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Open Society European Policy Institute (OSEPI) v. Bulgaria
Complaint No. 204/2022

COMPLAINT

Registered at the Secretariat on 25 January 2022

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Council of Europe
Directorate General Human Rights and Rule of Law
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COLLECTIVE COMPLAINT

with REQUEST FOR IMMEDIATE MEASURES

OPEN SOCIETY EUROPEAN POLICY INSTITUTE v. BULGARIA

On the violation of the right to protection of health and the principle of non-discrimination

Violation of article 11 of the European Social Charter, and article E in conjunction with article 11

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I. SUMMARY

In this collective complaint, the complainant organization, the Open Society European Policy Institute claims that Bulgaria has violated article 11 on the right to protection of health and article E on the prohibition of discrimination in conjunction with article 11 of the European Social Charter, in the context of the Covid-19 pandemic and distribution of Covid-19 vaccines.

First, Bulgaria failed to protect the health and life of the two groups of people who have a significantly higher risk of dying or developing serious illness from Covid-19 compared to the general population: older adults—60 years old and above—and people with underlying health conditions, like cardiovascular diseases, diabetes, chronic respiratory diseases, or cancer. Bulgarian authorities did not secure these two groups priority access to Covid-19 vaccines when those vaccines were available in limited quantities between December 2020 and May 2021 (violation of article 11 § 1 and article E in conjunction with article 11). In addition, from the beginning of the national vaccination program and up to now, Bulgaria has failed to properly and adequately inform and educate people, and in particular the most vulnerable, about the importance of Covid-19 vaccines as a means of protection against the risks posed by the pandemic (violation of article 11 § 2). And up to now as well, Bulgaria has failed to take the necessary measures to "prevent as far as possible epidemic, endemic and other diseases" in the context of the Covid-19 pandemic, by not prioritizing these two vulnerable groups, not providing information and educating them about the vaccines and not making the vaccines effectively accessible (violation of article 11 § 3).

Secondly, Bulgaria violated the prohibition of discrimination on the basis of age and health against the two aforementioned groups in the distribution of Covid-19 vaccines between December 2020 and May 2021. First, they were discriminated against in comparison with the general Bulgarian population: while they were at a much higher risk of dying or contracting severe illness, they did not effectively get priority access to vaccination, in disregard of sufficient consideration corresponding to their differences. Secondly, they were discriminated against in relation to other priority groups: although similarly situated, they were not treated equally, since they were not effectively prioritized.

The Open Society European Policy Institute asks the European Committee of Social Rights to indicate immediate measures to the Bulgarian Government in order to avoid the irreparable harm or injury of having a significant additional number of older adults and people with health conditions in Bulgaria dying or contracting serious illness because they were not vaccinated against Covid-19.

II. ADMISSIBILITY

A. The complainant organization

1. The Open Society European Policy Institute (hereafter "OSEPI") is a non-governmental organization that has consultative status with the Council of Europe. OSEPI is included on the list of international non-governmental organizations entitled to file collective complaints before the European Committee of Social Rights (hereafter "the Committee").

2. OSEPI's mandate is to promote the values of open societies across the globe, with a particular focus on the European region. OSEPI works to uphold the protection of human rights, including economic and social rights, and the respect of the rule of law in Europe, in areas such as the prohibition of discrimination[1], workers' rights,[2] housing rights,[3] the impact of migration on human rights and workers' rights,[4] climate change and its impact on human rights.[5] OSEPI develops its activities mainly through legal research and analysis, publication of reports and policy briefs and advocacy activities.

B. The respondent State and its obligations under the European Social Charter

3. Bulgaria has accepted the collective complaints procedure by a declaration made when ratifying the Revised European Social Charter on 7 June 2000.

4. Bulgaria has accepted to be bound by the article 11 of Part II of the Revised European Social Charter (hereafter "the European Social Charter" or "the Charter") that guarantees the right to protection of health. Bulgaria is also bound by the article E of Part V of the Charter on the prohibition of discrimination. OSEPI claims that Bulgaria has violated the article 11 on the right to protection of health and article E on the prohibition of discrimination in conjunction with article 11. Bulgaria failed to protect the health and life of the two aforementioned groups of people in the context of the Covid-19 pandemic and distribution of Covid-19 vaccines, while

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[1] See for example V. NAYDENOVA and M. MATARAZZO, *Post-2020 EU Roma Strategy: The Way Forward*, Open Society European Policy Institute, June 2019, 44 pages, https://www.opensocietyfoundations.org/publications/post-2020-eu-roma-strategy-the-way-forward. See also I. CHOPIN and C. GERMAINE, *Ethnic Origin and Disability Data Collection in Europe: Measuring Inequality—Combating Discrimination*, Open Society European Policy Institute, November 2014, 80 pages, https://www.opensocietyfoundations.org/publications/ethnic-origin-and-disability-data-collection-europe-measuring-inequality-combating.

[2] See for example E. CAMILLI and others, *Towards an EU Toolbox for Migrant Workers. Labour mobility and regularisation in Germany, Italy, and Spain in 2020*, Open Society European Policy Institute, December 2020, 26 pages, https://www.opensocietyfoundations.org/publications/towards-an-eu-toolbox-for-migrant-workers. See also OPEN SOCIETY EUROPEAN POLICY INSTITUTE, *How Clean Are Europe's Food Supply Chains? The Myths Fueling the Massive Growth of Spain's Pork Industry*, December 2021, 37 pages, https://www.opensocietyfoundations.org/publications/how-clean-are-europe-s-food-supply-chains.

[3] See for example T. L. WIN, *Memorandum to the European Commission. Violations of EU Law and Fundamental Rights by Bulgaria's Discriminatory Treatment of Roma in the Area of Housing*, Open Society European Policy Institute, February 2017, 27 pages, https://www.opensocietyfoundations.org/publications/memorandum-violations-eu-law-and-fundamental-rights-bulgaria-s-discriminatory.

[4] See for example M. JAROSZWICZ and I. SUSHKO, *"More Legal Migration Will Stem Irregular Arrivals" -Does This Assumption Hold True? A case study on Ukrainian migration to Poland*, Open Society European Policy Institute, June 2020, 32 pages, https://www.opensocietyfoundations.org/publications/more-legal-migration-will-stem-irregular-arrivalsdoes-this-assumption-hold-true.

[5] See for example J. EICHHORN, L. MOLTHOF, and S. NICKE, *From Climate Change Awareness to Climate Crisis Action - Public perceptions in Europe and the United States*, Open Society European Policy Institute, November 2020, 52 pages, https://www.opensocietyfoundations.org/publications/from-climate-change-awareness-to-climate-crisis-action.

these two groups were the most at risk of dying or becoming severely ill from Covid-19. From December 2020 to May 2021, Bulgarian authorities did not secure them effective and priority access to Covid-19 vaccines, and until now they did not inform them adequately about the importance of vaccination, nor did they take the necessary measures to "prevent as far as possible epidemic, endemic and other diseases" in the context of the Covid-19 pandemic by not prioritizing the two vulnerable groups, not providing information and not making the vaccines effectively accessible.

III. GENERAL CONTEXT OF THE COVID-19 PANDEMIC: VULNERABLE PERSONS TO CORONAVIRUS AND LIMITED VACCINE AVAILABILITY

5. In early 2020, Europe, like all other regions in the world, was hit by the pandemic of SARS-CoV-2 virus that causes the Covid-19 disease, an infectious disease that can take the form of a severe respiratory infection. As of 21st January 2022, 340,543,962 confirmed cases of Covid-19 have been reported to the World Health Organization ("WHO") worldwide and 5,570,163 deaths.[6]

6. Since the outbreak of the pandemic, medical experts have highlighted that some categories of persons are particularly vulnerable to the coronavirus and face a high risk of death or of becoming severely ill from the disease. The WHO indicated in particular that "older people[7] face a significant risk of developing severe illness due to physiological changes that come with ageing and existing underlying health conditions".[8] In addition, people with medical issues like cardiovascular disease, diabetes, chronic respiratory disease, or cancer also appeared to be more likely to develop serious illness or dying, regardless of their age.[9] Other populations have been described as vulnerable and particularly at risk as well, such as persons deprived of their

[6] WORLD HEALTH ORGANIZATION, *WHO Coronavirus (COVID-19) Dashboard*, last consulted on 24 January 2022, https://covid19.who.int/.

[7] People 60 years old and above are considered generally considered as "older persons". See UN GENERAL ASSEMBLY , Resolution 67/139, *Towards a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons*, A/RES/67/139, adopted on 20 December 2012, https://undocs.org/pdf?symbol=en/A/RES/67/139.

[8] WORLD HEALTH ORGANIZATION, REGIONAL OFFICE FOR EUROPE, *Health care considerations for older people during COVID-19 pandemic*, https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/publications-and-technical-guidance/vulnerable-populations/health-care-considerations-for-older-people-during-covid-19-pandemic. See also UN INDEPENDENT EXPERT ON THE ENJOYMENT OF ALL HUMAN RIGHTS BY OLDER PERSONS, *"Unacceptable" – UN expert urges better protection of older persons facing the highest risk of the COVID-19 pandemic*, 27 March 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25748&LangID=E; UN SECRETARY GENERAL, *Policy Brief: The Impact of COVID-19 on older persons*, May 2020, p. 2, https://unsdg.un.org/sites/default/files/2020-05/Policy-Brief-The-Impact-of-COVID-19-on-Older-Persons.pdf.

[9] WORLD HEALTH ORGANIZATION, *Coronavirus disease (COVID-19) - Overview*, https://www.who.int/health-topics/coronavirus#tab=tab_1.

liberty,[10] and people experiencing homelessness.[11]. As stated by the United Nations in April 2020, "the COVID-19 crisis has exacerbated the vulnerability of the least protected in society. It is highlighting deep economic and social inequalities, and inadequate health and social protection systems that require urgent attention as part of the public health response".[12]

7. As of the end of 2020, the administration of vaccines against Covid-19 has become the most effective tool to protect people against getting seriously ill or dying from the disease.[13] Combined with other protective measures, such as wearing a face mask, keeping social distance and securing ventilation in closed spaces, vaccines also appeared to effectively reduce the spread of the virus. As underlined by the European Medicines Agency (EMA), "safe and effective vaccines for COVID-19 are needed because they protect individuals from becoming ill. This is particularly important for healthcare professionals and vulnerable populations such as older people and people with long-term diseases".[14]

8. Between the end of 2020 and beginning of 2021, various vaccines were authorized by European and national health authorities and made available in European countries.[15] However, even before vaccines were made available, it was clear that not everyone could be vaccinated at the same time, at least during the first months of vaccination: vaccine availability was limited in almost all countries and there existed far fewer vaccines than the number of people needing to be vaccinated. As stressed by numerous international and regional bodies, governments therefore had the duty to adopt prioritization plans for the distribution of Covid-19 vaccines. To that end, guidance and ethical guidelines were developed by the United Nations, the WHO, the Council of Europe and the European Union, in order to help national governments define how limited supplies of Covid-19 vaccines should be deployed for optimal impact. As stressed

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[10] WORLD HEALTH ORGANIZATION. REGIONAL OFFICE FOR EUROPE, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention*, 15 March 2020, https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/publications-and-technical-guidance/vulnerable-populations/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention,-15-march-2020-produced-by-whoeurope. See also UN OHCHR, "No exceptions with COVID-19: "Everyone has the right to life-saving interventions" UN experts say, (The UN Special Rapporteurs, Independent Experts and Working Groups, Joint Statement), 26 March 2020.

[11] WORLD HEALTH ORGANIZATION. REGIONAL OFFICE FOR EUROPE, *Vulnerable populations during COVID-19 response, Factsheet. People experiencing homelessness during the COVID-19 response in the WHO European Region*, July 2020, https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/publications-and-technical-guidance/vulnerable-populations/factsheet-vulnerable-populations-during-covid-19-response-people-experiencing-homelessness-july-2020.

[12] UNITED NATIONS SUSTAINABLE DEVELOPMENT GROUP, COVID-19 and Human Rights: We are all in this together., April 2020, p. 2, https://unsdg.un.org/sites/default/files/2020-04/COVID-19-and-Human-Rights.pdf.

[13] See for example EUROPEAN MEDICINES AGENCY, *COVID-19 vaccines: key facts - Can vaccinated people still be infected with SARS-CoV-2?*, https://www.ema.europa.eu/en/human-regulatory/overview/public-health-threats/coronavirus-disease-covid-19/treatments-vaccines/vaccines-covid-19/covid-19-vaccines-key-facts

[14] EUROPEAN MEDICINES AGENCY, *COVID-19 vaccines: key facts*, *Why are vaccines to prevent COVID-19 needed?*, https://www.ema.europa.eu/en/human-regulatory/overview/public-health-threats/coronavirus-disease-covid-19/treatments-vaccines/vaccines-covid-19/covid-19-vaccines-key-facts

[15] The EU Commission has given conditional marketing authorization, after positive assessment of the European Medicines Agency, for: BioNTech and Pfizer vaccine on 21 December 2020, Moderna vaccine on 6 January 2021, AstraZeneca vaccine on 29 January 2020 and Janssen Pharmaceutica (Johnson & Johnson) on 11 March 2021. See EUROPEAN MEDICINES AGENCY, *COVID-19 vaccination in the EU*, *1. Which vaccine is now authorized?*, https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/safe-covid-19-vaccines-europeans/questions-and-answers-covid-19-vaccination-eu_en.

by the WHO, "determining how best to deploy vaccines requires taking into account the various ways in which vaccines can make a difference, and the many different groups whose lives could be improved as a consequence".[16]

9. As the next paragraphs will demonstrate, there are three main common threads in the guidelines issued by international and regional authorities. First, different interests may be at stake when defining priorities for the vaccination of population against Covid-19, and governments must make choices on the basis of ethical principles and human rights, and in the light of the situation in their own countries. Secondly, the necessity to protect the right to health and the right to life appear as paramount in all the guidelines provided by international and regional bodies: there can be no question of sacrificing lives for economic or other reasons. Thirdly, vulnerable groups must receive specific attention and prioritization in Covid-19 vaccination strategies.

10. The WHO published on 14 September 2020 a "values framework"[17] aimed at helping national authorities not to "overlook morally important uses or claims to vaccination"[18] when defining their vaccination priorities, in the context of a pandemic that had a devastating impact on public health, the economy, and many aspects of social and individual life. The WHO identified six core principles to ensure that Covid-19 vaccines contribute to an "equitable protection and promotion of human well-being among all people of the world"[19], among which the following are the most relevant for national prioritization:

- The protection and promotion of human well-being, that requires "strategies for containing transmission, reducing severe disease (including long term sequelae) and death, or a combination";[20]
- The recognition and treatment of all human beings as having equal moral status;[21]
- Ensuring equity in vaccine access and benefit for groups experiencing greater burdens from the Covid-19 pandemic, such as for example those who are older or have comorbidities, and are therefore at greater risk of severe disease and death;[22]
- The necessity to define prioritization through "transparent processes based on shared values, best available scientific evidence, and appropriate representation and input by affected parties".[23]

11. On 6 February 2021, the Director of the WHO denounced the "disturbing narrative in some countries that it's OK if older people die" and firmly stated that "It's not OK . . . It is important that everywhere older people are prioritized for vaccination. Those most at risk of severe

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[16] , WORLD HEALTH ORGANIZATION, *WHO SAGE values framework for the allocation and prioritization of COVID-19 vaccination*, 14 September 2020, p. 5, https://apps.who.int/iris/bitstream/handle/10665/334299/WHO-2019-nCoV-SAGE_Framework-Allocation_and_prioritization-2020.1-eng.pdf?sequence=1&isAllowed=y.
[17] *Ibid.*
[18] *Ibid.*, p. 5.
[19] *Ibid.*, p. 6.
[20] *Ibid.*, p. 6.
[21] *Ibid.*, p. 6.
[22] *Ibid.*, p. 7.
[23] *Ibid.*, p. 8.

disease and death from COVID-19, including health workers and older people, must come first. And they must come first everywhere." [24]

12. In a Statement published on 15 December 2020, the UN Committee on Economic, Social and Cultural Rights recalled that "the right to health requires States to make health facilities, services and goods, including vaccines, available, accessible, acceptable and of good quality".[25] The Committee added that to ensure access to Covid-19 vaccines, States must remove any discrimination based in particular on age and disability, and guarantee physical and economical accessibility to vaccines.[26] Given the limited available quantities of vaccines during the first stage of vaccination, prioritization will be required and should be based, according to the UN Committee, on medical needs and public health grounds: "according to these criteria, priority may be given, for instance, to health staff and care workers, or to persons presenting greater risks of developing a serious health condition if infected by SARS-CoV-2 because of age, or preexisting conditions, or to those most exposed and vulnerable to the virus owing to social determinants of health . . . ".[27]

13. The UN High Commissioner for Human Rights has emphasized that decisions of Covid-19 vaccines prioritization should be based on appropriate criteria in line with human rights standards and norms and that "the determination of early vaccine recipients should not, for instance, exclude anyone explicitly or implicitly on the basis of older age, disability, race, gender, migration status or other discriminatory criteria, and should be conducted through a fair, transparent, inclusive and accountable process".[28]

14. The UNESCO International Bioethics Committee (IBC) and the UNESCO World Commission on the Ethics of Scientific Knowledge and Technology (COMEST) also called for a fair distribution of Covid-19 vaccines and the adoption of vaccination strategies in light of four interrelated risks associated with the Covid-19 pandemic: comorbidity and mortality-associated risks, risk of exposure, transmission risk and socioeconomic risk (including mental health, education and travel restrictions).[29] However, the UNESCO experts made it clear that the vulnerability of specific groups should play a central role in the definition of priorities for the distribution of Covid-19 vaccines, such as the elderly.[30]

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[24] TEDROS ADHANOM GHEBREYESUS, The Director General of the WHO, Statement made via Twitter, 6 February 2021, https://twitter.com/DrTedros/status/1358084910569975810.

[25] UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *Statement on universal and equitable access to vaccines for the coronavirus disease (COVID-19)*, E/C.12/2020/2, 15 December 2020, para. 4., https://digitallibrary.un.org/record/3897801?ln=en.

[26] *Ibid.*.

[27] *Ibid.*, para. 5.

[28] UNITED NATIONS, HIGH COMMISSIONER FOR HUMAN RIGHTS, *Human Rights and Access to Covid-19 Vaccines - Topics in Focus: Access to Covid-19 Vaccines,* 17 December 2020, pp. 3-4., https://www.ohchr.org/Documents/Events/COVID-19_AccessVaccines_Guidance.pdf.

[29] UNESCO INTERNATIONAL BIOETHICS COMMITTEE (IBC) AND THE UNESCO WORLD COMMISSION ON THE ETHICS OF SCIENTIFIC KNOWLEDGE AND TECHNOLOGY (COMEST), *UNESCO's Ethics Commissions' Call for Global Vaccines Equity and Solidarity*, 24 February 2021, p. 6., https://www.sbbioetica.org.br/uploads/repositorio/2021_02_24/Unesco2021GlobalVaccineEquityESolidarityStatement-fev2021.pdf.

[30] *Ibid.*, pp. 4 & 6.

15. The Parliamentary Assembly of the Council of Europe (PACE) adopted on 27 January 2021 a resolution calling Member States to "prepare their immunization strategies to allocate doses in an ethical and equitable way, including deciding on which population groups to prioritize in the initial stages when supply is short".[31] In that regard, PACE urged that "bioethicists and economists largely agree that persons over 65 years old, those under 65 with underlying health conditions that put them at a higher risk of severe illness and death, healthcare workers (especially those who work closely with persons who are in high-risk groups) and people who work in essential infrastructure should be given priority for vaccination."[32] Therefore, relying PACE urged Member States to "develop strategies for the equitable distribution of Covid-19 vaccines"[33] and "ensure that persons within the same priority groups are treated equally, paying special attention to the most vulnerable such as older persons, those with underlying conditions and healthcare workers, especially those who work closely with persons who are in high-risk groups, as well as people who work in essential infrastructure and public services".[34]

16. The Committee on Bioethics of the Council of Europe firmly recalled that prioritizing access to Covid-19 vaccines is "essential in order to uphold the right to life and the right to the protection of health" and should aim at minimizing deaths and severe illness as well as reducing the transmission of the virus.[35]

17. In mid-October 2020, the European Commission also stressed that vaccination strategies should be developed so as to "save as many lives as possible" and that the decisions on who to prioritize during the initial phases of vaccine deployment should be based on two criteria: the protection of the most vulnerable groups and individuals, and the slowing down of the spread of the disease.[36] For the European Commission, the first priority groups should be composed of health care and long-term care facility workers, people above 60 years of age, vulnerable population due to chronic diseases, co-morbidities and other underlying conditions, essential workers outside the health sector, communities and workers unable to physically distance, and vulnerable socioeconomic groups and other groups at higher risk.[37] Shifting to aiming to reduce wider societal and economic restrictions and impact was expected to occur later in the vaccination deployment process, according to the European Commission.[38]

18. Finally, the European Centre for Disease Prevention and Control, an Agency of the European Union, published on 26 October 2020, "key aspects regarding the introduction and

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[31] COUNCIL OF EUROPE, PARLIAMENTARY ASSEMBLY, Resolution 2361 (2021), *Covid-19 vaccines: ethical, legal and practical considerations*, 27 January 2021, para. 6., https://pace.coe.int/en/files/29004/html?__cf_chl_jschl_tk__=657c28QA9UQRUVtX9Fs9kG7G7Cf7ogjlTavW7jYVfTA-1642679564-0-gaNycGzNCP0.
[32] *Ibid*.
[33] *Ibid*., para. 7.2.2.
[34] *Ibid*., para. 7.2.3.
[35] COUNCIL OF EUROPE, COMMITTEE ON BIOETHICS (DH-BIO), *COVID-19 and vaccines: ensuring equitable access to vaccination during the current and future pandemics*, 22 January 2021, para. 4., https://rm.coe.int/dh-bio-statement-vaccines-e/1680a12785.
[36] EUROPEAN COMMISSION, Communication from the Commission to the European Parliament and the Council, *Preparedness for COVID-19 vaccination strategies and vaccine deployment*, COM(2020) 680, Brussels, 15 October 2020, p. 11., https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:0680:FIN.
[37] *Ibid*., p. 12.
[38] *Ibid*.

prioritisation of COVID-19 vaccination in the EU/EEA and the UK".[39] The Agency envisaged various options to consider for the development of a prioritization strategy, starting with focusing on specific groups based on "key societal role during the COVID-19 pandemic (e.g. healthcare workers, first responders, social care workers), on their individual risk of developing severe COVID-19 (e.g. individuals with underlying conditions), and on belonging to specific vulnerable groups (e.g. socially vulnerable groups)". The European Centre for Disease Prevention and Control clearly stated that a strategy targeting groups that are identified as highly exposed to SARS-CoV-2 (e.g. younger adults, specific occupations) could not be developed if groups at risk for severe disease and death from Covid-19 are left out.[40]

IV. DISTRIBUTION OF COVID-19 VACCINES IN BULGARIA SINCE DECEMBER 2020: INADEQUACY OF THE NATIONAL VACCINATION PLAN, LACK OF INFORMATION AND NO EFFECTIVE ACCESS TO VACCINATION

A. Distribution of Covid-19 vaccines between December 2020 and May 2021

19. Like all other countries, and after the European Commission signed a number of agreements on behalf of the Member States with pharmaceutical companies in the second half of 2020, Bulgaria was initially to receive limited quantities of Covid-19 vaccines. This is indeed what happened between December 2020 and early May 2021[41]: Bulgaria, which has a total population of nearly 7 million, received 10,725 doses in December 2020, 66,645 doses in January 2021, 253,920 doses in February 2021, 503,190 doses in March 2021 and 745,290 doses in April 2021. Taking into account the fact that two doses are required for a full vaccination, the vaccines delivered to Bulgaria were thus extremely limited in comparison with the number of adults to be vaccinated. The authorities needed therefore to define priorities for the administration of the available vaccines. In the light of the recommendations formulated by international and regional bodies that have just been recalled, the Government acknowledged on its website dedicated to the Covid-19 pandemic that "Vaccines prevent severe disease. It is most important that the elderly and those with chronic diseases receive the vaccine, because the risk of serious illness, hospitalization and death is the highest".[42] The Bulgarian Academy of Sciences, that includes the most prominent scientific experts, confirmed

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[39] EU, EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, *Key aspects regarding the introduction and prioritisation of COVID-19 vaccination in the EU/EEA and the UK*, Technical Report, 26 October 2020, https://www.ecdc.europa.eu/sites/default/files/documents/Key-aspects-regarding-introduction-and-prioritisation-of-COVID-19-vaccination.pdf.

[40] *Ibid.*, p. 5.

[41] See MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Information about the Covid-19 vaccines delivered in Bulgaria as of 31 December 2021*, Excel sheet, https://www.mh.government.bg/bg/covid-19/dostaveni-v-stranata-vaksini/. See ANNEX XIII for English translation.

[42] COVID-19 UNIFIED INFORMATION PORTAL OF THE REPUBLIC OF BULGARIA, *Questions About Vaccines and Covid-19 Vaccination - "Why is it important to get vaccinated?"*, https://coronavirus.bg/bg/700. See ANNEX XIV for English translation.

in December 2020 that vaccines are the only option to protect people against the coronavirus in the absence of a specific and effective drug.[43]

20. However, the National Vaccination plan against Covid-19 adopted by the Council of Ministers on 7 December 2020[44] did not at all reflect this necessity to protect the most vulnerable people (older adults and people with underlying medical conditions) and did not give them priority access to the Covid-19 vaccines, despite converging international recommendations, endorsed by the Government on its website. By contrast, the Government defined five phases for the administration of the vaccines, leaving people 65 years old and above, and people with underlying medical conditions in only the last but one phase. The five phases were defined as follows:

- Phase 1 includes all types of health care staff: medical staff of outpatient and inpatient care facilities, healthcare professionals, dental practitioners, pharmacists, assistant pharmacists and other support staff, for an estimated total of 243,600 people.
- Phase 2 includes residents and staff of social institutions, pedagogical specialists, and the staff of mink farms, for an estimated total of 112,080 persons (15,000 residents and 8,000 staff members of social institutions; 89,000 pedagogical specialists and 80 staff of mink farms).
- Phase 3 includes staff involved in guaranteeing that activities essential for public life are able to take place. These activities were not further defined by the authorities and the government never gave the estimated number of people included in this phase 3.
- Phase 4 includes older people aged 65+ and persons with underlying health problems, because of the higher severity of the disease and the higher risk of complications and lethal outcome, including immunocompromised or individuals with secondary immune deficiencies. Total estimated was 1,800,000 persons, among which 1,500,000 were 65 years old and above.
- Phase 5 Vulnerable groups of the population at high epidemiological risk of infection related to their living conditions and lifestyle. This notion was not further explained.

21. It should be noted that phase 3 of the vaccination plan ended up including in practice large groups of workers involved in very different sectors and for a large number of them not pertaining to essential infrastructure or public services. It included, for example, employees of Ministries, journalists, bank employees, employees and workers in the transportation and communication sectors, police officers, the military and firefighters.[45] The vague wording used by the National Vaccination plan for the definition of phase 3 allowed thus for all sorts of people to be vaccinated before the vulnerable people listed in phase 4. Many companies drew

[43] B. PETRUNOV, PROF. R. ALEXANDROVA, PROF. P. PETROVA, PROF. I. UGRINOVA, *BAS [The Bulgarian Academy of Sciences]: In the absence of an effective drug against COVID-19, the only option is a vaccine*, BNT News, 21 December 2020, https://bntnews.bg/news/ban-pri-lipsa-na-efektivno-lekarstvo-sreshtu-covid-19-edinstvenata-vazmozhnost-e-vaksinata-1088177news.html. See ANNEX XVII for English translation.
[44] COUNCIL OF MINISTERS OF THE REPUBLIC OF BULGARIA, *Resolution № 896 of 7 December 2020 for the adoption of a National Vaccination Plan against COVID-19 in the Republic of Bulgaria*, https://coronavirus.bg/bg/663. See ANNEX IV for English translation.
[45] See for example S. MARINOVA, *Tax and police officers vaccinated in the third phase*, Monitor, 17 January 2021, https://www.monitor.bg/bg/a/view/injektirat-danychni-i-policai-v-treta-faza-245055. See ANNEX XVIII for English translation.

lists of their employees who wished to get vaccinated that were then submitted to the local Regional Health Inspectorates, which did not control the content of the lists. Even family members of employees were added to the lists and received priority access to vaccines.

22. On 3 February 2021, the National Vaccination plan was amended in order to include in phase 3 "the individuals to be directly engaged in the organization and conducting of the parliamentary elections scheduled for April 4, 2021, including the individuals engaged in the computer processing of voting data".[46] On 19 and 22 February 2021, the Bulgarian Government brought new changes to the National Vaccination plan, allowing individuals who did not belong to the priority groups under phases 1 to 5 – meaning literally anyone - to be vaccinated, if vaccines were available. This refers to what has been called the "green corridors", which were organized during weekends as of 19 February 2021, and in the afternoon of working days as of 22 February 2021.

23. The "green corridors" were started while phases 1, 2 and 3 of the vaccination plan were still ongoing, and while phase 4 for older adults and those with underlying health conditions had still not started yet.[47] Opening the vaccination to all people regardless of the priority phases was actually in contradiction with the very principle of prioritization, especially at a time when vaccines were still available in very limited quantities. By 19 February 2021, the date of the start of the "green corridors", Bulgaria had only received 258,300 vaccine doses, including 57,600 delivered on 19 February.[48] The "green corridors" made the situation even worse for older adults and those presenting health problems: green corridors were only opened in the main cities and people had to stay in line without anywhere to sit for long hours, and often outside in low winter temperatures[49] These conditions made it unattainable for those vulnerable persons to receive vaccines there. Consequently, people who did not belong to any priority group ended up being vaccinated first, at the expense of those most in need of protection against Covid-19.

24. In addition, the Government made little effort to make the vaccines physically accessible to vulnerable people who could not travel to vaccination centers. While vaccines were supposed to be administered both at vaccination centers and by general practitioners, the latter received an extremely limited number of doses, not allowing them to have vaccines available for those who were unable to visit a vaccination center. On 1 March 2021, the National Association of

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[46] COUNCIL OF MINISTERS OF THE REPUBLIC OF BULGARIA, *Resolution № 91 of 3 February 2021, for supplementing the National Vaccination Plan against COVID-19 in the Republic of Bulgaria, adopted by Decision № 896 of the Council of Ministers of 2020,* 3 February 2021, https://coronavirus.bg/bg/777. See ANNEX V for English translation.
[47] The Minister of Health claimed in the media that the opening of the green corridors meant entering in phase 4 of the National vaccination plan: such assertion is not correct and in contradiction with the terms of the vaccination plan, that had to be amended by the Government in order to organize the green corridors.
[48] See MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Information about the Covid-19 vaccines delivered in Bulgaria as of 31 December 2021*, Excel sheet, https://www.mh.government.bg/bg/covid-19/dostaveni-v-stranata-vaksini/. See ANNEX XIII for English translation.
[49] See the pictures and videos published in the following links: Bulgaria On Air TV, on 19 February 2021 ["Queues in front of the immunization center 'Pirogov'"]: https://www.bgonair.bg/a/188-gallery/218249-pred-pirogov-se-izviha-opashki-ot-zhelaeshti-da-se-vaksinirat; and on 20 February 2021 ["Queues of people waiting for the vaccine in Burgas"]: https://www.bgonair.bg/a/2-bulgaria/218339-opashki-ot-chakashti-za-vaksina-i-v-burgas-razkriha-6-kabineta-za-imunizirane. See also news Nova TV on 21 February ["Again long queues of people willing to get immunized"]: https://nova.bg/news/view/2021/02/21/316508/.

General Practitioners in Bulgaria sent a letter to the Minister of Health, reminding them of their commitment to the vaccination process, but deploring the "insignificant quantities of vaccine provided to the [general practitioners], which in practice excludes them from the vaccination process".[50] As highlighted by the European Agency for Fundamental Rights (FRA), the difficulties for general practitioners to receive doses of vaccine were confirmed by a study published by the National Association of General Practitioners in Bulgaria. Among the problems listed, the study found that general practitioners had to wait a long time before receiving vaccine doses for their patients; they needed to visit the local health inspectorate several times before receiving doses; and they were not notified when vaccines were available, or given instruction on how to receive them.[51] The general practitioners also denounced the arbitrary manner in which people received vaccinations through the green corridors, rather than according to a proper prioritization.[52]

25. Early 2021, the Ministry of Health announced that mobile units would be deployed to help vaccinate people living in remote and difficult-to-access regions, starting with those living in social care homes.[53] Actually, these mobile units had in fact very limited utility: by 23 September 2021, they vaccinated only 4,274 people.[54]

26. In practice, the vaccination plan as implemented by Bulgarian authorities meant that persons who were the most at risk of dying from Covid-19 or contracting severe disease—older adults and those with underlying medical conditions—were never properly prioritized, resulting in the vast majority of them remaining unvaccinated during the first months of 2021. Among a total of 1,500,000 people 65 years old and older, only 302,149, or barely 20%, were vaccinated by the end May 2021.[55] Bulgaria had by then received 3,377,260 doses of the vaccines.[56] Priority was indeed given to groups 1, 2 and 3, which included a very large number of people who did not qualify as priority groups according to the recommendations issued by international and regional bodies. And the limited available vaccines were also distributed to

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[50] NATIONAL ASSOCIATION OF GENERAL PRACTITIONERS IN BULGARIA, *Letter sent to the Minister of Health of the Republic of Bulgaria*, 1 March 2021, https://www.nsoplb.com/uploads/assets/2021/izh-n-4-pismo-ministur-angelov.pdfhttps://www.nsoplb.com/uploads/assets/2021/izh-n-4-pismo-ministur-angelov.pdf. See ANNEX XII for English translation.

[51] EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, *Coronavirus pandemic in the EU – Fundamental Rights implications National vaccine deployment Bulgaria*, 5 May 2021, pp. 8-9., https://fra.europa.eu/sites/default/files/fra_uploads/bg_report_on_national_vaccine_deployment.pdf.

[52] *Ibid.*.

[53] BNT NEWS, *Mobile teams will vaccinate the elderly in Sofia*, 6 January 2021, https://bnt.bg/news/mobilni-ekipi-shte-vaksinirat-vazrastnite-hora-v-sofiya-v285344-289658news.html?page=21. ANNEX XXVII for English translation.

[54] MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Mobile teams formed by the Regional Health Inspectorates have immunized 4 274 citizens with reduced mobility and people living in difficult to access and remote areas,* 23 September 2021, https://www.mh.government.bg/bg/novini/aktualno/mobilnite-ekipi-na-regionalnite-zdravni-inspekcii-/. See ANNEX VI for English translation.

[55] MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Decision made on a Freedom of Information request submitted by the Bulgarian Helsinki Committee*, 3 December 2021. See ANNEX X for English translation. The FOI request submitted by the Bulgarian Helsinki Committee on 19 November 2021 has been also attached to the end of the ANNEX X.

[56] See MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Information about the Covid-19 vaccines delivered in Bulgaria as of 31 December 2021*, Excel sheet, https://www.mh.government.bg/bg/covid-19/dostaveni-v-stranata-vaksini/. See ANNEX XIII for English translation.

general population who could attend the "green corridors", which was, as already explained, physically extremely difficult for older people or those presenting health problems.

27. Only on 17 May 2021—about six months after Bulgaria received its first vaccine doses—did the Ministry of Health instruct general practitioners and other vaccination centers to vaccinate persons aged 60 years and older, between Mondays and Thursdays.[57]

28. Between January and May 2021, 8,813 people 60 years and older died from Covid-19 in Bulgaria, which accounts for more than 80% of all Covid-19-related deaths during this period.[58] This figure of 8,813 deaths does not include the number of people below 60 years old who died from Covid-19 and were at an increased risk due to their health condition. Statistical data demonstrate significantly lower death rates due to Covid-19 among fully vaccinated individuals globally.[59] It can therefore be inferred that a number of deaths of vulnerable people such as older adults and people with health conditions could have been prevented if these vulnerable groups had been given priority access to vaccination, which the government did not do.

B. Distribution of Covid-19 vaccines through May 2021

29. As of May 2021, Bulgaria received more crucial doses of vaccines, making them available for larger number of people.[60] However, the authorities never developed an official campaign to inform the public about the vaccines and encourage people to get vaccinated, either at the start of the vaccination program, or at later stages when it appeared that levels of vaccination in the country were very low. They have done little to facilitate access to the vaccines, which disproportionately affects vulnerable groups. The Government also made no effort to combat misinformation about vaccines spread through social media, but also by medical experts on mainstream media.[61]

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[57] MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Order XRD-01-350/17 May 2021*, 17 May 2021. See ANNEX VII for English translation.

[58] MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Open Data Portal: Statistics on the distribution of COVID-19 cases in Bulgaria*, https://data.egov.bg/data/resourceView/18851aca-4c9d-410d-8211-0b725a70bcfd.

[59] See for example E. MATHIEU and M. ROSER, *How do death rates from COVID-19 differ between people who are vaccinated and those who are not?*, Our World in Data, 23 November 2021, https://ourworldindata.org/covid-deaths-by-vaccination. See also M. MI MESLÉ et al., *Estimated number of deaths directly averted in people 60 years and older as a result of COVID-19 vaccination in the WHO European Region, December 2020 to November 2021*, Eurosurveillance, Europe's Journal on Infectious Disease Surveillance, Epidemiology, Prevention and Control, Volume 26, Issue 47, 25 November 2021, https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2021.26.47.2101021: The experts "calculated lives saved in this age group [60 years and older] by COVID-19 vaccination in 33 countries from December 2020 to November 2021, using weekly reported deaths and vaccination coverage. [They] estimated that vaccination averted 469,186 deaths (…). Impact by country ranged 6–93%, largest when implementation was early".

[60] Bulgaria received 1,797,490 doses in May 2021 and 1,267,710 in June 2021. See MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Information about the Covid-19 vaccines delivered in Bulgaria as of 31 December 2021*, Excel sheet, https://www.mh.government.bg/bg/covid-19/dostaveni-v-stranata-vaksini/. See ANNEX XIII for English translation.

[61] See below.

30. As a consequence of the Government mismanagement of the distribution of Covid-19 vaccines and the lack of proper and accurate information provided to people about the vaccines, Bulgaria has the lowest rate of vaccinated adults in the European Union: as of 21 January 2022, barely 34,1% of adults 18 years and older[62] and barely 28,5% of the total population are fully vaccinated.[63] The figures of vaccinated people are also extremely low among the elderly: only 36,6% of the Bulgarian population 60 years and older are fully vaccinated against Covid-19, as of 21 January 2022.[64]

V. VIOLATIONS OF THE EUROPEAN SOCIAL CHARTER BY BULGARIA

31. Through the development and implementation of its Covid-19 National Vaccination plan, Bulgaria has violated the right to protection of health and the right to life of those who were at higher risk of death or serious illness from the coronavirus, namely the elderly and persons with underlying medical conditions. As Section A below details, Bulgaria has thus violated article 11 of the European Social Charter. As detailed in Section B below, Bulgaria additionally did not respect the prohibition on discrimination on the basis of age and health, as guaranteed by article E of the European Social Charter, in conjunction with article 11.

A. Violation of article 11 European Social Charter - the right to protection of health

1. Introduction: the protection of health is a component of the right to life and human dignity

32. Article 11 of the European Social Charter guarantees the right to protection of health and reads as follow:

> "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 organizations, 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."

[62] EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, *COVID-19 Vaccine Tracker*, Cumulative uptake (%) of full vaccination among adults (18+) in Bulgaria as of 21 January 2022, https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#uptake-tab

[63] EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, *COVID-19 Vaccine Tracker*, Cumulative uptake (%) of full vaccination in total population in Bulgaria as 21 January 2022, https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#uptake-tab

[64] EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, *COVID-19 Vaccine Tracker*, Cumulative uptake (%) of full vaccination among people aged 60 years and above in Bulgaria as of 21 January 2022, https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#age-group-tab

33. According to the article 31 of the Vienna Convention on the law of treaties, the Committee interprets the terms of the European Social Charter in their context, in the light of its objective and purpose, and taking into account the current conditions and new emerging issues and situations.[65] The rights and freedoms set out in the Charter must also be interpreted in harmony with other relevant and applicable rules of international law.[66] The Charter must be seen as a "living instrument whose purpose is to protect rights not merely theoretically but also in fact".[67]

34. The Committee has repeatedly recalled that article 11 of the European Social Charter is intrinsically linked to and complements the right to life and the right to respect of human dignity as enshrined in article 2 and article 3 of the European Convention on Human Rights.[68] The Committee stated in that regard that "human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights and [that] health care is a prerequisite for the preservation of human dignity".[69] States therefore have positive obligations to make the right to health effective.

35. The right to protection of health guaranteed by article 11 of the European Social Charter therefore conveys fundamental values linked to human beings, including the right to life and dignity. This probably explains why all but one of the 36 States Parties that ratified the Revised European Social Charter accepted to be bound by the article 11.[70]

36. According to the European Court of Human Rights, the right to life of article 2 of the European Convention on Human Rights "ranks as one of the most fundamental provisions in the Convention and also enshrines one of the basic values of the democratic societies making up the Council of Europe" and requires States "to take appropriate steps to safeguard the lives of those within [their] jurisdiction", even if "the right to health, recognized in numerous international instruments, is not as such among the rights guaranteed under the Convention and

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[65] ECSR, *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint n°. 173/2018, Decision on the merits, 26 January 2021, para. 120, http://hudoc.esc.coe.int/eng/?i=cc-173-2018-dmerits-en. ECSR, *Transgender Europe and ILGA-Europe v. the Czech Republic*, complaint n° 117/2015, Decision on the merits, 15 May 2018, para. 75, http://hudoc.esc.coe.int/eng/?i=cc-117-2015-dmerits-en.

[66] *Ibid.*.

[67] ECSR, *International Commission of Jurists v. Portugal*, Complaint n° 1/1998, Decision on the merits, 9 September 1999, para. 32, http://hudoc.esc.coe.int/fre?i=cc-01-1998-dmerits-en.

[68] ECSR, *Interpretative Statement on Article 11, Conclusions 2005*, 2005_Ob_1-1/Ob/EN, http://hudoc.esc.coe.int/eng/?i=2005_Ob_1-1/Ob/EN. ECSR, *Marangopoulos Foundation for Human Rights (MFHR) v. Greece*, Complaint n° 30/2005, Decision on the merits, 6 December 2006, para. 202, http://hudoc.esc.coe.int/fre?i=cc-30-2005-dmerits-en. ECSR, *Transgender Europe and ILGA-Europe v. the Czech Republic*, Complaint n° 117/2015, Decision on the merits, 15 May 2018, para. 73, http://hudoc.esc.coe.int/fre?i=cc-117-2015-dmerits-en. See also ECSR, *Statement of interpretation on the right to protection of health in times of pandemic*, 21 April 2020, p. 5, https://rm.coe.int/statement-of-interpretation-on-the-right-to-protection-of-health-in-ti/16809e3640

[69] ECSR, *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint n° 14/2003, Decision on the merits, 8 September 2004, para. 31, http://hudoc.esc.coe.int/eng/?i=cc-14-2003-dmerits-en.

[70] COUNCIL OF EUROPE, EUROPEAN SOCIAL CHARTER, *Acceptance of provisions of the Revised European Social Charter (1996)*, https://rm.coe.int/country-by-country-table-of-accepted-provisions/1680630742. Armenia did not accept to be bound by Article 11.

its Protocols".[71] The Court has further stated that positive obligations of the States require them "to make regulations compelling hospitals, whether private or public, to adopt appropriate measures for the protection of patients' lives".[72] Appropriate measures include "adequate provision for securing high professional standards among health professionals and the protection of the lives of patients".[73]

37. The right to life also requires that States take all measures within their power to prevent that the life of persons under their jurisdiction is avoidably put at risk[74]. This has been applied by the European Court of Human Rights in different contexts such as, but not limited, to the risk of criminal acts of another individual,[75] risks arising from industrial and dangerous activities[76] or risks of natural disasters.[77] As detailed further below, this is of particular relevance in the context of a pandemic, where specific measures must be taken by State authorities to protect the life and the health of their populations, as stated by article 11 § 3 of the European Social Charter as well.

38. The close links between the right to life and the right to health arise also from article 6 of the International Covenant on Civil and Political Rights – a multilateral treaty to which Bulgaria is a State party. According to this provision, "Every human being has the inherent right to life. This right shall be protected by law". As underlined by the UN Human Rights Committee, the right to life should not be interpreted in a restrictive manner: it requires that States adopt positive measures, especially to eliminate epidemics.[78] In its general comment n°36, the UN Human Rights Committee further affirmed that States have positive obligations to effectively protect the life of individuals in the context of life threatening diseases[79]: appropriate measures must be taken to protect life and adequate health care must be provided.[80]

39. Additionally, the Court of Justice of the European Union held that "the health and life of humans rank foremost among the assets or interests protected by Article 30 EC".[81]

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[71] ECtHR (GC), *Lopes De Sousa Fernandez v. Portugal*, Judgment of 19 December 2017, para. 164-165, http://hudoc.echr.coe.int/fre?i=001-179556.
[72] *Ibid.*, para. 166.
[73] *Ibid.*, para. 168.
[74] ECtHR, *L.C.B. v. The United Kingdom*, Judgment of 9 June 1998, para. 36, http://hudoc.echr.coe.int/fre?i=001-58176.
[75] ECtHR, *Osman v. The United Kingdom*, Judgment of 28 October 1998, para. 115, http://hudoc.echr.coe.int/fre?i=001-58257.
[76] ECtHR, *L.C.B. v. The United Kingdom*, Judgment of 9 June 1998, para. 36.
[77] ECtHR, *Budayeva and Others v. Russia*, Judgment of 29 September 2008, paras. 158-160, http://hudoc.echr.coe.int/fre?i=001-85436.
[78] UN HUMAN RIGHTS COMMITTEE, *General comment n°6: Article 6 (right to life)*, 30 April 1982, para. 5, https://www.refworld.org/docid/45388400a.html.
[79] UN HUMAN RIGHTS COMMITTEE, *General comment n°36: Article 6 (right to life),* 30 October 2018, CCPR/C/GC/36, para. 26, https://www.refworld.org/docid/5e5e75e04.html.
[80] *Ibid.*.
[81] CJEU, *Commission of the European Communities v. Federal Republic of Germany*, Judgment C-141/07, 11 September 2008, para. 46, https://curia.europa.eu/juris/document/document.jsf?text=&docid=67991&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=32277206; CJEU, *Müller Fleisch GmbH v. Land Baden-Württemberg*, Judgment C-562/08, 25 February 2010, para. 32,

2. The failures of Bulgaria to protect health in the distribution of Covid-19 vaccines

40. Under the article 11 of the European Social Charter, the States must act in three different fields and take measures to:
    - remove as far as possible the causes of ill-health, which includes at least enabling enjoyment of the highest possible standard of health attainable and access to healthcare (article 11 § 1);
    - provide advisory and educational facilities for the promotion of health, which includes at least the duty to inform and educate the public as a matter of public health (article 11 § 2); and
    - prevent as far as possible epidemic, endemic and other diseases (article 11§ 3).

41. Accordingly, States have to take appropriate measures to protect the life and the health of their populations in the context of the Covid-19 pandemic. The nature and the scope of States' responsibilities have varied over time in light of the development of the pandemic and the emergence of the variants of the virus, and on the basis of the knowledge acquired about the virus and its impact on health. New obligations have also unfolded when the Covid-19 vaccines have been made available in order to ensure a fair and effective distribution of the vaccines in a way that best protects the health of all persons.

42. However, since December 2020 and continuing now, the Bulgarian government has failed to take the appropriate measures to protect the health and life of the most vulnerable people (the elderly and people with underlying medical conditions), when distributing the vaccines. The Bulgarian State has thus violated the three components of the right to protection of health as defined in the article 11 of the European Social Charter. What follows is a summary of the legal international framework for each of these components, and a demonstration of how Bulgaria has not complied with its legal obligations.

a. Article 11 § 1: the duty to remove as far as possible the causes of ill-health

Legal framework

43. Article 11 § 1 of the European Social Charter requires that States Parties adopt appropriate measures to "remove as far as possible the causes of ill-health". This provision encompasses in particular the right to the highest possible standard of health and the right of access to health care.[82] The Committee aligns its definition of health with the definition given by the World Health Organization (WHO) in its Constitution: "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity"[83]. WHO further

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https://curia.europa.eu/juris/document/document.jsf?text=&docid=72404&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=31924130.

[82] ECSR, *Transgender Europe and ILGA-Europe v. the Czech Republic*, Complaint n° 117/2015, Decision on the merits, 15 May 2018, para. 71, https://hudoc.esc.coe.int/eng/?i=cc-117-2015-dmerits-en.

[83] WORLD HEALTH ORGANIZATION, *Constitution adopted by the International Health Conference held in New York from 19 June to 22 July 1946*, signed on 22 July 1946, Preamble, https://www.who.int/about/governance/constitution.

affirms that “The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”.[84]

44. The right to health is recognized as a human right by various international instruments. According to article 25 § 1 of the Universal Declaration of Human Rights, “everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services”. Article 12 of the International Covenant on Economic, Social and Cultural Rights—a multilateral treaty to which Bulgaria is a State party—recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. In its General Comment n° 14 on article 12, the UN Committee on Economic, Social and Cultural Rights stated that “health is a fundamental human right indispensable for the exercise of other human rights” and that “every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity”.[85] This UN Committee has also recalled that the right to health includes “the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health”.[86] Finally, article 35 of the European Charter of fundamental rights also guarantees the right to health, which should include preventive healthcare and medical treatment. According to the Court of Justice of the European Union, this provision requires States to ensure a “high level of human health protection”.[87]

45. When defining the scope of obligations that rely on States on the basis of article 11 § 1 of the European Social Charter to secure an effective protection of the health of their population, the European Committee of Social Rights made clear that “health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action, and States must guarantee the best possible results in line with the available knowledge”.[88] The Committee also pays particular attention to the situation of disadvantaged and vulnerable groups when assessing whether the right to protection of health can be effectively exercised.[89] The Committee considers that “any restrictions on this right must not be interpreted in such a way as to impede the effective exercise by these groups of the right to protection of health”.[90]

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[84] *Ibid.*.
[85] UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *General Comment n°14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant),* August 11, 2000 U.N. Doc. E/C.12/2000/4, para. 1, https://www.refworld.org/pdfid/4538838d0.pdf.
[86] *Ibid.*, para. 8.
[87] CJEU, *Philip Morris Brands SARL and Others v. Secretary of State for Health*, Judgment C-547/14, 4 May 2016, para. 190, https://curia.europa.eu/juris/document/document.jsf?text=&docid=177724&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=38851604.
[88] ECSR, *Conclusions XV-2 (2001) Denmark*, 31 December 2001, http://hudoc.esc.coe.int/fre?i=XV-2/def/DNK/11/1/EN
[89] ECSR, *Conclusions 2005, Interpretative Statement on Article 11 of the Charter*, 2005_Ob_1-1/Ob/EN, http://hudoc.esc.coe.int/fre?i=2005_Ob_1-1/Ob/EN
[90] *Ibid.*.

46. The Committee has considered the question of prioritization schemes where health care resources are limited. While this question was examined by the Committee with regard to the number of available beds in public hospitals, its approach provides relevant insights into how to address the issue of limited medical resources in relation to the right to health protection. The Committee stated indeed that access to treatment must be "based on transparent criteria, agreed at the national level, taking into account the risk of deterioration, in clinical terms as well as in terms of quality of life".[91] Such an approach is of course even more relevant when it comes to essential medical health care such as Covid-19 vaccines: when a medical supply is not available to the whole population that should benefit from it, this supply must be distributed on the basis of clear criteria that take into account the medical risks incurred by the different categories of people if they do not receive the limited resource. In this scenario, the right to life, intrinsically linked to the right to protection of health in article 11 of the Charter, requires States to prioritize distribution to those whose life and health are the most at risk.

47. On adequacy of measures, the Committee recalled in its "Statement of interpretation on the right to protection of health in times of pandemic" adopted on 21 April 2020, that "during a pandemic, States Parties must take all possible measures . . . in the shortest possible time, with the maximum use of available financial, technical and human resources, and by all appropriate means both national and international in character, including international assistance and cooperation".[92] The Committee further underlined that States Parties must be "particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for other persons affected".[93] The Committee also made clear that "the right to protection of health must be protected not merely theoretically, but also in fact. Implementation of the Charter requires States Parties not only to take legal action but also practical action making available the resources and the operational procedures necessary to give full effect to the rights specified therein".[94] The Committee added that "this is particularly true and absolutely crucial with regard to the right to protection of health in times of pandemic, in order for the States Parties to act in conformity with their obligations under the Charter and, most importantly, to limit the number of deaths and health problems caused in such situation".[95] Finally, the Committee recalled as regards prevention that "precautionary measures are a key aspect of the right to protection of health. This implies that when a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects of virus or other factors on human health, then the States Parties must take adequate measures to prevent those risks".[96]

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[91] ECSR, *Conclusions XV-2, United Kingdom, Article 11-1,* XV-2/def/GBR/11/1/EN, 31 December 2001, http://hudoc.esc.coe.int/fre?i=XV-2/def/GBR/11/1/EN

[92] ECSR, *Statement of interpretation on the right to protection of health in times of pandemic*, Adopted by the Committee on 21 April 2020, p. 4, https://rm.coe.int/statement-of-interpretation-on-the-right-to-protection-of-health-in-ti/16809e3640.

[93] *Ibid.*.

[94] *Ibid.*, p. 5. See also the references cited by the Committee in its statement.

[95] *Ibid.*.

[96] *Ibid.*, p. 4.

Bulgaria violated article 11 § 1 of European Social Charter in the distribution of Covid-19 vaccines between December 2020 and May 2021

48. The National vaccination plan for the distribution of Covid-19 vaccines developed and implemented by Bulgaria between December 2020 and May 2021 violated the right of the protection of health as guaranteed by article 11 § 1, of the older persons and those with underlying medical conditions. These people were the most at risk of dying or contracting serious diseases because of Covid-19. However, Bulgaria neglected to protect their health and life by failing to give them a priority and effective access to the Covid-19 vaccines. Instead, Bulgaria distributed the limited supply of vaccines to people who, for a signification part of them, were neither particularly vulnerable to being severely affected by Covid-19, nor occupied in essential infrastructures and public services.

49. According to article 11 § 1 of the European Social Charter, Bulgaria has the duty to ensure the enjoyment of the highest attainable standard of health by all segments of its population. This requires at least adoption of an appropriate response to avoidable health risks, by guaranteeing the best possible results in line with available knowledge, especially for the most vulnerable groups.[97]

50. In the context of the distribution of Covid-19 vaccines, article 11 § 1 required that Bulgaria distribute the available vaccines in a way that best protected the health of all persons and to pay specific attention to those who were most vulnerable, that is, the most at risk of dying or contracting severe disease. Covid-19 vaccines were indeed available in limited quantities in December 2020 and during the first five months of 2021, and choices had to be made by the authorities in compliance with human rights standards. As aforementioned, guidance was offered in that regard by numerous international and regional bodies.

51. However, Bulgaria did not respect the rules deriving from the right to health and right to life when distributing the Covid-19 vaccines. Through the vaccination plan adopted and implemented between December 2020 and May 2021, Bulgaria deliberately decided not to give priority vaccine access to the older adults and persons with underlying medical conditions, despite their being the most likely to die or seriously suffer from Covid-19. As explained extensively above,[98] these two categories of vulnerable persons were included in only the one but last priority phase of the vaccination plan. They came after phases 1, 2 and 3, which included large number of persons who were not involved in essential infrastructures or public services, and persons who were not at risk of dying or contracting serious diseases if infected with the coronavirus. For example, phase 3 was defined in very vague terms and included people who did not present any need for a priority access to Covid-19 vaccines, such as for example, employees of Ministries, journalists, bank employees, and workers in the transportation and communication sectors.[99] These people thus had access to Covid-19 vaccines before vulnerable groups listed in phase 4.

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[97] See references above, especially paragraphs 36-39 and 45-47.

[98] See above paragraphs 20-28.

[99] See for example S. MARINOVA, *Tax and police officers vaccinated in the third phase*, Monitor, 17 January 2021, https://www.monitor.bg/bg/a/view/injektirat-danychni-i-policai-v-treta-faza-245055. See ANNEX XVIII for English translation.

52. The Bulgarian authorities further violated their obligations with the organization of the so called "green corridors": as of 19 February 2021, people who did not belong to any of the five priority groups listed in the original National Vaccination plan were allowed to show up in a vaccination center and be vaccinated. In practice, it was extremely difficult for older persons and those presenting health problems to attend those green corridors, because doing so required waiting for hours, standing with no possibility to sit, outside in cold winter temperatures. Moreover, many older people could not travel to the green corridors, which were mainly located in large cities. As stressed by the Bulgarian general practitioners, the green corridors constituted a random vaccination plan rather than a proper prioritization.[100]

53. Moreover, the chronology of the Bulgarian authorities' decision to organize the green corridors speaks for itself: the green corridors were organized less than two months after the start of vaccinations in Bulgaria, at a time when Covid-19 vaccines were particularly scarce (by the 19 February 2021, Bulgaria received 258,300 doses of the vaccine for a total population of nearly 7 million people) and very few older adults and persons with underlying health conditions had the chance to be vaccinated. Yet, the Government chose to open vaccinations to the whole population instead of making the required effort to protect those who needed to be vaccinated first in order to be protected from death and serious diseases.

54. Yet, Bulgarian authorities had, like all other countries around the world, the relevant scientific information confirming that the Covid-19 vaccines authorized by the European Union and distributed in Bulgaria were the best tools to protect the life and health of older persons and those with underlying medical conditions. All the guidelines developed by WHO, the United Nations, the Council of Europe and the European Union clearly urged governments to include those vulnerable groups in the very first groups to be vaccinated. And this is indeed what many States did. But not Bulgaria.

55. In its vaccination plan adopted on 7 December 2020, the Bulgarian Government declared that the priority groups were defined "according to the risk of infection and need to maintain structures".[101] No reference was made to the need to protect the life and the health of those who were the most at risk of dying or severely suffering from Covid. This means concretely that healthy adults, including young healthy adults, who for example, could perfectly continue to work remotely without any disruption in their work or in the functioning of their company, were vaccinated before old adults or people with underlying medical conditions, who eventually died from Covid-19 in significant numbers. The claimant acknowledges that the Covid-19 pandemic has created challenges in many sectors, including the economy, and that restarting the economy was important for all countries around the world. Nevertheless, the right to life and the right to health could not be sacrificed on the altar of the economy: as stressed by the Court of Justice of the European Union, "protection of public health takes

[100] EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS, *Coronavirus pandemic in the EU – Fundamental Rights implications National vaccine deployment Bulgaria*, 5 May 2021, p. 9, https://fra.europa.eu/sites/default/files/fra_uploads/bg_report_on_national_vaccine_deployment.pdf.

[101] COUNCIL OF MINISTERS OF THE REPUBLIC OF BULGARIA, *Resolution № 896 of 7 December 2020 for the adoption of a National Vaccination Plan against COVID-19 in the Republic of Bulgaria*, 7 December 2020, https://coronavirus.bg/bg/663. See ANNEX IV for English translation.

precedence over economic considerations and may therefore justify adverse economic consequences".[102] For example, the inclusion of staff from mink farms in phase 2 of the National vaccination plan in Bulgaria, before the most vulnerable groups, is among the starkest violations of these rules.

56. As a consequence of the decisions made by the Bulgarian Government, 8,813 persons 60 years and older died from Covid-19 during the first five months of 2021.[103] Figures about the number of persons below 60 years old with underlying medical conditions who also died are unknown.

57. By giving preference for vaccination to healthy and younger adults who were not as vulnerable to Covid-19, nor even involved in essential infrastructures or public services, instead of protecting the life and health of the elderly and people with comorbidities, who were at greatest risk of death or severe illnesses, Bulgaria has violated the right to protection of health as guaranteed by article 11 § 1 of the European Social Charter.

b. Article 11 § 2. The duty to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health

Legal framework

58. According to article 11 § 2 of the European Social Charter, States Parties must take the appropriate measures designed to "provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health". As stated by the Committee, "informing the public, particularly through awareness-raising campaigns, must be a public health priority".[104] States must proactively adopt measures "with a view to implementing a public education policy which is directed towards the population at large as well as particular population groups which are affected by specific health problems".[105]

59. The Committee addressed the specific duties of States Parties in terms of education and information of their population in the context of the Covid-19 pandemic, in its "Statement of interpretation on the right to protection of health in times of pandemic" adopted on 21 April

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[102] CJEU, *French Republic v. European Commission*, Judgement T-257/07, 9 September 2011, para. 64, https://curia.europa.eu/juris/document/document.jsf?text=&docid=109288&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=32047748. See also CJEU, *Artegodan GmbH and Others v. Commission of the European Communities*, Joined Cases T 74/00, T 76/00, T 83/00 to T 85/00, T 132/00, T 137/00 and T 141/00, 26 November 2002, para.186, https://curia.europa.eu/juris/document/document.jsf?text=&docid=47533&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=39428431.

[103] MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Open Data Portal: Statistics on the distribution of COVID-19 cases in Bulgaria*, https://data.egov.bg/data/resourceView/18851aca-4c9d-410d-8211-0b725a70bcfd.

[104] ECSR, *Conclusions 2007, Albania, Article 11-2*, 2007/def/ALB/11/2/EN, 31/10/2007, http://hudoc.esc.coe.int/fre?i=2007/def/ALB/11/2/EN.

[105] ECSR, *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia*, Complaint n° 45/2007, Decision on the merits, 30 March 2009, para. 43, http://hudoc.esc.coe.int/fre?i=cc-45-2007-dmerits-en

2020.[106] The Committee stated that "in line with article 11 § 2, States Parties must take all necessary measures to educate people about the risks posed by the disease in question. This entails carrying out public awareness programs so as to inform people about how to mitigate the risks of contagion and how to access healthcare services as necessary".[107]

60. The Commissioner for Human Rights of the Council of Europe has also underlined the critical importance of information to the public in a context such as the Covid-19 pandemic. In its issue paper published in February 2021, the Commissioner recalled indeed "the importance of building trust in scientific research and public policy through well-conceived, adaptable health communication policies that ensure that new scientific knowledge is communicated rapidly, transparently and accurately in accessible formats".[108]

Bulgaria violated article 11 § 2 in the implementation of its Covid-19 vaccination strategy since December 2020

61. Bulgaria has failed to fulfill its duty to properly and adequately inform and educate people, particularly the most vulnerable, about the importance of receiving the Covid-19 vaccine as a means of protection against the risks posed by the pandemic. First, since the administration of Covid-19 vaccines began, the Government has failed to communicate a strong and unambiguous message addressed at both the general public and vulnerable groups about the safety and importance of Covid-19 vaccines in preventing death and severe illnesses. Secondly, the Bulgarian authorities have failed to actively denounce and combat the misinformation about the vaccines, their effects and safety, including where the latter have been expressed publicly by medical professionals and on public media. Finally, the Bulgarian authorities have failed to issue guidance and organize training involving general practitioners and other medical professionals who have a role in providing advice to patients and the public regarding the life-saving importance and safety of Covid-19 vaccines.

The government's failure to communicate the importance and effects of the Covid-19 vaccines to the public

62. To date, Bulgarian authorities have failed to develop and implement either a communication strategy and a communication campaign on combating the Covid-19 pandemic and the

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[106] ECSR, *Statement of interpretation on the right to protection of health in times of pandemic*, Adopted by the Committee on 21 April 2020, https://rm.coe.int/statement-of-interpretation-on-the-right-to-protection-of-health-in-ti/16809e3640.

[107] *Ibid.*, p. 3.

[108] COUNCIL OF EUROPE, COMMISSIONER FOR HUMAN RIGHTS, *Protecting the right to health through inclusive and resilient health care for all,* Issue paper, February 2021, p. 38, https://rm.coe.int/protecting-the-right-to-health-through-inclusive-and-resilient-health-/1680a177ad.

importance and effectiveness of vaccines.[109] Unlike in many countries, the authorities did not conduct awareness-raising campaigns to inform people about the Covid-19 vaccines.[110] No proper information was communicated by the authorities about the characteristics of the vaccines available, how they were approved and their safety, their effectiveness to protect people and vulnerable people against the risks of death and contracting serious illnesses, etc.[111] Despite the very low level of vaccination in the country that quickly appeared over time, no dedicated efforts were made by the authorities to inform and educate people. Undoubtedly, such measures would have significantly increased vaccination rates among vulnerable individuals, as well as the general population of Bulgaria.

63. On 26 June 2021, the Ministry of Health acknowledged that no specific measures had been taken to organize the communication strategy around the pandemic and vaccination process. Answering a written question raised by a journalist, the Ministry stated indeed, through its press center, that "no special communications team has been appointed, nor has one been hired, although there have been proposals for communication services, which, however, are financially unaffordable for both the Ministry of Health and the Council of Ministers".[112] Furthermore, on 10 September 2021, the Bulgarian Parliament rejected the proposal of the parliamentary group "Democratic Bulgaria" to allocate BGN 10 million in the state budget (5 million euros), so that the Ministry of Health could invest in an information campaign promoting vaccination against Covid-19 (including a survey of attitudes, the identification of the obstacles for the vaccination and a broad public campaign).[113] No alternative measures for communication strategy were adopted by the Parliament.

64. In September 2021, the Center for Analysis and Crisis Communications, a think-thank based in Sofia, expressed concerns about the lack of an adequate campaign around vaccination and urged the Ministry of Health to adapt its communication policy and develop an information campaign.[114] The Center stressed the need to counter the widespread ignorance and

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[109] On 13 December 2021, a new government was established in Bulgaria. On 14th January 2022, it has announced its plan to elaborate a communication campaign on the benefits of vaccines. This is a positive announcement that however has not been concretely implemented yet.

[110] See for example THE CENTER FOR ANALYSIS AND CRISIS COMMUNICATION, *The lack of an adequate vaccine campaign is a severe communication and political failure*, mediapool.bg, 23 September 2021, https://www.mediapool.bg/lipsata-na-adekvatna-kampaniya-za-vaksinite-e-tezhak-komunikatsionen-i-politicheski-proval-news326654.html?fbclid=IwAR2VjQq9jeqAZJl2taMxcilI7aA3XwoPc8hV7e97uRZ8iN480DwU0Bdoze4. See ANNEX XVI for English translation.

[111] See for example Journalist Petrov underlines that in Bulgaria, "There is a problem with the government's communication about the pandemic - at least because citizens do not see communication at all". See A. PETROV, *How the West shifted the problem of vaccine misinformation to social media*, 031 August 2021, https://aej-bulgaria.org/social-networks-vaccine-misinformation/. See ANNEX XIX for English translation.

[112] See the e-mails exchanged between journalist Nadezhda TSEKULOVA and the press center of the Ministry of Health of the Republic of Bulgaria, 26 June 2020. See ANNEX XI for English translation.

[113] See NATIONAL ASSEMBLY OF THE REPUBLIC OF BULGARIA, *Excerpt from the Bulgarian National Assembly's session held on 10 September 2021*. See ANNEX XV for English translation.

[114] THE CENTER FOR ANALYSIS AND CRISIS COMMUNICATION, *The lack of an adequate vaccine campaign is a severe communication and political failure*, mediapool.bg, 23 September 2021, https://www.mediapool.bg/lipsata-na-adekvatna-kampaniya-za-vaksinite-e-tezhak-komunikatsionen-i-politicheski-proval-

misinformation, which, combined with the lack of political will and understanding of national priorities, is claiming more and more victims. Since March 2020, the Center for Analysis and Crisis Communications offered its support, free of charge, to the Bulgarian authorities to develop a communication strategy and made several proposals, among which launching an information campaign on the vaccination process, targeting medical professionals with positions and instructions on the need to vaccinate, creating an information board to manage communication in a professional way and combating misinformation.[115] It was not until early November 2021 that the Ministry of Health sought help from the Center for Analysis and Crisis Communications.[116]

65. The absence of any proper campaign to encourage people to get vaccinated against Covid-19 is even more problematic now that the levels of vaccination in Bulgaria are among the lowest in Europe. This remains the case as European countries and the world are hit by new waves of the pandemic, new variants emerge and vaccines remain the best tool to protect against risks of death and severe diseases.

66. Notably, the State's failure to conduct an appropriate communication campaign around the vaccination process was explicitly acknowledged on 14 December 2021 by the newly appointed Minister of Health, Asena Serbezova, who said that "many people decided to stay away from vaccines, due to the lack of a communication campaign and the fact that vaccines appeared quickly and were subject to political talking".[117]

The government's failure to oppose anti-vaccines propaganda and misconceptions

67. The government's inaction in developing a sound public awareness program reflects also on its failure to combat misinformation relating to the effects and the safety of the Covid vaccines. Disinformation as to the nature and the effects of Covid-19 started spreading soon after the outbreak of the pandemic, in particular on social media and mainstream media. Prominent figures from the medical and the scientific community contributed to the spread of misinformation and opposed protective measures, including Covid-19 vaccines. From January to September 2021, the 24 most influential media outlets in Bulgaria, including the two mainstream TV channels BNR and BNT, published 577 articles in which the main speakers were two medical experts who had been actively spreading misinformation since the beginning

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news326654.html?fbclid=IwAR2VjQq9jeqAZJl2taMxciII7aA3XwoPc8hV7e97uRZ8iN480DwU0Bdoze4. See ANNEX XVI for English translation.

[115] *Ibid.*.

[116] See Lubomir ALAMANOV's Facebook post on 5 November 2021. See ANNEX XXVI for English translation.

[117] BULGARIAN NATIONAL RADIO, *Minister of Health Serbezova: Vaccination will remain voluntary*, 14 December 2021, https://bnr.bg/en/post/101572101/minister-of-health-serbezova-vaccination-will-remain-voluntary.

of the pandemic.[118] In 90% of these articles, their statements were uncritically cited, without any analysis or attempt at interpretation.[119]

68. Other health care professionals contributed to spreading misinformation about Covid-19 vaccines, with a detrimental impact on people's willingness to get vaccinated and without any reaction from Bulgarian authorities. For example, in April 2021, an angiologist stated that people with atherosclerosis—a disease with high prevalence in Bulgaria—and various other conditions should not be vaccinated, against the recommendations made by international and regional public health experts.[120] Other professionals urged extreme precaution, emphasizing that each person is unique and that everyone should first consult their doctor about whether the vaccine is good for them.[121] In other mainstream media, so many precautions and risks were discussed that persons with chronic health conditions were discouraged from getting vaccinated.[122] These statements were made against the guidance provided by international health experts, such as the WHO that clearly stated that there are only "very few conditions that would exclude someone from being vaccinated".[123]

69. Yet, Bulgarian authorities did nothing to counter this misinformation. The Ministry of Health and the Government as a whole remained passive. They did not organize a communication in the media to inform people about the positive impact of the vaccines and encourage them to be vaccinated, in contrast to what was observed in many European countries where Heads of State and Ministers of Health regularly communicated the benefits of the vaccine through mainstream media. Moreover, the Bulgarian authorities did not take any measures to combat the misinformation. Responding to a freedom of information request from the Bulgarian Helsinki Committee, the Ministry of Health acknowledged that until September 2021, the institution in charge of analyzing and combating disinformation, the National Center for Public

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[118] P. GALEV, *Pseudo-Scientific statements and the responsibility of the media*, toest.bg, 24 October 2021, https://toest.bg/psevdonauchnite-tezi-i-otgovornostta-na-mediite/. See ANNEX XX for English translation.

[119] *Ibid.*.

[120] S. HRISTOVA, *30% of the infected with Covid develop venous thromboses*, Interview with Prof. Dr. Lachezar Grozdinski, Acibadem CityClinic, 14 April 2021, https://acibademcityclinic.bg/cardio/blog/detaili/30-ot-tezhko-covid-bolnite-razvivat-venozni-trombozi. See ANNEX XXI for English translation.

[121] See for example DARIK NEWS, *Vaccines against COVID-19 and the cardiovascular disease*, 14 July 2021, https://dariknews.bg/novini/obshtestvo/vaksinite-sreshtu-covid-19-i-syrdechno-sydovite-zaboliavaniia-2277169. See ANNEX XXIII for English translation.

[122] See for example M. VANKOVA, *Covid-19: Vaccines: "Can patients with various diseases be immunized?"*, BTV News, 9 February 2021, https://btvnovinite.bg/predavania/tazi-sutrin/covid-19-vaksinite-kogato-imunnata-sistema-raboti-sreshtu-teb.html. See ANNEX XXII for English translation. This material concludes that "for tens of thousands of Bulgarians the decision to vaccinate is not so easy".

[123] WHO, *Coronavirus disease (COVID-19): Vaccines - Questions & Answers*, "Who should not be vaccinated against Covid-19?", 7 October 2021, https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(covid-19)-vaccines. According to WHO, people should not be vaccinated in three circumstances: if they have a history of severe allergic reactions to any of the ingredients of the COVID-19 vaccines, if they have fever over 38.5ºC on the day of vaccination or if they have confirmed or suspected COVID-19 at the time of vaccination.

Health and Analysis, took almost no action: they published only two articles in 2020 in specialized magazines that have a very limited audience.[124]

The government's failure to issue guidance and to organize trainings involving medical professionals

70. The Government failed to raise awareness, issue guidance and organize trainings for general practitioners and other medical professionals about the Covid-19 vaccines. This failure served to suppress vaccination rates, including among vulnerable groups such as older adults and people with underlying medical conditions. According to a 2020 survey among medical professionals in Europe on their attitudes towards vaccination, only 71% of general practitioners in Bulgaria were confident in effectiveness and safety of the vaccines, and especially of new vaccines, which is among the lowest rates in Europe.[125] In contrast, for example, 97% of the general practitioners surveyed in Italy had full confidence in the vaccines. In addition, the number of health care staff who are vaccinated against Covid-19 in Bulgaria is very low: only 53% of them were vaccinated as of 27 July 2021 according to the Bulgarian Medical Association.[126]

71. No action was taken by the Bulgarian authorities to tackle and overcome this mistrust on part of health care workers. Yet, general practitioners and health care staff are key actors in the vaccination process. They are the ones on whose guidance many Bulgarians rely, since general practitioners are tasked with carrying out vaccinations outside large Bulgarian cities and providing medical advice about their safety and effectiveness. It is therefore of key importance for the authorities to target this group with guidance and training in order to bolster the population's trust in vaccines and foster the vaccination. However, the Bulgarian government failed to issue such guidance and to organize training for medical professionals.

Conclusion

72. Bulgaria has violated article 11 § 2 of the European Social Charter by failing to develop a communication campaign and strategy about Covid-19 vaccines, by failing to combat misinformation and by failing to provide guidance and training to health care staff.

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[124] See MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, NATIONAL CENTER FOR PUBLIC HEALTH AND ANALYSIS, *Letter sent in response to a Freedom of information request submitted by the Bulgarian Helsinki Committee,* 10 September 2021. See ANNEX VIII for English translation. The FOI request submitted by the Bulgarian Helsinki Committee on 1 September 2021 has been also attached to the end of the ANNEX VIII.
[125] BULGARIA SEGA, *Our doctors are the biggest sceptics in the EU towards the vaccines*, 9 October 2021, https://www.segabg.com/hot/nashite-lekari-sa-nay-golemite-skeptici-es-kum-vaksinite. See ANNEX XXV for English translation.
[126] BTV NEWS, *BMA [The Bulgarian Medical Association]: 53% of the Bulgarian medics are vaccinated against Covid-19*, 28 July 2021, https://btvnovinite.bg/bulgaria/bls-53-ot-balgarskite-medici-sa-vaksinirani-sreshtu-covid-19.html. See ANNEX XXIV for English translation.

c. Article 11 § 3. The duty to prevent as far as possible epidemic, endemic and other diseases

Legal framework

73. According to article 11 § 3 of the European Social Charter, States Parties have specific duties in order to protect the right to health and right to life of their population against epidemic, endemic and other diseases, including the Covid-19 pandemic. The Committee made clear in 2013 that "when a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects on human health, the State must take precautionary measures consistent with the high level of protection established by Article 11".[127]

74. This approach of the Committee is similar to that of the Court of Justice of the European Union, which ruled that "it is settled case-law that, in the field of public health, the precautionary principle implies that where there is uncertainty as to the existence or extent of risks to human health, the institutions may take precautionary measures without having to wait until the reality and seriousness of those risks become fully apparent"[128]. Accordingly, the decisions made by the States must "comply with the principle that the protection of public health, safety and the environment is to take precedence over economic interests, as well as with the principles of proportionality and non-discrimination".[129]

75. As recalled by the Commissioner for Human Rights of the Council of Europe, article 11 § 3 of the European Social Charter requires that States Parties "demonstrate their ability to cope with infectious diseases by means of arrangements for reporting and notifying diseases and by taking all the necessary emergency measures in the event of epidemics".[130]

76. The Committee has dealt in the past with the specific question of vaccination as a mean of combatting infectious and epidemic diseases. It considered, for example, that low levels of vaccination in Belgium against diphtheria, measles, meningitis Hib and poliomyelitis were not in conformity with article 11 § 3 of the European Social Charter, "which requires states to ensure high immunisation levels, in order not only to reduce the incidence of these diseases, but also to neutralise the amount of virus".[131] The objective of high levels of vaccination is important when "large-scale vaccination is recognised as the most efficient and most economical means of combating infectious and epidemic diseases".[132] The Committee

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[127] ECSR, *International Federation of Human Rights Leagues (FIDH) v. Greece*, Collective Complaint n° 72/2011, Decision on the merits, 23 January 2013, para. 150, http://hudoc.esc.coe.int/fre?i=cc-72-2011-dmerits-en.

[128] CJEU, *Artegodan GmbH and Others v. Commission of the European Communities*, Joined Cases T 74/00, T 76/00, T 83/00 to T 85/00, T 132/00, T 137/00 and T 141/00, 26 November 2002, para. 185, https://curia.europa.eu/juris/document/document.jsf?text=&docid=47533&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=39428431.

[129] *Ibid.*, para. 186.

[130] COUNCIL OF EUROPE. COMMISSIONER FOR HUMAN RIGHTS, *Protecting the right to health through inclusive and resilient health care for all,* Issue paper, February 2021, p. 19, https://rm.coe.int/protecting-the-right-to-health-through-inclusive-and-resilient-health-/1680a177ad.

[131] ECSR, *Conclusions XV-2, Belgium, Article 11-3*, 31 December 2001, p. 4, http://hudoc.esc.coe.int/fre?i=XV-2/def/BEL/11/3/EN.

[132] *Ibid.*

reiterated its position in the context of the Covid-19 pandemic, in its "Statement of interpretation on the right to protection of health in times of pandemic", affirming that "under Article 11§3, States Parties must operate widely accessible immunisation programmes" and that "vaccine research should be promoted, adequately funded and efficiently coordinated across public and private actors".[133]

Bulgaria violated article 11 § 3 in the distribution of Covid-19 vaccines since December 2020

77. Scientific information published as of the second half of 2020 made it clear that the Covid-19 vaccines approved by the European authorities and distributed in Bulgaria were the most powerful and effective tools to protect life and health against Covid-19, especially among those identified as most vulnerable, such as the older adults and persons with underlying medical conditions. This is why international and regional authorities urged national governments to make the appropriate choices in order to first vaccinate those whose life and health were most at risk.

78. However, Bulgaria has done the opposite in choosing not to prioritize vaccinating the elderly and persons with underlying medical conditions, leaving the vast majority of them without any effective means of receiving the vaccine between December 2020 and May 2021. In other words, Bulgaria did not take appropriate measures to protect the health and life of those vulnerable persons against the pandemic, despite scientific guidance indicating that Covid-19 presented an increased danger to them as compared to the general population, and that the vaccine would provide substantial protection against the risk of death or severe disease.

79. In addition, Bulgaria has also failed to take appropriate measures to make the vaccines effectively and physically accessible to older persons and those with health problems who are unable to travel to vaccinations centers. For a long time, general practitioners received very limited quantities of vaccines and could therefore not vaccinate their patients unable to attend vaccination centers.[134] Moreover, the mobile teams announced by the Government had very limited activities: as of 20 September 2021, they had vaccinated only 4,274 people.[135] It is unclear whether those 4,274 people were residents of social institutions – who were supposed to be the first target of the mobile units - or other people. It is worth reminding that a total of 1,500,000 people in Bulgaria are aged 65 years and older.

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[133] ECSR, *Statement of interpretation on the right to protection of health in times of pandemic*, Adopted by the Committee on 21 April 2020, https://rm.coe.int/statement-of-interpretation-on-the-right-to-protection-of-health-in-ti/16809e3640, p. 5.

[134] NATIONAL ASSOCIATION OF GENERAL PRACTITIONERS IN BULGARIA, *Letter sent to the Minister of Health of the Republic of Bulgaria*, 1 March 2021, https://www.nsoplb.com/uploads/assets/2021/izh-n-4-pismo-ministur-angelov.pdfhttps://www.nsoplb.com/uploads/assets/2021/izh-n-4-pismo-ministur-angelov.pdf. See ANNEX XII for English translation.

[135] MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Mobile teams formed by the Regional Health Inspectorates have immunized 4 274 citizens with reduced mobility and people living in difficult to access and remote areas,* 23 September 2021, https://www.mh.government.bg/bg/novini/aktualno/mobilnite-ekipi-na-regionalnite-zdravni-inspekcii-/. See ANNEX VI for English translation.

80. The failure to inform and educate the public about Covid-19 vaccines, as set forth under the examination of violation of article 11 § 2 above, also constitute a failure to protect people from possible epidemic, endemic and other diseases and thus a violation of article 11 § 3.

81. This characterized failure of Bulgaria to protect people, and in particular older adults and people with underlying medical conditions, against Covid-19 pandemic has had at least two detrimental consequences in the light of the right to protection of health. First, Bulgaria continues to have among the lowest levels of vaccination in Europe.[136] This is of great concern given the prevalence of the coronavirus, and its variants Delta and Omicron, against which the vaccines offer the best protection against the risk of death and severe disease.

82. Secondly, a significant number of Bulgarians aged 60 years and older have died during the period when effective access to Covid-19 vaccines could have protected them from death:
    - between January and May 2021, 8,813 people aged 60 years and older died from Covid-19 in Bulgaria, out of a total of 10,539 deaths in the country, [137]
    - and between January and mid-November 2021, 16,019 persons aged 60 years and older died from Covid-19 out of a total of 18,652 deaths.[138]

83. Bulgaria has thus violated article 11 § 3 of the European Social Charter.

B. Violation of article E (prohibition of discrimination) in conjunction with article 11

1. <u>The prohibition of discrimination: legal framework</u>

84. According to article E of European Social Charter, "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".

85. As stated by the Committee, "the wording of Article E is almost identical to the wording of Article 14 of the European Convention on Human Rights"[139] and requires "treating equals equally and unequals unequally".[140] The European Court of Human Rights has held that the right under article 14 not to be discriminated against in the enjoyment of the rights guaranteed under the Convention is not only violated when States treat persons in analogous situations differently without providing an objective and reasonable justification, but also when States

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[136] See the figures cited in paragraph 30.
[137] MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Open Data Portal: Statistics on the distribution of COVID-19 cases in Bulgaria*, https://data.egov.bg/data/resourceView/18851aca-4c9d-410d-8211-0b725a70bcfd.
[138] See MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Decision made on a Freedom of Information request submitted by the Bulgarian Helsinki Committee,* 19 November 2021. See ANNEX IX for English translation. The FOI request submitted by the Bulgarian Helsinki Committee on 8 November 2021 has been also attached to the end of the ANNEX IX.
[139] ECSR, *Association internationale Autisme-Europe (AIAE) v. France*, Collective Complaint no. 13/2002, Decision on the merits, 4 November 2003, para. 52, http://hudoc.esc.coe.int/fre?i=cc-13-2002-dmerits-en.
[140] *Ibid.*.

fail to treat persons differently whose situations are significantly different, without an objective and reasonable justification.[141]

86. The insertion of article E into a separate article in the European Social Charter indicates, according to the Committee, "the heightened importance the drafters paid to the principle of non-discrimination with respect to the achievement of the various substantive rights contained therein".[142] Its function is to "help secure the equal effective enjoyment of all the rights concerned regardless of difference".[143]

87. The prohibition of discrimination enshrined in article E must be read in conjunction with one of the rights guaranteed by the European Social Charter, among which the right to protection of health of article 11. Prohibited grounds of discrimination are those listed in article E of the Charter, such as health, but also include those that are not explicitly quoted in this provision under the category of "other status".[144] Age is not among the prohibited grounds explicitly listed in article E but has been recognized by the Committee as a relevant ground to be taken into consideration as "other status" under article E of the Charter.[145]

88. The right to protection of health must thus be effectively ensured by Member States without discrimination. This was recalled as well by the Commissioner for Human Rights of the Council of Europe in 2021. The Commissioner stated that "discrimination, whether direct or indirect, can act as a significant barrier to health equity" and "can lead to specific groups of people being systematically disadvantaged in accessing their health rights owing to factors such as their religion, economic status, ethnic origin, migration status, age, gender, sexual orientation, gender identity, sex characteristics, health status or other similar grounds".[146] The Commissioner further reminded that "the promotion of inclusive and non-discriminatory access to health care for all must therefore be an absolute priority for Council of Europe member states"[147], which have the duty to provide access to the highest attainable standard for health for all persons "irrespective of their age, gender, sexual orientation, gender identity and sex characteristics, disability, geographic location or socio-economic background".[148]

89. Commenting on the right to the highest attainable standard of health as guaranteed by article 12 of the International Covenant on Economic, Social and Cultural Rights, the UN Committee on Economic, Social and Cultural Rights has also underlined that "the right to health is closely related to and dependent upon the realization of other human rights, as contained in the

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[141] ECtHR (GC), *Thlimmenos v. Greece*, Judgment of 6 April 2004, para. 44, http://hudoc.echr.coe.int/fre?i=001-58561.
[142] ECSR, *Association internationale Autisme-Europe (AIAE) v. France*, op. cit., para. 51.
[143] *Ibid.*.
[144] ECSR, *Association internationale Autisme-Europe (AIAE) v. France*, Collective complaint n° 13/2002, Decision on the merits, 4 November 2003, para. 51, http://hudoc.esc.coe.int/fre?i=cc-13-2002-dmerits-en.
[145] See for example ECSR, *International Federation of Associations of the Elderly (FIAPA) v. France*, Collective complaint n° 162/2018, Decision on the merits, para. 89, http://hudoc.esc.coe.int/fre?i=cc-162-2018-dmerits-en.
[146] COUNCIL OF EUROPE. COMMISSIONER FOR HUMAN RIGHTS, *Protecting the right to health through inclusive and resilient health care for all,* Issue paper, February 2021, p. 20, https://rm.coe.int/protecting-the-right-to-health-through-inclusive-and-resilient-health-/1680a177ad.
[147] *Ibid.*, p. 21
[148] *Ibid.*, p. 20.

International Bill of Rights, including . . . non-discrimination, equality",[149] and that "health facilities, goods and services have to be accessible to everyone without discrimination".[150]

90. The WHO and the UN High Commissioner for Human Rights have underscored that "non-discrimination and equality further imply that States must recognize and provide for the differences and specific needs of groups that generally face particular health challenges, such as higher mortality rates or vulnerability to specific diseases"[151] and that "the obligation to ensure nondiscrimination requires specific health standards to be applied to particular population groups".[152]

2. <u>The requirement to protect older persons</u>

91. The obligation to protect older persons has been specifically addressed by different international instruments, particularly with regard to the right to health and protection against discrimination.

92. The General Assembly of the United Nations has adopted during the last decades various resolutions specifically focused on the situation of older persons,[153] with an emphasis on their access to health and their need for protection against discrimination. On 3 December 1982, the General Assembly adopted the "Vienna International Plan of Action on Ageing",[154] which includes a set of recommendations for Member States in the field of health. The plan of action emphasizes that the care of older persons "should go beyond disease orientation and should involve their total well-being" (recommendation 2), underlines the necessity for early diagnosis, appropriate treatment and preventive measures to reduce disabilities and diseases of the ageing (recommendation 3) and the need to provide health care to the very old and those incapacitated in their daily lives (recommendation 4).

93. On 16 December 1991, the General Assembly of the United Nations adopted the "United Nations principles for older persons", which states that "older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness".[155] In 2015, the UN General Assembly reiterated its attention to the situation of older persons through a new resolution on

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[149] UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, *General Comment n°14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant),* op.cit., para. 3.
[150] *Ibid.*, para. 12.
[151] UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR), *Fact Sheet No. 31. The Right to Health*, June 2008, n° 31, p. 7, https://www.refworld.org/docid/48625a742.html.
[152] *Ibid.*, pp. 7-8.
[153] There is no general agreement across the globe on the age at which a person becomes old. The United Nations generally use 60 years old and above to refer to the older population. See for example UN GENERAL ASSEMBLY, *Resolution 67/139, Towards a comprehensive and integral international legal instrument to promote and protect the rights and dignity of older persons*, A/RES/67/139, adopted on 20 December 2012, https://digitallibrary.un.org/record/743962?ln=en.
[154] UN GENERAL ASSEMBLY, *Resolution 37/51,* A/RES/37/51, adopted on 3 December 1982, https://undocs.org/en/A/RES/37/51.
[155] UN GENERAL ASSEMBLY, *Resolution 46/91*, *United Principles on Older Persons,* 16 December 1991, https://www.ohchr.org/en/professionalinterest/pages/olderpersons.aspx.

"Measures to enhance the promotion and protection of the human rights and dignity of older persons", adopted on 17 December 2015.[156] Among other measures, the General Assembly "call[ed] upon all States to promote and ensure the full realization of all human rights and fundamental freedoms of older persons, including by taking measures to combat age discrimination, neglect, abuse and violence, and to address issues related to social integration and adequate health care" (article 3).[157]

94. The UN Human Rights Council has also stressed the need to combat age discrimination and secure effective access to adequate health services for older persons. In a resolution adopted on 29 September 2016, the Council "recognize[d] that older persons face a number of particular challenges in the enjoyment of their human rights that need to be addressed urgently, including in the areas of prevention of and protection against violence and abuse, social protection, food and housing, right to work, equality and non-discrimination, access to justice, education, training, health support".[158]

95. The Council of Europe has paid equal attention to the situation of the elderly. On 10 October 1994, the Committee of Ministers adopted a recommendation to Member States "concerning elderly people"[159], recalling that "elderly people have the same entitlement to human dignity as other members of society, and therefore to the same rights and duties" and that "the human rights of increasingly vulnerable people must be particularly safeguarded". The Committee of Ministers reiterated its attention to old persons through the adoption, on 19 February 2014, of another recommendation to Members States "on the promotion of human rights of older persons".[160] The Committee reaffirmed that "all human rights and fundamental freedoms are universal, indivisible, interdependent and interrelated, and their full enjoyment, without any discrimination, by older persons needs to be guaranteed". It further recognized that "effective measures should be taken to ensure the full enjoyment of their human rights" and recalled that "respect for the dignity of older persons should be guaranteed in all circumstances, including mental disorder, disability, disease and end-of-life situations". As a consequence, the Committee of Ministers defined a set of principles that it recommend the Members States comply with, both by law and in practice.[161] These principles include the right not to be discriminated against on the basis of age (paragraph 6) and the duty of Members States to take a range of measures to protect the health of the older persons. They should in particular take "appropriate measures, including preventive measures, to promote, maintain and improve the health and well-being of older persons" and "ensure that appropriate health care and long-term

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[156] UN GENERAL ASSEMBLY, *Resolution 70/164, Measures to enhance the promotion and protection of the human rights and dignity of older persons*, A/RES/70/164, 17 December 2015, https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/164.

[157] *Ibid.*

[158] UN HUMAN RIGHTS COUNCIL, *Resolution 33/5, The human rights of older persons,* A/HRC/33/L.9, adopted on 29 September 2016, para. 1, https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/212/50/PDF/G1621250.pdf?OpenElement.

[159] COUNCIL OF EUROPE, COMMITTEE OF MINISTERS, *Recommendation n°. R (94) 9 to Member States concerning elderly people*, adopted on 10 October 1994 at the 518th meeting of the Ministers' Deputies, https://rm.coe.int/16804c49ec.

[160] COUNCIL OF EUROPE, COMMITTEE OF MINISTERS, *Recommendation CM/Rec(2014)2 of the Committee of Ministers to member States on the promotion of human rights of older persons*, adopted on 19 February 2014 at the 1192nd meeting of the Ministers' Deputies, https://rm.coe.int/1680695bce. See especially pp. 5-7.

[161] *Ibid.*, Recommendation n° 1, p. 7.

quality care is available and accessible" (paragraph 29). Eventually, they should "promote a multi-dimensional approach to health and social care" as well (paragraph 31).

96. The Parliamentary Assembly of the Council of Europe has in turn, in 2007, expressed the concern that "elderly persons still too often encounter discrimination, whether in their daily lives or in a professional context", including in their access to health care.[162] Accordingly, the Parliamentary Assembly developed a set of recommendations for Members States, such as improving health care systems and making them accessible to all elderly persons to ensure that they receive appropriate medical care (paragraph 11.4), and establishing preventive health-care systems for elderly persons (paragraph 11.5).

3. Specific vulnerabilities in the context of Covid-19 pandemic

97. The need to protect the population against discrimination, in particular on the basis of age and health, has been constantly repeated by regional and international bodies since the outbreak of the Covid-19 pandemic and in the context of the distribution of Covid-19 vaccines as well.[163] The government of Bulgaria ignored ubiquitous scientific and credible statistical information indicating higher morbidity of persons with specific vulnerabilities. Older persons were indeed immediately identified by health experts as particularly at risk of dying and suffering from severe diseases. [164] And an overwhelming number of persons 60 years old and above died from Covid-19 since early 2020 around the world: as reported by the Commissioner for Human Rights of the Council of Europe, "over 95% of COVID-19 deaths in the WHO Europe region occurred among people over 60 years of age".[165] In France, as of 22 June 2021, 73% of deaths from Covid-19 were aged 65 and over.[166] And in Germany, as of 2 November 2021, 95,213 people died from Covid-19, among which 81,860 were aged 70 or over, which represent almost 86% of the total number of deaths.[167] In the United States of America, 748,164 persons died

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[162] COUNCIL OF EUROPE, PARLIAMENTARY ASSEMBLY, *Recommendation 1796 (2007), The situation of elderly persons in Europe*, adopted by the Standing Committee, acting on behalf of the Assembly, on 24 May 2007, http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17545&lang=en.

[163] See for example UNITED NATIONS, HIGH COMMISSIONER FOR HUMAN RIGHTS, *Human Rights and Access to Covid-19 Vaccines*, 17 December 2020, pp. 3-4, https://www.ohchr.org/Documents/Events/COVID-19_AccessVaccines_Guidance.pdf.

[164] WORLD HEALTH ORGANIZATION, REGIONAL OFFICE FOR EUROPE, *Health care considerations for older people during COVID-19 pandemic*, https://www.euro.who.int/en/health-topics/health-emergencies/coronavirus-covid-19/publications-and-technical-guidance/vulnerable-populations/health-care-considerations-for-older-people-during-covid-19-pandemic. See also UN INDEPENDENT EXPERT ON THE ENJOYMENT OF ALL HUMAN RIGHTS BY OLDER PERSONS, *"Unacceptable" – UN expert urges better protection of older persons facing the highest risk of the COVID-19 pandemic,* 27 March 2020, https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25748&LangID=E; UN SECRETARY GENERAL, *Policy Brief: The Impact of COVID-19 on older persons*, May 2020, p. 2, https://unsdg.un.org/sites/default/files/2020-05/Policy-Brief-The-Impact-of-COVID-19-on-Older-Persons.pdf.

[165] COUNCIL OF EUROPE, COMMISSIONER FOR HUMAN RIGHTS, *Protecting the right to health through inclusive and resilient health care for all,* Issue paper, February 2021, p. 22, https://rm.coe.int/protecting-the-right-to-health-through-inclusive-and-resilient-health-/1680a177ad.

[166] STATISTA, *Breakdown of coronavirus (COVID-19) deaths in France from March 1, 2020 to June 22, 2021, by age group*, last consulted on 9 November 2021, https://www.statista.com/statistics/1107434/victims-coronavirus-age-france/.

[167] STATISTA, *Number of coronavirus (COVID-19) deaths in Germany in 2021, by gender and age*, last consulted on 9 November 2021, https://www.statista.com/statistics/1105512/coronavirus-covid-19-deaths-by-gender-germany/.

from Covid-19 as of 3 November 2021, among whom 564,006 were 65 years old or over, which represents a bit more than 75% of the total number of deaths.[168] These numbers confirm that older persons are particularly vulnerable to death and severe Covid-19 disease, and are therefore in need of being rapidly vaccinated.

98. The same concerns apply for people with underlying medical conditions that make them particularly vulnerable to Covid-19 as well. As highlighted by the Commissioner for Human Rights of the Council of Europe, "during a pandemic, states must be particularly mindful of the impact that their choices will have on groups with heightened vulnerabilities and on other persons, including their families in particular, who shoulder the heaviest burden in the event of institutional shortcomings".[169] The Commissioner also recalled that "the promotion of inclusive and non-discriminatory access to health care for all must . . . be an absolute priority for Council of Europe member states and special efforts must be made to be proactive in ensuring that the rights of persons belonging to particular groups that face access barriers, including women, Roma, persons with disabilities, older persons, LGBTI persons, prisoners, persons with migrant backgrounds or migrants, are effectively safeguarded".[170]

4. <u>The failure of Bulgaria to comply with the prohibition on discrimination in conjunction with the right to protection of health</u>

99. Bulgaria failed to comply with the prohibition on discrimination on the grounds of age and health, as enshrined in article E of the European Social Charter and read in conjunction with article 11 on the right to the protection of health. Older adults and people with underlying medical conditions were indeed discriminated against by not getting priority and timely access to Covid-19 vaccines between December 2020 and May 2021.

100. In the light of the jurisprudence of the European Court of Human Rights, the existence of a prohibited discrimination must be verified through a two-step test. First, it must be assessed whether there has been a difference in treatment of persons in analogous or relevantly similar situations, or a failure to treat differently persons in relevantly different situations. Second, the existence of an objective and reasonable justification to support the different or equal treatment must be examined. It should also be remembered that specific rules apply in matters of discrimination for the burden of proof: once the claimant demonstrates a difference in treatment, it is for the Government to show that this difference was justified.[171]

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[168] STATISTA, *Number of coronavirus disease 2019 (COVID-19) deaths in the U.S. as of November 3, 2021, by age,* last consulted on 9 November 2021, https://www.statista.com/statistics/1191568/reported-deaths-from-covid-by-age-us/.

[169] COUNCIL OF EUROPE, COMMISSIONER FOR HUMAN RIGHTS, *Protecting the right to health through inclusive and resilient health care for all*, Issue paper, February 2021, p. 22, https://rm.coe.int/protecting-the-right-to-health-through-inclusive-and-resilient-health-/1680a177ad.

[170] *Ibid.*, p. 21.

[171] ECtHR (GC), *Molla Sali v. Greece*, Application n° 20452/14, Judgment of 19 December 2018, para. 137, http://hudoc.echr.coe.int/fre?i=001-188985.

101. Bulgarian authorities discriminated against the elderly and persons with underlying medical conditions in two ways: as compared to the general population, and as compared to other groups that were prioritized for the Covid-19 vaccine.

a. Discriminatory treatment of older persons and persons with underlying medical conditions in comparison with the general Bulgarian population

102. Persons 65 years old and above and those with underlying medical conditions were ranked fourth in the Covid-19 National vaccination plan adopted by Bulgaria on 7 December 2020. This low ranking constitutes direct discrimination compared to the general population on the basis of age and health because they were not treated with sufficient consideration corresponding to their differences.

103. The group made of the elderly and people with underlying medical conditions was in a significantly different situation than the general population because of their age and state of health: the scientific and medical knowledge acquired in 2020 about the SARS-CoV-2 virus and the Covid-19 disease clearly demonstrates that this group faces a significant risk of dying or becoming severely ill with Covid-19, which is not the case with younger, healthy adults. The statistics bear this out: people 65 years old and above represent in many countries up to 85% or even 95 % of the number of persons who died from Covid-19.[172] This is why, since the outbreak of the pandemic and specifically in the context of the distribution of Covid-19 vaccines, the particular vulnerability of older persons and people with underlying medical conditions has always been stressed, including in guidance developed by international and regional bodies for prioritization of vaccination.

104. Because the elderly and those with underlying medical conditions were in a different situation from the general population, Bulgarian authorities are obligated to treat them differently: due to the heightened risk these groups face with respect to the coronavirus, Bulgarian authorities must provide them with priority vaccine access. Yet, Bulgaria has completely failed to do so. Taking into account their vulnerability should have meant ranking them among the very first persons to be vaccinated, as opposed to including them only in fourth phase of the vaccination plan.

105. In practice, for people aged 65 years and older and persons with underlying health problems, being included in phase 4 meant not being prioritized for vaccination at all. As extensively explained in Section IV above, the limited number of available vaccines were first given to very large numbers of people falling under phases 1, 2 and 3, and were distributed through the "green corridors", which were open to every able-bodied adult in Bulgaria, before the fourth phase even began.

106. Failing to adequately prioritize the elderly and people with health conditions for the vaccination amounts to less favourable treatment of these categories of persons compared to the general population. By failing to treat differently groups that were in significant different situations, Bulgaria did not provide equal treatment to everyone.

[172] See above paragraph 97.

107. Bulgaria also did not provide any objective and reasonable justification that supports this less favourable treatment of older persons and people with underlying medical conditions. No explanation was given by the authorities as to the rationale of the national prioritization plan, nor as to why these two groups of vulnerable persons were not sufficiently prioritized despite the clear guidance published by the WHO, the UN, the Council of Europe and the European Union, urging States to include the elderly and people with underlying health conditions among the very first groups to be vaccinated against Covid-19. More fundamentally, the complainant observes that in the light of the right to life and right to health, nothing could objectively and reasonably justify that those who were at the highest risk of dying from Covid-19—the elderly and people with health conditions—did not receive a priority and effective access to the vaccines and therefore were not treated in accordance with their vulnerabilities and their right to protection of health.

108. Bulgaria has thus violated article E of the European Social Charter in conjunction with article 11 on the basis of age and health: it has discriminated against older persons and those with underlying health conditions by treating them less favourably than the general population in the distribution of the Covid-19 vaccines between December 2020 and May 2021.

b. Discriminatory treatment of old and ill persons in comparison with the other priority groups

109. The group made of the elderly and persons with underlying medical conditions was ranked fourth in the Covid-19 National vaccination plan adopted by Bulgaria on 7 December 2020. As noted above, they were thus eligible to vaccination after the persons included in groups 1, 2 and 3. This ranking has discriminated them on the basis of age and health from the other priority groups by not treating them equally.

110. Older persons and people with underlying medical conditions are in a comparable situation to some others who were included in the first three phases of the National Vaccination plan, such as front line health workers and persons living in social care homes, in that they all needed priority access to Covid-19 vaccination. Yet, the elderly and people with health conditions were not treated the same way since they could only have access to the vaccines in phase 4. This difference of treatment was exacerbated by the fact that phases 1, 2 and 3 also included persons who were not at all in the need of priority access to vaccination since they were not involved in essential infrastructures or public services, nor at particular risk of contracting severe forms of diseases. For example, phase 1 included employees and civil servants working in the health administration, and phase 3 included all kinds of workers regardless of the essential nature of their activities, such as for example employees of ministries, journalists or bank employees.[173]

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[173] See for example S. MARINOVA, *Tax and police officers vaccinated in the third phase*, Monitor, 17 January 2021, https://www.monitor.bg/bg/a/view/injektirat-danychni-i-policai-v-treta-faza-245055. See ANNEX XVIII for English translation.

111. Bulgaria did not provide any objective and reasonable justification that supports this difference of treatment. No explanation was given by the authorities as to the rationale of the national prioritization plan, nor as to why older persons and those with health conditions were not prioritized as their right to life and right to health required. The complainant observes again that actually, nothing could objectively and reasonably justify that these two groups of persons were not properly protected while they were the most at risk of dying from the coronavirus and the most in need of being vaccinated.

112. Bulgaria has thus violated article E of the European Social Charter in conjunction with article 11, on the basis of age and health, by not treating older persons and those with underlying health conditions equally as other priority persons that were in a similar situation for the distribution of the Covid-19 vaccines.

VI. REQUEST FOR INDICATION OF IMMEDIATE MEASURES

113. In accordance with Rule 36 of the Rules of Procedure, the European Committee of Social Rights may "indicate to the parties any immediate measure, the adoption of which is necessary to avoid irreparable injury or harm to the persons concerned". As underlined by the Committee, the immediate measures are those that are "necessary with a view to avoiding the risk of a serious and irreparable injury and to ensuring the effective respect for the rights recognised in the European Social Charter (Rule 36§1), insofar as the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact".[174] The Committee further stated that "any request for immediate measures must establish a tangible situation in which the persons concerned by the complaint find themselves at risk of serious irreparable injury or harm".[175]

114. Currently, Bulgaria continues to have extremely low vaccination rates among adults, including in regard to older persons and persons with underlying health conditions. The number of adults vaccinated in Bulgaria is the lowest in the European Union: as of 21 January 2022, barely 34,1% of adults 18 years and above[176] were fully vaccinated in Bulgaria and barely 28,5% of the total population. [177] The figures of vaccinated people are also extremely low for the elderly: only 36,6% of the Bulgarian population 60 years old and above are fully vaccinated against Covid-19 on 16 December 2021.[178] These figures are disproportionately

[174] ECSR, *European Roma Rights Centre v. Belgium*, Complaint nr 185/2019, Decision on admissibility and immediate measures, 14 May 2020, para. 12, http://hudoc.esc.coe.int/fre?i=cc-185-2019-dadmissandimmed-en
[175] *Ibid.*, para. 13.
[176] EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, *COVID-19 Vaccine Tracker*, Cumulative uptake (%) of full vaccination among adults (18+) in Bulgaria as of 21 January 2022, https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#uptake-tab
[177] EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, *COVID-19 Vaccine Tracker*, Cumulative uptake (%) of full vaccination in total population in Bulgaria as of 21 January 2022, https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#uptake-tab
[178] EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, *COVID-19 Vaccine Tracker*, Cumulative uptake (%) of full vaccination among people aged 60 years and above in Bulgaria as of 21 January 2022, https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#age-group-tab

lower in comparison with the countries of the European Union: on average in the EU, 80,9% of adults aged 18 and above[179], and 69,6% of the total population[180] are fully vaccinated as of 21 January 2022. The same disproportion is observed with the elderly population in the other countries of the European Union: on average, 90,6% of people aged 60 and above in the EU are fully vaccinated as of 21 January 2022.[181]

115. Under article 11 of the European Social Charter, public authorities have the responsibility to do everything possible to ensure that the population is effectively protected against the Covid-19 pandemic. It is therefore the duty of States to take the appropriate measures to make sure that their populations have a proper and effective access to the Covid-19 vaccines and are correctly informed about the characteristics of these vaccines and the risks they face for their health and life if they are not vaccinated.

116. The Bulgarian Government has failed to protect the health of its population, and in particular the health of the most vulnerable groups, the older adults and people with underlying health conditions that place them at a higher risk of death and grave illness. This failure is still ongoing with almost nothing done by the authorities to inform, educate and encourage people to be vaccinated, to make the vaccines effectively and truly accessible to persons who are the most at risk of dying if they are not vaccinated and are infected by Covid-19, and to combat misinformation around the vaccines. With new waves of Covid-19 infection hitting Europe, including Bulgaria, since the fall 2021 and the spread of new very contagious variants, it remains of paramount importance that Bulgaria takes the appropriate measures required by the protection of health to improve the levels of vaccination, especially among the most vulnerable groups, to avoid continued high rates of death and severe diseases caused by the coronavirus. It is therefore necessary for the Committee to indicate the immediate measures that Bulgaria should implement to this end.

117. Without immediate measures taken by Bulgaria, the two aforementioned population groups will continue to be at risk of dying or contracting serious diseases because of Covid-19, and rates of death and serious illness will continue to rise, especially with the very high levels of infections observed currently in the country and in Europe.[182] Such a situation undoubtedly constitutes an "irreparable injury or harm to the persons concerned" in the meaning of article 36 of the Rules of procedure.

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[179] EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, COVID-19 Vaccine Tracker Cumulative uptake (%) of full vaccination among adults (18+) in EU Member States as of 21 January 2022, https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#uptake-tab

[180] EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, *COVID-19 Vaccine Tracker* Cumulative uptake (%) of full vaccination in the total population in EU Member States as of 21 January 2022, https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#uptake-tab

[181] EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, *COVID-19 Vaccine Tracker* Median cumulative uptake (%) of full vaccination by age group in EU Member States as of 21 January 2022, https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#target-group-tab.

[182] See for example EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, *Country Overview Report: Week 01, 2022*, 13 January 2022, https://covid19-country-overviews.ecdc.europa.eu/index.html.

118. Therefore, the complainant asks the Committee to indicate to the Bulgarian Government immediate measures as described below.

VII. CONCLUSION

119. Bulgaria has failed to protect the right to protection of health of older adults and persons with underlying medical conditions, it has failed to comply with the prohibition of discrimination in conjunction with the right to protection of health, by not providing them with a priority and effective access to Covid-19 vaccines, by not duly and properly informing and educating these high at risk and vulnerable groups, as well as the public about the vaccines, and by not taking the necessary measures to "prevent as far as possible epidemic, endemic and other diseases". Bulgaria has thus violated article 11 of the European social Charter, as well as article E in conjunction with article 11.

120. Pending a decision of the Committee on the merits of this collective complaint and according to Rule 36 of the Rules of Procedure, the complainant asks 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.

For these reasons, the Open Society European Policy Institute asks the European Committee of Social Rights to:

- Declare this collective complaint admissible and indicate to the Bulgarian Government the following immediate measures:
  - Adopt and implement an emergency action plan with targeted measures to reach out and vaccinate the persons 60 years old and above and persons with underlying medical conditions against Covid-19 as a matter of priority;
  - Organize a proper access to vaccines, including locally for those who cannot move because of their age or health, and if appropriate in collaboration with general practitioners;
  - Develop and implement a campaign of information about the need for people, and especially vulnerable groups such as the elderly and the sick, to be vaccinated against Covid-19, in order to achieve high levels of vaccination among these groups, and the population in general.

- Find a violation of article 11 of the European Social Charter and a further violation of article E read in conjunction with article 11 of the European Social Charter.

Brussels, 25 January 2022.

On behalf of the Open Society European Policy Institute,

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Carl Dolan, Deputy Director

Maïté De Rue, Senior Legal Officer

Annexes : List of annexes and 27 annexes