul CANOSA USERA  
François VANDAMME  
Barbara KRESAL  
Kristine DUPATE  
Aoife NOLAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary,

Having deliberated on 5 December 2018,

On the basis of the report presented by Birgitta NYSTRÖM,

Delivers the following decision adopted on this last date:

## **PROCEDURE**

1. The complaint lodged by the European Roma Rights Centre (ERRC) was registered on 22 May 2017.
2. ERRC alleges that the situation in Bulgaria constitutes a violation of Articles 11§§1 and 2, 13§§1 and 2, and E in conjunction with each of these provisions of the Revised European Social Charter (“the Charter”). The ERRC states that Bulgaria has failed to eliminate systemic discriminatory practices targeting Romani women in access to sexual and reproductive healthcare services, and these discriminatory policies and practices undermine the protection of the reproductive health of Romani women in Bulgaria.
3. On 16 October 2017 referring Article 6 of the Protocol providing for a system of collective complaints (“the Protocol”), the Committee declared the complaint admissible.
4. In its decision on admissibility, the Committee invited the Government to make written submissions on the merits of the complaint by 21 December 2017.
5. In application of Article 7§1 of the Protocol, the Committee invited the States Parties to the Protocol, and the States having made a declaration in accordance with Article D§2 of the Revised Charter, to transmit to it any observations they wished to make on the merits of the complaint before 21 December 2017.
6. In application of Article 7§2 of the Protocol, it invited the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter to make observations by 21 December 2017.
7. On 19 December 2017, the Government asked for an extension of the deadline for presenting its submissions on the merits. The President of the Committee extended this deadline until 5 January 2018. The Government’s submissions on the merits of the complaint were registered on 2 January 2018.
8. The President of the Committee set 9 March 2018 as the deadline for ERRC’s response to the Government’s submissions on the merits. ERRC’s response was registered on 7 March 2018.
9. Pursuant to Rule 31§3 of the Rules, the Government was invited to submit a further response by 14 May 2018. On 9 May 2018, the Government asked for an extension of the deadline for presenting its further response. The President of the

Committee extended this deadline until 25 May 2018. The Government's further response was registered on 23 May 2018.

## **SUBMISSIONS OF THE PARTIES**

### **A – The complainant organisation**

10. ERRC invites the Committee to hold that Bulgaria has violated Articles 11§§1 and 2, as well as Article 13§§1 and 2, as well as Article E in conjunction with these provisions, as Bulgaria has not taken sufficient action to end racially segregated maternity wards, resulting in inferior and abusive treatment of Roma women in maternity care, as well as the disparate impact of lack of health insurance on Roma women.

### **B – The respondent Government**

11. The Government considers that the complaint is unfounded and asks the Committee to dismiss it in its entirety.

## **RELEVANT DOMESTIC LAW AND PRACTICE**

12. In their submissions the parties refer to the following provisions of domestic law:

### **A – The Constitution**

13. Article 6 reads as follows:

“(1) All persons are born free and equal in dignity and rights.  
(2) All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status.”

14. Article 14 states that:

“The family, motherhood and children shall enjoy the protection of the State and society”

15. Article 47.2 reads as follows:

“Mothers shall be the object of special protection on the part of the State and shall be guaranteed prenatal and postnatal leave, free obstetric care, alleviated working conditions and other social assistance”.

16. Article 52.1 reads as follows:

“Citizens shall have the right to medical insurance guaranteeing them affordable medical care, and to free medical care in accordance with conditions and procedures established by law. (...)”

## **B – The Bulgarian Health Insurance Act**

17. Bulgaria has a compulsory health insurance system. The basic provisions in the Health Insurance Act are:

Article 4. (1) (Previous Article 4, amended, SG No. 107/2002) Compulsory health insurance shall guarantee to the insured persons free access to medical care by means of a package of health-care activities of a specific type, scope and amount, as well as a free choice of a provider of such care, who or which has concluded a contract with a Regional Health Insurance Fund.

(2) (New, SG No. 107/2002, effective 1.01.2004) The right of choice shall apply to the entire territory of Bulgaria and may not be restricted on geographic and/or administrative grounds.

18. Eligibility for “non-contributory” health insurance in Bulgaria is conditional on access to social assistance or targeted benefits for heating. Article 40§3 of the Health Insurance Act indicates the persons whose health care contributions are paid by the state budget:

Article 40 (3) (Renumbered from Paragraph (2), SG No. 95/2006, amended, SG No. 15/2013, effective 1.01.2014) The following shall be insured for the account of the State Budget, unless insured according to the procedure established by Paragraph (1):

1. (supplemented, SG No. 119/2002, SG No. 98/2015, effective 1.01.2016) any person who has not attained the age of 18 years, if attending school as a full-time pupil: until completion of secondary education, but not later than the attainment of the age of 22 years;

2. any full-time student enrolled in a higher school until attainment of the age of 26 Years, and any full-time doctoral candidate enrolled within the state quota;

3. (new, SG No. 18/2006) any full-time foreign students: until attainment of the age of 26 years, and any full-time doctoral candidates admitted to higher schools and Research organizations in Bulgaria according to the procedure established by Council of Ministers Decree No. 103 of 1993 on Implementation of Educational Activity among Bulgarians Abroad and Council of Ministers Decree No. 228 of 1997 on Admission of Citizens of the Republic of Macedonia as Students at the Public Higher Schools of the Republic of Bulgaria;

4. (renumbered from Item 3, SG No. 18/2006, repealed, SG No. 46/2007);

5. (supplemented, SG No. 119/2002, amended, SG No. 111/2004, renumbered from Item 4, SG No. 18/2006, supplemented, SG No. 41/2009, effective 2.06.2009, SG No. 101/2009, effective 1.01.2010) any citizens who are responsive to the eligibility requirements for receipt of monthly social assistance benefits and of target benefits for heating according to the procedure established by the Social Assistance Act, unless insured on another ground, as well as those placed in specialized institutions for social services and those admitted to social training and vocational centres and temporary placement centres, placement centres of a family type, provisional accommodation, sheltered accommodation, monitored accommodation and crisis centres;

6. (renumbered from Item 5, SG No. 18/2006) any person remanded in custody or any person deprived of his or her liberty;

7. (renumbered from Item 6, SG No. 18/2006) any person in respect of whom a procedure for recognition of refugee status or for affording a right of asylum has been initiated;

8. (renumbered from Item 7, SG No. 18/2006, repealed, SG No. 95/2006);

9. (renumbered from Item 8, SG No. 18/2006, amended, SG No. 61/2015, effective 15.08.2015) any parents, adopters, spouses or one of the parents of the mother or father taking care of disabled persons who have lost more than 90 per cent of the working ability thereof and who requires constant attendance;

10. (new, SG No. 111/2004, renumbered from Item 9, SG No. 18/2006, amended, SG No. 35/2009, SG No. 99/2011, effective 1.01.2012) the individuals receiving compensations under Articles 230 and 231 of the Defence and Armed Forces of the Republic of Bulgaria Act - for the period during which they receive the compensation.

19. The Bulgarian Health Insurance Act requires payment of a user fee for each visit to a physician or each day spent in hospital. Some categories of persons, including those receiving social assistance, are exempted from payment of fees (Article 37).

### **C – Health Act (No. 70/10, 2004)**

20. The Act stipulates that the State shall ensure the protection of the reproductive health of its citizens through measures including promotion of health and consultations for preservation of the reproductive health of children and persons of reproductive age and by ensuring access to specialised consultative assistance on issues of reproductive health and family planning.

21. Article 2 reads as follows:

“The protection of the citizens’ health as a condition of full physical, mental and social wellbeing is a national priority and it shall be guaranteed by the government through the application of the following principles:

1. equality in the use of health services;

2. ensuring accessible and high-quality healthcare, giving priority to children, pregnant women and mothers of children aged up to one year;

3. priority of health promotion and the integrated disease prevention;

4. prevention and reduction of the health risk to citizens as a result of adverse effects of environmental factors;

5. special health protection of children, pregnant women, mothers of children aged up to one year and people with physical and mental disabilities;

6. participation of the government in the financing of activities aimed at protecting the health of citizens.”

22. The Act guarantees services for those who have public health insurance, including optimal living environment for women in maternity wards, medical supervision and healthcare in the wards, free access to medical establishments and the right of the women to choose the facility in which they will give birth. According to Article 127:

“(1) For the purposes of ensuring risk-free maternity, every woman shall have access to health activities aimed at ensuring optimal health condition of the woman and the foetus from the beginning of the pregnancy to the 42<sup>nd</sup> day of the child.

(2) The health activities under Paragraph (1) shall include:

1. promotion aimed at protecting the health of the woman and the foetus;
2. prevention of the threat of abortion and premature childbirth;
3. training in the feeding and care of infants;
4. active medical monitoring of pregnancy on the basis of the dispensary principle at medical treatment facilities for primary and specialised out-patient aid health care;
5. pre-natal diagnostics and prevention of genetic and other diseases under terms and conditions set out in regulations issued by the Minister of Health;
6. ensuring optimal living environment for mothers and infants;
7. dispensary monitoring and healthcare for mothers and infants;
8. free access of pregnant women or mothers of infants to medical treatment facilities for specialised out-patient aid health care;
9. free access of pregnant women to medical treatment facilities for specialised out-patient and hospital in-patient health care in conditions threatening the pregnancy;
10. the freedom of choice of an in-patient medical establishment treatment facility for hospital aid at childbirth by pregnant women.”

23. Article 82 states the types of medical services provided to Bulgarian citizens outside the scope of mandatory health insurance. Obstetrical care is not a medical service available for non-insured women according to Article 82. There is however a reference to “medical aid in emergency cases” (para. 1). Article 99 establishes that medical aid in emergency cases includes “complications in women at childbirth, which threaten the health and life of the mother or the foetus”.

## **D – Clinical Pathway NQ 141 "Birth, regardless of the duration of pregnancy, foetal presentation, and manner of delivery"**

24. Completing the former legislative acts, for those who do not have health insurance, a bylaw was adopted that sets out the services that are available free of charge. It is Clinical Pathway NQ 141 "Birth, regardless of the duration of pregnancy, foetal presentation, and manner of delivery". This bylaw sets out a list of free-of-charge services accessible to uninsured women and services they can receive if they pay.

## **RELEVANT INTERNATIONAL MATERIALS**

### **A – The United Nations**

#### **1. International Covenant on Economic, Social and Cultural Rights**

25. The International Covenant on Economic, Social and Cultural Rights provides in Article 12, that States recognize:

"The right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

26. General Comment No.14 of the Committee on Economic, Social and Cultural Rights (CESCR) specifies that the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services, and conditions necessary for the realisation of the highest attainable standard of health and these are available, accessible, acceptable and of good quality. Exercising the right to health without discrimination of any kind is essential for the full realization of Article 12.

27. General Comment No. 22 on the right to sexual and reproductive health of the CESCR in particular calls upon States to ensure that sexual and reproductive services, goods, and facilities are available to all women throughout the country, and that they are physically and economically accessible, culturally appropriate, and of good quality. The CESCR also recognises that the right to sexual and reproductive health is not only an integral part of the general right to health but it is fundamentally linked to the enjoyment of many other human rights, including the rights to education, work, and equality, as well as the rights to life, privacy, freedom from torture, and individual autonomy. Therefore, the realisation of the right to sexual and reproductive health requires that States also meet their obligations to fulfill other protected rights, such as the right to be free from discrimination.

## **2. United Nations Convention on the Elimination of Discrimination Against Women (CEDAW)**

28. In its General Recommendation No. 24, the United Nations Committee on the Elimination of Discrimination against Women (the CEDAW Committee) issued several principles in relation to women's health, in particular their sexual and reproductive health, when interpreting Article 12 of the CEDAW. The CEDAW Committee noted, in particular, that it is the duty of States Parties to ensure women's right to safe motherhood. Under CEDAW, reproductive health services must be available, accessible, acceptable, and of good quality. In brief, States Parties must ensure that there are available healthcare services in the State that are physically and economically accessible for women and provide acceptable and sufficiently high-quality services respecting fully informed consent, confidentiality, dignity, sensitivity, and equal treatment.

29. When it comes to the vulnerable situation of certain communities, including Roma women, the CEDAW Committee has already highlighted the need for giving special attention to the health needs and rights of women belonging to vulnerable and disadvantaged groups and to intersectional discrimination on the grounds of sex, ethnic origin, and the low economic status of the victim.

30. In its 2012 Conclusion on Bulgaria, the CEDAW Committee expressed its concern about "the lack of information on the inclusion of Roma women in the reformed compulsory health-care system". It further stated that "while noting the information provided about the recent adoption by the Government of regulations prohibiting illegal requests for additional payments by medical staff and about the establishment of a working group to design a patients' bill of rights and responsibilities", the Committee expressed its concern "at the impact on women, in particular, of the unfriendly health-care environment and at the lack of effective complaints mechanisms". The Committee therefore urged Bulgaria "to ensure that health-care providers are fully aware of the particular health-care needs of women, to adopt the patients' bill of rights and responsibilities and to establish effective complaints mechanisms to enable women to seek redress in cases of health-care related discrimination and abuse".

## **B – Council of Europe**

### **1. The Commissioner for Human Rights**

31. Council of Europe Commissioner for Human Rights, Nils Muižnieks, issued a report on 2017 on women's sexual and reproductive health and rights in Europe. Although essential human rights, the Commissioner stated that "regrettably, women in Europe still have these rights denied or restricted as a result of laws, policies and



practices that ultimately reflect continuing gender stereotypes and inequalities. States must acknowledge and address these violations and resolutely commit to advancing gender equality in this crucial sphere of life”.

32. Concerning segregated maternity care, the report points out to (page 42):

The risk of exposure to abusive and discriminatory treatment in the context of maternal health care, [which] is exacerbated for certain groups of women in Europe. For Roma women in a number of central and eastern European countries, it can be extreme. Reports indicate that the ethnic segregation of Roma women in maternal health facilities remains a reality in certain parts of Europe in 2017. Roma women are sometimes assigned to separate rooms, bathroom facilities and eating areas within maternity hospitals or departments. In these separate facilities, overcrowding and inadequate sanitation services frequently prevail. There are reports of two Roma women being placed in the same bed after giving birth, of patients being given beds in corridors when segregated rooms became full, and of failures to change soiled bedclothes and to ensure clean toilet facilities. Allegations of pervasive racial harassment and discrimination against Roma women by medical professionals in the context of childbirth and provision of reproductive health care are also common in several central and eastern European countries and affected Roma women describe intense feelings of humiliation, discrimination and debasement as a result of these practices.

## 2. The European Court of Human Rights

33. The European Court of Human Rights has established that sexual and reproductive rights are protected by the Convention as part of the right to health and the integrity of the person in, among others, *Yordanova and others v Bulgaria* (2012), and *Nachova and others v Bulgaria* (2005). In these cases, there is a detailed account of numerous incidents of alleged racial violence against Roma in Bulgaria.

34. The European Court of Human Rights has addressed the importance of guaranteeing women’s informed consent and decision making during childbirth and related procedures. In *Konovalova v. Russia* (2014), the Court held that the lack of sufficient safeguards to ensure women’s informed decision making in relation to medical interventions, including in the course of childbirth, gave rise to a violation of the right to private life under Article 8 of the European Convention on Human Rights.

## THE LAW

### PRELIMINARY CONSIDERATIONS

35. The Committee observes that the present complaint concerns alleged systemic discriminatory practices targeting Roma women in access to maternity services. In particular, the ERRC alleges that lack of health insurance of Roma, in particular its impact on Roma women, amounts to discrimination; it further alleges the existence of segregated maternity wards in public hospitals in Bulgaria. This practice, resulting in inferior and sometimes abusive treatment of Roma women in maternity care in public hospitals, together with the lack of health insurance, constitutes, according to ERRC, a violation of Article E in conjunction with Articles 11§§1 and 2 and 13§§1 and 2.

36. The Committee further notes that this complaint follows on to the Complaint *ERRC v. Bulgaria*, Complaint No. 46/2007, decision on the merits of 3 December 2008, introduced by ERRC on the basis of the same articles, in which the lack of access to health insurance and medical assistance for the most vulnerable and, in particular, Roma, was at stake. The Committee found that the State had failed to meet its positive obligations to ensure that Roma enjoy an adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services. The Committee held that the failure of the authorities to take appropriate measures to address the exclusion, marginalisation and environmental hazards to which Roma communities are exposed to in Bulgaria, as well as the problems encountered by many Roma in accessing health care services, constitute a breach of Article E in conjunction with Article 11§§1, 2 and 3 of the Charter (*ERRC v. Bulgaria*, Complaint No. 46/2007, *op.cit.*).

37. The ERRC states in the present complaint that this is a case of discrimination which goes further than what was found in the previous complaint introduced against Bulgaria. Roma and, in particular, Roma women, are disproportionately excluded from national health insurance schemes in Bulgaria, barring them from receiving the necessary healthcare. The present complaint goes further in that it states that the lack of insurance is the basis for inferior treatment for Roma women in accessing maternity health services, despite the fact that, according to national law, maternity services have to be provided to both insured and non-insured women. ERRC denounces that the situation as regards the number of un-insured Roma has not improved since 2007, and that this has an impact on the services provided to Roma women during pregnancy and labour, including access to consultations and tests. The existence of segregated maternity wards in public hospitals in Bulgaria further amounts to discrimination and inferior health treatment for Roma women.

38. The ERRC does not raise separate allegations under each provision, but it states that the situation complained of is in breach of both Articles 11 and 13 of the Charter. As already stated by the Committee, the rights protected under Article 11 (the right to protection of health) and Article 13 (the right to social and medical assistance) are closely related (*ERRC v. Bulgaria*, Complaint No. 46/2007, *op. cit.*, §39). However, the main questions raised by the présent complaint concern a very specific element, which is the discrimination towards Roma women in accessing and receiving health care services in public hospitals during pregnancy and delivery. The complaint does not address any other issues, such as the right to social and medical assistance of Roma population, the lack of medical care not related to maternity, the conditions required to receive health and social assistance or even the right under Article 11§2 to provide advisory and educational facilities to the promotion of health

and the encouragement of individual responsibility in matters of health. The specific allegations raised by ERRC will be therefore analysed under Article 11§1 of the Charter, and not under Article 13 of the Charter.

39. The Committee will examine the questions relating to alleged discrimination under Article E in conjunction with Article 11§1. Two main issues are at stake:

- on the one hand, the alleged lack of access to health insurance and its disproportionate impact on Roma women in accessing maternity care;
- and, on the other, the alleged practice of segregation in maternity wards of Roma women in public hospitals.

## **ALLEGED VIOLATION OF ARTICLE E IN CONJUNCTION WITH ARTICLE 11§1 OF THE CHARTER**

40. Article 11 of the Charter reads as follows:

### **Article 11 – The right to the protection of health**

Part I: "The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development."

Part II: " Part II: "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;

(...)."

41. Article E reads as follows:

### **Article E – Non-discrimination**

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

## **A – Arguments of the parties**

### **1. The complainant organisation**

42. The ERRC alleges that the situation in Bulgaria amounts to a violation of the Charter on the ground that Bulgaria has failed to eliminate systemic discriminatory practices targeting Roma women in access to sexual and reproductive healthcare services. In particular, Bulgaria has not taken sufficient action to end racially segregated maternity wards, inferior and abusive treatment of Roma women in maternity care, and the disparate impact of lack of health insurance on Roma

women. These discriminatory policies and practices undermine the protection of the reproductive health of Roma women in Bulgaria.

43. The official number of Roma living in Bulgaria is 325,343, although the Council of Europe estimates are much higher, between 700,000 and 800,000. Roma make up 4.9% of the national population using the official estimate, or about 10% using the Council of Europe estimate. Roma in Bulgaria often live, according to ERRC, in dire conditions, with no little or no access to training and jobs, frequently affected by forced evictions.

44. With regard to the access to housing, according to ERRC, 42% of Roma surveyed live in conditions of severe deprivation, which is defined as lack of access to running water, no connection to the sewage system or a sewage tank, and/or lack of access to electricity, as compared with 12% of non-Roma living nearby. As primary caretakers and responsible for the majority of domestic work, Roma women are disproportionately affected by these conditions.

#### *Health insurance and Roma*

45. With regard to health, on average, Roma are estimated to live 10 years fewer than the rest of the population and their living conditions contribute to communicate diseases, such as tuberculosis and hepatitis. Due to the lack of infrastructure in the Roma communities, many Roma suffer from diseases which are frequently only found among them and not in the rest of the population.

46. ERRC states that 51% of Roma in paid work are not covered by health insurance. The corresponding number is 21% of workers not covered among the non-Roma population.

47. According to ERRC, since 2015, there has been a racially-biased rhetoric used by politicians during elections, targeting Roma. There are major challenges in protecting Roma from discrimination and improving race relations in the country. These include lack of provision of effective protection from racist attacks by national and local authorities; politically-manipulated protests against Roma in various locations; use of racist language for political gain; use of racist language by mainstream media in the country; and the lack of affirmative or preventative measures taken by the national regulatory bodies.

48. ERRC further states that there is an increase in hate speech, discrimination and violence towards both Roma and migrants in 2016. The situation of Roma women is even more worrisome as they are submitted to several forms of discrimination.

49. The ERRC points out that in 2013 official statistics estimated that 2,034,000 Bulgarian citizens lack health insurance. Out of a population of 7,282,000, the percentage of those uninsured is 27.93%, therefore nearly one in every three

Bulgarians lacks health insurance. The situation for Bulgarian Roma is much graver. Previous estimates of the uninsured rate amongst the Roma population, for those aged 16 and older, range from 55% to 80%.

50. The Bulgarian National Roma Integration Strategy has recognised that there is a serious problem of lack of health insurance among the Roma population. No significant legislative or regulatory measures have been taken to address this. Lack of health insurance implies that Roma women refrain from visiting their obstetrician during pregnancy and they are treated in a different manner in maternity wards, despite that fact that the law ensures free services during childbirth.

51. The ERRC acknowledges that in order to give health access to Roma population without health insurance, there exist mobile health units, which include gynaecological units carrying examinations among Roma women. However, the instant complaint does not refer to mobile gynecological units, as the complaint concerns only treatment in maternity wards in hospitals. ERRC states nevertheless that the fact that 25% of urgent medical care provided for in Bulgaria is for Roma is yet another element of evidence showing that they do not have access to normal health insurance.

52. The ERRC considers that the lack of insurance amounts to indirect discrimination particularly against Roma women in access to maternity care.

*On the segregation of Roma women in maternity wards in Bulgaria*

53. The ERRC bases its allegations on a study conducted by the Bulgarian Helsinki Committee, including a fact-finding research into the practice of segregating maternity wards for Roma women. In this research 63 qualitative in-depth interviews with Roma women from five different locations throughout Bulgaria were conducted, including three small towns and two large cities. The interviews were conducted in 2016 and the locations were chosen at random in areas with significant Roma populations. The women who agreed to take part were between 14 and 46 years old, and they had given birth in six public hospitals in five cities (Pazardzhik, Velingrad, Sliven, Varna and Sofia).

54. As further evidence, ERRC further submits several calls to public hospitals, of which transcripts have been attached to the complaint, which would confirm the report produced by the Bulgarian Helsinki Committee, and reflect that the practice is to put Roma women in separate rooms (the so-called "gypsy rooms").

55. 89% (56 of the 63 women) reported that they had attended at least one obstetric consultation during their pregnancy. Some of the respondents reported that they did not attend regular visits with their obstetrician, due to various obstacles, such as lack of public health insurance, poverty, very low social status, and lack of general health literacy and, as a consequence, a lack of involvement in the progress of their pregnancy. Most of the women who had regular or at least one obstetric consultation was provided some medical documents concerning their pregnancy

upon admission to the maternity ward to give birth. Those with regular visits or a private obstetrician had obtained copies of their blood tests and ultrasound images. Only a few of the women were admitted to hospital during their last pregnancy without any medical documents.

56. The practice of segregating Roma women in separate maternity wards has existed in the past in Bulgaria. In *ERRC v. Bulgaria* (Complaint No. 46/2007, op.cit), the ERRC provided evidence that segregated maternity wards and inferior treatment were practised in these wards. The situation has not improved since 2007: 84% of interviewees were accommodated separately from ethnic Bulgarians when admitted to give birth. Roma women were prevented from walking freely in the ward and any attempt to do so was sanctioned by shouting and harsh comments by the hospital staff. Nearly all who were placed in segregated rooms were not given any justification and the very few who were given an answer were told that the segregation was based either on the lack of insurance or simply “because they are Roma and have lice and steal” (Report produced by the Bulgarian Helsinki Committee, p. 6).

57. The ERRC accepts that segregation is not lawful and is not a policy as such anywhere in Bulgaria in a legal sense, but it exists in reality. Not only the segregation itself in maternity wards is discriminatory, but there is also a less favourable treatment of Roma women as compared to ethnic Bulgarian women in hospitals. Inferior sanitary and physical conditions are granted to Roma women, who are also submitted to racial harassment and physical abuse. It is a clear case of intersectional discrimination based on the grounds of race, gender and social status.

58. Indeed, there are poorer physical and sanitary conditions in the separated rooms provided for Roma women. Roma women are far from the other rooms, with furniture and equipment of lower quality and dirtier. In one hospital, Roma women were on beds without mattresses and sheets. The rooms were not cleaned often and in some cases had no hot water, bathrooms and toilets, while the rooms of the ethnic Bulgarian women were equipped with sanitary facilities.

59. Racial harassment including verbal aggression, as well as physical violence were also alleged. Half of the women interviewed stated that they had been subjected to verbal aggression, including racial slurs and use of stereotypes about Roma, such as that they are dirty, promiscuous, and that they have children only to receive social benefits. They were also accused of being incompetent, including in relation to their bodies and health. These stereotypes resulted in a refusal to seek

Roma women's informed consent, as well as lack of provision of information about care and services. The study also suggests that Roma women were asked to pay in order to receive the same level of care as provided to non-Roma free of charge, including attention to them and their babies, access of their relatives to the ward, access to certain medicines and medical supplies.

60. About one fourth of the interviewees (15 women), from different hospitals, stated having suffered some kind of physical abuse. One of the most serious cases was a case in which a Roma woman was stitched without anesthesia, but on other occasions there was pressure applied on the abdomen of women, pinching, slapping on the face and legs, and aggressive pulling. Also one fourth of the women said they were forcibly restrained during the delivery with different belts. Their consent was never sought and no justification was given.

61. ERRC asserts that there is no requirement under the Charter to produce "representative" evidence, and therefore rejects the Government's claim that the study conducted is not valid because it is not a national representative survey. Anonymity of the women's names has been a necessity to empower them to speak truthfully. ERRC further states that there is no need to act before domestic bodies, such as the Commission for the Protection against Discrimination, as there is no requirement to exhaust domestic remedies before introducing a collective complaint. Moreover, the ERRC has already established that the practice exists in six hospitals and the burden of proof should now shift onto the Government, which should show that there is no such discrimination. Regional Health Inspectorates should control the care given in hospitals and ensure respect for the principle of non-discrimination. There are no documents proving that the Regional Health Inspectorates have supervised the maternity wards in the cities mentioned or showing their assessment of the situation in this respect.

62. The ERRC considers that the segregation in maternity wards amounts to direct discrimination, not only because of the segregation as such, but also because it implies inferior care, harassment and racial behaviour that Roma women suffer while in maternity care.

## **2. The respondent Government**

### *Health insurance and Roma*

63. The Government states that all compulsory health insured persons have free access to hospital medical care in a medical treatment facility of their choice, which has signed an agreement with the National Health Insurance Fund (NHIF), on the

territory of the whole country, including obstetric care, irrespective of the type of birth. The Government rejects the allegation of the ERRC that a larger part of Roma women are not covered by health insurance. According to Article 40.3(1) of the Health Insurance Act any person who has not attained the age of 18 years shall be insured at the expense of the State. Furthermore, the Government also rejects the allegation that 51% of the Roma in paid labour lack health insurance. All citizens are covered by health insurance, when they perform legal paid work.

64. Hospitals, which have signed a contract with the NHIF for medical treatment of insured pregnant women, also provide medical care to uninsured pregnant women in compliance with Ordinance 26/2007 for providing obstetric care to pregnant women without health insurance and for carrying out examinations falling beyond the scope of compulsory health insurance of children and women. This is funded by the Ministry of Health.

65. In addition, there are the mobile health units, visiting populated areas with strong presence of Roma population. In 2016, mobile gynaecological units carried out a total of 2,299 obstetric or gynaecological examinations among the Roma population. The mobile gynaecological units were allocated to four areas, covering municipalities with a high concentration of Roma, lacking health insurance.

*On the segregation of Roma women in maternity wards in Bulgaria*

66. The Government considers that the ERRC does not provide specific verified facts and circumstances demonstrating the existence of segregated maternity wards and other discriminatory practices. Its full research is based on the report issued in 2016 by the Bulgarian Helsinki Committee, which cannot be regarded as a national representative survey and therefore cannot prove the facts alleged in the complaint. Therefore, the complaint is groundless.

67. Any discrimination occurring in Bulgaria should be taken before the Commission for the Protection Against Discrimination or an independent court and it is not clear whether this has been done in the situations referred to. According to the Commission, no complaints have been brought on this topic. There are no complaints before administrative courts either.

68. Moreover, the Government highlights that the Bulgarian Helsinki Committee has included in its study women from age 14 to 46 years old. Infants and minors until the age of 18 are not entitled to make legally valid declarations.

69. According to the Government, Bulgarian legislation and practice are in full compliance with the Charter. The allegations in the complaint of an aggravated situation and lack of adequate care measures for Roma women and pregnant women



are false. Segregation does not exist in any of the public spheres (education, healthcare, social services and other) in Bulgaria. The same is valid for the state policy, concerning racial discrimination and racial hatred. The Bulgarian Constitution and laws guarantee equal rights of all Bulgarian citizens. Medical treatment is also equal for the entire population. This is explicit in Article 5.5 of the Health Insurance Act, Article 2 of the Health Act and other legislative acts in the field of medical care.

70. The general allegations of “segregation” of Roma women in the maternity wards of Bulgarian hospitals are untenable, as not one specific example has been provided. For this reason, the Government cannot offer any specific counterarguments. Complaints about difficulties encountered by Roma women on the grounds of insufficient knowledge of Bulgarian language are not acceptable. Pursuant to Article 3 of the Constitution, the Government states that “Bulgarian is the official language and Roma women are obliged to know this language, while the medical staff is not obliged to know Roma language” (Case-document No. 2, submissions of the Government on the merits, p. 3).

71. When there are any obstacles in the access to health services, the Regional Health Inspectorates are responsible for guaranteeing this right. They control hospitals, health care and children care. ERRC does not provide any information as to whether any of the cases have been referred to the mentioned Commission or courts. In 2017, no complaints were registered on segregation in maternity wards.

72. Moreover, the National Strategy for Roma Integration 2012-2020 has been adopted and is being implemented. Its goal is to create conditions for full integration of Roma and disadvantaged Bulgarian citizens, belonging to other ethnic minorities in the public and economic life by ensuring equal opportunities and equal access to rights, assets, goods and services, participation in all public spheres and by improving the quality of life in compliance with the principles of equality and non-discrimination. With regard to the issue raised in the complaint about unemployment and poverty among the Roma population it should be noted that there is a consistent and targeted policy on social protection, social inclusion and promoting the employment of disadvantaged population groups, including Roma. The policy is governed by the principles of non-discrimination, respect for human dignity and the provision of conditions for equal opportunities and equal treatment of all Bulgarian citizens, irrespective of their ethnic background.

## **B – Assessment of the Committee**

### *Access to health insurance and its impact on Roma women*

73. ERRC alleges that the lack of access to health insurance to Roma has not improved since 2007, when the Committee found that Bulgaria had failed to address the problems encountered by Roma in accessing health care services in breach of the Charter. ERRC further states that this situation affects particularly Roma women in their access to maternity services. ERRC does not dispute that health care for uninsured pregnant women is provided, but alleges that the disproportionate amount of Roma with no health insurance exacerbates the inferior treatment of Roma women in accessing care services, as they do not often receive the consultations needed, nor copy of their blood or ultrasounds tests, nor the full enjoyment of their access to medical care, with fewer consultations and inferior services.

74. The Committee notes that the existing legislation provides for state-subsidised health insurance. Access to this health insurance is made conditional on being eligible for the right to social assistance or being registered as unemployed. Concerning pregnant women, the Constitution itself states in Article 47.2 that obstetrical care is free of charge. According to the implementing legislation, every uninsured pregnant woman has the right to one free-of-charge examination before the delivery; the delivery and associated procedures are also free of charge.

75. According to a report prepared by the European Commission in 2014 on the health of Roma population across Europe, unemployment rates amongst Roma are twice as high as the general population in Bulgaria and 1 in 3 Roma interviewees report discrimination at job interviews. The Report points out that this, together with the greater risk of Roma communities of living in poverty, the fact that they live typically further away than the general population from medical facilities (partly because of living in segregated neighbourhoods), and reported discrimination when using those medical services, has an impact on the lack of access to medical services.

76. The Committee also takes note that the ERRC alleged in its previous complaint (ERRC v. Bulgaria, Complaint No. 46/2007, *op.cit.*) that the percentage of uninsured Roma in Bulgaria was 47% in 2007. ERRC maintains that this percentage is between 55 and 80% at present. No figures have been submitted by the Government. According to the European Commission Country Health Profile prepared on Bulgaria in 2017, the number of citizens that remain uninsured is high, as citizens who fail to pay three monthly contributions in the previous 36 months lose coverage and this has special repercussions for disadvantaged groups, including long-term unemployed and the poor. This report also shows that infant mortality is 80% higher in Bulgaria than the European average, and that there are also relatively

high maternal mortality rates. The Report on the health status of the Roma population of 2014 stated that health insurance among Roma was at that moment around 45 to 48%.

77. The Committee also notes that the same Report highlights the fact that the health system in Bulgaria has exceptionally high out-of-pocket payments, at 48% the highest in the European Union, which also has an impact on the type of services provided. Other sources, such as the Fundamental Rights Agency of the European Union's research programme LERI (Local Engagement for Roma Inclusion), which used as a case study the situation of Roma in the city of Pavlikeni (Bulgaria) in 2017, have identified as main challenges for access and quality of health care services for Roma the fact that service providers – such as general practitioners, doctors – often request informal additional payment and most Roma women have not undergone gynaecological screening and, as a result, many of them are suffering from gynaecological conditions.

78. The Committee further acknowledges the existence of mobile gynaecological units, but ERRC's allegations concern more specifically the access to maternity services in public hospitals.

79. The Committee takes note that in its Resolution CM/ResCMN(2018)2 of 7 February 2018 on the implementation of the Framework Convention for the Protection of National Minorities by Bulgaria, the Committee of Ministers of the Council of Europe expressed concerns that the overall health status of Roma is significantly lower than that of the rest of the population and recommended that the Bulgarian authorities pursue and intensify efforts to address the socio-economic problems confronting persons belonging to minorities, particularly Roma, in fields such as housing, employment and health care.

80. The Committee takes note of the allegation of the ERRC that the poor access to health services by Roma women is exacerbated by the fact that often they cannot express themselves in Bulgarian. The Government replied in its written submissions that "it is the Roma women obligation to speak Bulgarian and medical staff does not have to speak Roma". The Committee would like to recall that language cannot be a barrier to accessing adequate medical services and the appointment of health mediators by the Ministry of Health is an important initiative to overcome this type of obstacles. The mediators are in charge of helping to overcome cultural and communication barriers between Roma communities and the medical personnel in various locations. In 2016, there were 195 health mediators (Report submitted by Bulgaria to the Committee, 2017).

81. The Committee has previously considered that the health status of Roma is inferior to that of the general population and that Bulgaria had failed to meet its positive obligations to ensure that Roma enjoy an adequate access to health care, in particular by failing to take reasonable steps to ensure health care for poor or socially vulnerable persons who become sick and to address the specific problems faced by

Roma communities stemming from their often unhealthy living conditions and difficult access to health services (ERRC v. Bulgaria, Complaint No. 46/2007, op.cit., §§44 and 49).

82. The Committee recalls that Article E also prohibits all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 52).

83. The Committee acknowledges that, even though both uninsured and insured pregnant women have access health services related to maternity and delivery free of charge, there is an inferior access to these services. Several elements show the existing differences in accessing and enjoying maternity care, including the official data on the high level of out-of-pocket payments in public hospitals, the lower amount of consultations and tests conducted for uninsured pregnant women and the high maternity mortality rates. ERRC allegations, confirmed by the reports produced by the European Commission and the Fundamental Rights Agency of the European Union (cited above, paragraphs 76 to 78), highlight that all these factors have a considerable and disproportionate impact on the more disadvantaged categories of Bulgarian population, and particularly on Roma women.

84. The Government argues that the persons concerned by the alleged discrimination had legal avenues to assert their rights and seek remedies. While this may be true in principle, it cannot be assumed for people whose degree of exclusion, past experience and social status places them in a situation where they may not have the means for seeking such remedies. In such cases, the authorities have a responsibility to support the persons concerned in order to overcome the barriers so they can effectively assert their rights. Failing such a proactive approach on the part of the Government, the rights and remedies are rendered illusory for such disadvantaged communities. This is all the more relevant and important when fundamental rights are concerned, especially the right to health and the conditions under which the enjoyment of that right is enabled.

85. Taking into account the overall discrimination that Roma still suffer in accessing health care, which has not been redressed during 10 years after the decision in ERRC v. Bulgaria (Complaint No. 46/2007, op.cit.), as established in the Committee's follow up, the overall lower health status of Roma reflected in official statistics, the higher amount of uninsured Roma as compared to the rest of the population and the difficulties in accessing public hospitals as a consequence of geographical distance and other barriers, the Committee considers that health care for Roma is inferior to that of the rest of the population. The State has not fulfilled its

obligations in guaranteeing equal access to medical services for Roma, and in particular women's access to maternity services.

86. In the light of the above, the Committee considers that Roma women in Bulgaria do not benefit from adequate access to health care in respect of maternity, and that this constitutes indirect discrimination in violation of Article E in conjunction with Article 11§1 of the Charter.

*Segregation in maternity wards of Roma women in public hospitals*

87. ERRC further alleges the segregation of Roma women in maternity wards in public hospitals, the use of racially offensive language by doctors and medical staff, as well as, in some occasions, physical abuse, and the fact that this segregation result in accessing inferior medical services during maternity.

88. To sustain its allegations, ERRC submits two different types of evidence. First, the complaint has in attachment a study produced by the Bulgarian Helsinki Committee conducted in 2016 on the basis of 63 Roma women interviewed in different cities all through Bulgaria. The second piece of evidence submitted is the transcripts of several telephone calls with different doctors in public hospitals, showing that medical staff acknowledged the existence of segregated wards.

89. The Committee recalls that the segregation in maternity wards was already alleged by ERRC in its previous complaint. The Committee considered then that the cases, although significant, could not be relied on to conclude that there were systematic discrimination practices against Roma in the health care system in Bulgaria at that time (ERRC v. Bulgaria, Complaint No. 46/2007, op. cit., §50).

90. The Committee further notes that the Council of Europe Commissioner for Human Rights has referred to segregation practices in the Report of 2017 on women's sexual and reproductive health and rights in Europe, but without making any specific reference to the Bulgarian situation.

91. Several NGOs have raised the existence of segregation concerning Roma women, but also generally to an overall situation of verbal and physical abuse towards women in Bulgaria during delivery in public hospitals. The NGO Gender Alternatives Foundation presented in 2012 a shadow report to the CEDAW Committee in this sense, alleging that verbal and physical abuse during obstetric care by medical staff leaves very little trace and is generally accepted as "normal behaviour". Such abuse is, therefore, very difficult to denounce or plead. The CEDAW Committee established in its conclusions on Bulgaria in 2012 that the State

should “ensure that health-care providers are fully aware of the particular health-care needs of women, to adopt the patients’ bill of rights and responsibilities and to establish effective complaints mechanisms to enable women to seek redress in cases of health-care related discrimination and abuse” (CEDAW Committee, Observations, Bulgaria, 2012).

92. The Committee considers that the examples provided of such practices are of a very serious nature, but although very significant, they cannot be relied on to conclude that there is systematic discrimination practices against Roma women in respect of the rest of the Bulgarian women, resulting in inferior medical treatment and systematic physical and verbal abuse. However, they underscore the fact of the existence of barriers in accessing maternity services for Roma women, which, together with the practice of the out-of-pocket payments, has important repercussions in the quality and the adequacy of the services provided for uninsured women, as analysed above.

93. In the light of the above, the Committee concludes that there is insufficient evidence of systematic discrimination against Roma women resulting in inferior medical care in comparison to non-Roma women during birth and delivery and, therefore, that there is no violation of Article E in conjunction with Article 11§1 of the Charter on this ground.

## CONCLUSION

For these reasons the Committee concludes:

- Unanimously, that there is a violation of Article E in conjunction with Article 11§1 of the Charter as regards the access to health insurance and health care for Roma women in respect of maternity.
- Unanimously, that there is no violation of Article E in conjunction with Article 11§1 of the Charter, as regards the segregation in maternity wards.



Birgitta NYSTRÖM  
Rapporteur



Giuseppe PALMISANO  
President



Henrik KRISTENSEN  
Deputy Executive Secretary