



European
Social
Charter

Charte
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**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

22 July 2024

Case Document No. 4

Amnesty International and Médecins du Monde – International v. Sweden
Complaint No. 227/2023

RESPONSE FROM THE COMPLAINANT ORGANISATIONS TO THE GOVERNMENT'S SUBMISSIONS ON THE MERITS

Registered at the Secretariat on 15 July 2024



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15 July 2024

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WRITTEN RESPONSE OF AMNESTY INTERNATIONAL AND MÉDECINS DU MONDE - INTERNATIONAL TO THE OBSERVATIONS OF THE SWEDISH GOVERNMENT ON THE MERITS OF THE COLLECTIVE COMPLAINT NO. 227/2023

Dear Mr Kristensen,

Further to your notification of 14 May 2024, please find enclosed our written response to the observations of the Swedish Government on the merits of the collective complaint.

We would be grateful if you could confirm receipt via the email addresses below mandi.mudarikwa@amnesty.org and hannah.laustiola@lakareivarlden.se with Iain Byrne (iain.byrne@amnesty.org) in copy.

Yours sincerely,

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EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Amnesty International and Médecins du Monde - International v. Sweden

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15 July 2024

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I. INTRODUCTION

1. On 19 June 2023, Amnesty International and Médecins du Monde – International filed a collective complaint with the Council of Europe’s European Committee of Social Rights (“the Committee”), alleging that the Government of Sweden violated provisions of the European Social Charter concerning the rights to protection of health (Article 11), social and medical assistance (Article 13) and to non-discrimination (Article E) because of the continued denial of healthcare services for EU migrants in Sweden, the billing of the full cost of healthcare services for members of this group and the chilling effect of said practices that lead to the refraining of seeking healthcare services by them.
2. On 6 December 2023, the collective complaint was found admissible. By its letter of 5 April 2024, the Committee provided Amnesty International and Médecins du Monde – International with the submissions of the Government of Sweden (“Government’s submissions”) on the merits and invited Amnesty International and Médecins du Monde – International to submit a written response in reply by 31 May 2024. Amnesty International and Médecins du Monde – International requested and were granted an extension to respond by 15 July 2024.
3. Amnesty International and Médecins du Monde – International have reviewed the Government’s submissions and respectfully submit their comments in response. In their response, Amnesty International and Médecins du Monde - International address the merits of the collective complaint only to the extent that they need to be clarified or expanded upon considering the Government’s submissions. The detailed reasons have otherwise been set out in the collective complaint of June 2023, and the Committee is respectfully asked to read this response in conjunction with the collective complaint.
4. Amnesty International and Médecins du Monde – International do not address all the issues raised by the Government because either they have been adequately addressed in the collective complaint or they are not relevant to the allegations raised within it. Therefore, Amnesty International and Médecins du Monde – International respectfully request the Committee to not interpret their silence on any of these issues as agreement with the Swedish Government’s submissions.

II. GENERAL REMARKS

a) Inadequate reference to relevant human rights standards

5. The Government’s submissions make no reference to relevant human rights law and standards beyond the Charter, including Sweden’s obligations under international human rights treaties it has ratified, and despite international criticism by respective monitoring bodies, as referred to in the original complaint.¹ Instead, the government clarifies that its

¹ For example UN CESCR in para 142 of the Collective Complaint.

focus is “the scope of the Charter as it is interpreted by the ECSR”.² However, as explained below (para. 12), the Government limits its comments to Article 13.1 only, fails to explain why it does not engage with its international obligations and fails to comment on the Committee’s rich and evolving jurisprudence on access to healthcare for vulnerable groups, including irregular migrants, which was elaborated by the complainants in the original complaint (paras. 24 and 53-54).³ The collective complaint reiterated that all human rights are universal, indivisible, interdependent and interrelated and the decision not to engage with all human rights as engaged by the complaint is contrary to this.

b) Inadequately engaging with the impact of lacking affordable and accessible healthcare on the lived experiences of people affected

6. Amnesty International and Médecins du Monde – International note that the Government refers to EU and national laws and regulations with regard to EU migrants in relation to Swedish healthcare.⁴ However, it is further noted that the Government does not in any serious way address the actual *impact* of said law and practice on the lived experiences of the population in question, as evidenced by the analysis and the cases presented in the collective complaint. The nature of the documented cases on (i) denial of care, (ii) the billing of full costs for necessary healthcare and (iii) the chilling effect leading to the abstaining from necessary healthcare demonstrate the serious consequences for the lives, health and human dignity of people affected. These consequences constitute discriminatory treatment and a denial of their human rights both under the Charter and other international treaties. The number of cases and types of violations identified by the complainants based on research carried out in several locations across the country suggest that these cases are only the tip of the iceberg, and that Sweden’s breach of the Charter is systemic and structural.⁵
7. Moreover, the Government does not address its failure to officially collect data for this population in order to better address their situation and needs.⁶

c) Inadequately acknowledging the connection between indirect discrimination, multiple forms of discrimination and access to affordable healthcare

8. The Government notes that the collective complaint includes facts about the housing and living conditions of EU migrants more generally,⁷ which is mainly based on Amnesty International’s own research. The Government goes on to explain that its response will only focus on the alleged breaches of Articles 11 and 13 read in conjunction with Article E. Amnesty International and Médecins du Monde – International provided this context for the Committee to fully understand the situations of vulnerability of the EU migrants as the

² Submissions by the Swedish Government, para. 22.

³ Submissions by the Swedish Government, para. 5 including footnotes 1 and 2.

⁴ Submissions by the Swedish Government, e.g. paras. 10-21.

⁵ See collective complaint, paras. 147-148.

⁶ See collective complaint, para. 148.

⁷ Submissions by the Swedish Government, para. 23, which refers to Section 2.3 of the collective complaint.

focus of the complaint. Amnesty International and Médecins du Monde – International highlight here that the position adopted by the Government in relation to the full circumstances of the EU migrants amounts to a failure to acknowledge the intersectional and compounded impact of multiple forms of discrimination experienced. Amnesty International and Médecins du Monde – International have explained that the affected people’s ethnicity, migrant status and socio-economic situation, cumulatively impacts their health status, vulnerability and their ability to access the corresponding healthcare and treatment they need. This neglect reflects the Government’s systematic failure in its submission to address the impacts that the Swedish legal standards and policies and application of them have on the affected people’s ability to access affordable healthcare, as indicated above (para. 6).

9. As described in the collective complaint, human rights mechanisms have increasingly recognised that addressing intersectional discrimination is necessary to guaranteeing substantive equality and non-discrimination.⁸ As explained in the collective complaint, intersectional discrimination has a unique and specific impact on individuals and merits particular consideration and remedying.⁹ To fulfil its obligation to provide equal access to affordable healthcare services and address both intersectional and indirect discrimination, the state must apply a holistic and intersectional approach to understand, and take measures to address, the everyday reality of for instance destitution, social exclusion and systematic discrimination.
10. The state’s assertion in para 29 of its response that “the provisions are *by nature* non-discriminatory since they apply to anyone in the region” (*emphasis added*) inadequately understands both the experiences of discrimination of the EU migrants and its own obligation to address intersectional discrimination in situations where indirect discrimination is experienced. Indirect discrimination occurs when a rule is the same for everyone but has a worse effect on a particular person or group of people similarly placed often because of their intersecting identity factors such as their migration status, ethnicity, or socio-economic status. In this case, this is true for EU migrants living in Sweden in a state of destitution and marginalization.

III. RESPONSE TO PARTICULAR OBSERVATIONS BY THE GOVERNMENT

a) The European Social Charter

Relevant ECSR conclusions

11. Amnesty International and Médecins du Monde – International welcome the fact that the Government takes note of the text of Articles 11, 13 and E of the Charter. The organizations also welcome the Government noting that its ratification of the Charter *means that Sweden has an obligation according to international law to secure that the Charter is respected in law and in the application of law.*¹⁰

⁸ Collective complaint, e.g. paras 87-90.

⁹ Collective Complaint, eg. Para 88.

¹⁰ Submissions by the Swedish Government, paras. 2-4.

12. Amnesty International and Médecins du Monde – International note, however, that when the Government explores the meaning of the invoked Articles in the collective complaint, it limits itself to explore Article 13.1 only.¹¹ It does this based on the apparent incorrect assumption that this is because the population under review is EU migrants in Sweden in need of health care that reside irregularly in the country. Consequently, according to the Government, Articles 11 and 13.2-4 are not applicable. It is submitted that in taking this approach, the Government bases the rest of its submissions on a wrongfully narrow interpretation of its international human rights obligations.¹² Consequently, instead of engaging substantively with all of the legal arguments and evidence presented in the collective complaint, the Government’s submissions only respond to a very narrow aspect.
13. Amnesty International and Médecins du Monde – International wish to make it clear that they are not asking the Committee to comment on whether the population in question is lawfully or unlawfully residing in Sweden. Rather, the complainants are respectfully asking the Committee to comment on the discriminatory treatment and the denial of the right to protection of health and to social and medical assistance of a vulnerable group of EU citizens because of Sweden’s legislation and practices, contrary to the relevant provisions of the Charter. It is these specific allegations to which the Government offers a very limited response in its overall submissions.
14. Amnesty International and Médecins du Monde – International wish to respectfully draw the Committee’s attention to its rich and evolving jurisprudence, ignored by the Government, concerning those Charter rights relating to irregular migrants or other non-nationals whom State Parties have excluded from rights protection - specifically within the remit of the right to protection of health and social and medical assistance.¹³ Most importantly, with regard to EU citizens present in another EU member state, the Committee has stated that “it is extremely complex... to distinguish to whom the protection guaranteed by the Charter and its Appendix applies without restrictions. The Committee considers that the lack of identification possibilities should not lead to depriving persons fully protected by the Charter of their rights under it”.¹⁴ In other words, even though an EU citizen without a right of residence is considered legally in the territory of another EU member state only for the first three months, the difficulty to distinguish those present lawfully from those present unlawfully makes this distinction irrelevant with regard to protection under the Charter. Consequently, in cases relating to Roma EU migrants of Bulgarian and Romanian origin residing in France and Italy, the Committee has determined that all rights under the Charter apply to all individuals in the population under review.¹⁵ This important finding in the Committee’s case law, blatantly ignored by the Government in its submission, is highly relevant to the case under review.
15. Amnesty International and Médecins du Monde – International reiterate that in Sweden, there is no system in place to distinguish EU citizens who have just arrived from those who have stayed longer than three months and may be considered to have an irregular status.

¹¹ Submissions by the Swedish Government, paras. 5-6.

¹² See submissions by the Swedish Government, para. 27.

¹³ See collective complaint, paras. 24 and 53-55.

¹⁴ *Médecins du Monde - International v. France*, Complaint No.67/2011, para. 33.

¹⁵ See e.g. *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, paras. 32-33; *Médecins du Monde - International v. France*, Complaint 67/2011, paras. 33-34.

Consequently, the Government's assumption that the persons on behalf of whom this collective complaint has been filed, at the time of seeking or needing healthcare, were all unlawfully in Sweden is ill-founded. Furthermore, under the Charter and the case law of the Committee, the Swedish state has a responsibility to treat all rights bearers within its territory under review consistently regardless of status and circumstances and guarantee that nobody is deprived of their rights under the Charter.

16. The Committee has repeatedly found that the right to protection of health and the right to social and medical assistance concern human rights that are connected to the rights to life, physical integrity and the preservation of human dignity.¹⁶ In this context, the Committee has stated that "those who do not fall within the definition in the Appendix cannot be deprived of their rights linked to life and dignity under the Charter [...] and that such a restriction should not end up having unreasonably detrimental effects where the protection of vulnerable groups of persons is at stake."¹⁷
17. The complainants note the reference made by the Swedish government to one of the Committee's conclusions from 2018 with respect to Article 13.1.¹⁸ In this context and based on the close relationship between human dignity and access to healthcare, the Committee has concluded that "legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter".¹⁹ Further, the Committee has found that the healthcare system must be accessible to everyone, in particular to disadvantaged groups which should not be victims of discrimination,²⁰ and that "the cost of healthcare must not represent an excessively heavy burden for the individual."²¹ According to the Committee, "[t]his implies that healthcare must be effective and affordable to everyone, and that vulnerable groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected."²²

b) The right to health and medical care in Sweden

Health and medical care for registered residents in Sweden

¹⁶ See, e.g., *Defence for Children International v Belgium*, Complaint No. 69/2011, paras 120-121; *International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, paras. 26-32; *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, para. 220.

¹⁷ *Médecins du Monde - International v. France*, Complaint No.67/2011, para. 34. See also more recent statements on the Charter's applicability to foreigners in an irregular migration situation in *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, para. 75.

¹⁸ Submissions by the Swedish Government, para. 5, footnote 1.

¹⁹ *International Federation of Human Rights Leagues (FIDH) v France*, Complaint No.14/2003, para. 32.

²⁰ *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, para. 218.

²¹ Conclusions 2013, Georgia.

²² *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece*, Complaint No. 173/2018, para. 218. See further Collective Complaint.

18. The Government explains that “access to healthcare in Sweden is not based on nationality but on the fulfilment of the requirements to register as a resident in a Swedish region.”²³ The complainants respectfully wish to stress that, in relation to the Government’s human rights obligations to ensure universal access healthcare for all without discrimination, neither nationality nor the successful completion of registration procedures should be conditions to base the right to access to healthcare on.
19. The Government refers to the prohibition of discrimination in the Swedish Discrimination Act, including on the ground of ethnicity, regarding health and medical care and other medical services. Furthermore, and in connection, the Government mentions the Discrimination Ombudsman, its mandate to supervise compliance and states that “it can bring a court action on behalf of an individual complaint.”²⁴
20. Here, the Government omits the fact that a breach of the Discrimination Act within the area of health and medical care and other medical services can, at the most, lead to the obligation to pay compensation (in Swedish: diskrimineringsersättning) for the body at fault.²⁵ Thus, the Discrimination Ombudsman, or any other supervisory body within the Swedish system,²⁶ is not mandated to order the provision of adequate healthcare that is accessible and affordable through a decision binding upon the healthcare provider. In addition, there are no legal safeguards to ensure that the Ombudsman, or any supervisory body in the Swedish system, will act on an individual’s case or even investigate it.
21. Further, turning to public bodies to seek remedy cannot be considered a realistic option for the people affected under review. It is well known²⁷ that many EU migrants in Sweden are marginalised and live in destitution, and due to systematic discrimination and social exclusion going back generations both in their home and host countries, often avoid contact with authorities.²⁸ As such, the remarks by the Government suggesting that the population under review had the option and should have sought a remedy through the Discrimination Ombudsman, the Patient Advisory Committee, or the Health and Social Care Inspectorate, appears to reveal a lack of understanding and limited knowledge of the lived experiences of this community.

Healthcare in Sweden for EU/EEA-citizens

22. The complainants note that the Government relies in its argumentation on parts of the EU coordination rules on social security including the European Health Insurance Card.²⁹ Amnesty International and Médecins du Monde – International would like to reinforce that as a party to the (Revised) European Social Charter, and treaties such as the UN ICESCR, the Swedish state is legally obliged to fulfill the rights contained therein, and to do this in an effective and non-discriminatory manner. As explored in the collective complaint, there

²³ Submissions by the Swedish Government, para. 9.

²⁴ Submissions by the Swedish Government, para. 12.

²⁵ Discrimination Act, Chapter 5, Section 1.

²⁶ See also submissions by the Swedish Government, para. 30.

²⁷ See collective complaint, annex 1.

²⁸ See collective complaint section 2.3

²⁹ Submissions by the Swedish Government, paras. 13-15.

is considerable evidence to show that, independently of how the EU rules appear on paper, in reality a significant number of EU citizens are still not covered by health insurance in their home countries, which is particularly common among disadvantaged groups such as Roma communities.³⁰ Sweden and other EU member states ought to be aware of this, and guarantee people's access to health care in this context.

Healthcare for other foreigners in Sweden

Access to healthcare for irregular migrants

23. In the collective complaint Amnesty International and Médecins du Monde – International allege that the lack of clarity in the 2013 Act,³¹ which allows some subsidized health care to irregular adults, has led to diverging and to some degree conflicting interpretations on whether the Act includes EU migrants or not.³² Together with inconsistent guidelines, differences in application of the law among the regions, and a lack of political will to remedy the situation despite repeated international criticism,³³ the affected people's access to affordable healthcare is routinely breached by the Swedish state – as shown by the 129 case examples set out in the complaint that the complainants submit constitute violations of the Charter and other international treaties.
24. The Government's submissions include comments on the 2013 Act and its legislative history in relation to EU migrants.³⁴ The submissions include a translation of the key wordings in the Government bill where EU citizens are mentioned.³⁵ It is noteworthy that the Government's translation does not adequately reflect the Swedish meaning of the text: "... it cannot be ruled out that the proposed legislation on health and medical care for persons staying in Sweden without a permit may in *exceptional* cases become applicable also to Union citizens."³⁶ By contrast, Amnesty International and Médecins du Monde – International have translated the same part in the Government bill as "not out of the question... that the proposed legislation on health services and medical services for persons residing in Sweden without a permit may also be applicable to [European] Union citizens in *individual cases*".³⁷ The complainants' translation reflects more adequately the Swedish word in question in the Bill. If the Government's understanding of the word were correct, the text should have read "i undantagsfall" ("in exceptional cases") and not, as is the case in the Bill, "i enstaka fall" ("in individual cases"). The complainants submit that, consequently, the Government's translation inadequately narrows the scope for when the 2013 Act is applicable to EU citizens.

³⁰ Collective complaint, see e.g. para. 19.

³¹ Act (2013:407) on healthcare and medical services for certain aliens resident in Sweden without necessary permits (Lag (2013:407) om hälso- och sjukvård till vissa utlänningar som vistas i Sverige utan nödvändiga tillstånd).

³² See collective complaint paras. 67-69.

³³ Collective complaint, paras. 132-146.

³⁴ Submissions by the Swedish Government, paras. 18-21.

³⁵ Government bill 2012/13:109, p. 41.

³⁶ Submissions by the Swedish Government, para. 20. Italics added to the quote by the complainants.

³⁷ Collective complaint, para. 67.

c) On the merits

On the allegations

Residence in Sweden of the group concerned

25. The Government takes note of para. 30 in the collective complaint and submits that an absence of an expulsion practice for EU citizens staying more than three months in Sweden without fulfilling the requirements for right of residence does not imply that these persons are lawful residents. Further, the Government submits that “[f]rom the circumstances described in the complaint it can be concluded that the persons in the group concerned have not complied with the requirements to become registered residents in Sweden.”³⁸
26. Amnesty International and Médecins du Monde – International reiterate that there is no feasible means for state authorities to know the legal status of each individual in this community. As such, the statement of the Government that the persons in the group have not complied with relevant requirements is both irrelevant³⁹ and ill-founded. Amnesty International and Médecins du Monde – International also question whether a system of registration consistent with human rights law and standards would be effective, since it is not uncommon for individuals in this group to move across the state border, thus, to repeatedly re-start their three-months period. This means that they would often reside lawfully in Sweden and, as such, with the Government’s logic, enjoy protection from the Charter.⁴⁰

Access to healthcare and to subsidies

27. The Government submits that Sweden has a legal order in place that fulfills the provisions of the Charter when it comes to emergency medical assistance for persons present in Sweden.⁴¹ With reference to the Committee’s jurisprudence referred to above (paras. 13-16) and explored further in the collective complaint, the complainants have identified both law and practice to respectfully strongly disagree that all people in Sweden have access to emergency medical assistance (see further in the complaint chapter 3). Notably, despite the existence of the legal order the government has pointed to, in reality the people affected by the issues set out in the complaint face significant barriers in accessing such care. Furthermore, even if Sweden had a legal order that complied with the obligations under the Charter, the Committee (and other human rights bodies) has (have) made clear that States Parties are under a duty to make sure that the rights are effective in practice and enjoyed by every individual without discrimination.⁴²

³⁸ Submissions by the Swedish Government para. 27.

³⁹ See para 13 above.

⁴⁰ See collective complaint para. 22.

⁴¹ Submissions by the Swedish Government para. 28.

⁴² See, for instance, *Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, para. 35; *Médecins du Monde - International v. France*, Complaint No.67/2011, para. 55; *Defence for Children International v. Belgium*, Complaint No. 69/2011, para. 69; *International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE)*, Complaint No. 173/2018; and *Amnesty International v. Italy*, Complaint No. 178/2019, paras. 98 and 116. See also Committee on Economic, Social and Cultural rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 2 July 2009, para. 8.

28. With regard to discrimination,⁴³ the complainants underline that the issue of discriminatory treatment in relation to Article E of the Charter needs to be addressed by the application of human rights law. Whilst the Government's detailed comments on the Swedish legislation on immediate care,⁴⁴ and the EU coordination rules,⁴⁵ focus on whether these rules are directly discriminatory or not, the question of indirect discrimination is overlooked. EU legal standards on health care mean that people who do not have health insurance in their own countries are likely to not be able to access affordable health care in other EU countries as well, as a result. Very often, uninsured groups are groups that are marginalised due to multiple and intersecting factors, such as ethnicity, race, nationality, and economic status. As a result, these groups experience indirect discrimination and are unable to access affordable health care in other EU countries as well. This is not in conformity with international human rights law and standards, which requires that all persons should have equal access to affordable health care. Consequently, in light of human rights law, the legal standards have, unavoidably, discriminatory impacts on these same communities as long as there is no Charter conforming implementation in member states, including Sweden.⁴⁶
29. With respect to the Government's references to compliance with EU rules as a justification for not breaching the Charter,⁴⁷ the complainants respectfully remark that EU obligations do not exclude and/or take priority over Sweden's human rights obligations. Thus, the questions of compliance with EU law and standards, on one hand, and other international law and standards, on the other, should not be confused. Consequently, it is submitted that in considering a complaint under the Charter it is irrelevant to explore how the EU and domestic systems on access to health care are designed, unless this is done in relation to relevant human rights obligations, including protection from discrimination.
30. The Government questions whether the data presented in relation to cases that concern denial of medical treatment are of such nature that the patient who needed treatment, had been in need of immediate care.⁴⁸ Whilst Amnesty International and Médecins du Monde – International stress the need for a perspective consistent with human rights law on what constitutes immediate care, such as to include abortion, the complainants would like to draw the Committee's attention to the deflecting nature of the Government's submission in terms of the actual scope of Articles 11, 13, and E of the Charter. The Swedish legislation on immediate care is far from meeting the standards of the Charter.⁴⁹ The complainants submit that the 129 individual cases are outlined with the purpose to reflect the structural and systematic nature of Sweden's violations of the rights to protection of health and to social and medical assistance of a group of people affected similarly placed that are commonly subjected to discriminatory treatment in society overall.

⁴³ See submissions by the Swedish Government, paras. 28-29 and 32.

⁴⁴ Submissions by the Swedish Government paras. 16, 17 and 28-30.

⁴⁵ Submissions by the Swedish Government, paras. 13-15 and 32.

⁴⁶ See submissions by the Swedish Government, para. 4, where the principle of treaty conform interpretation of national law is mentioned.

⁴⁷ Submissions by the Swedish Government, e.g. paras. 32, 35 and 42-43.

⁴⁸ Submissions by the Swedish Government, para. 30.

⁴⁹ See collective complaint, paras. 59-61, 68 and 70 on immediate care, and paras. 24 and 53-54 on the Committee's rich and evolving jurisprudence.

31. The Government makes several remarks on the 2013 Act's applicability to EU migrants.⁵⁰ The complainants note that the Government does not confirm that EU migrants may fall within the scope of the law. However, it neither closes the door, instead preferring to refer the issue to local authorities and courts to clarify.⁵¹ At the same time, the Government submits that "the EU legislative framework shall be used as far as possible for this group"⁵² despite the fact that EU citizens are mentioned explicitly in the legislative history of the 2013 Act, see further above (paras. 23-24).
32. Amnesty International and Médecins du Monde – International submit that these remarks demonstrate the legal uncertainty that EU migrants are subjected to in relation to subsidised healthcare in Sweden. This is both in terms of accessibility when healthcare is not considered "immediate" by healthcare staff (but may well be considered necessary if a moderate delay of treatment would risk causing serious consequences for the patient), and in terms of affordability.⁵³ In Amnesty International and Médecins du Monde – International's view the explicit inclusion of EU migrants in the 2013 Act would bring the Swedish legislation into greater conformity with the standards of the Charter and international law generally. By contrast, to not include everyone residing within Sweden's territory in accessible and affordable healthcare services constitutes a breach of Sweden's obligations under the Charter and international law.
33. In this context Amnesty International and Médecins du Monde – International would respectfully like to provide an update on the case mentioned in the collective complaint regarding a Bulgarian woman who in 2020 received bills for the full cost of healthcare in connection with pregnancy and childbirth by cesarean section.⁵⁴ The woman has challenged the bills and argues that since she should be considered to fall within the scope of the 2013 Act, her healthcare should be subsidised. In its judgement, the Administrative Court held that the woman had a right to appeal. The Administrative Court also found that the Region of Gävleborg had been wrong not to assess whether the woman fell within the scope of the 2013 Act. However, after the filing of the collective complaint, the Region of Gävleborg appealed the verdict of the Administrative Court. On 10 April 2024, the Administrative Court of Appeal denied the woman's right to appeal in this case and found her appeal inadmissible. The Administrative Court of Appeal assessed that the woman could challenge the bills in regular court instead of the administrative court system that is free of charge, whereas proceedings in the general court system are subject to very high costs.⁵⁵
34. At the time of submitting this response, the woman has appealed her case to the Supreme Administrative Court, which has yet to decide on whether to grant her leave of appeal.
35. As described in the collective complaint, so far, no Swedish case-law has been developed on what the criteria are for a person in need of healthcare to be considered to fall within the scope of the 2013 Act.⁵⁶ If the judgement of the Administrative Court of Appeal becomes final, or if the Supreme Administrative Court confirms its findings, it will be even

⁵⁰ Submissions by the Swedish Government paras. 21, 33-35 and 45.

⁵¹ Submissions by the Swedish Government, para. 31.

⁵² Submissions by the Swedish Government, para. 35.

⁵³ See further collective complaint, paras. 65-69 and Annex II.

⁵⁴ Collective complaint, para. 120.

⁵⁵ Administrative Court of Appeal in Sundsvall, Decision in case no. 1270-23, April 10 2024.

⁵⁶ Collective complaint, para. 67.

more difficult for the group under review to access justice in relation to bills they get, as they are required to pay the full costs of healthcare in Sweden. In addition, it may even risk closing the door to further clarifications of the issue by the courts, see further above (para. 31). So far, to the complainants' knowledge, no measures have been taken by the Government in relation to the National Board of Health and Welfare, a national agency under the Ministry of Social Affairs, to adopt a policy to clarify the current legal situation in relation to the status of EU migrants under the 2013 Act.

Abstention from necessary healthcare

36. Amnesty International and Médecins du Monde – International note that the Government mentions that municipalities have an obligation to provide anyone present in the municipality with “minimum necessary protection” according to Swedish legislation. It goes on to mention examples of emergency support provided to EU migrants.⁵⁷ Amnesty International and Médecins du Monde – International currently lack information about how this legislation is implemented, and respectfully asks the Committee to request more information from the Government in support of its claim.

d) Recommendations of the complainants

37. The Government mentions the existence of Swedish rules on debt enforcement and debt relief and indicates that the creditor and the Social Services are available to assist EU migrants when they end up in debt as a consequence of being billed the full costs for medical services. However, Amnesty International and Médecins du Monde – International note that the Government does not indicate whether this service is actually used in practice and none of those interviewed by the complainants had done so.

38. The complainants also note that most Swedish national and municipal policies vis-à-vis EU migrants are designed to fit a three-month model, assuming that individuals in this group are staying for a maximum period of three months, which excludes them from social assistance according to the Free Movement Directive.⁵⁸ As with the topic of supervisory bodies, commented above (paras. 20-21), to suggest that EU migrants could turn to Swedish public actors as a realistic solution overlooks their actual lived experiences, vulnerability and marginalisation. As explored in the collective complaint, the Swedish system is both facilitating and contributing to the social exclusion and multifaceted and intersectional discrimination commonly experienced by individuals within this population.

39. In their collective complaint, the complainants respectfully make recommendations to address the situation of accessible and affordable health care for EU migrants in Sweden.⁵⁹ Amnesty International and Médecins du Monde – International note that the Government of Sweden takes note of them in their submissions.⁶⁰

⁵⁷ Submissions by the Swedish Government para. 39.

⁵⁸ Collective complaint, paras. 29-30.

⁵⁹ Collective complaint, para. 149.

⁶⁰ Submissions by the Swedish Government, paras. 40 and 46.

40. The recommendations are made in light of the evidence presented in the collective complaint. The evidence covers an explanation of Sweden's vague laws and guidelines, that, independently of their compliance with EU law are not, the complainants submit, meeting Sweden's human rights obligations in light of the Committee's jurisprudence. The evidence also covers the inconsistent application of the law by regions. Through the 129 individual cases provided, the complainants demonstrate examples of lived experiences of persons who have been denied care altogether, billed for the full cost of healthcare services for EU migrants in Sweden, and who have suffered the chilling effect of these practices that lead to them refraining from seeking healthcare services when needed. These violations have serious consequences for the lives, health and human dignity of EU migrants in Sweden. Further, the cases presented are not isolated examples but instead show that the lack of access to affordable health care for EU migrants is both structural and systematic.
41. Despite international and national criticism for several years, the Swedish Government has not taken the necessary or appropriate measures to remedy the situation and ensure real change for the people affected. Instead, Sweden is ignoring EU migrants' right to health by refusing to clarify the legal situation, but also by failing to document their health needs through the gathering and analysis of data. Therefore, EU migrants' right to access affordable healthcare are seriously and widely breached, and Sweden fails to meet its obligations under Article 11 and Article 13, read alone or in conjunction with Article E of the Charter.
42. The Government submits that it is difficult to overlook the consequences if people without medical insurance in their home country would be granted general access to subsidised healthcare as long as they stay in Sweden.⁶¹ Through such a remark, the complainants note that the Government displays a view of human rights as negotiable, disregarding the universality, indivisibility and binding nature of them. Amnesty International and Médecins du Monde - International respectfully wish to underline that the hypothetical consequences of upholding certain rights is irrelevant to the fundamental nature of the obligations of the state with regards to the Charter, as well as any other relevant human rights conventions that Sweden has ratified, such as the ICESCR. To hold otherwise would seriously undermine the Charter and other human rights systems.

IV. CONCLUSION

43. As explained in the collective complaint, Amnesty International and Médecins du Monde – International submit the combination of vague laws, inconsistent guidelines, lack of political will to remedy the situation and regional differences has created a situation in which EU migrants' right to access affordable healthcare as guaranteed Articles 11 and 13 read in conjunction with Article E, of the revised European Social Charter is being seriously and widely breached in Sweden ⁶².
44. In light of the information presented in the collective complaint and the follow-up information presented above, Amnesty International and Médecins du Monde –

⁶¹ Submissions by the Swedish Government, para. 44.

⁶² Collective complaint, para 147.

International respectfully calls on the European Committee of Social Rights to find Sweden in violation of Articles 11 and 13 read in conjunction with Article E, of the revised European Social Charter.

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