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

March 2024

# FOLLOW-UP TO DECISIONS ON THE MERITS OF COLLECTIVE COMPLAINTS

# FINDINGS 2023

(adopted in January 2024)

*This text may be subject to editorial revision*

# GENERAL INTRODUCTION

In accordance with the changes to the reporting system adopted by the Committee of Ministers at the 1196th meeting of the Ministers' Deputies on 2-3 April 2014, certain countries were exempted from reporting on the provisions subject to assessment in the framework of the Conclusions 2023 These countries were invited, instead, to provide information on the follow-up given to the decisions on the merits of collective complaints in which the Committee had found violations.

This document presents the findings of the Committee adopted at the 339th session in January 2024 concerning the follow-up to decisions. The following countries are concerned:

- BELGIUM
- BULGARIA
- FINLAND
- FRANCE
- GREECE
- IRELAND
- ITALY
- PORTUGAL

# BELGIUM

## 5th assessment of follow-up: International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 62/2010, decision on the merits of 21 March 2012, Resolution CM/ResChS(2013)8

### 1. Decision of the Committee on the merits of the complaint

1. The Committee concluded that there were several violations of Article E read in conjunction with Article 16 of the Charter on the following grounds:

a. failure in the Walloon Region to recognise caravans as dwellings;

b. the existence in the Flemish and Brussels Regions of housing quality standards not adapted to caravans and the sites on which they were installed;

c. failure to provide an adequate number of public sites for Travellers;

d. failure of urban planning legislation to take account of Traveller families' specific circumstances;

e. illegal use of evictions against Travellers who are unlawfully settled on land because they have been unable to find a place on an authorised site.

2. The Committee also found a lack of a co-ordinated overall policy with regard to Travellers, particularly on housing, to prevent and combat poverty and social exclusion (violation of Article E read in conjunction with Article 30 of the Charter).

### 2. Information provided by the Government

### A. Violations of Article E read in conjunction with Article 16 of the Charter

*a. Failure in the Walloon Region to recognise caravans as dwellings*

In the information provided by the Government, no indication has been provided concerning any amendments to the Walloon Housing and Sustainable Dwellings Code, according to which caravans are not regarded as dwellings.

*b. The existence, in the Flemish and Brussels Regions, of housing quality standards that are not adapted to caravans and the sites on which they are installed.*

<u>Flemish Region</u>

The Government states that, as recognised by the Committee in its Findings 2021, the Flemish Region has developed indicative quality standards for caravans. The Flemish housing policy strives to improve the housing situation of people who live in caravans. It is explicitly stated in the Flemish Housing Code that the right to decent housing applies to everyone, regardless of the type of housing the household chooses. Consequently, the choice of type of housing is not a decisive factor in fulfilling the right to housing. Initiatives have been taken to allow caravan dwellers to also benefit from this right. The Flemish authorities intend to assess the Travellers' needs with respect to affordable and quality housing and are collecting data on occupancy rates of the existing sites. In addition, a study has been conducted on Travellers' living and housing conditions. The study was finalised in June 2020 and presented to the Flemish authorities. Subsequently, the stakeholders involved in the various relevant policy areas (housing, environment, welfare, etc.) entered into a dialogue about the research results and the recommendations.

<u>Brussels Region</u>

In the Brussels region, the authorities run projects specifically targeting Travellers' needs. The projects focus on four main themes, namely: housing, education/training,

vocational integration and health care. The projects relate to, *inter alia*, the acquisition, rental or development of a reception area, technical equipment (water connection, toilets, water drainage, etc.), and operational systems for organising reception (management, coordination within the municipal services, etc.). These projects aim to address the findings issued by the European Committee of Social Rights, in particular regarding the absence of housing criteria adapted to caravans and the land on which they are installed.

*c. Failure to provide an adequate number of public sites for Travellers*

<u>Flemish Region</u>

The Government indicates that the Flemish authorities provide incentives to build the sites locally by means of large subsidies of up to 100% for new sites and 90% for the renovation of existing sites. Each year, the government publishes a list of the existing pitches for caravans on residential sites and transit sites. In 2021, there were 515 pitches (for 553 families) on residential sites, and 106 pitches on transit sites. These figures represent an increase since the Committee's previous assessment (Findings 2021). The Government provides an overview of the number of families and the number of places available on the transit sites and residential caravan sites in the Flemish Region, as of April 2022, which indicates that there are sufficient places available on public sites to enable Traveller families to park their caravans.

<u>Brussels Region</u>

The Government confirms that the projects targeting Travellers in the Brussels-Capital Region, referred to above, aim at increasing the number of sites accessible to Travellers and at addressing the absence of housing criteria adapted to caravans. The Brussels Region launched a real estate study in October 2022 aimed at compiling a list of sites likely to be able to accommodate Travellers, on a permanent basis if possible. The first results have confirmed the difficulty of finding a single plot of land of +/- 1 000m² appropriate to accommodating around fifteen caravans. The research will instead focus on preparing a list of several smaller plots of land, scattered across the territory of the Brussels Region.

<u>The Walloon Region</u>

The Walloon Parliament adopted a decree on aid and subsidies for the provision of sites for Travellers. Furthermore, the Parliament adopted, on 4 May, a decree modifying the Walloon Code of Social Action and Health on aid to Travellers, in particular concerning their reception during the winter period and responding to the lack of reception areas equipped with water, electricity and sanitary equipment, by extending the benefit of future calls for projects to provinces, intermunicipal associations and associations of municipalities. Lastly, the Mediation Centre for Travellers and Roma[1] in the Walloon Region, as an organisation recognised by the Government, is regularly consulted on and associated with any reflection on the policy of welcoming Travellers within the Walloon Region. It is available to municipalities for any questions relating to receiving Travellers in the territory of the Walloon Region.

*d. Failure of urban planning legislation to take account of Traveller families' specific circumstances*

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[1] The term “Roma and Travellers” is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term “Gens du voyage”, as well as persons who identify themselves as Gypsies.

The Government provides detailed information on the planning rules concerning caravans in the Flemish Region. It is necessary to obtain a permit if a caravan is parked with the intention of living in it on a permanent basis. Travellers can request this permit online. When a caravan is placed on a site approved for Travellers, it is not necessary to obtain a specific permit for the individual caravan. In addition, it is possible to temporarily park a caravan on an unauthorised private site for a total of 120 days per year.

*e. Illegal use of evictions against Travellers who are unlawfully settled on land because they have been unable to find a place on an authorised site*

The Government confirms that when Travellers occupy a site illegally, they can be ordered to leave that site, either by the mayor (in the event of a threat to public safety or public health) or by a judge (following a request by the owner of the site).

**B. Violation of Article E read in conjunction with Article 30 of the Charter**

The Government states that, in June 2022, Belgium submitted its national Roma integration strategy to the European Commission, which was the result of close collaboration between the Communities, the Regions, representatives of civil society and the federal authorities. The strategy is structured around four objectives: health, education, work and housing for Roma, Sinti, and Travellers.

The Flemish authorities have commissioned a study about Travellers' housing and living conditions with the aim of generating policy recommendations (in the fields of housing, poverty, social exclusion, well-being, etc.). Subsequently, stakeholders in the various relevant policy areas (housing, environment, social welfare, etc.) entered into a dialogue about the research results and the recommendations. The Flemish authorities have also financed a research project about the needs of Travellers in terms of social support. Finally, a working group "Travellers and Education" was created within the Ministry of Education to investigate how the education situation of the children of Travellers can be improved.

As part of the national Roma integration strategy developed by the Government and submitted to the European Commission in June 2022, the Minister for Social Action and Health organised a first round table with stakeholders in the field in the Brussels Region in June 2022. On the basis of their recommendations, a working document was established with a view to developing a strategy for the inclusion of the Roma in the Brussels Region. Furthermore, as part of the adoption of the Brussels Anti-Racism Plan (2022-2025), working groups were created to fulfil the fundamental rights of Roma and Travellers, with the objective of incorporating those rights in regional policies. The Government has drawn up a detailed list of the actions underway or envisaged as part of this programme.

**2. Information provided by the European Federation of National Organisations Working with the Homeless (FEANTSA)**

FEANTSA refers to its arguments in the case *FEANTSA v. Belgium*, Complaint No. 203/2021, according to which there has been no progress regarding the available places and sites for caravan dwellers in the Flemish Region.

**3. Information provided by the Flemish Government in reply to FEANTSA**

In response to the case *FEANTSA v. Belgium*, op.cit., the Flemish authorities state that they have provided proof that the necessary efforts are being made to provide places and sites for caravan dwellers in Flanders. The Flemish authorities refer to the arguments that were made in the context of the proceedings in this complaint.

## 4. Assessment of the follow-up

### A. Violations of Article E read in conjunction with Article 16 of the Charter

*a. Failure in the Walloon Region to recognise caravans as dwellings*

The Committee notes that the recognition of caravans as dwellings is a regional responsibility. It has previously noted that in the Flemish and Brussels Regions, caravans were regarded as dwellings, whereas in the Walloon Region they were not (see Findings 2021). This situation has not changed. The Committee wishes to point out that this constitutes indirect discrimination, as it means that the specific situation of Traveller families is not taken into account.

The Committee concludes that the situation has not been brought into conformity with Article E read in conjunction with Article 16 of the Charter because of the failure in the Walloon Region to recognise caravans as dwellings.

*b. The existence, in the Flemish and Brussels Region, of housing quality standards that are not adapted to caravans and the sites on which they are installed*

The Committee recalls that the feature which undoubtedly distinguishes Traveller families where housing is concerned is their caravan lifestyle. This situation calls for differentiated treatment and appropriate measures to improve their housing conditions. It notes that, both in the Flemish Region and in the Brussels Region, the authorities have developed specific and targeted actions, aiming at adapting the housing quality standards relating to health, safety and living conditions for Travellers. The Committee points, however, to the pending complaint No. 203/2021 *European Federation of National Organisations Working with the Homeless (FEANTSA) v. Belgium*, declared admissible on 6 July 2022, in which the complainant organisation alleges that the Flemish authorities have pursued an unfair and ineffective housing policy based on support for homeownership, which fails to meet the objective of a comprehensive and coordinated approach to promoting access to housing in order to eradicate poverty and social exclusion. In the light of the information submitted and pending the outcome of this complaint, the Committee maintains it previous finding as regards the follow-up to the present decision (*FIDH v. Belgium*, Complaint No. 62/2010) namely that the situation in the Flemish Region has not been brought into conformity with Article E read in conjunction with Article 30 of the Charter in this respect.

*c. Failure to provide an adequate number of public halting sites for Travellers*

The Committee recalls that there is a positive obligation on the State to ensure that there is an adequate number of accessible residential sites for Traveller families to park their caravans. This means that public sites for Travellers must be properly fitted out with the basic amenities necessary for a decent life, such as running water, waste disposal, sanitation facilities and electricity, and that these must be structurally secure, not overcrowded and with secure tenure supported by law. It is also important, in order to secure social integration and, in particular, access to employment and education for Travellers, that sites are located in an appropriate setting, with easy access to public services, employment opportunities, health care services and other social services.

The Committee notes the various ongoing projects and subsidies allocated in each region, as well as the detailed information on plots already made available in the Flemish Region. In this regard, it refers to the complaint No. 203/2021, mentioned above, in which the complainant organisation alleges that the authorities' efforts to promote access to housing are insufficient to meet the current needs of vulnerable groups. In the light of the information submitted to it in the other case, the Committee

concludes that the situation has not been brought into conformity with Article E read in conjunction with Article 16 of the Charter in this respect.

*d. Failure of urban planning legislation to take account of Traveller families' specific circumstances*

The Committee points out that the caravan lifestyle of Traveller families most certainly results in a housing situation that is quite distinct from that of other people.

The Committee previously asked for detailed information on the documents required for a planning application and also on the duration of the permits issued to Traveller families (see Findings 2021).

It notes there are detailed and transparent planning rules for permits to install and park caravans with the intention of living permanently in them in the Flemish Region. The Committee considers that the situation has been brought into conformity with the Charter on this aspect in the Flemish Region.

The Government does not indicate whether planning legislation and its implementation in the Brussels Region and the Walloon Region ensure the differentiated treatment of Travellers, in particular with regard to the rules governing applications for a planning permit and on the duration of the permits issued to Travellers.

In the absence of such information, the Committee concludes that, in this regard, the situation has not been brought into conformity with Article E read in conjunction with Article 16 of the Charter in the Walloon Region and in the Brussels Region.

*e. Illegal use of evictions against Travellers who are unlawfully settled on land because they have been unable to find a place on an authorised site*

The Committee recalls, that to comply with the Charter, legal protection for persons threatened with eviction must be prescribed by law and include:

- an obligation to consult the affected parties to find alternative solutions to eviction;
- an obligation to fix a reasonable notice period before eviction;
- a prohibition from carrying out evictions at night or during winter;
- access to legal remedies;
- access to legal aid;
- compensation for illegal evictions.

Furthermore, when evictions do take place, they must be:

- carried out under conditions which respect the dignity of the persons concerned;
- governed by rules of procedure that are sufficiently protective of the rights of the persons concerned;
- accompanied by offers of alternative accommodation.

In its previous findings, the Committee reiterated the Charter's requirements regarding legal protection for persons threatened with eviction and asked for confirmation that the procedural safeguards introduced to limit the risk of expulsion are indeed respected (see Findings 2018, 2020 and 2021). The Government has still not provided the information requested regarding, for example, the obligation to set a reasonable notice period before eviction; the prohibition from carrying out evictions at night or during winter; access to legal remedies and access to legal aid; compensation for illegal evictions; or the obligation to consult the affected parties to find alternative solutions to eviction or rehousing solutions.

In the absence of such information, the Committee considers that, in this regard, the situation has not been brought into conformity with Article E read in conjunction with Article 16 of the Charter.

**B. Violation of Article E, read in conjunction with Article 30 of the Charter**

The Committee recalls that, as a vulnerable group, Travellers need to benefit from a co-ordinated overall policy to combat poverty and social exclusion and that their situation requires differentiated treatment and targeted measures to improve their circumstances.

The Committee notes the national Roma integration strategy adopted in 2022, as the result of close collaboration between the Communities and the Regions. The strategy encompasses numerous specific measures which target several aspects of support necessary to improve the specific circumstances of Travellers in the fields of housing, poverty, social exclusion, and well-being. It also cites ongoing and envisaged measures and studies undertaken by the Regions with the objective of social support and inclusion for Travellers.

The Committee refers, however, to the pending complaint *FEANTSA v. Belgium*, Complaint No. 203/2021, mentioned above, in which the complainant organisation alleges that the Flemish authorities have pursued an unfair and ineffective housing policy based on support for homeownership, which does not meet the objective of a comprehensive and coordinated approach to promoting access to housing in order to eradicate poverty and social exclusion, in violation of Articles 16 and 30 of the Charter, read alone, and of Article E read in conjunction with these Charter provisions. Pending the outcome of this complaint, the Committee maintains it previous finding as regards the follow-up to the present decision (*FIDH v. Belgium*, Complaint No. 62/2010) that the situation in the Flemish Region has not been brought into conformity with Article E read in conjunction with Article 30 of the Charter.

*Finding*

The Committee finds that the situation has been brought into conformity with Article E read in conjunction with Article 16 of the Charter as regards:

- urban planning legislation in the Flemish Region taking account of Traveller families' specific circumstances.

The Committee finds that the situation has not been brought into conformity with Article E read in conjunction with Article 16 of the Charter as regards:

- the existence, in the Flemish Region, of housing quality standards that are unsuitable for caravans and the sites on which they are installed;

- urban planning legislation in the Flemish Region taking account of Traveller families' specific circumstances;

- the failure in the Walloon Region to recognise caravans as dwellings;

- the lack of provision of an adequate number of public sites for Travellers;

- failure of urban planning legislation in the Walloon and Brussels Regions to take account of Traveller families' specific circumstances;

- the illegal use of evictions against Travellers who are unlawfully settled on land because they have been unable to find a place on an authorised site.

The Committee finds that the situation has not been brought into conformity with Article E read in conjunction with Article 30 of the Charter.

## 5th Assessment of follow-up: International Federation of Human Rights (FIDH) v. Belgium, Complaint No. 75/2011, decision on the merits of 18 March 2013, Resolution CM/ResChS(2013)1*6*

### 1. Decision of the Committee on the merits of the complaint

#### A. Violation of Article 14§1

In its decision, the Committee concluded there had been a violation of Article 14§1 of the Charter due to the significant obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs. The Committee also concluded that Article 14§1 of the Charter had been violated due to the lack of institutions providing advice, information and personal help to highly dependent adults with disabilities in the Brussels Region.

#### B. Violation of Article 16

The Committee also concluded that there had been a violation of Article 16 of the Charter on the ground that the shortage of care solutions and of social services adapted to the needs of persons with severe disabilities caused many families to live in precarious circumstances, undermining their cohesion, which amounted, on the part of the defendant State, to a lack of protection of the family as a unit of society.

#### C. Violation of Article 30

The Committee finally concluded that there had been a violation of Article 30 of the Charter on the ground that the State's failure to collect reliable data and statistics throughout the whole territory of Belgium in respect of highly dependent persons with disabilities did not represent an "overall and co-ordinated approach" to the social protection of these persons and constituted an obstacle to the development of targeted policies in their regard.

### 2. Information provided by the Government

The Government provides information on the measures taken by the three regions to remedy the situation of non-conformity, as follows:

#### A. Violation of Article 14§1

- *On the obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs*

As regards the Flemish Region, the Government confirms that the introduction of the system of "person-following budgets" ("PVF" in Dutch) in the Flemish region (see Findings 2021) has revolutionised the care and support sector for adults with a disability. The person-following funding aimed at its introduction to contribute to the two main objectives of the long-term policy plan, called "Perspective 2020"': 1) demand-driven care and support for well-informed users and 2) care guarantee for people in greatest need of support.

The Government reiterates the information that it has pledged an additional financing of €270 million in the period 2020-2024, while the previous Government provided €330 million over the previous 5 years. More recently, the Flemish Agency for People

with a Disability (VAPH) has supported more than 28 000 people who used directly accessible assistance. That is limited, low-threshold help for those with a (presumed) disability. The Flemish Region is investing almost 20 million euros extra to further expand the availability of this kind of assistance. Additional budget is also currently (October 2022) provided for 400 person-following budgets for the benefit of people with disabilities in greatest need of care and support.

The Government also provides statistical data on the use of the system of "person-following budgets". in the period 2017-2021. The Committee has already assessed the data until 2019 (see Findings 2021). The number of "persons-following budgets" awarded also increased from 2 654 in 2019 to 4 026 in 2021, whereas the number of requests on priority lists (persons waiting for a "person-following budget" for adults) has decreased slightly (following an increase in the previous years) from 16 159 in 2019 to 15 957 in 2021. It is also reported that the total number of persons (adults) with a "person-following budget" increased from 25 299 in 2019 to 27 266 in 2021.

The Government states that, in 2022, the Flemish Agency for People with a Disability (VAPH) started financing a research post - Academic Workplace on "De-Institutionalisation" - with the goal of providing tools to make the transition to community living, while keeping an eye on the most vulnerable people, such as people with very complex care-needs or severe behavioural problems. This Academic Workplace will continue for a further four years.

Concerning the Brussels Region, one of the actions carried out consists of mapping both the existing disability services in Brussels and the needs of disabled people in this area. This dual mapping exercise was commissioned jointly by the French Community Commission (COCOF) and the Bicommunal Office of Health (*Iriscare*) as part of a public contract. This research aims to identify the levers which should enable a better response to these problems, drawing both on existing systems and those to be further developed or created. Based on the results of the study, expected in early 2023, COCOF and the Bicommunal Health Office (*Iriscare*) will develop a global vision for existing services for disabled people and their needs, with a view to further legislative work and future projects in this area. As far as institutional services are concerned, day centres and residential centres for people with disabilities have a higher staffing standard for people recognised as "requiring severe care" and, therefore, additional funding.

As regards the Walloon Region, the Government refers to the information submitted previously (see Findings 2021) that the policy of "priority cases" continues. It recalls that, in 2020, the budget for this policy amounted to €5 million and that 157 designated places had been created. The report states that, in 2021, with additional budget of €4 million, new registered places could be created for 194 people. This policy in favour of highly dependent people and people in emergency situations has continued with the granting of an additional €2 million in 2022 and the creation of 170 new places.

The Government goes on to refer to developments in the "Autism" project (see Findings 2021), with 4 new places for adults and 18 for young people created, with new places approved from the beginning of 2023. Furthermore, in 2022, the Walloon government granted €2.8 million for the opening of new approved and subsidised day care and residential places for young people and adults. Among the services concerned, some host people with multiple disabilities, autism spectrum disorders, dual diagnosis, severe and profound intellectual disabilities, as well as brain damage.

- *On the lack of institutions giving advice, information and personal help to highly dependent adults with disabilities in the Brussels Region.*

The Government does not provide any specific information on this point, other than on the mapping of existing disability services in Brussels and the needs of disabled people in this area.

**B. Violation of Article 16**

- *On the shortage of care solutions and of social services adapted to the needs of persons with severe disabilities which caused many families to live in precarious circumstances, undermining their cohesion, and amounted, on the part of the defendant State, to a lack of protection of the family as a unit of society.*

The Government provides no information on this point.

**C. Violation of Article 30**

*On the State's failure to collect reliable data and statistics on highly dependent persons with disabilities throughout the whole territory of Belgium which prevented the emergence of an "overall and co-ordinated approach" to the social protection of these persons and constituted an obstacle to the development of targeted policies in their regard.*

With regard to the Walloon Region, the Government states that, in 2017, the Agency for the Quality of Life (*AVIQ*) introduced a single list to allow access to accommodation to be prioritised for people with disabilities in emergency situations and in particular people suffering from a mental deficiency, an autism spectrum disorder, physical disorders (BMI), head trauma, multiple disabilities or a dual diagnosis. The data collected showed that, in 2020, there were 1 765 adults actively applying for this list (compared with 1 628 in 2019). The Government provides more information on four ongoing projects within the *AVIQ* which seek to improve data collection concerning adults with disabilities in situations of great dependency. In particular, the creation of the single list should make it possible to identify typical profiles of people and their needs, assess these needs in relation to the solutions proposed, and to determine the cost of these solutions.

In 2022, 1 990 adults were registered on the single list. This dynamic tool makes it possible to have a day-to-day view of the number of disabled adults actively looking for a reception or accommodation solution. It is also possible to filter using a wide range of criteria such as disability profile, degree of urgency, geographical distribution, age, gender, etc.

The Government provides no information on the situation in the other regions.

**3. Assessment of the follow-up**

**A. Violation of Article 14§1**

The Committee takes note of the measures taken. It considers that progress has been made to ensure that highly dependent adults with disabilities have equal and effective access to social welfare services. For instance, the Committee takes note of the new Academic Workplace on De-Institutionalisation project in the Flemish Region, as well developments in the "Autism" project in the Walloon Region. It also notes that, in the Brussels Region, the measures are yet to be designed, following the conduct of a study on the situation and a needs assessment. The Committee notes that the Government does not provide information as to the percentage of highly dependent adults with disabilities who do not have access to social welfare services (see Findings 2020 and Findings 2021), but again refers to information on the large number

of persons on the single list of adults with disabilities awaiting a solution in day care and night accommodation facilities in the Walloon Region, who amounted to 1 765 in 2020.

In the light of the information provided, the Committee considers that the situation has not been brought into conformity with Article 14§1 of the Charter.

**B. Violation of Article 16**

The Committee notes that there have been no new developments since its previous assessment of the follow-up (Findings 2020). Consequently, it reiterates its finding that the situation has not been brought into conformity with Article 16 of the Charter.

**C. Violation of Article 30**

The Committee takes note of the developments in the collection of reliable data and statistics on highly dependent persons with disabilities in the Walloon Region.

However, the Committee notes that no information has been provided with regard to the Brussels and Flemish Regions. The Committee considers that the situation has not been brought into conformity with Article 30 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 14§1 of the Charter as regards:

- obstacles to equal and effective access for highly dependent adults with disabilities to social welfare services appropriate to their needs;

- a lack of institutions giving advice, information and personal help to highly dependent adults with disabilities in the Brussels Region.

The Committee finds that the situation has not been brought into conformity with Article 16 of the Charter.

The Committee finds that the situation has not been brought into conformity with Article 30 of the Charter.

## 4th Assessment of follow-up: Association for the Protection of All Children (APPROACH) Ltd v. Belgium, Complaint No. 98/2013, decision on the merits of 20 January 2015, Resolution CM/ResChS(2015)12

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there had been a violation of Article 17§1 of the Charter on the ground that none of the relevant domestic legal provisions, taken together or in isolation, is set out in sufficiently precise terms to enable parents and "other persons" to model their conduct on Article 17 of the Charter which requires States' domestic law to prohibit and penalise all forms of violence against children, i.e. acts or behaviour likely to affect the physical integrity, dignity, development or psychological well-being of children.

### 2. Information provided by the Government

The Government states that two proposals for relevant legal amendments are still under discussion before the Parliament:

- proposal for a law dated 27 April 2021 amending the Civil Code in order to incorporate in it the child's right to a non-violent upbringing and to prohibit all forms of violence against children;

- proposal for a law dated 9 March 2021 amending the Civil Code with a view to prohibiting any systematic violence between parents and their children.

The Government states it is not aware of any new civil or criminal case law expressly condemning corporal punishment.

With regard to the Flemish Community, the Government refers to the information provided previously, indicating that the Flemish legislation on the legal status of minors in youth care (2004 decree) contains an explicit prohibition of physical punishment and psychological violence against minors living in Flemish youth care institutions. The Government, however, also recalls that the regulations concerning the care of children in the Flemish Community do not explicitly prohibit physical violence. The Government adds that there are indirect references in the requirements for childcare providers in the decree on babies and young children.

The Government further provides information on specific measures and initiatives taken in the Flemish Community with regard to policy on preventing ill-treatment and on support for parenting. It also states that the children's rights policy plan was adopted on 25 September 2020. One of the main goals of this plan is to pursue an integrated integrity policy and to deal with violence against children and young people, in line with the 2019 recommendations of the UN Committee on the Rights of the Child.

### 3. Assessment of the follow-up

The Committee takes note that there have been no new developments since its previous assessments of the follow-up (Findings 2020 and 2021). It notes that the bill proposing to amend the Civil Code has not yet been adopted and that relevant discussions are still pending before the Parliament.

The Committee takes note of the information provided on various initiatives in the Flemish Region.

Noting that there is still no clear and precise prohibition of corporal punishment in Belgian law, the Committee reiterates its finding that the situation has not been brought into conformity with Article 17§1 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 17§1 of the Charter.

## 3rd Assessment of follow-up: Mental Disability Advocacy Centre (MDAC. v. Belgium, Complaint No. 109/2014, decision on the merits of 28 March 2018, Resolution CM/ResChS(2018)3

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there had been a violation of Article 15§1 and 17§2 of the Charter as follows:

#### A. Violation of Article 15§1

The Committee found a violation of Article 15§1 on the grounds that:

- the right to inclusive education of children with intellectual disabilities was not effectively guaranteed in the Flemish Community of Belgium;
- there is no effective remedy against the refusal of enrolment in mainstream schooling for children with intellectual disabilities.

#### B. Violation of Article 17§2

The Committee found a violation of Article 17§2 on the ground that mainstream educational institutions and curricula are not accessible in practice to the children concerned.

### 2. Information provided by the Government

#### A. Violation of Article 15§1

In 2015, the Flemish Region adopted a so-called M-Decree, legislation introducing measures aiming to support the inclusion of children with disabilities in mainstream education, including reasonable accommodation.

The Government states that the coalition agreement (2019-2024) stipulates that the M-decree is to be abolished and replaced by a learning support decree which introduces a new learning support model. A conceptual framework was adopted by the Flemish Government in 2021. The decision-making process is currently focusing on translating the conceptual framework into legislation. The Flemish Government continues to support the principle of inclusion but prefers to work step by step. To create sufficient public support, the government wants to follow a pragmatic and realistic approach: special needs education when needed, inclusive education when possible. The evolution to inclusive education will need to happen gradually and at an achievable pace. The Flemish Government is therefore continuing to accord the special educational needs system its rightful place and will improve its quality where necessary.

To continue the transition towards inclusion, the learning support model will establish 47 learning support centres. These will pool different kinds of expertise (disability-specific, coaching, inclusion, pedagogical and didactic) to support mainstream schools in educating pupils with special educational needs. A new statute is being introduced to ensure better employment conditions for the current support staff. The educational inspectorate is currently developing a reference framework for high-quality learning support and will audit the quality of the work of the learning support centres. The mainstreaming of schools and guidance services will also be boosted in order to enhance the quality of their care policy.

Furthermore, the learning support decree will stimulate cooperation between mainstream and special needs education. Some of the measures that will be taken are:

- ensuring that both mainstream and special needs schools use individually adapted curricula, which makes it easier for pupils to navigate their way between special needs and mainstream education;
- creating and extending opportunities for pupils with a report to follow classes part-time in both contexts;
- facilitating special needs schools' efforts to open a location on the campus of a mainstream school;
- monitoring the efforts made by special needs schools to cooperate with mainstream schools and to encourage pupils to return to mainstream schools. The educational inspectorate will supervise these efforts;
- establishing an independent committee of experts, academics, educational professionals and experiential experts. This committee will be responsible for formulating recommendations on the transition towards inclusive education and on the role of mainstream and special needs education in this respect. It will start work in September 2023 and will provide its advice at the end of the 2023-2024 school year.

The learning support decree and the learning support model will enter into force on 1 September 2023 at the earliest.

**B. Violation of Article 17§2**

The statistics provided by the Government show that, on 1 February 2022, there were 1 234 pupils with intellectual disabilities (type 2) in mainstream education (compared with 706 pupils in 2020) and 11 017 pupils in special education (compared with 10 387 in 2020).

**3. Information provided by the Mental Disability Advocacy Centre**

The Mental Disability Advocacy Centre (MDAC) submits that with its intention to abolish of the M-Decree, the Flemish Government denies its full support to inclusive education and that, since 2017, it has pursued the policy that a system of segregated special-needs schools needs to be kept in place in the long run.

It further states that, as a result, inclusive education for children with disabilities has become significantly less available in the Flemish Region in recent years and that the Government has taken no steps to improve children's access to mainstream education. They point to the statistics indicating a significant increase in the number of children enrolled in the special needs education system.

The MDAC states that, with the introduction of a new decree in September 2023, the legislation will be a further step away from implementing inclusive education.

**4. Assessment of the follow-up**

**A. Violation of Article 15§1**

The Committee notes the shift in the policy of the Flemish Government towards the learning support model. The Committee reiterates its finding that the eligibility requirements for admission to mainstream education under the M-Decree, particularly Articles 37§1 and 37§2, are based on the notion of integration rather than inclusion. The Committee holds that integration is when the child is required to adapt to the mainstream system while inclusion means the child's right to participate in mainstream schooling and the school's obligation to accept the child, taking into

account the best interests of the child, as well as their abilities and educational needs (decision on the merits, §66). It further notes the MDAC's comment that, with the introduction of the new decree in 2023 and the abolition of the M-Decree, the legal system will shift even further towards supportive education, rather than inclusive education.

The Committee also noted that in the Flemish education system there are serious and multiple restrictions on the right to inclusive education excluding pupils who are "unable to follow the common curriculum" (decision on the merits, §69). The Committee also held that discrimination based on intellectual disabilities also stems from the refusal to introduce reasonable accommodations (decision on the merits, §73). No information has been provided on any developments in this respect.

The Committee notes that the Government has not provided any information regarding the lack of an effective remedy against refusal of enrolment in mainstream schooling for children with intellectual disabilities.

In light of the above, the Committee reiterates its previous finding that sufficient steps have not been taken by Belgium to remedy the violations found by the Committee. It concludes, therefore, that the situation has not been brought into conformity with Article 15§1 of the Charter.

**B. Violation of Article 17§2**

The Committee notes that, according to the statistics provided by the Flemish Government, the number of pupils with intellectual disability (type 2) in mainstream education has increased from 706 in 2020 to 1 234 in 2022. The Committee notes, however, that the number of pupils with intellectual disability (type 2) in special education has also increased: from 10 387 in 2020 to 11 017 in 2022. Accordingly, the ratio remains almost unchanged - ten times as many pupils with intellectual disabilities attend a special school than a mainstream school.

With regard to taking special account of children with disabilities, the Committee recalls that the inclusion of children with disabilities in mainstream schooling in which arrangements are made to cater for their special needs should be the norm and teaching in specialised schools must be the exception (see decision on the merits, §104).

In light of the above, the Committee reiterates its previous finding that sufficient steps have not been taken by Belgium to remedy the violations found by the Committee. It concludes, therefore, that the situation has not been brought into conformity with Article 17§2 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 15§1 and Article 17§2 of the Charter.

## 1st Assessment of follow-up: University Women of Europe (UWE) v. Belgium, Complaint No. 124/2016, decision on the merits of 6 December 2019, Recommendation CM/RecChS(2021)1

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of Articles 4§3 and 20.c of the Charter on the ground that the obligation to recognise and respect pay transparency in practice was not satisfied, in particular because there were no legal provisions establishing comparative parameters to pinpoint equal value where work is performed by men and women; there was no guarantee in practice for the principle of pay transparency in the private sector; and there were some shortcomings in the job classification systems.

### 2. Information provided by the Government

The Government refers to the fact that several legislative measures are being revised in order to address pay transparency. While today, in Belgium, the assessment of the structure of remuneration within an enterprise is purely internal information which cannot be shared, under the revision being discussed, it is being considered to make it easier to produce this information, as well as to make it more transparent so that gender pay gaps can be identified and reduced. The proposal for a directive of the European Parliament and of the Council to strengthen the application of the principle of equal pay between women and men for equal work of equal value through transparency on pay and enforcement mechanisms, adopted by the European Commission in March 2021, is also being taken into account for the purposes of preparing the new legislation at the federal level.

As regards jobs classifications, the Government submits that these are established on the basis of their respective collective agreements and that all classifications are verified to ensure that they are gender-neutral. The social partners can challenge their neutrality and, if this classification is not changed, the business in question is put on a “name and shame” list. There is no obligation to change the classification, but the Government considers that this would be more opportune because otherwise companies would not commit to a jobs classification being included in the collective agreement. In practice, most classifications that have not been considered gender-neutral are re-examined.

### 3. Assessment of the follow-up

The Committee notes that the Government is considering certain changes concerning pay transparency. However, these have not yet been adopted and they are also linked to the eventual adoption of the proposed EU directive in the field. As regards job classification, there is no obligation for companies to have a gender-neutral system.

The Committee therefore encourages the adoption of specific measures to improve pay transparency taking into account parameters for establishing the equal value of the work performed, such as the nature of the work, training and working conditions, and to improve job classification systems with a view to ensuring their gender neutrality. Meanwhile, in the light of the information at its disposal, the Committee considers that the situation has not been brought into conformity with the Charter on this point.

*Finding*

The Committee finds that the situation has not yet been brought into conformity with Articles 4§3 and 20.c of the Charter.

## 1st Assessment of follow-up: International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium, Complaint No. 141/2017, decision on the merits of 9 September 2020, Recommendation CM/RecChS(2021)19

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there had been a violation of Articles 15§1 and 17§2 of the Charter as follows:

#### A. Violation of Article 15§1

The Committee identified a violation of Article 15§1 on the ground that the right to inclusive education of children with intellectual disabilities was not effectively guaranteed in the French Community of Belgium.

The Committee noted that, even though children with disabilities have the right to enrol in mainstream schools and measures do exist to foster their integration, there are various obstacles which undermine the effective enjoyment of this right.

The Committee also found that the State's failure to make provision for reasonable accommodation violated the children's right not to be discriminated against in the enjoyment of their right under Article 15§1 of the Charter.

Lastly, the Committee noted that the adoption and implementation of the legislation was not part of a coherent action plan, creating the necessary conditions for effective inclusion.

#### B. Violation of Article 17§2

The Committee found a violation of Article 17§2 on the ground that children with intellectual disabilities do not have an effective right to an inclusive education in the French Community.

Referring to its findings under Article 15§1, the Committee considered that the mainstream educational institutions and curricula are not sufficiently accessible in practice to the children concerned.

### 2. Information provided by the Government

#### A. Violation of Article 15§1

The Government states that developing inclusion in mainstream schools is one of the key objectives of the Pact for Excellence, which aims to reduce the enrolment of students with special needs in special schools, encouraging their education in mainstream establishments, while education indicators show a more than proportional increase in admissions to special education, particularly for less socio-economically advantaged students.

Since September 2019, a decree has been in force requiring mainstream schools to accommodate children with special needs.

In June 2021, the decree was adopted introducing territorial poles attached to a special education school to provide practical and active support for the mainstream education teams that provide for the beneficiaries which are currently targeted by the integration mechanism. The reform consists of setting up 48 territorial centres distributed throughout all zones and in all education networks.

In addition, in 2022, round table discussions took place on the issue of including disabled pupils in mainstream education. These discussions involved management, teachers, parent associations, support services, field and institutional actors. The work focuses on various strands:

- the initial skills framework will be contextualised for all pupils with special needs. In other words, both special-needs education and mainstream education will be able to educate children with special needs;
- the definition of progress benchmarks and certificates of acquired skills for students attending form 1 (social adaptation education) and form 2 (social and professional adaptation education);
- specialised secondary education is planned;
- other avenues are also under discussion: a redefinition of inclusive classes, particularly concerning the organisation of common activities between students in mainstream education and those in inclusive classes; the introduction of a portfolio of acquired skills for students with intellectual disabilities, so that they can follow a pathway in mainstream education; a special focus on the care of pupils with intellectual disabilities in teacher training, etc.

**B. Violation of Article 17§2**

The Government does not provide information in this regard.

**3. Assessment of the follow-up**

**A. Violation of Article 15§1**

The Committee has noted that, under the current legislation in the French Community in Belgium, pupils with intellectual disabilities may follow special education, mainstream education with integration measures, or mainstream education. The Committee, in its decision on the merits of 9 September 2020 in relation to this complaint, examined the various measures adopted in the French Community aimed at ensuring that every child with a disability has access to inclusive education, in particular through the adoption of the 2004 Decree on special education, the Missions Decree and the Pact for Excellence in 2017. However, it also noted that, even though children with disabilities had the right to enrol in mainstream schools and measures did exist to foster their integration, there was a range of obstacles which undermine their benefiting effectively from this right. In practice, children with intellectual disabilities were deprived of this right because of the absence of coherent and sufficient measures in place to meet their needs.

The Committee welcomes the fact that, with the legislative amendments of 2019, providing reasonable accommodation for children with special needs became mandatory, and it therefore considers that the situation is now in conformity with the Charter on this point.

The Committee notes the introduction of territorial poles which will provide better support for integrating children with special needs.

However, the Committee also notes that other measures towards inclusive education are now under consideration and that the legislation does not yet set out a time frame for implementing the right to inclusive education; nor does it provide for indicators of success for measuring progress. Furthermore, the lack of adequate continuous monitoring and evaluation of the measures taken to ensure the right of inclusive education and protect children from discrimination has not yet been addressed.

In the light of the above, the Committee considers that the situation has not been brought into conformity with Article 15§1.

**B. Violation of Article 17§2**

In the light of the fact that there appear to be no new developments in this regard, the Committee considers that the situation has not been brought into conformity with Article 17§2 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Articles 15§1 and 17§2 of the Charter.

# BULGARIA

## 5th Assessment of follow-up: European Roma Rights Centre v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006, Resolution CM/ResChS(2007)2

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of Article E in conjunction with Article 16 of the Charter on the following grounds:

A. The inadequate housing of Roma families;

B. The lack of legal security of tenure and the non-respect of the conditions applicable to the eviction of Roma families from dwellings they have unlawfully occupied.

### 2. Information provided by the Government

### A. As to the inadequate housing of Roma families

The Government notes that work on drafting a new National Housing Strategy, which is expected to include activities to improve the housing conditions of vulnerable groups, is ongoing. The Government also indicates that the project "Assessment of the housing and living conditions of the most marginalised and vulnerable communities (with a focus on Roma) in North-West Bulgaria", implemented since 2019 in partnership with the World Bank, has been successfully completed. Data from the project will be used to inform policy work in the area of housing for vulnerable communities.

The Government indicates that the implementation of measures aimed at improving housing standards in vulnerable communities within the context of the European Union (EU)-funded Operational Programme for Regional Development (OPRD) continued during the reference period (see Findings 2020 and Findings 2021 for further detail about the projects in question). By 31 December 2021, 24 municipal social housing projects received funding, including 329 already rehabilitated housing units in four municipalities. The new Operational Programme for the period 2021-2027 is expected to provide continued funding for work on improving housing standards in disadvantaged communities, including Roma communities. The Committee notes that the report includes information, which it has already examined in Findings 2020 and Findings 2021.

### B. As to the lack of legal security of tenure and the non-respect of the conditions applicable to the eviction of Roma families from dwellings they have unlawfully occupied.

The Government notes that National Construction Control Directorate (NCCD) developed a practice of refusing permission to proceed with the demolition of illegal dwellings where the building in question is the occupiers' only home. By August 2022, there had been 329 demolition orders denied permission, 200 of which involved Roma households. The report further notes that, in exercising its powers, the NCCD applies the principle of proportionality. However, the Government also notes that the authorities are duty-bound to demolish illegal buildings, regardless of the ethnicity of those concerned, as to do otherwise would undermine citizens’ trust in the rule of law.

## 3. Assessment of the follow-up

### A. As to the inadequate housing of Roma families

As in its previous findings, the Committee notes that several activities in the context of EU-funded programmes are due to be completed, but that the Government does not provide any data to demonstrate that these activities have had a tangible and meaningful impact on housing standards in Roma communities. On the contrary, the Committee notes from the latest Roma Survey 2021, published by the EU Fundamental Rights Agency, that although most indicators on housing standards in Bulgarian Roma communities show a slight improvement compared to the previous survey from 2016, overall, the situation continues to be of serious concern. For example, 66% Roma still lived in housing deprivation in 2021, down from 70% in 2016, against 22% in the general population, and an average of 52% of Roma in the EU-27. Such levels of housing inadequacy are consistent with the findings included in the Report by Dunja Mijatović, Council of Europe Commissioner for Human Rights, following her visit to Bulgaria from 19 to 25 November 2019, CommDH(2020)8, 31 March 2020, already highlighted by the Committee in its Findings 2020. The Committee therefore finds that the situation has not been brought into conformity with Article E read in conjunction with Article 16 of the Charter.

### B. As to the lack of legal security of tenure and the non-respect of the conditions applicable to eviction of Roma families from dwellings unlawfully occupied by them.

The Committee has previously considered the progress in implementing related decisions of the *Yordanova* group of cases before the Committee of Ministers to be a relevant indicator in examining the questions of legal tenure and eviction procedure in the present case (Findings 2020 and 2021). When it last examined this group of cases in 2022, the Committee of Ministers expressed its deep concern regarding the lack of progress in preparing legislative amendments to ensure that all persons affected by a demolition order could benefit from a proportionality assessment, even if they or their household members had no property rights and had not carried out construction work. The Committee of Ministers further noted that the relevant authorities did not consistently subject all administrative acts, which in practice had a similar effect to eviction or demolition on the right to respect for one's home, to a proportionality review.

In this context, the Committee finds that the present report does not sufficiently address the questions raised in Findings 2020 and Findings 2021. Furthermore, comments in the Government's latest report suggesting that evictions are colour-blind and that they are essential for securing respect for the rule of law, appear to question the underlying rationale of the Committee's decision on the merits and indicate an apparent lack of willingness to provide effective follow-up to the decision. The Committee therefore finds that the situation has not been brought into conformity with Article E read in conjunction with Article 16 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article E read in conjunction with Article 16 of the Charter and that this applies to both grounds of non-conformity included in its decision on the merits.

## 5th Assessment of follow-up: Mental Disability Advocacy Centre (MDAC) v. Bulgaria, Complaint No. 41/2007, decision on the merits of 3 June 2008, Committee of Ministers Resolution CM/ResChS(2010)7

### 1. Decision of the Committee on the merits of the complaint

**A. Violation of Article 17§2 of the Charter regarding lack of effective right to education for children with moderate, severe or profound intellectual disabilities residing in homes for mentally disabled children (HMDC)**

In its decision, the Committee concluded that there was a violation of Article 17§2 of the Charter on the ground that children with moderate, severe or profound intellectual disabilities residing in homes for mentally disabled children (HMDC) did not have an effective right to education.

**B. Violation of Article E read in conjunction with Article 17§2 of the Charter regarding the discrimination against children with moderate, severe or profound intellectual disabilities residing in HMDC**

The Committee also held that the situation in Bulgaria constituted a violation of Article 17§2 of the Charter, read in conjunction with Article E because of the discrimination against children with moderate, severe or profound intellectual disabilities residing in HMDCs as a result of the low number of such children receiving any type of education when compared to other children.

### 2. Information provided by the Government

The Government indicates that several measures and plans have been adopted concerning the education of children with disabilities as described below.

**A. Violation of Article 17§2 of the Charter regarding lack of effective right to education for children with moderate, severe or profound intellectual disabilities residing in homes for mentally disabled children (HMDC)**

The Government produces many figures on existing facilities and students enrolled in specific education schemes. For the academic year 2021/2022, an environment conducive to the inclusive education process has been created in the kindergartens and schools themselves or by the regional centres to support the process of inclusive education for a total of 24 986 children and pupils in the preschool and school education system, including 18 920 in schools and 6 066 in kindergartens. Children and students with special educational needs who are educated in the preschool and school education system have various disabilities and disorders - sensory disabilities, physical disabilities, multiple disabilities, intellectual impairments, language and speech disorders, specific learning disabilities, autism spectrum disorders, emotional and behavioural disorders. Depending on their special educational needs resulting from these disabilities and disorders, they are supported by 5 288 pedagogical specialists assigned to kindergartens and schools, including: resource teachers – 1 432, psychologists –1 394, speech therapists – 922, hearing and speech rehabilitators – 78, teachers of visually impaired children – 135, teachers of hearing impaired children – 12; pedagogical advisors – 801, teachers of children with mental disabilities – 21, educators – 412, other pedagogues – 79, and physiotherapists – 2.

To provide further support for the inclusive education process, 966 educational specialists (675 resource teachers, 126 psychologists, 137 speech therapists, 17

hearing and language specialists, 11 teachers for visually impaired children) have been assigned by the regional centres to help 8 799 children with special educational needs attending schools and kindergartens (excluding special schools and special educational support centres).

A total of 2 838 – 137 children and 2,701 students – are educated in 42 Centres for Special Educational Support (CSES) on the territory of the country. These children and students have more complex special educational needs and multiple disabilities and are supported by 762 specialists, including: psychologists – 48, speech therapists – 49, auditory-speech experts for hearing-impaired children – 2, pedagogical advisors – 3, teachers of children with mental disabilities – 456, educators – 69, pedagogues – 20, other pedagogical specialists – 50, pedagogical specialists with management functions – 65. A proportion of these 2 838 children and students who study at CSESs are placed in social services centres in the community, such as family-type accommodation centres for children and adolescents with disabilities or in other services that replace homes for mentally disabled children (HMDC).

There are a five special schools for students with sensory disabilities in the country - three for children and students with impaired hearing and two for children and students with impaired vision. They teach a total of 688 children and students, who are supported by 289 pedagogical specialists of whom 183 are special educators.

It should also be noted that the Ordinance on the quality of social services, adopted in 2022, sets specific standards and criteria to safeguard the rights of users, including with regard to access to education, training and employment. For example, among the standards and criteria relating to the quality of residential care centres set up by specialised social services for children/adolescents aged between 3 and 18/25 with a permanent disability, is a standard which requires the specialised social service concerned to facilitate each child/adolescent's good access to an institution for pre-school and school education, and to support the inclusion of adolescents in training programmes with a view to acquiring professional skills and obtaining appropriate employment.

**B. Violation of Article E read in conjunction with Article 17§2 of the Charter, regarding the discrimination against children with moderate, severe or profound intellectual disabilities residing in HMDC**

The Government points out that the focus of the standards is to empower people using services and to promote their independence and social inclusion. The standards are developed in such a way as to take into account the opinion of users at each stage of the provision of the service, and a large part of the indicators relating to the criteria formulated for each standard include surveys of users' views. The procedure for filing complaints and reporting violations of rights under the Social Services Law and its implementation acts is also regulated. In this way, the control and monitoring functions in the field of social services, which are carried out at three levels, are significantly strengthened.

**3. Assessment of the follow-up**

**A. Violation of Article 17§2 of the Charter regarding lack of an effective right to education for children with moderate, severe or profound intellectual disabilities residing in homes for mentally disabled children (HMDC)**

The Committee takes note of the detailed statistical data submitted with regard to the education of children with disabilities, in reply to the questions asked previously. The Committee recalls that homes for mentally disabled children (HMDC) were closed down in Bulgaria and they were replaced by the Centres for Disabled Children and

Young People. Residential care providers seek partnership with the educational system to ensure the successful integration of children and young people into school by placing them in appropriate forms of inclusive education.

However, there is no specific information on the progress made, on the total numbers of children and students with mental disabilities in need, to understand whether there is a significant number who are granted access to education.

The Committee further recalls that the mainstream educational institutions and curricula must be accessible in practice to children with intellectual disabilities. Schools need to be able to meet the needs of children with intellectual disabilities i.e. teachers have to be appropriately trained to teach intellectually disabled children and teaching materials have to be adequate (*Mental Disability Advocacy Centre (MDAC) v. Bulgaria*, Complaint No. 41/2007, decision on the merits of 3 June 2008, § 37, § 43 and § 44).

The Committee considers that the situation has not been brought into conformity with the Charter.

**B. Violation of Article E read in conjunction with Article 17§2 of the Charter regarding the discrimination against children with moderate, severe or profound intellectual disabilities residing in HMDC**

The Committee recalls that it had held that the situation in Bulgaria constituted a violation of Article 17§2 of the Charter, read in conjunction with Article E, because of discrimination against children with moderate, severe or profound intellectual disabilities residing in HMDCs, given that their rate of access to all types of education was considerably lower than that of other children.

The Committee had invited the authorities to provide updated information in the next report on the percentage of children with moderate, severe or profound intellectual disabilities (living in family-type centres for disabled children and young people or other types of accommodation which replaced the homes for mentally disabled children) who are educated in mainstream schools and specialised schools, and the percentage of all the other children who have access to education. These figures have not been provided to the Committee and therefore progress cannot be measured in this respect.

The Committee considers that the situation has not been brought into conformity with the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with either Article 17§2 of the Charter or with Article E read in conjunction with Article 17§2 of the Charter.

## 5th Assessment of follow-up: European Roma Rights Centre v. Bulgaria, Complaint No. 46/2007, decision on the merits of 3 December 2008, Resolution CM/ResChS(2010)1

### 1. Decision of the Committee on the merits of the complaint

#### A. Violation of Article 13§1 of the Charter regarding the lack of adequate health care for poor and socially vulnerable persons who become sick

In its decision, the Committee concluded that there was a violation of Article 13§1 of the Charter on the ground that the measures adopted by the Government did not provide sufficient guarantees that health care would be provided to poor or socially vulnerable persons who become sick.

#### B. Violation of Article E read in conjunction with Article 11§1, 2 and 3 of the Charter on the lack of measures to address the exclusion, marginalisation and environmental hazards faced by Roma communities, as well as the problems encountered by many Roma in accessing health care services

The Committee also concluded that there was a violation of Article E read in conjunction with Article 11§§1, 2 and 3 of the Charter on the ground that there was a failure of the authorities to take appropriate measures to address the exclusion, marginalisation and environmental hazards to which Roma communities were exposed in Bulgaria, as well as the problems encountered by many Roma in accessing health care services.

### 2. Information provided by the Government

#### A. Violation of Article 13§1 of the Charter regarding lack of adequate health care for poor and socially vulnerable persons who become sick

The Government states that there are two consecutive strategic documents: the National Roma Integration Strategy of the Republic of Bulgaria for 2012-2020 and National Strategy of the Republic of Bulgaria for Equality, Inclusion and Participation of the Roma for 2021-2030. Both are being implemented. In the latter, the aim is to build on what was achieved during the implementation period of the first National Roma Integration Strategy of the Republic of Bulgaria and address: prevention and control of HIV, tuberculosis and sexually transmitted infections; improvement of health status of marginalised communities. A total of 4 531 Roma individuals were contacted and 1 415 were screened for tuberculosis.

> In addition, information has been provided about the screening of Roma for diseases such as cancer. The report states that 21 mobile medical offices are available in the regional health inspectorates. The report provides updated information on the number of examinations carried out with mobile offices, and diseases diagnosed including HIV, tuberculosis, paediatric health and obstetric consultations. 21 new health mediators were also authorised to practice. There were also immunisation campaigns regarding Covid-19. In this respect, a vaccination campaign was conducted in all areas of the country. Mobile vaccination centres working in cooperation with the municipal administration and health mediators, meant that a significant part of the Roma population was vaccinated against Covid-19.

**B. Violation of Article E read in conjunction with Article 11§1, 2 and 3 of the Charter on the lack of measures to address the exclusion, marginalisation and environmental hazards of Roma communities, as well as the problems encountered by many Roma in accessing health care services**

The Government states that measures were taken to improve and modernise the regulatory framework in the field of conventional medical care for uninsured pregnant women. Amendments were made to Ordinance No. 26 of 2007 on providing obstetric care to uninsured women and for the conduct of examinations outside the scope of the compulsory health insurance for children and pregnant women. The amendments were promulgated in SG No. 69 of August 26, 2022. The number of preventive examinations has been increased to four, the package of medical-diagnostic examinations during pregnancy for women without health insurance has been extended. The scope of medical services is also being expanded, with the possibility of providing inpatient care for high-risk pregnancies on a clinical pathway lasting up to twice the duration of pregnancy. These changes are fully in line with the Bulgarian government's aspiration to improve access and to provide a sufficient degree of medical assistance to pregnant women who cannot benefit from the same health rights as insured women during their pregnancy.

The purpose of the changes is to ensure that uninsured pregnant women have better access to obstetric care and to reduce infant mortality in the country by improving the quality of maternal and child health care, as well as introducing an effective system for the prevention, screening, prophylaxis and early diagnosis of predictable and preventable conditions and pathologies during pregnancy. The 2021-2030 National Programme for the Improvement of Maternal and Child Health, approved by the Council of Ministers, provides for an additional examination by an obstetrician-gynaecologist and further consultations for diseases occur during pregnancy. The programme envisages ensuring the sustainability of the activity of the existing 31 health and advisory centres for maternal and child health in order to improve the access of pregnant women and children to quality medical services outside the scope of mandatory health insurance, as well as to psychological counselling and social care, if required. The programme's implementation will create the necessary conditions for the active promotion of health and prevention of diseases, for the provision of timely, quality and complex medical and health care, as well as for the development of health and social services.

The Republic of Bulgaria's National Strategy for Equality, Inclusion and Participation of the Roma (2021-2030), under the "Housing Conditions" priority, sets an operational objective: Improvement of housing conditions, including the adjacent technical infrastructure and infrastructure for public services. The general objectives are: 1. Creation of an integrated geographic information system and introduction of orthorectified images taken with a drone; 2. Creation of a cadastral map and cadastral registers of territories including areas with a dense Roma population; 3. Priority development by the municipalities of general and detailed development plans in order to regulate the status of territories and impose requirements for infrastructure and residential and other construction. 4. Implementation of improvement measures (construction of outdoor and indoor play areas and sports halls) in neighbourhoods with a predominant Roma population, with the aim of improving the living environment of the local communities; 5. Search for tools to improve the legal and economic conditions for the elimination of non-compliant housing and neighbourhoods; 6. Development and implementation of long-term programmes for an integrated residential environment; 7. Assistance in providing social municipal housing for the most marginalised and vulnerable communities; 8. Construction/renovation of the social infrastructure for healthcare, education, culture centres, etc. in neighbourhoods with a concentration of poverty, with a view to providing integrated health and social

services, as well as development services for children and adults in the community; 9. Expanding legal access to quality water, electricity and sanitation in designated neighbourhoods with a high concentration of poverty; 10. Support and implementation of innovative and effective solutions to overcome energy poverty among Roma communities in the country, and inclusion of neighbourhoods with a predominant Roma population in energy renovation programmes.

The measures to achieve the goals are laid down in the Action Plan for the implementation of the Strategy.

The realisation of the measures under the Housing Conditions priority will contribute to implementing the indicators under the Social inclusion and Local development priorities of the NDP and plays a major role in the achievement of Goal 11 "Transforming cities and towns into inclusive, safe, adaptive and sustainable places to live" and Goal 6 "Ensuring access to and sustainable management of water and sanitation for all" of the UN Sustainable Development Goals.

### 3. Assessment of the follow-up

#### A. Violation of Article 13§1 of the Charter regarding lack of adequate health care for poor and socially vulnerable persons who become sick

The Committee recalls that Article 13§1 of the Charter provides that, in the event of sickness, persons without adequate resources should be granted financial assistance for the purpose of obtaining medical care or be provided with such care free of charge (*European Roma Rights Centre (ERRC) v. Bulgaria*, Complaint No. 46/2007, decision on the merits of 3 December 2008, §44).

The Committee previously noted that, the Health Insurance Act links eligibility for 'non-contributory' state health coverage to being a recipient of social assistance benefits and that the types of medical services available to all citizens outside the scope of mandatory health insurance are mainly confined to emergency care and obstetric care for women (*ERRC) v. Bulgaria*, Complaint No. 46/2007, decision on the merits of 3 December 2008, §43).

The Committee further notes that, according to a study on Roma, conducted by the EU's Fundamental Rights Agency (FRA) in 10 countries, and particularly in Bulgaria, in 2021 and published in 2022 (https://fra.europa.eu/en/publication/2022/roma-survey-findings), found that those Roma at risk of poverty show almost no progress over the period between 2016 and 2021. On average, in 2021, 71% of Roma in Bulgaria were at risk of poverty. This means that they lived in households where the equivalent income after social transfers was less than 60% of the median income in their country. 62% of Roma in Bulgaria live in several situations of material deprivation in 2021, according to this same survey (meaning a household that cannot afford to pay for four of the nine items in the material deprivation index). Segregation in schools is also particularly pronounced in Bulgaria in 2021. In terms of access to a certain type of medical insurance, FRA states that an average was 47% of Roma had access to it compared with 44% who had access in 2016. The progress is therefore almost non-existent.

According to the European Commission's Country Health Profile prepared on Bulgaria in 2021, the number of citizens who remain uninsured is significant. It is estimated that 1 million people in Bulgaria have no health insurance, around 14.8%. Screening rates remain low despite the existence of national programmes. The report refers to the fact that this has repercussions for the Roma population and undocumented migrants, as health insurance coverage remains a challenge.

The information provided by the authorities does not refer to any new elements demonstrating that persons not receiving social assistance are entitled to medical assistance, other than emergency care, obstetric and hospital treatment. Therefore, the Committee considers that the situation has not been brought into conformity with Article 13§1 the Charter.

**B. Violation of Article E read in conjunction with Article 11§1, 2 and 3 of the Charter on the lack of measures to address the exclusion, marginalisation and environmental hazards of Roma communities, as well as the problems encountered by many Roma in accessing health care services**

With regard to health education, the Committee has noted that the network of health mediators has expanded. The increase in the number of health mediators contributes to improving awareness and access to health and social services of Roma. The Committee also considers that the recent government initiatives aimed at addressing gaps through the National Strategy for Roma Integration 2020, have shown early progress in recruiting and training health intermediaries, as well as in boosting preventive check-up rates.

However, according to the country health profile of Bulgaria of 2021 prepared by the European Commission, mortality rates have increased in Bulgaria. Mortality rates from both preventable and treatable causes in Bulgaria have remained high since 2011, at levels well above those for the EU as a whole. In 2018, the preventable mortality rate in Bulgaria stood at 226 per 100 000 population, which is considerably higher than the rate across the EU (160 per 100 000). Throughout the Covid-19 pandemic, extra funds have been made available to cover the costs associated with the screening, testing, transport and treatment of all patients, regardless of their insurance status. Both the new National Health Strategy for 2021-30 and the National Strategy for Reducing Poverty and Promoting Social Inclusion 2030 contain measures to strengthen the quality and accessibility of health services and medicines, but in 2021 the status of both was in limbo, according to the report.

Moreover, the Committee notes from the FRA report of 2022 that discrimination and hate speech towards Roma remain still very high in Bulgaria. Taking into account this, aspect, but also the lack of health insurance since many Roma only use the emergency services, the Committee considers that the situation has still not been brought into conformity with the Charter.

*Finding*

The Committee finds that the situation has still not been brought into conformity with Article 13§1 of the Charter or with Article E read in conjunction with Article 11§1, 2 and 3 of the Charter.

## 2nd Assessment of follow-up: Equal Rights Trust (ERT) v. Bulgaria, Complaint No. 121/2016, decision on the merits of 16 October 2018, Resolution CM/ResChS(2019)9

### 1. Decision of the Committee on the merits of the complaint

**A. Violation of Article 16 of the Charter concerning the suspension or the termination of family allowances when a child stops attending school**

In its decision, the Committee held that there was a violation of Article 16 of the Charter with respect to the suspension or termination of the family allowance when a child stops attending school, as the measure increases the economic and social vulnerability of the children concerned.

**B. Violation of Article 16 of the Charter concerning the termination of family allowances when a minor becomes a parent**

The Committee also held that the situation in Bulgaria constituted a violation of Article 16 of the Charter because, while it found that the measure is clearly prescribed by law, it considered that neither the legislation itself nor the submission of the government indicated that the restriction pursued any of the legitimate aims established by the Charter. According to this measure, minors who become parents cease to be considered minors and this was against the Charter.

**C. Violation of Article E, read in conjunction with Article 16 of the Charter concerning discrimination against Roma, and particularly against Roma female minors**

The Committee found that the legislative measures in question (namely, the withdrawal of family benefits if the minor becomes a parent and the suspension of child benefit if the child stops attending school) had a disproportionate impact on the Roma community and, within that community, on female minors, which amounted to discrimination against Roma, and particularly towards Roma female minors.

### 2. Information provided by the Government

The Government contests the decision of the Committee. It further underlines that no complaint from citizens or the Bulgarian civil sector has been filed regarding either the provision of benefits in kind, including to minors who are parents, or the termination of benefits when the child has become a parent or when children are not regularly attending school or a preschool group. A change in the type of sanctions and suspension and termination conditions within the Family Allowances Act is not envisaged.

**A. Violation of Article 16 of the Charter concerning the suspension or the termination of family allowances when a child stops attending school**

and

**B. Violation of Article 16 of the Charter concerning the termination of family allowances when a minor becomes a parent**

The Government states that, as of 2021, with the Law on the State Budget of the Republic of Bulgaria (LSBRB) for 2021, changes have been made to the Family

Allowances Act with a view to increasing this form of support and avoiding making it primarily conditional on income.

The income criterion for awarding the one-time aid for students enrolled in first grade has been dropped, and the new conditions have been applicable since the 2021/2022 school year. At the same time, with the changes made in the Family Allowances Act, the one-time aid for students enrolled in the eighth grade for the academic year 2020/2021 was provided. The aid has already been granted without an income test starting from the 2021/2022 academic year. With the adoption of the LSBRB for 2021, the amounts of these two one-off benefits have also been increased from BGN 250 to BGN 300. The income criterion for access to the one-off pregnancy benefit and the monthly allowance for a dependent child up to the age of one year old has also been increased - from BGN 450 to BGN 510, as has the amount of the monthly allowance for a dependent child up to the age of one - from BGN 100 to BGN 200.

Other benefits have also increased, such as the monthly benefits for raising a child, the amount of family allowances per child, etc. In 2022, a bill to amend the Family Allowances Act was prepared. Under the proposed changes, the regulations guaranteeing the right to monthly family allowances for children with one or two deceased parents are systematised and clarified, and support for these children will continue to be provided on a reduced basis - without an income test, regardless of whether or not they are entitled to an inheritance from a deceased parent. The bill was approved by Decision No. 673 of 15 September 2022 of the Council of Ministers.

**C. Violation of Article E read in conjunction with Article 16 of the Charter concerning discrimination against Roma, and particularly against Roma female minors**

The Government does not present information under this point.

**3. Assessment of the follow-up**

**A. Violation of Article 16 of the Charter concerning the suspension or the termination of family allowances when a child stops attending school**

and

**B. Violation of Article 16 of the Charter concerning the termination of family allowances when a minor becomes a parent**

The Committee takes note of the increase in the amount of family allowances since 2021, as presented by the Government.

However, the restrictions introduced concerning the suspension or the termination of the family allowances when a child stops attending school or when a minor becomes a parent remain. Therefore, the Committee considers that the situation has not been brought into conformity with the Charter.

**C. Violation of Article E read in conjunction with Article 16 of the Charter concerning discrimination against Roma, and particularly against Roma female minors**

The report does not submit any new information in this respect and on the specific impact of the measures on Roma and on Roma female minors in particular.

The Committee recalls that, in order to ensure that Roma families have access to family allowances, the mere legal guarantee of equal treatment as a means of

protection against any discrimination on the grounds of race and gender does not suffice. As recalled in in its decision, the Committee considers that Article E imposes an obligation to take due consideration of relevant differences, as well as the impact that the measure may have on a part of the population, in this case the Roma, and among them, female minors.

The Committee therefore considers that the situation has not been brought into conformity with the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with either Article 16 of the Charter or with Article E read in conjunction with Article 16 of the Charter.

## 1st Assessment of follow-up: University Women of Europe (UWE) v. Bulgaria, Complaint No. 125/2016, decision on the merits of 6 December 2019, Recommendation CM/RecChS(2021)2

### 1. Decision of the Committee on the merits of the complaint

#### A. Violation of Articles 4§3 and 20.c of the Charter regarding the obligation to ensure access to effective remedies

In its decision, the Committee concluded that there had been a violation of Articles 4§3 and 20.c of the Charter on the ground that there was no information on the number of pending cases on gender pay discrimination and there were obstacles to accessing judicial proceedings in this respect, such as the existing costs and difficulties accessing the necessary evidence. Moreover, there was a predetermined upper limit on compensation for workers who are dismissed as a result of gender discrimination, which may prevent damages from compensating for the loss suffered and being sufficiently dissuasive.

#### B. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency and job comparisons

In its decision, the Committee concluded that there was a violation of Articles 4§3 and 20.c of the Charter on several grounds, in particular the absence of an explicit definition of pay in the law, the absence of the principle of transparency in the legislation and the lack of information on individual workers' access to relevant data concerning wages either within their organisation or outside their own company. Moreover, there was no information about the scope of job comparisons, i.e. whether it is broad enough to extend beyond the company directly concerned to include a group of companies owned by the same person or controlled by a holding or a conglomerate. In addition, there was a lack of clear and gender-neutral job classification systems.

#### C. Violation of Articles 4§3 and 20.c of the Charter regarding the obligation to maintain an effective equality body

In its decision, the Committee concluded that there was a violation of Articles 4§3 and 20.c of the Charter on the ground that the Commission for Protection against Discrimination (CPD) has insufficient means and its decisions are not always followed up.

#### D. Violation of Article 20.c of the Charter regarding measures to promote equal opportunities between women and men in respect of equal pay

In its decision, the Committee concluded that there was a violation of Article 20.c of the Charter on the ground that there had been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay.

#### E. Violation of Article 20.d of the Charter as regards ensuring balanced representation of women in decision-making positions within private companies

In its decision, the Committee concluded that there was a violation of Article 20.d of the Charter on the ground that there had been insufficient progress in ensuring a

balanced representation of women in decision-making positions within private companies.

**2. Information provided by the Government**

**A. Violation of Articles 4§3 and 20.c of the Charter regarding the obligation to ensure access to effective remedies**

The Government refers to the fact that, according to Article 243.1 of the Labour Code, women and men have the right to equal remuneration for equal or equivalent work. It is further required that the criteria for evaluating work are the same for all workers and employees and are determined by the collective labour agreements or by the internal rules relating to salary, or by the job description for the position held, which is provided to the worker. Every company in the country has internal rules regarding salaries. The report states that the legislation created mechanisms for the formation of labour remuneration, ensuring gender equality.

**B. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency and job comparisons**

The Government refers to the Civil Servant Act (Article 7.6), according to which discrimination, privileges or restrictions based on race, nationality, ethnicity, gender, origin, religion, beliefs, membership of political, trade union and other public organisations or movements, personal, social and property status or the presence of a disability are forbidden. The appointing authority determines the individual amount of a civil servant's basic salary, taking into account the level of the position held, qualification and professional experience. The minimum and maximum amounts of the basic salaries by levels and degrees, the amounts of additional remunerations, as well as the procedure for receiving them, are determined by an ordinance of the Council of Ministers and cannot be lower than those defined by labour legislation. There are no further details on job comparisons and private companies under this point.

**C. Violation of Articles 4§3 and 20.c of the Charter regarding the obligation to maintain an effective equality body**

The Government does not submit specific information under this point.

**D. Violation of Article 20.c of the Charter regarding measures to promote equal opportunities between women and men in respect of equal pay**

The Government states that the gender pay gap is decreasing in Bulgaria and was 12.7% in 2020. According to the wage structure observation, which is conducted every 4 years by the National Statistics Institute, in 2018, men made up 49% of the total number of employed persons and the remaining 51% were women.

As of 2020, more than half of the women in Bulgaria worked in low-paid industries, with an average salary of 701 BGN to 1 124 BGN. The average salary for the country was 1 391 BGN. Women are predominant in the education and health sectors, where the average wages of men exceed the average wages of women. In human health, 77.5% of the workers are women but the average salary of men exceeds that of women due to the nature of the positions held by the latter. The Government states that most women work as nurses and orderlies. Male employment dominates in two of the three highest-paid economic activities, and pay gaps remain high.

Conversely, women's employment predominates in two of the three lowest-paid economic activities, with a lower wage level than that of men - hotel and restaurant industry, textile and clothing production, leather processing, manufacture of shoes and other articles of treated skin without hair, other activities, medical-social care with accommodation and social work without accommodation, culture, sports and entertainment. In manufacturing of textiles and clothing, leather processing, production of shoes and other products the average salary of women is 390 BGN lower than that of men. In culture, sport and entertainment, the average salary of women is 432 BGN lower than that of men.

Despite this legal framework, the effective application and implementation of this principle in practice continues to be a challenge in all EU member states.

**E. Violation of Article 20.d of the Charter as regards ensuring balanced representation of women in decision-making positions within private companies**

No further information is submitted as regards this point.

**3. Assessment of the follow-up**

**A. Violation of Articles 4§3 and 20.c of the Charter regarding the obligation to ensure access to effective remedies**

The Committee notes that the Government has not produced any specific information on how remedies can be effective, on the number of cases, on access to procedures or on the issue of the predetermined upper limit on compensation for workers who are dismissed as a result of gender discrimination.

The Committee encourages, therefore, the adoption of specific measures to ensure access to adequate and effective remedies for victims of pay discrimination. The Committee considers that the situation has not yet been brought into conformity with the Charter on this point.

**B. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency and job comparisons**

The Committee notes that the Government presents in the report certain elements for calculating wages and pay within the public sector, but that no information is provided regarding private companies and enabling job comparisons across companies.

The Committee therefore encourages the State to define the notion of equal pay in the legislation and to adopt measures to improve pay transparency thus allowing workers to request and obtain, in the context of judicial proceedings, information on the pay of a fellow worker while duly respecting applicable rules on personal data protection and commercial and industrial secrecy. It also encourages it to expand the scope of pay comparisons in the private sector beyond the same enterprise. The Committee considers that the situation has not yet been brought into conformity with the Charter on this point.

**C. Violation of Articles 4§3 and 20.c of the Charter regarding the obligation to maintain an effective equality body**

The Government does not submit specific information under this point. Therefore, the Committee considers that the mandate of the Commission for the Protection against Discrimination (CPD) should be reinforced so as to ensure proper follow-up to its

measures in the field of equal pay. The Committee considers that the situation has not yet been brought into conformity with the Charter on this point.

**D. Violation of Article 20.c of the Charter regarding measures to promote equal opportunities between women and men in respect of equal pay**

The Committee notes the information concerning the gender pay gap and the complexities in reducing it and present challenges.

The Committee reiterates its invitation to the authorities to pursue further the measures adopted in order to promote equal opportunities between women and men in respect of equal pay and to reduce further the adjusted and unadjusted gender pay gap. The Committee notes from Eurostat that the unadjusted gender pay gap in Bulgaria in 2021 stood at 12.2%. It stood at 14.3% in 2017. In the Committee's view, this cannot be regarded as sufficient measurable progress. The Committee considers therefore that the situation has not yet been brought into conformity with the Charter on this point.

**E. Violation of Article 20.d of the Charter as regards ensuring balanced representation of women in decision-making positions within private companies**

The Committee notes that there was no further information submitted as regards the representation of women in decision-making positions within private companies. It reiterates its invitation to promote effective parity in the representation of women and men in decision-making positions in both the public and private sectors. The Committee considers that the situation has not yet been brought into conformity with the Charter.

*Finding*

The Committee finds that the situation has not yet been brought into conformity with Article 4§3, 20.c and 20.d of the Charter.

## 2nd Assessment of follow-up: European Roma Rights Centre v. Bulgaria, Complaint No. 151/2017, decision on the merits of 5 December 2018, Resolution CM/ResChS(2019)8

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee considered that there was a violation of Article E in conjunction with Article 11§1 of the Charter on the ground that Roma women in Bulgaria do not benefit from adequate access to health care in respect of maternity, and that this constitutes indirect discrimination.

### 2. Information provided by the Government

The Government states that, in the context of the projects under the heading "Improving Access to Social and Health Services" (Development of Human Resources Operational Programme 2014-2020), various health and information campaigns are being carried out. These aim to prevent the health issues of the Roma communities, strengthen the health culture through talks on various issues (healthy eating, prevention and control of HIV, tuberculosis and sexually transmitted infections, promotion of family planning and responsible parenthood), as well as permitting persons without health insurance from the Roma community to benefit from various preventive medical tests.

The number of preventive tests has risen to four and the package of medical-diagnostic examinations during pregnancy for women without health insurance has been expanded. The scope of the medical services is also being expanded, with the possibility of providing inpatient care for high-risk pregnancies on a clinical pathway up to twice the duration of pregnancy. These changes are fully in line with the Bulgarian government's aspiration to improve access and provide a sufficient amount of medical assistance to pregnant women who cannot enjoy rights as health-insured persons, to health activities during their pregnancy. The purpose of the changes is to guarantee better access to obstetric care for pregnant women without health insurance and to reduce infant mortality in the country by improving the quality of maternal and child health care, by introducing an effective system for prevention, screening, prophylaxis and early diagnosis of predictable and preventable conditions and pathologies during pregnancy.

Taking into account the need to offer additional examinations during the pregnancy of uninsured pregnant women, the 2021-2030 National Programme for the Improvement of Maternal and Child Health, approved by the Council of Ministers, includes the possibility of an additional examination by an obstetrician-gynaecologist and additional consultations in the event of diseases occurring during pregnancy. The programme envisages ensuring the sustainability of the activity of the existing 31 health and advisory centres for maternal and child health in order to improve the access of children and pregnant women to quality medical services outside the scope of mandatory health insurance and to the necessary psychological counselling and social care. Through its implementation, conditions will be ensured for the active promotion of health and the prevention of diseases, for the provision of timely, quality and complex medical and health care, as well as for the development of health and social services.

The Government also states that the policies aim to improve the access of all Bulgarian citizens of Bulgaria, regardless of their gender, age, ethnicity and social affiliation, to quality and timely health services, as well as to manage public health care costs effectively. Protecting citizens' health, understood as their state of

complete physical, mental and social well-being, is a national priority. It is guaranteed by the State by applying the following principles: the provision of affordable and quality health care, with priority given to children, pregnant women and mothers of children up to one year old, and the special protection for the health of children, pregnant women, mothers of children up to one year old and people with physical disabilities and mental disorders.

Funding for health activities under the Ministry of Health's budget receives an annual increase, which ensures that the scope of health activities underwritten by the National Health Insurance Fund (NHIF) budget. Since the changes to Regulation No. 9 of 2019 determining the package of health activities guaranteed by the NHIF budget, were introduced in 2021, it is now possible to carry out activities linked to the detection of malignant ovarian tumours and cervical cancer, which ensure quality and timely diagnosis and the treatment of patients suffering from a variety of conditions and diseases.

**3. Assessment of the follow-up**

The Committee notes that there has been some progress made to ensure that all Bulgarian women, including those who are uninsured, can benefit from maternity care. While,, as noted in the Committee's findings adopted in 2021, every pregnant women had the right to one free examination before giving birth, the Government points out that this is being changed so that several examinations are possible.

However, the Government does not submit any specific information on the particular impact of the measures on Roma women's access to maternity care, and in particular; on their care in public hospitals.

The Committee recalls the important challenges facing Roma women's access to health care services and the quality of this care. There are mobile gynaecological units, but the complaint specifically concerned access to maternity services in public hospitals. The Committee acknowledges that, even though both uninsured and insured pregnant women have access to free health services relating to maternity and childbirth, this access is not always sufficient, an aspect which continues to have a considerable and disproportionate impact on Roma women. There are no new elements demonstrating that health care, and in particular Roma women's access to maternity services in public hospitals, has been improved.

The Committee, therefore, considers that the situation has not been brought into conformity with the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article E in conjunction with Article 11§1 of the Charter.

# FINLAND

## 5th Assessment of follow-up: The Central Association of Carers in Finland v. Finland, Complaint No. 70/2011, decision on the merits of 4 December 2012, Resolution CM/ResChS(2013)12

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of Article 23 of the Charter on the ground that the legislation allowed practices that led to a part of the older population being denied access to informal care allowances or other alternative support.

### 2. Information provided by the Government

The Government refers to the information provided in its previous report on the follow-up to this decision (the 16th national report).

With regard to the number of recipients of support for informal care and of the informal carers responsible for them, it is reported that, in 2021, for example, a total of 52 073 persons received support for informal care and that 67% of them were over 65 years old. The number of informal carers responsible for them came to 50 241 and 57% of these carers were over 65 years old. According to the Government, the number of informal carers declined slightly while the number of persons cared for continued to rise. The level of allowances for informal care increased by 2% in 2020 compared to 2019.

The Government provides information on the health and social services reform. It indicates that the general criteria for granting the support are laid down by law, but that there remain differences between municipalities and regions as regards the detailed criteria. The Government adds that, in recent years, there has been a trend towards the regional harmonisation of the criteria and the allowances paid to informal carers. It is reported that many of Finland's 18 regions have already adopted uniform criteria and allowances for informal care. At the start of 2023, responsibility for organising health and social services was transferred from the municipalities to the 21 welfare services counties. The only exception is the City of Helsinki, which retains responsibility for organising health and social services within the city.

The Government indicates that the health and social services reform also covers support for informal care. The welfare services counties are required to harmonise the criteria for granting support for informal care and the allowances for informal care within the counties as of 1 January 2023.

The Government states that the development of informal care is also part of the Future Health and Social Services Centres programme (2020-2023) and provides information on the main activities carried out under this programme in relation to informal care. For example, in autumn 2021, the Finnish Institute for Health and Welfare initiated a study to establish the current situation concerning the criteria for granting support for informal care and the harmonisation of these criteria. The study was commissioned by the Ministry of Social Affairs and Health.

The Government also provides information on the reform of the legislation concerning services for older persons. The aim of the second stage of the reform is to improve the adequacy and quality of services provided at home to older persons. The range of housing services will also be augmented. The Government states that the reform is also significant in terms of support for informal care, as many persons receiving informal care also require home care services, which in turn help informal carers to cope.

The Government refers to the views of non-governmental organisations according to which the measures implemented and planned do not guarantee the equal treatment of informal carers. The Government indicates that the non-governmental organisations were of the view that establishing uniform criteria by 2023, at the latest, when the welfare services in the counties will take responsibility for organising informal care support, would be vital to eliminate inequality and provide adequate social protection for older persons, including through informal care support.

### 3. Information provided by the non-governmental organisations

Comments were submitted by the Finnish Human Rights Centre.

In relation to the present decision on the merits, the comments indicate that the implementation of the Law on Support for Informal Care varies across the different municipalities and joint municipal authorities. This is explained as being largely due to the funding dependency of informal caregiving support, which allows municipalities to independently decide how many resources are allocated to informal caregiving. Municipalities also establish the eligibility criteria for informal caregiving support and the level of compensation for informal caregivers. These criteria and compensation levels vary from one municipality to another.

### 4. Assessment of the follow-up

The Committee notes that reforms are taking place with regard to the health and social services and services for older persons. It notes that responsibility for organising health and social services was transferred from the municipalities to the 21 welfare services counties. With regard to informal care, the welfare services in the counties are required to harmonise the criteria for granting support for informal care and the informal care allowances within the counties as of 1 January 2023.

The Committee notes from the Government's statement that non-governmental organisations were of the view that the measures implemented and planned do not guarantee the equal treatment of informal carers. The Committee notes the comments of the Finnish Human Rights Centre according to which the implementation of the law on informal care varies across different municipalities and joint municipalities.

The Committee recalls that the lack of uniformity in the services provided for older persons throughout Finland resulting from differences in the funding of such services by municipalities does not, as such, violate Article 23 of the Charter. However, the fact that the legislation allows practices leading to a part of the older population being denied access to informal care allowance or other alternative support constitutes a violation of this provision of the Charter (see §60 of the decision on the merits).

The Committee takes note of the reforms initiated and carried out by the Government. It notes in particular that, according to the Government, the welfare services in the counties are required to harmonise the criteria for granting support for informal care and the informal care allowances within the counties as of 1 January 2023. However, the Committee notes that the above-mentioned reforms are still ongoing at the time of the report. Moreover, it is not clear what practical impact the reforms will have in remedying the lack of support for informal carers in certain municipalities or counties.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 23 of the Charter.

## 5th Assessment of follow-up: The Central Association of Carers in Finland v. Finland, Complaint No. 71/2011, decision on the merits of 4 December 2012, Resolution CM/ResChS(2013)13

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of Article 23 of the Charter on the grounds that insufficient regulation of fees for serviced housing and serviced housing with 24-hour assistance combined with the fact that the demand for these services exceeds supply:

- created legal uncertainties for older persons in need of care due to diverse and complex fee policies. Although municipalities may adjust prices, there are no effective safeguards to guarantee effective access to services for all older persons in need of services due to their condition;
- constituted an obstacle to the right to "the provision of information about services and facilities available for older persons and their opportunities to make use of them" as guaranteed by Article 23b of the Charter.

### 2. Information provided by the Government

The Government refers to the information provided in its previous report on the follow-up to this decision (the 16th report national report). The Government states that the Act on Client Charges in Health and Social Services was amended in order to remove barriers to treatment and to increase equality in health by introducing more cost-free services and by making client charges more equitable.

The Government further states that, as already announced in its previous report, a proposal to amend the Act on Client Charges in Health and Social Services was submitted to the Finnish Parliament in September 2020. The proposal covered fees for serviced housing and for serviced housing with 24-hour assistance. For serviced housing with 24-hour assistance, the proposed fee is based on the client's income in a way that is similar to the fee for long-term institutional care. The upper limit of the proposed fee is 85% of the client's monthly net income. However, the client must be left with at least €164 per month. The Parliament passed the proposal and the legislation entered into force on 1 July 2021.

The Government also states that non-governmental organisations have drawn attention to the lack of adequacy of places suitable for serviced housing places. They also drew attention to the fact that when an older person lives in serviced housing other than 24-hour serviced housing, municipalities remain free to set the fees for housing and services. The non-governmental organisations state that this sustains inequality based on place of residence.

### 3. Assessment of the follow-up

The Committee welcomes the progress made due to the amendments brought to the Act on Client Charges in Health and Social Services in respect of the fees for serviced housing with 24-hour assistance. According to the new legislation, the fee for serviced housing with 24-hour assistance depends on the client's income, with an upper limit of 85% of the client's monthly net income. The client retains 15% of their net income or at least €167 per month for personal expenses.

It notes that, according to non-governmental organisations, when an older person lives in serviced housing other than 24-hour serviced housing, municipalities remain free to set the fees for housing and services at their discretion.

While welcoming the positive developments with regard to the fees for serviced housing with 24-hour assistance, the Committee notes that uncertainties remain in respect of the setting of fees for serviced housing other than serviced housing with 24-hour assistance. It considers, therefore, that the situation has not yet been brought into conformity with Article 23 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 23 of the Charter.

## 4th Assessment of follow-up: Finnish Society of Social Rights v. Finland, Complaint No. 88/2012, decision on the merits of 9 September 2014, Resolution CM/ResChS(2015)8

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of:

**A. Article 12§1 of the Charter with regard to the minimum level of:**

- sickness, maternity and rehabilitation allowances (29% of median equivalised income).
- basic unemployment allowance (29% of median equivalised income) and
- guaranteed pension (38% of median equivalised income).

**B. Article 13§1 of the Charter with regard to:**

- social assistance, on the ground that even if social assistance could reach the level of 50% of median equivalised income for certain recipients under certain circumstances, when various additional benefits were taken into account, it has not been demonstrated, based on the information provided, that all persons in need received sufficient social assistance.
- the labour market subsidy, on the ground that it was insufficient (29% of median equivalised income).

### 2. Information provided by the Government

**A. Violation of Article 12§1 of the Charter**

- ***Sickness allowance, parental allowance, rehabilitation allowance***: the Government states that the minimum amount of these allowances was increased to €741.75 per month in 2022. An additional adjustment of 3.5% to these benefits was made in 2022 and, after that adjustment, the minimum rate of each allowance was €767.75 per month as of 1 August 2022.
- ***Unemployment:*** in its data, the Government lumps basic unemployment allowance together with labour market subsidy, which constitutes social assistance within the meaning of Article 13 of the Charter. According to the Government, these benefits amounted to €35.72 per day or about €768 per month. The Government states that benefits are increased for those "participating in services that promote employment" by €5.08 per weekday (covering both labour market subsidy and basic unemployment allowance) for up to 200 days. For this participation, they are also entitled to an additional sum to cover their expenses (€9 per weekday). Persons with a dependent child are entitled to an additional sum of €5.61 per weekday; for two dependent children, this sum is increased to €8.23 per weekday, and for three to €10.61 per weekday.
- ***Guaranteed pension:*** the Government states that the pension amount was raised progressively in recent years from €837.59 at the beginning of 2021 to €855.48 at the beginning of 2022. In 2022, the additional index adjustment of social security benefits brought the full guaranteed pension to €885.63.

### B. Violation of Article 13§1 of the Charter

- ***Labour market subsidy:*** the Government draws attention to the fact that the labour market subsidy is payable indefinitely. It states that between 1 August and 31 December 2022, the labour market subsidy amounted to €35.72 per day, or about €768 per month.
- ***Social assistance:*** no information is provided in the Government's report.

*Social security reform*

The Government provides information on the ongoing reform of the social security system. The reform is being prepared by a parliamentary committee appointed in March 2020 for a term extending until 2027. The reform will address questions related to basic social security, earnings-based benefits and social assistance, as well the financing of these forms of support and the connections between them.

*Finnish social security system*

The Government provides information on the social security system which can be divided into three tiers: minimum security, basic security and earnings-related security. The Government adds that these three tiers may be supplemented by housing benefits, reimbursements for medical expenses, child benefits and disability benefits.

The Government states that when assessing compliance of the Finnish social security system with the provisions of the Charter, the system should be taken into account as a whole. It indicates that, in Finland, the majority of labour market subsidy recipients supplement their income with a housing allowance, and those with the lowest incomes also with social assistance. It states that all low-income households are entitled to a general housing allowance to cover their housing expenses.

### 3. Comments by the Finnish Human Rights Centre

The Centre states that the Finnish Institute for Health and Welfare was commissioned by the Ministry of Social Affairs and Health to convene an assessment group in May 2022 to carry out the fourth assessment of the adequacy of the basic social security in Finland. The report, which was published in February 2023, concluded that the basic social security for the unemployed, the ill and those on parental leave is inadequate to cover the consumption of reference budgets, but that the pensioners' basic social security is sufficiently high enough to cover it. Student social security is only enough to cover the reference budget expenses if it is supplemented by student loans.

The Centre also indicates that the rapid rise of costs of living has, in late 2022 and early 2023, also affected levels of rent and forced many families and individuals to move to smaller and cheaper apartments as the inflation has affected, for example, food prices, and the housing benefit levels no longer correspond to actual rent levels. It is reported that, in addition to marginalised persons, more persons with regular income now have to resort to food banks on a regular basis due to increasing costs of living. High healthcare costs can also cause financial distress for those who are already struggling with everyday expenses. People may need to rely on social assistance to pay for their healthcare expenses. In nearly half a million cases, in 2022, social and healthcare customer fees resulted in enforcement proceedings.

### 4. Assessment of the follow-up

The Committee notes from the Eurostat database that in 2022, median equivalised income was €2,211 per month and therefore the 40% threshold was €884 per month.

**A. Violation of Article 12§1 of the Charter**

- ***Sickness, parental and rehabilitation allowances:*** the Committee notes that the minimum allowance is €767.75 per month (i.e. 34.72% of median equivalised income), which is an insufficient amount in relation to Article 12§1.
- ***Basic unemployment allowance:*** the Committee notes that, according to the Government, in 2022 basic unemployment allowance was €35.72 per day or about €768 per month, which represents 34.73% of median equivalised income. It may be increased for persons participating in services to promote employment by up to €5.08 per weekday for a single person in the unemployment benefit (labour market subsidy and basic unemployment allowance). In such cases, the combined/increased benefit can reach €40.8 per weekday or about €856 per month, which is still under 40% of the median equivalised income.
- ***Guaranteed pension:*** the Committee notes that, according to the Government, the total amount was raised to €885.63 in 2022. The Committee notes that the amount of guaranteed pension represented 40.05% of the median equivalised income in 2022.

Concerning sickness allowance, parental allowance, rehabilitation allowance and basic unemployment allowance, the Committee notes that the minimum amount of these social security benefits is below 40% of median equivalised income and therefore insufficient to meet the requirements of Article 12§1 of the Charter.

The Committee recalls that where the minimum level of an income-substituting benefit falls below 40% of median equivalised income, the Committee will not consider that its aggregation with other benefits can bring the situation into conformity and holds that it is manifestly inadequate (*Finnish Society of Social Rights v. Finland*, Complaint No. 88/2012, decision on the merits of 9 September 2014, §64).

With regard to the guaranteed pension, the Committee notes that, in 2022, the additional index adjustment of social security benefits brought the full guaranteed pension to €885.63 which represents 40.05% of the median equivalised income.

The Committee recalls that where an income-substituting benefit stands between 40% and 50% of median equivalised income, the Committee will also take into account other supplementary benefits, for example social assistance and housing allowance, where applicable (*Finnish Society of Social Rights v. Finland*, op. cit., §63).

As regards the reliance on supplementary benefits more specifically, the Committee recalls that it is for the States Parties to prove that the supplementary benefits are effectively provided to all the persons concerned by social security benefits falling below the 50% threshold (*Finnish Society of Social Rights v. Finland*, op. cit., §65). Based on the information provided by the Government, the Committee does not consider it has established that the supplementary benefits ensure an adequate level of guaranteed pension to most of beneficiaries.

The Committee considers that the situation has not been brought into conformity with 12§1 of the Charter with regard to the benefits mentioned above.

**B. Violation of Article 13§1 of the Charter**

- ***Social assistance benefits:*** the Committee notes from the MISSOC database that the basic social assistance for a single person amounts to €514.82 per month in 2022, which represents 23.3% of median equivalised income.

- ***Labour market subsidy:*** the Committee notes from the Government's report that, in 2022, the labour market subsidy amounted to €35.72 per day or about €768 per month, or 34.73% of median equivalised income. The Committee notes that the level of labour market subsidy is insufficient to meet the requirements of Article 13§1 of the Charter.

The Committee notes the Government's statement that the majority of labour market subsidy recipients supplement their income with housing allowance and those with the lowest incomes also with social assistance. However, the Government has not provided information on the amounts of housing allowance and social assistance benefits paid to persons receiving the labour market subsidy. No information is provided on the level of (supplementary) social assistance benefits that may be payable to beneficiaries of the labour market subsidy.

As to the benefits covered by Article 13§1, the Committee notes that the labour market subsidy is still inadequate. As regards social assistance, the Committee has not been provided with information to ascertain that the social assistance benefits paid to persons in need are sufficient. Consequently, the Committee considers that the situation has not been brought into conformity with Article 13§1 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Articles 12§1 and 13§1 of the Charter.

## 4th Assessment of follow-up: Finnish Society of Social Rights v. Finland, Complaint No. 106/2014, decision on the merits of 8 September 2016, Resolution CM/ResChS (2017)7

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee held that there was a violation of Article 24 of the Charter on the grounds that:

- the upper limit on compensation in cases of unlawful dismissal provided for by the Employment Contracts Act may result in situations where the compensation awarded is not commensurate with the loss suffered;
- under Finnish legislation reinstatement is not made available as a possible remedy in cases of unlawful dismissal.

### 2. Information provided by the Government

The Government refers to the information provided in its previous report on the follow-up to this decision (see Finland's 15th report).

The Government states that, in Finland, labour legislation is drafted on a tripartite basis. Based on previous experience, it has been concluded by all parties that the possibility of reinstatement would not work in practice in the Finnish system.

The Government states that, in Finland, it has been considered that, on the one hand, the continuity of an employment relationship and, on the other hand, the situation of a dismissed person are protected by other means, such as a high threshold for dismissal, liability for compensation for groundless termination of employment, compensation for breaching the Act on Equality between Women and Men, the unemployment security system, and public services. A significant percentage of disputes relating to termination of employment are settled in a negotiation system based on collective agreements. The Government also states that introducing the possibility of reinstatement would require a more comprehensive review of the entire employment security system. According to the Government, such a review would also have to take into account the collective bargaining system, the unemployment security and public services, as well as the judicial system.

### 3. Assessment of the follow-up

The Committee notes that the Confederation of Finnish Enterprises (EK) and the Federation of Finnish Enterprises (FFE) refer to their views expressed in the context of Finland's 15th report.

As regards the views expressed by the Federation of Finnish Enterprises (in the 15th report) that reinstatement is not expressly provided for as a specific and indispensable remedy under Article 24 of the Charter, the Committee refers to its previous evaluation of the follow-up recalling its decision on the merits where it held that "while Article 24 of the Charter does not explicitly refer to reinstatement, it refers to compensation or *other appropriate relief*. The Committee considers that *other appropriate relief* should include reinstatement as one of the remedies available to national courts or tribunals (see Conclusions 2003, Article 24, Bulgaria). The possibility of ordering reinstatement recognises the importance of placing the worker back in an employment situation no less favourable than he/she previously enjoyed. Whether reinstatement is appropriate in a particular case is a matter for the domestic courts to decide" (see §55 of the decision on the merits).

The Committee also notes that the Central Organisation of Finnish Trade Unions (SAK), the Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA) and the Finnish Confederation of Professionals (STTK) state that with regard to the level of compensation payable for unlawful termination, the situation cannot be considered satisfactory. As far as reinstatement is concerned, the above-mentioned organisations assert that workers employed under employment contracts and those employed under public service contracts are treated differently in law.

The Committee notes that there have been no new developments in respect of the legal framework and/or practice since its previous assessment of the follow-up (Findings 2021). Consequently, it reiterates its finding that the situation has not been brought into conformity with Article 24 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 24 of the Charter.

## 4th Assessment of follow-up: Finnish Society of Social Rights v. Finland, Complaint No. 108/2014, decision on the merits of 8 December 2016, Resolution CM/ResChS(2017)8

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of Article 13§1 of the Charter on the ground that the level of the labour market subsidy, even in combination with other benefits such as housing allowance and social assistance to cover excess housing costs, was not sufficient to enable its beneficiaries to meet their basic needs.

### 2. Information provided by the Government

The Government states that between 1 August and 31 December 2022, the labour market subsidy amounted to €35.72 per day or about €768 per month. It draws attention to the fact that the labour market subsidy is payable indefinitely and is not conditional upon having a previous employment history.

The Government adds that, at the end of 2021 there were 830,951 people living in households that received general housing allowance and housing allowance for pensioners. This is equal to nearly 15% of Finland's population. The Government stresses that the housing allowance is a key component of the Finnish social security system. It states that many recipients of other social security benefits also receive housing allowance.

The Government states that the non-governmental organisations consider that basic social security is at an insufficient level.

### 3. Comment by the Finnish Human Rights Centre

The Centre indicates that the Finnish Institute for Health and Welfare was commissioned by the Ministry of Social Affairs and Health to convene an assessment group in May 2022 to carry out the fourth assessment of the adequacy of the Finnish basic social security system. The report, which was published in February 2023, concluded that the basic social security of the unemployed, the sick and those on parental leave is inadequate to cover the consumption of the reference budgets, but that the pensioners' basic social security is high enough to cover them. The social security of students is only enough to cover the reference budget expenses if supplemented by student loans.

### 4. Assessment of the follow-up

The Committee notes from the Government's report that, in 2022, the labour market subsidy amounted to €35.72 per day or about €768 per month. According to Eurostat, the median equivalised income was €2,211 per month in 2022 and therefore the 40% threshold was €884 per month. The labour market subsidy hence corresponded to 34.73% of median equivalised income. The Committee notes that the level of labour market subsidy is still insufficient to meet the requirements of Article 13§1 of the Charter.

The Committee considers that it had not been demonstrated that action had been taken to bring the labour market subsidy to an adequate level whether alone or in combination with the housing allowance. Nor had it been shown with any degree of precision that the effect of possible supplementary social assistance benefits, such as

housing allowance and/or social assistance, was sufficient to decisively improve the situation for all the recipients of labour market subsidy concerned.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 13§1 of Charter.

## 1st Assessment of follow-up: University Women of Europe (UWE) v. Finland, Complaint No. 129/2016, decision on the merits of 5 December 2019, Recommendation CM/RecChS(2021)6

### 1. Decision of the Committee on the merits of the complaint

#### A. Violation of Articles 4§3 and 20.c of the Charter regarding access to effective remedies not being ensured

In its decision, the Committee observed that the law does not make provision for reinstatement in cases where a worker is dismissed in retaliation for bringing an equal pay claim. In the light of this element, the Committee considered that the obligation to ensure access to effective remedies was not satisfied.

#### B. Violation of Article 20.c of the Charter regarding insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay

In its decision the Committee found that the gender pay gap was a persistent problem in Finland and was high in relative terms, being above the European Union average. Segregation in the labour market has remained the same for the last 20 years and is well entrenched in Finland. The measures adopted by the Government were therefore not sufficient and did not result in measurable progress in this area.

### 2. Information provided by the Government

#### A. Violation of Articles 4§3 and 20.c of the Charter regarding access to effective remedies not being ensured

The Government does not provide any information concerning this ground of non-conformity.

#### B. Violation of Article 20.c of the Charter regarding insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay

The Government indicates that the Ministry of Social Affairs and Health implemented a family leave reform which took effect in August 2022 (Government proposal HE 129/2021 and Acts 28/2022 and 29/2022 – 59/2022). The family leave reform aims to promote the equal sharing of care responsibilities and family leave. The reform introduces an equal quota for parental leave. In two-parent families, both parents are assigned an equal quota of 160 parental leave days. No more than 63 days of this quota may be transferred to the other parent. Non-transferrable parental leave days left not taken are forfeited. It has been observed that quotas earmarked for fathers result in parental leave being taken more equally, because fathers tend to make use of the leave earmarked for them.

The Government also provides information about the Equal Pay Programme 2020–2023, a tripartite equal pay programme underway in Finland. The programme is committed to the objective of bridging the gender pay gap. Key themes of the programme include remuneration and contract policy, remuneration schemes and pay awareness, desegregation and reconciliation of work and family life. The programme measures aim to promote gender impact assessments of collective agreements, remuneration schemes that are based on job requirements and support pay equality,

pay awareness and the equal division of parental leave between parents. Equality planning and pay surveys at workplaces will also be made more effective. The Equal Pay Programme is heavily invested in desegregation. The Committee notes that the Equal Pay Programme will examine the impacts of collective agreements on the pay to women and to men and on the pay gap, both in the private and public sectors.

The Government indicates that two projects that should be implemented in the context of the Equal Pay Programme 2020–2023. One will focus on tools for a more equal working life in order to end segregation, is to reduce gender-based segregation in working life by means of developing best practices and network cooperation. The project also promotes more gender-sensitive and egalitarian communication, particularly to break gender stereotypes related to professions, workers and jobs in highly segregated sectors.

The second project, the 2022–2024 research project on professional careers and occupational segregation behind the gender pay gap (as part of the Equal Pay Programme) studies the career development of women and men as well as changes in occupational structures. In particular, it examines how career changes and changes in roles are connected to the gender pay gap. Carried out by Statistics Finland, the project also includes an extensive statistical analysis using long-term data. The research project aims at providing the basis for developing working careers and occupational structures on a more equal basis.

The Government also provides information on the study on employers' gender equality plans and pay surveys 2020, conducted by Statistics Finland. The survey focused on the prevalence and quality of employers' gender equality plans and pay surveys. The framework for the study consisted of the provisions on equality plans and pay surveys in the Equality Act. Under the Equality Act, an employer who has at least 30 workers on a regular basis must prepare a gender equality plan that also includes a pay survey.

The results of the survey show that while the majority of organisations draw up an equality plan and pay survey, there is considerable variation in the scope and quality of these. Problems were observed especially in the prevalence and quality of pay surveys. Progress needs to be made with regard to cooperation with staff, pay comparisons, processing of pay data, and concrete measures included in plans. With regard to pay comparisons, in most cases, the comparisons were made between workers doing the same work, and in some cases, between occupational and worker groups.

The Government further provides information about the study on gender impacts of collective agreements 2022–2023. Funded by the Ministry of Social Affairs and Health, the project "Gender impacts of collective agreements from the perspective of equal pay" examines collective agreements from the perspective of gender equality. The research focuses particularly on the impact that collective agreements have on the achievement of equal pay. The project explores the practices applied by the social partners in gender impact assessment and the manner in which these practices are reflected in collective agreements. The project identifies areas, particularly those related to equal pay, where improvements could be made in assessing gender impacts. It also develops recommendations.

The Government also provides comments by the Central Organisation of Finnish Trade Unions (SAK), the Confederation of Unions for Academic Professionals in Finland (AKAVA) and the Finnish Confederation of Salaried Employees (STTK). According to these comments, even though the Act on Equality between Women and Men takes into account the principle of equal pay comprehensively, the legislation is not sufficiently binding and its coverage in respect of equality planning and the associated pay surveys only extends to workplaces that regularly have a workforce of

at least 30 workers. This condition excludes roughly 90% of workplaces in Finland from the rule laid down by the Act.

When examining the gender pay gap, it should be noted that the gap is not caused solely by labour market segregation. On the contrary, as individualised remuneration schemes become more commonplace, “unexplained” pay gaps are increasing. This makes concrete measures and increased pay transparency the key tools to promote equal pay.

**3. Assessment of the follow-up**

**A. Violation of Articles 4§3 and 20.c of the Charter regarding access to effective remedies not being ensured**

The Committee notes that no new information has been presented regarding this ground of non-conformity. The Committee also refers to its conclusion regarding Article 4§3 (Conclusions 2022), in which it observed that the Finnish labour legislation does not provide for the possibility of reinstatement in case of unlawful dismissal based on equal pay claims.

The Committee notes that the situation has not changed. Therefore, it considers that the situation has not been brought into conformity.

**B. Violation of Article 20.c of the Charter regarding insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay**

In its decision, the Committee observed that the gender pay gap is a persistent problem in Finland and is high in relative terms as it is above the European Union average. Segregation in the labour market has remained the same for the last 20 years and is entrenched in Finland. The measures adopted by the Government have not been sufficient, therefore, and have not resulted in measurable progress in this area.

In its Recommendation CM/RecChS(2021)6, the Committee of Ministers recommended that Finland review and reinforce existing measures aimed at reducing and eliminating the gender pay gap and consider adopting any new measures that may bring about measurable progress within reasonable time in this respect.

The Committee takes note of the measures taken by the Government in promoting equal pay. It recalls that, in its decision, it noted that the employers under the obligation to prepare a gender equality plan, as required by the Act on Equality between Women and Men, are those who have at least 30 workers. According to the figures published by the European Commission in respect of Finland for 2016, micro-companies (those with fewer than 10 workers) accounted for 93% of the total number of companies in the country. Small companies (between 10 to 49 workers) amount to 5.7%. In terms of persons employed, micro-companies employ 25% of workers in Finland and small companies employ 21.6%. These companies are not monitored and do not have a legal requirement to produce gender plans. The Committee notes that this situation has not changed.

The Committee also notes from the comments of the Central Organisation of Finnish Trade Unions (SAK), the Confederation of Unions for Academic Professionals in Finland (AKAVA) and the Finnish Confederation of Salaried Employees (STTK), that the Act on Equality between Women and Men only extends to workplaces that regularly have a workforce of at least 30 workers.

The Committee notes from Eurostat that the unadjusted gender pay gap in 2020 stood at 16.7% and at 16.5% in 2021, against 12.9% in 2020 and 12.7% in 2021 in the EU on average. The Committee considers that despite the measures taken and the commitment shown by the Government to reduce the gap, it has remained stagnant and therefore, there has not been a measurable progress.

Therefore, the situation has not been brought into conformity with the Charter on the point.

*Finding*

The Committee finds that the situation has not been brought into conformity with Articles 4§3 and 20.c of the Charter.

## 1st Assessment of follow-up: Central Union for Child Welfare v. Finland, Complaint No. 139/2016, decision on the merits of 11 September 2019, Resolution CM/ResChS(2020)3

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee held that, as a result of the amendment to the Early Childhood Education and Care Act, which entered into force on 1 August 2016, limiting the individual right of young children to early childhood education and care to 20 hours per week where one of the parents is unemployed or is caring for another child in the family as part of maternity or paternity or parental leave for a sibling, there has been a violation of the following provisions of the Charter:

### A. Violation of Article E read in conjunction with Article 17§1.a of the Charter

The Committee found that the difference in treatment of children whose parents are unemployed or on maternity, paternity or parental leave, compared to those of parents who work, has no objective and reasonable justification. Insofar as the difference in the treatment of children has the effect of reserving full access to early childhood education and care only to children whose parents work, it constitutes discrimination on the ground of the parents' status within the meaning of Article E of the Charter.

### B. Violation of Article 27§1.c of the Charter

The Committee considered that the Government has failed to provide an objective or reasonable justification for this difference in treatment between parents who are unemployed or on leave and working parents in terms of access to childcare services, which penalises those who are in most need of support from entering or re-entering employment.

### C. Violation of Article E read in conjunction with Article 16 of the Charter

The Committee found that that the Early Childhood Education and Care Act, as amended, which entered into force on 1 August 2016, establishes a difference in treatment between families in a comparable situation and that the Government has not provided any objective and reasonable justification for this difference in treatment of the most vulnerable or disadvantaged families.

### 2. Information provided by the Government

The Government states that Act No. 1395/2019, which was adopted in December 2019 and entered into force on 1 August 2020, amended the Early Childhood Education and Care Act to eliminate the limitation that applied to the subjective right of a child to full-time early childhood education and care.

### 3. Assessment of the follow-up

In its final observations of the decision on the merits, the Committee took note of the Government's intention to amend the Early Childhood Education and Care Act and restore the earlier subjective right of children to full-time early childhood education and care. The Committee considered that, should the new law come into force and be properly implemented, the situation would no longer be in violation of Article E, read in conjunction with Article 17§1.a, Article 27§1.c and Article E, read in

conjunction with Article 16 of the Charter (paragraph 115 of the decision on the merits).

The Committee notes the Government's statement that Act No. 1395/2019, adopted in December 2019, amended the relevant Early Childhood Education and Care Act to remove the limitation applicable to a child's subjective right to full-time early childhood education and care. The Government states that the amendment entered into force on 1 August 2020.

The Committee welcomes the amendments to the Early Childhood Education and Care Act which have eliminated the limitation on a child's subjective right to full-time early childhood education and care which was found by the Committee to be in violation of the Charter.

The Committee considers therefore that the situation has been brought in conformity with Article E read in conjunction with Article 17§1.a of the Charter, Article 27§1.c of the Charter, and Article E read in conjunction with Article 16 of the Charter.

*Finding*

The Committee finds that the situation has been brought into conformity with Article E read in conjunction with Article 17§1.a of the Charter, Article 27§1.c of the Charter, and Article E read in conjunction with Article 16 of the Charter.

# FRANCE

## 5th Assessment of follow-up: Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, Resolution CM/ResChS(2004)1

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of Articles 15§1 and 17§1, read alone or in conjunction with Article E of the Charter, on the following grounds:

**A.** the proportion of children with autism being educated in either mainstream or specialised schools was extremely low and much lower than in the case of other children, whether disabled or not;

**B.** there was a chronic shortage of care and support facilities for autistic adults.

### 2. Information provided by the Government

#### A. With regard to the proportion of children with autism being educated in either mainstream or specialised schools

The Government states that in September 2021, 54 500 children with Autism Spectrum Disorders (ASD) were enrolled in school:

- 41 600 (about 76%) were in the mainstream system (with more than 27 300 in nursery or primary school and 14 000 in secondary school);
- 12 900 were in medico-social settings and institutions.

The Government adds that 25 ASD teaching units were opened in nursery schools in September 2019, 40 in September 2020, 49 in September 2021 and 57 in September 2022. The numbers of ASD teaching units opened in primary schools in the same years were 20, 31, 33 and 30 respectively.

In addition, the Government reiterates information, already provided in its previous reports, concerning, in particular, the objectives of Law No. 2019-791 for a School of Trust [*une école de la confiance*] , the teaching resources (full-time equivalents) delegated by the Ministry of National Education and Youth to specialised establishments, the moving of teaching units from the medico-social sector to mainstream schools and the budget allocated for schooling under the Autism Plan.

#### B. With regard to the chronic shortage of care and support facilities for autistic adults

The Government reiterates what it said in its previous reports, namely that there are not enough statistical sources to provide a full picture of the care and support of autistic persons. Consequently, the French authorities have made provisions for the establishment of other information collection systems, which are currently being developed.

However, an extract from the national register of health and social care institutions (FINESS) from 2019, lists 784 accredited medico-social institutions and services providing support for adults with autism (excluding inclusive housing, supported employment and collective self-help groups) and 8 291 places in medico-social facilities for adults.

### 3. Assessment of the follow-up

**A. With regard to the proportion of children with autism being educated in either mainstream or specialised schools**

The Committee notes that the French authorities are continuing their efforts to provide education for children with autism. In particular, it notes the increase in the number of children with autism enrolled in mainstream schools (39 100 in September 2019 as against 36 000 in September 2018) and in the number of ASD teaching units opened in nursery and primary schools.

However, the Government has not provided the information requested regarding (i) the proportion of children with autism who are educated in either mainstream or specialised schools, or (ii) the number of children with autism who do not receive any education. These figures are an important element in the assessment of Government policies on inclusive education (see, *mutatis mutandis*, *European Disability Forum (EDF) and Inclusion Europe v. France*, Complaint No. 168/2018, decision on the merits of 19 October 2022, §263).

The Committee also notes that the UN Committee on the Rights of the Child, in its concluding observations on the combined sixth and seventh reports on France, remains seriously concerned that children with disabilities, in particular children with ASD, continue to be institutionalised, despite the measures taken (adoption of Law No. 2019-791 on a School of Trust; the launch in September 2019 of the *Cap école inclusive* (Towards an inclusive school) online platform of educational resources to meet the special educational needs of pupils) and despite the increase in the number of children with disabilities in mainstream schools (concluding observations adopted at the 2728th meeting held on 26 May 2023, CRC/C/FRA/CO/6-7, 2 June 2023, advance unedited version, §35).

In the light of the above considerations, the Committee reiterates its finding that the situation has not yet been brought into conformity on this point.

**B. With regard to the chronic shortage of care and support facilities for autistic adults**

The Committee notes that there have been no new developments since its previous assessment of the follow-up (Findings 2021). In the absence of any information enabling it to reassess the situation, the Committee reiterates its finding that the situation has not been brought into conformity on this point.

*Finding*

The Committee finds that the situation has not yet been brought into conformity with Articles 15§1 and 17§1 of the Charter, read alone or in conjunction with Article E, with regard either to the proportion of children with autism being educated in school or to the number of care and support facilities for autistic adults.

## 5th Assessment of follow-up: European Council of Police Trade Unions (CESP) v. France, Complaint No. 38/2006, decision on the merits of 3 December 2007, Resolution CM/ResChS(2008)6

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee held that the French system of compensation for overtime worked by active members of the national police force did not comply with Article 4§2 of the Charter.

The Committee found that the flat-rate compensation scheme for overtime for all active personnel of the national police force is such as to deprive them of the real increase required by the said Article. The Committee concluded that the functions of officers and commanders do not always equate to planning and management tasks and that, therefore, officers and commanders who did not carry out planning and management tasks were denied the increase for overtime required by Article 4§2 of the Charter.

### 2. Information provided by the Government

No new information is provided by the Government.

### 3. Assessment of the follow-up

The Committee firstly notes that, in its previous finding, it had requested that the Government indicate in its next report various approaches envisaged and/or adopted to resolve the issue of structural dysfunctions at the origin of overtime accumulation and the results obtained (Findings 2021). The information was not provided in this report. The Committee therefore cannot conclude that the situation has been brought into conformity with Article 4§2 of the Charter on this point.

Secondly, with regard to the situation of officers in the command corps, the Committee notes that it had previously requested more information about the content of the provisions of the specific instruction issued in the context of the Order of 5 September 2019. However, the information was not provided in this report. The Committee is thus unable to assess the situation in this respect anew and cannot conclude that it has been brought into conformity with Article 4§2 of the Charter on this point.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 4§2 of the Charter.

## 5th Assessment of follow-up: European Council of Police Trade Unions (CESP) v. France, Complaint No. 57/2009, decision on the merits of 1 December 2010, Resolution CM/ResChS(2013)9

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee held that the French system of compensation for overtime worked by active members of the national police force did not comply with Article 4§2 of the Charter.

The Committee concluded that police officers are treated differently depending on whether they belong to the command corps or the "*corps d'encadrement et d'application*". The functions of officers and commanders are not comparable to those of senior police officers (planning and management duties). Therefore the officers (*corps d'encadrement et d'application*) are denied the higher rate of remuneration required by Article 4§2 of the Charter.

### 2. Information provided by the Government

No new information is provided by the Government.

### 3. Assessment of the follow-up

The Committee notes that, in its previous finding, it had requested that the Government indicate in its next report various approaches envisaged and/or adopted to resolve the issue of structural dysfunctions at the origin of overtime accumulation and the results obtained (Findings 2021). The information was not provided in this report. The Committee is therefore unable to conclude that the situation has been brought into conformity with Article 4§2 of the Charter on this point.

With regard to the situation of officers in the command corps, the Committee notes that it had previously requested more information about the content of the provisions of the specific instruction issued in the context of the Order of 5 September 2019. The information was not provided in this report. The Committee is thus unable to assess the situation in this respect, once again, and cannot conclude that it has been brought into conformity with Article 4§2 of the Charter on this point.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 4§2 of the Charter.

## 5th Assessment of follow-up: Médecins du Monde - International v. France, Complaint No. 67/2011, decision on the merits of 11 September 2012, Resolution CM/ResChS(2013)6

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there were violations of the following Articles of the Charter:

- Article E read in conjunction with Article 31§1, due to the limited access of migrant Roma to adequate housing;
- Article E read in conjunction with Article 31§2, due to the eviction of migrant Roma without provision of alternative accommodation and to their ensuing homelessness;
- Article E read in conjunction with Article 16, due to a lack of sufficient measures to provide housing to migrant Roma families;
- Article E read in conjunction with Article 30, due to a lack of sufficient measures to provide housing to migrant Roma families;
- Article E read in conjunction with Article 19§8, due to breaches in the expulsion procedure of migrant Roma;
- Article E read in conjunction with Article 17§2, due to a lack of accessibility of the French education system to migrant Roma children;
- Article E read in conjunction with Article 11§1, due to difficulties in accessing healthcare for migrant Roma;
- Article E read in conjunction with Article 11§2, due to a lack of information and awareness-raising and of counselling and screening on health issues towards migrant Roma;
- Article E read in conjunction with Article 11§3, due to a lack of prevention of diseases and accidents of migrant Roma;
- Article E read in conjunction with Article 13§1, due to a lack of medical assistance for migrant Roma;
- Article 13§4, due to a lack of medical assistance for migrant Roma.

In its 2015 Findings, the Committee found that the situation which had led to a violation of Article E, read in conjunction with Article 17§2, had been brought into conformity with the Charter.

In its 2018 Findings, the Committee found that the situation which had led to violations of Article E, read in conjunction with Articles 13§1 and 19§8, and of Article 13§4 alone, had been brought into conformity with the Charter.

In its 2020 Findings, the Committee found that the situation which had led to the violations of Article E, read in conjunction with Articles 30, 31§§1-2 and 16, had been brought into conformity with the Charter.

The present finding will therefore assess the follow-up given to the remaining violations of the Charter, namely as regards Article E read in conjunction with Article 11§§1-3 of the Charter.

### 2. Information provided by the Government

The Government reiterates that a working group on healthcare has been set up within the framework of the National Commission for Slum Clearance. This working group, steered by the central administration and composed of workers in the field and health professionals, produced a methodological sheet designed to take the health

dimension into account in territorial strategies for slum clearance and to encourage the development of healthcare action plans.

**3. Assessment of the follow-up**

The Committee notes that the violations of Article 11 of the Charter at issue were rooted in the circumstances that applied at the material time, namely the sub-standard living conditions prevalent in Roma camp sites and the forced evictions from those camps. In its 3rd assessment of the follow-up, the Committee decided that the situation had been brought in conformity with the Charter with respect to most violations in the decision on the merits, in view of significant progress with respect to plans to improve the living conditions in reception areas for Roma and Travellers, or to eradicate existing slum-like settlements and resettle their inhabitants. As the circumstances that gave rise to the violations of Article 11 no longer apply, the Committee concludes that the situation as regards Article E, read in conjunction with Article 11§§1-3, can now be regarded as being in conformity with the Charter.

*Finding*

The Committee finds that the situation leading to the violation of Article E, read in conjunction with Article 11§§1-3, on the ground of various restrictions of the right to protection of health of Roma migrants, has been brought into conformity with the Charter.

## 5th Assessment of follow-up: European Council of Police Trade Unions (CESP) v. France, Complaint No. 68/2011, decision on the merits of 23 October 2012, Resolution CM/ResChS(2013)10

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee held that the French system of compensation for overtime worked by active members of the national police force did not comply with Article 4§2 of the Charter.

The Committee found that the flat-rate compensation scheme for overtime for all active personnel of the national police force is such as to deprive them of the real increase required by the said Article. The Committee concluded that the functions of officers and commanders do not always equate to planning and management tasks and that, therefore, officers and commanders who did not carry out planning and management tasks were denied the increase for overtime required by Article 4§2 of the Charter.

### 2. Information provided by the Government

No new information is provided by the Government.

### 3. Assessment of the follow-up

The Committee firstly notes that, in its previous finding, the Committee requested that the Government indicate in its next report various approaches it has envisaged and/or adopted to resolve the issue of structural dysfunctions at the origin of overtime accumulation and the results obtained (Findings 2021). The information was not provided in this report. The Committee therefore cannot conclude that the situation has been brought into conformity with Article 4§2 of the Charter on this point.

Secondly, with regard to the situation of officers in the command corps, the Committee notes that it previously requested more information about the content of the provisions of the specific instruction issued in the context of the Order of 5 September 2019. The information was not provided in this report. The Committee is thus unable to assess the situation in this respect anew and cannot conclude that it has been brought into conformity with Article 4§2 of the Charter on this point.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 4§2 of the Charter.

## 5th Assessment of follow-up: European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 11 September 2013, Resolution CM/ResChS(2014)2

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee found a violation of Article 15§1 of the Charter in respect of:

**A.** the right of children and adolescents with autism to be educated primarily in mainstream schools;

**B.** the right of young persons with autism to vocational training;

**C.** the work done in specialised institutions caring for children and adolescents with autism, which is not predominantly educational in nature.

The Committee also concluded that there was a violation of Article E of the Charter read in conjunction with Article 15§1 on the grounds of:

**D.** families having no other choice than to go abroad in order to educate their children with autism in a specialised school, which constitutes direct discrimination against them;

**E.** the limited funds in the State's social budget for the education of children and adolescents with autism indirectly disadvantaging persons with disabilities.

### 2. Information provided by the Government

#### A. With regard to the violation of Article 15§1 of the Charter concerning the right of children and adolescents with autism to be educated primarily in mainstream schools

In its report, the Government provides information on the number of pupils with autism spectrum disorders (ASD) in mainstream schools (41 600 in September 2021) and on the number of ASD teaching units opened in nursery schools (25 in September 2019, 40 in September 2020, 49 in September 2021 and 57 in September 2022) and in primary schools (20, 31, 33 and 30 respectively).

In addition, the Government reiterates information already provided in its previous report, in particular on the objectives of Law No. 2019-791 on a School of Trust and the implementation of this law (see Findings 2021).

#### B. With regard to the violation of Article 15§1 of the Charter concerning the right of young persons with autism to vocational training

The Government states that it has made the employment of workers with disabilities a policy priority. It launched work in preparation for the National Disability Conference held in the spring of 2023 to set the course for its term of office. In the field of employment, efforts are focused on diagnosis, training, support for businesses and job retention in order to reduce the number of people losing their jobs.

In addition, the Government reiterates information already provided in its previous report, in particular on the strategy for the employment of people with disabilities (see Findings 2021).

**C. With regard to the violation of Article 15§1 of the Charter concerning the work done in specialised institutions caring for children and adolescents with autism, which is not predominantly educational in nature**

The Government reiterates the information provided in its previous report (see Findings 2021).

**D. With regard to the violation of Article E of the Charter read in conjunction with Article 15§1 on the ground that families have no other choice than to go abroad in order to educate their children with autism in a specialised school, which constitutes direct discrimination against them**

The Government reiterates the information provided in its previous report (see Findings 2021).

**E. With regard to the violation of Article E of the Charter read in conjunction with Article 15§1 on the ground of the limited funds in the state's social budget for the education of children and adolescents with autism indirectly disadvantaging persons with disabilities**

The Government reiterates the information provided in its previous report (see Findings 2021).

**3. Assessment of the follow-up**

**A. With regard to the violation of Article 15§1 of the Charter concerning the right of children and adolescents with autism to be educated primarily in mainstream schools**

On this point, the Committee refers to its fifth assessment of the follow-up to the decision on the merits of Complaint No. 13/2002, Autism-Europe v. France (Findings 2023).

**B. With regard to Article 15§1 of the Charter concerning the right of young persons with autism to vocational training**

The Committee notes that the Government has not provided any information that would enable it to reassess the situation. Consequently, the Committee reiterates its finding that the situation has not been brought into conformity on this point.

**C. With regard to the violation of Article 15§1 of the Charter concerning the work done in specialised institutions caring for children and adolescents with autism, which is not predominantly educational in nature**

In the absence of any new information, the Committee is unable to reassess the situation. Consequently, the Committee reiterates its finding that the situation has not been brought into conformity on this point.

**D. With regard to the violation of Article E of the Charter read in conjunction with Article 15§1 on the ground that families have no other choice than to go abroad in order to educate their children with autism in a specialised school, which constitutes direct discrimination against them**

In the absence of any new information, the Committee is unable to reassess the situation. Consequently, the Committee reiterates its finding that the situation has not been brought into conformity on this point.

**E. With regard to the violation of Article E of the Charter read in conjunction with Article 15§1 on the ground of the limited funds in the state's social budget for the education of children and adolescents with autism indirectly disadvantaging persons with disabilities**

In the absence of any new information, the Committee is unable to reassess the situation. Consequently, the Committee reiterates its finding that the situation has not yet been brought into conformity on this point.

*Finding*

The Committee finds that the situation has not been brought into conformity with the Charter, either with Article 15§1 with regard to the right of young persons with autism to vocational training and as regards the work done in specialised institutions caring for children and adolescents with autism not being predominantly educational in nature, or with Article E of the Charter, read in conjunction with Article 15§1, with regard to the funds in the State's budget allocated for the education of children and adolescents with autism, and the fact that families have no choice but to go abroad in order to educate their children with autism in a specialised school.

## 4th Assessment of follow-up: European Council of Police Trade Unions (CESP) v. France, Complaint No. 101/2013, decision on the merits of 27 January 2016, Resolution CM/ResChS(2016)5

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee found the following violations:

### A. Violation of Article 5 of the Charter (right to organise)

The Committee held that where the National Gendarmerie is functionally equivalent to a police force, the Defence Code restricts the right to organise guaranteed under Article 5, in a manner that is not necessary in a democratic society for the protection of, *inter alia*, national security within the meaning of Article G of the Charter.

The Committee considered, with regard to freedom to establish, join or not join organisations, in particular, that membership of National professional associations of military personnel ("APNMs") was restricted to military personnel of any rank, fighting force or related unit defined in Article L4111-2 of the Defence Code. It found that limiting the membership of APNMs to active military personnel was excessive in light of Article 5 of the Charter, as retired members of the Gendarmerie were excluded.

The Committee also noted, in this respect, that, under the Defence Code, the APNM's statutes must not undermine the values of the Republic or fundamental principles of military service and the obligations of members of the armed forces. It considered that the fundamental principles of the military service and the obligations of members of the armed forces constituted restrictions on the statutes of APNMs and on the police forces' right to organise which were excessive with regard to Article 5 of the Charter.

With regard to trade union prerogatives, the Committee noted that, under the Defence Code, members of APNMs benefit from the essential guarantees for their freedom of expression without prejudice, however, to the restrictions on the rights and duties of members of the armed forces. It considered that these restrictions to the freedom of expression applying to members of the armed forces constrain trade union prerogatives of associations of members of the Gendarmerie to an extent that exceeds the restrictions accepted under Article 5.

As to the protection of trade union representatives, the Committee noted that the general non-discrimination provision on the basis of military personnel belonging or not belonging to an APNM and the essential guarantees for freedom of expression did not offer sufficient protection to APNM representatives from harmful consequences, in particular reprisals, that the exercise of their representative activities or prerogatives may have on their employment. The Committee held that basic guarantees for the protection of APNM representatives, extending beyond general non-discrimination and freedom of expression, should be incorporated as a primary obligation into the Defence Code.

### B. Violation Article 6§2 of the Charter (right to collective bargaining)

The Committee held that APNMs are not provided with the means to effectively represent their members in all matters concerning their material and moral interests. It noted in particular that, although, in accordance with Law No. 2015-917, APMM representatives may take part in the dialogue organised at national level by the Defence and the Interior Ministries, as well as by the military authorities, on questions of a general nature concerning the conditions applying to military personnel, APNMs

representing at least three fighting forces and two attached units may sit on the CSFM (L4123-8-II of the Defence Code) and that their activity was restricted by the fundamental principles of military service set out in the Defence Code, which were excessive in the light of Article 6§2 of the Charter.

**2. Information provided by the Government**

As in its previous report, the Government recalls the constituent elements of Law No. 2015-917 of 28 July 2015, which establishes a legal regime specific to national professional associations of military personnel (cf. Articles L.4126-1 et seq. of the Defence Code), set out at regulatory level (Articles R4126-1 et seq. of the Defence Code, and the Instruction of 24 July 2019 relating to the resources granted to national professional associations of military personnel). The Government also underlines that freedom of professional association has been recognised for the military since the judgment of the European Court of Human Rights in *Matelly v. France* (judgment of 2 October 2014), having enabled the impetus for a major reform within armed forces and attached formations.

As to the *measures put in place to comply with the provisions of Article 5 of the Charter (freedom to form associations and to pursue trade union prerogatives),* the report recalls that the Decree of 21 October 2016 distinguishes three categories of national military professional associations (APNM): 1) declared APNMs; 2) declared APNMs, recognised as representative in respect of one or more Armed Forces and attached formations (FAFR); 3) declared APNMs, recognised as representative in respect of one or more FAFR, which sit on the *Conseil supérieur de la fonction militaire* (CSFM).

The report states that the APNMs exercise their right to organise in accordance with the provisions of Articles R4126-10 and R4126-15 of the Defence Code. These provisions allow members of these associations to benefit from a credit for associative time (managed by the Directorate of Human Resources of the Ministry of the Armed Forces (DRH-MD)) to devote themselves to associative activity. They can also collect membership forms and subscriptions within the military fora.

In addition, the members of the representative APNMs sitting on the CSFM may speak on behalf of the APNM to which they belong. The communiqués and reports of the CSFM and the *Conseil de la fonction militaire gendarmerie* (CFMG) may be consulted by the APNMs.

As to the protection of trade union representatives, the Government states that in order to respect the principle of non-discrimination between members and non-members of the APNM, military personnel receiving communications from the APNM may not be questioned about their situation with regard to the APNM, let alone be the subject of files.

Concerning the violation found under Article 6§2 of the Charter, the Government provides information with regard subsidies allocated to APNMs and to the means of communication dedicated to APNMs. According to the report, representative APNMs may benefit from subsidies distributed in proportion to the number of members, and/or in proportion to the number of seats on the CSFM in the case of APNMs sitting on that body. Each association applies for a subsidy from the DRH-MD of the Ministry of the Armed Forces.

Moreover, the APNMs may create their own communication media and, as part of their internal communication, they may use the administration's digital means of communication. They also benefit from a dedicated space on APG Connect, managed by the HRD-MD. At the local level, the documents emanating from the APNM are displayed on boards arranged in such a way as to ensure the conservation of these documents. These panels must be placed in premises (corridors in particular) which

are easily accessible to staff, except in premises which are specially assigned to receiving the public. The posted documents are handed over simultaneously to the administrative training commander or head of organisation. They must bear the name of the issuing association and the date.

**3. Assessment of the follow-up**

**A. Violation of Article 5 of the Charter (right to organise)**

The Committee refers to its previous findings (Findings 2020 and 2021), as well as to its latest conclusion concerning 5 (Conclusions 2022 – France), where it maintained that the situation in France was not in conformity with the Charter on the ground that the right of members of the armed forces to organise is not guaranteed in practice.

The Committee notes that the information provided in the present report is similar to that previously submitted to the Committee, and assessed by it in its 2021 Findings.

- *Freedom to associate and to pursue trade union prerogatives*

In its previous findings (Findings 2020 and 2021), the Committee noted that the Defence Code sets out a framework for, as well as resources dedicated to, the exercise of APNM activities, which make it possible to guarantee the right to organise of military personnel. The Committee also noted that the CSFM is the institutional framework in which the military can express their opinions on matters of a general nature to the Minister of the Armed Forces and in which the elements constituting the status of all military personnel are examined. While the Committee noted that 16 seats in the CSFM were reserved for members of the representative APNMs, it also observed that the conditions set out in Article L 4126-8-II and Article L3211-1 of the Defence Code for allocating the 16 seats for the representative APNMs make it impossible in practice for them to participate in this body since, in practice, the 16 seats reserved for members of the APNM have, to date, always remained vacant.

The Committee, therefore, in the previous Finding (Findings 2021), invited the Government to provide information in its next report on measures taken or envisaged to ensure the right of APNMs to sit on the CSFM.

No information is provided in this respect.

The Committee also notes that Article L4111-2 of the Defence Code, which restricts membership of the APMNs to active military personnel, and was considered by the Committee in its decision as being excessive with regard to Article 5, since pensioned members of the Gendarmerie were kept out, is still in force. The same holds true with regard to the provisions of the Defence Code which provide that APNM statutes shall not undermine the values of the Republic or fundamental principles of military service or the obligations of members of the armed forces, a restriction considered by the Committee as excessive with regard to Article 5 of the Charter.

Consequently, the Committee considers that the situation has not yet been brought into conformity with the Charter.

- *Protection of APNM members*

The Committee recalls that, in its decision on the merits in this case, it considered that the general non-discrimination provision based on the membership or non-membership of military personnel of an APNM and the essential guarantees for the freedom of expression did not provide sufficient protection to APNM representatives against harmful consequences, in particular reprisals, that the exercise of their

representative activities or prerogatives may have on their employment. It held that basic guarantees for the protection of APNM representatives, extending beyond general non-discrimination and freedom of expression, should be incorporated as a primary obligation into the Defence Code.

The Government limits its submission to indicating that, in order to respect the principle of non-discrimination between members and non-members of the APNM, military personnel receiving communications from the APNM may not be questioned about their situation with regard to the APNM. The report does not however contain any information on the incorporation of basic guarantees for the protection of APNM representatives, going beyond general non-discrimination and freedom of expression in the Defence Code.

Consequently, the Committee considers that the situation has not been brought into conformity on this point and that the Charter rights at stake are not guaranteed in a concrete and effective manner.

- *Subsidies allocated to APNMs*

The Government underlines that the representative APNMs may benefit from subsidies distributed in proportion to the number of members.

The Committee recalls that, in its previous finding (Findings 2021), it noted that the viability of some APNMs representing services that are by nature small in size may depend on the allocation of such subsidies. The Committee reiterated its request for information on the calculation methods used to allocate subsidies to the six APNMs recognised as representative by the decree of 11 December 2019, and the amounts actually paid. It also reiterated its request that the Government specify whether the credits opened in the budget programmes of the "defence" mission are intended to be continued. The Committee also noted, previously, that, under the current provisions, only a "Union of APNMs" could theoretically come to sit on the CSFM because of the number of existing armed forces. Therefore, in the event that such a "Union of the APNMs" were to become a member of the CSFM, the Committee requested that the Government indicate how the funds would then be distributed.

The report does not address the above-mentioned questions of the Committee and limits its submission to indicating that representative APNMs may benefit from subsidies distributed in proportion to the number of members and each association applies for a subsidy from the DRH-MD of the Ministry of the Armed Forces.

The Committee considers that the situation has not been brought into conformity on this point.

**B. Violation of Article 6§2 of the Charter (right to collective bargaining)**

In the previous finding (Findings 2021), the Committee took note that in 2018, the Council of State annulled certain domestic provisions which obliged the APNMs requesting recognition of their representativeness to transmit a list of their members to a body directly under the authority of the Ministry. It asked for information on how the control of membership lists declared by the APNMs is now carried out and to what extent these data are retained or returned to the APNMs. No information is provided in the report in this respect.

In its decision on the merits, the Committee also considered, under Article 6§2, that under the provisions of the Defence Code, the APNM statutes must not undermine the values of the Republic or fundamental principles of military service, or the obligations of members of the armed forces, limitations which were considered by the Committee as excessive with regard to Article 6§2 of the Charter. The report does not

contain any information in this respect and the Committee understands that these restrictions are still in force.

The Committee also recalls that the report does not provide any response to the Committee question in the previous findings on the measures taken or envisaged to ensure the right of APNMs to sit on the CSFM.

The Committee therefore considers that the situation has not been brought into conformity with the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 5 and 6§2 of the Charter.

## 3rd Assessment of follow-up: European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France, Complaint No.114/2015, decision on the merits of 24 January 2018, Resolution CM/ResChS(2018)8

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee found violations of the following provisions of the Charter:

#### A. Violation of Article 17§1 of the Charter

The Committee found a violation of Article 17§1 of the Charter due to:

- the shortcomings noted in the national arrangements for the provision of shelter, , assessment of and guidance for unaccompanied foreign minors;
- delays in the appointment of an ad hoc administrator for unaccompanied foreign minors;
- the detention of unaccompanied foreign minors in waiting areas and hotels;
- the use of bone testing to determine the age of unaccompanied foreign minors, considered inappropriate and ineffective;
- the legal uncertainty surrounding access to effective remedy for unaccompanied foreign minors.

#### B. Violation of Article 17§2 of the Charter

The Committee found a violation of Article 17§2 of the Charter due to the lack of access to education for unaccompanied foreign minors aged between 16 and 18.

In its Findings 2020, the Committee concluded that the situation which had led to the findings of violations of Article 17§2 had been brought into conformity.

#### C. Violation of Article 7§10 of the Charter

The Committee found a violation of Article 7§10 of the Charter because of inappropriate accommodation of minors or their exposure to life on the street.

#### D. Violation of Article 11§1 of the Charter

The Committee found a violation of Article 11§1 of the Charter due to the lack of access to health care for unaccompanied foreign minors.

#### E. Violation of Article 13§1 of the Charter

The Committee found a violation of Article 13§1 of the Charter due to the lack of access to social and medical assistance for unaccompanied foreign minors.

#### F. Violation of Article 31§2 of the Charter

The Committee found a violation of Article 31§2 of the Charter due to the failure to provide shelter for unaccompanied foreign minors.

### 2. Information provided by the Government

### A. Violation of Article 17§1 of the Charter

- *on the shortcomings identified in the national system for the provision of shelter, assessment of and guidance for unaccompanied foreign minors*

The Government states that Law No. 2016-297 of 2016 relating to the protection of children, as amended in February 2022, provides specific protection allowing any person declaring themselves to be unaccompanied minors to be placed in shelter as part of temporary emergency reception during which their situation must be assessed. Under the Social Action and Families Code (CASF), the president of the departmental council puts in place a temporary emergency reception for a period of five days for unaccompanied foreign minors. It mainly consists of accommodation and material assistance.

The Government mentions the entry into force of Decree No. 2019-57 of 30 January 2019 relating to the methods of assessment of persons declaring themselves minors and temporarily or permanently deprived of the protection of their family and authorising the creation of processing of personal data relating to these people. This decree sets out the terms of application of the Code for entry and residence of foreigners and the right to asylum (CESEDA) which allows fingerprints, as well as a photograph of foreign nationals declaring themselves as minors temporarily or permanently deprived of the protection of their family, to be taken, stored and subjected to automated processing.

The Government also states that the decree of 20 November 2019, adopted pursuant to article R. 221-11 of the Social Action and Family Code, relating to the methods of evaluating people presenting themselves as minors and temporarily or permanently deprived of protection of their family, introduces the possibility for the president of the departmental council to ask the prefects for Minority Assessment Assistance Files (AEM), including any useful information for determining the identity and situation of such persons. According to the Government, the AEM file is therefore intended to temporarily accommodate the biometric and alphanumeric data of people who declare themselves to be minors, during their assessment, until their final placement in child welfare (ASE). It makes it possible to better identify people who declare themselves to be unaccompanied minors as part of the assessment of their situation, and has therefore made it possible to relieve the congestion of ASE services, allowing them to focus their action on people who are actually eligible.

In addition, Law No. 2022-140 of 7 February 2022 relating to the protection of children makes the use of the AEM device compulsory throughout the country. Furthermore, the provisions of CESEDA indicate that the ministry responsible for foreign affairs and the ministry responsible for immigration are authorised to implement the system of automated processing of personal data called “VISABIO”. The purposes of this processing are to facilitate the determining and verifying of the identity of a foreigner who declares him/herself a minor and who is temporarily or permanently deprived of the protection of his/her family. The person declaring themselves an unaccompanied minor is referred to the prefecture for their fingerprints to be recorded in the AEM, with a view to comparing them with the VISABIO.

The Government underlines that the new provisions of the Social Action and Family Code, introduced in 2022, make it a general requirement for young people to be referred to the prefecture with a view to implementing the AEM protocol when it is not clear that the person being assessed is a minor. They also provide for the State to make a fixed contribution to the costs incurred by the *departments* in providing shelter and assessing minority and isolation.

According to the Government, the Social Action and Family Code also provides that in the context of temporary emergency reception, the persons declaring themselves

as unaccompanied minors must be able to benefit from a period of respite before their assessment. This respite time is a period during which the young person is taken care of (health and humanitarian assistance), with an interview aimed simply at assessing their health needs. During the sheltering period (temporary emergency reception), the departmental council must assess the situation of the person concerned. National provisions also define the terms of this evaluation and set the benchmark, in order to guarantee the relevance and uniformity of practices throughout the territory.

The Government also emphasises that, under the Social Action and Family Code, the State participates financially in the care of people presenting themselves as unaccompanied minors. A decree of June 2019 specifies the conditions of this financial participation, indicating that the person must benefit from an initial assessment of their health needs and, if necessary, referral for care. They must also benefit from accommodation adapted to their situation, as well as initial social support.

The Government indicates that Law No. 2022-140 of 7 February 2022 relating to the Child Protection sets out further provisions contributing to better care for young people presenting themselves as unaccompanied minors. According to this law, young people presenting themselves as unaccompanied minors are accommodated in establishments authorised and controlled by the president of the departmental council for the care of protected minors and young people under 21. This law also bans hotel accommodation and support until young people are 21 years old. Unaccompanied minors also benefit from support from child welfare services in their efforts to obtain a residence permit upon reaching the age of majority or, where applicable, an asylum application.

The Government also reports that, as a follow-up to the abovementioned order of 20 November 2019, a guide to best practices on assessments aimed at verifying the age and unaccompanied person status of people declaring themselves to be unaccompanied minors was published on 23 December 2019. The guide was drawn up by a working group composed of representatives from different ministries with Local and Regional Authorities, judicial authorities, departments, and the voluntary sector. The guide is intended for professionals who may be required to deal with persons identifying themselves as unaccompanied minors. It covers the relevant legal framework, identifies best practices, and provides a detailed description of the social assessment procedure.

The Government recalls that in order to harmonise practices for the assessment of minority and isolation, training (one to two sessions per year) for professionals responsible for assessing the situation of unaccompanied minors has been conducted since 2016 by the national training centre for the territorial civil service and the national school for the judicial protection of youth. This three-day training course includes conferences, round tables, testimonies from professionals, etc, and its objectives are in particular to ensure the harmonisation of the assessment of minority and isolation; the professionalisation of the evaluation processes; provision of knowledge on the migratory journey and trauma of unaccompanied minors, knowledge of the legislation applied to the status of foreign minors and raising evaluators' awareness of human trafficking and the identification of potential victims.

Finally, the Government indicates that the 2020-2022 Child Protection Strategy was published in October 2019. The objective of this Strategy is to improve practices in child protection by providing for specific measures aimed at "facilitating the social and professional integration of former unaccompanied minors when they reach the age of 18". This strategy proposes to ensure that the risks of disruption in access to employment or training are reduced when these young people reach adulthood. The Strategy was implemented locally through departmental child protection contracts concluded between the prefect, the regional health agency and the president of the

departmental council. With financial support from the State, the departments were able to develop measures that permitted, for example, the creation of a system including accommodation in outsourced housing for one or more young adults in shared accommodation or the strengthening of social and administrative support.

- *delays in the appointment of an ad hoc administrator for unaccompanied foreign minors*

The Government specifies the procedures for appointing and compensating ad hoc administrators, in the light of the provisions of the Act on Parental Authority of 4 March 2002, which provides that "*in the absence of a legal representative accompanying the minor, the public prosecutor, notified as soon as a minor enters the waiting area or a minor requesting asylum, immediately appoints an ad hoc administrator. The ad hoc administrator assists the minor during their retention in the waiting area or during their asylum application and ensures their representation in all administrative and jurisdictional procedures relating to this retention.*"

With regard specifically to the delays in the appointment of an ad hoc administrator, the Government indicates that practices regarding the appointment of a legal representative vary from one *département* to another. The opening of guardianship (appointed by the judge of family affairs, according to Article 390 of the Civil Code) being more protective for young people, this mode of legal representation must be favoured. However, according to the Government, the time limits for opening a guardianship measure may be longer, and, as the provisions of the Civil Code do not expressly consider the case of unaccompanied minors, the practice of guardianship judges varies. For example, some judges consider that the fact that parents are abroad is insufficient to justify the opening of guardianship. The Government also states that a significant proportion of unaccompanied minors in conflict with the law are not subject to an assessment of their age and their isolation by the Child Welfare services. However, the opening of guardianship is most often only considered if the minority is confirmed by an effective evaluation.

The Government reiterates that (see Findings 2020), in two rulings dated 22 May 2007 and 6 May 2009, the Court of Cassation established the principle that detention in a waiting area is null and void if the ad hoc administrator is not appointed immediately. In a ruling of 25 December 2012, the Paris Court of Appeal recalled that the function of the ad hoc administrator is not limited to representing the minor in administrative and jurisdictional bodies, but also includes assisting the minor during his or her stay in the waiting area.

- *the detention of unaccompanied foreign minors in waiting areas and hotels*

The Government states that when a person declares themselves as an unaccompanied minor and does not meet the conditions for entering French territory or that of another Schengen area, they are placed in the waiting area. The border police must provide the person held in the waiting area with a report of refusal of entry into the territory, as well as a notification of detention and placement in the waiting area which specifies the reasons for continued detention and the rights of the person concerned. These rights include the right to "hotel-type" accommodation (Art. L.341-6 of CESEDA). According to the Government, there is no age and isolation assessment in the waiting area. The public prosecutor is immediately notified of the presence of a minor and immediately appoints an assistant (Red Cross). The assistant represents the interests of the minor, assisting them in administrative and jurisdictional procedures relating to their stay and entry into France.

The Government indicates that medical examination is obligatory for all minors in the waiting area. The Red Cross, by delegation from the Ministry of the Interior (Directorate-General for Foreigners), manages accommodation and provides the

necessary assistance, ensuring a continuous presence on the site. Internet access is possible with the support of the Red Cross and a telephone card is given to use in the booths.

Young people wishing to submit an asylum application are kept in the waiting area during the processing. A representative of the French Office for the Protection of Refugees and Stateless Persons is present and examines the person's situation, issuing an opinion on the manifestly founded or unfounded nature of their request.

The Government provides also the following statistical data: out of 3 791 placements in the waiting area in Roissy Charles de Gaulle airport in 2020, the share of unaccompanied minors was 1.87%. Out of 71 unaccompanied minors, 42 were over 13 years old and 29 under 13 years old. Out of 3 206 placements in the Roissy waiting area in 2021, the share of unaccompanied minors was 3.06%. Out of 98 unaccompanied minors, 82 were over 13 years old and 16 under 13 years old.

- *the use of bone testing to determine the age of unaccompanied foreign minors considered inappropriate and ineffective*

The Government recalls that Article 388 of the Civil Code strictly regulates the use of bone radiological examination which is possible only in the absence of valid identity documents and when the alleged age is not probable and can then only be carried out by decision of the judicial authority and after obtaining the agreement of the person concerned.

According to the Government, since the Committee's decision on the merits of the present case, the guarantees surrounding the use of these examinations have been further strengthened by the *Conseil constitutionnel* in its decision No. 2018-768 of 21 March 2019, which considered that only the judicial authority is competent to decide whether to resort to such examinations; an examination can only be ordered if the person in question is unable to present valid identity documents and if the age they claim is not credible; the informed consent of the interested party must be obtained, in a language that they understand; the adult age of the person concerned cannot be inferred from the refusal to submit to such an examination; the judicial authority guarantees that the assessment of a person's age takes into account all other elements that may have been collected; radiological examinations are only one of several elements; when a doubt persists, the magistrate must ensure that it benefits the minor of the person concerned.

- *legal insecurity surrounding access to an effective remedy for unaccompanied foreign minors*

The Government indicates that the inter-ministerial Circular of 25 January 2016 relating to the mobilisation of State services to departmental councils concerning minors temporarily or permanently deprived of the protection of their family, indicates that the young person must be given a document attesting of the assessment made in the event of a proven majority. This consists, in practice, of a notification of the decision, reasoned and which mentions the deadlines and methods of appeal. In this way, the person can access all the rights to which they are entitled.

The Government refers to the Decree of 20 November 2019 which provides that "if the evaluated person makes a request, the president of the departmental council communicates to him/her, in addition to his decision, the social evaluation report and the reasoned opinion of the evaluator. Also, when the person is not recognised as a minor temporarily or permanently deprived of the protection of his or her family, the president of the departmental council notifies the person concerned of a reasoned decision to refuse care, mentioning the appropriate avenues and time limits for appeal".

**B. Violation of Article 11§1 and 13§1 of the Charter**

The Government states that, during the emergency temporary reception period, an initial assessment of the health needs of unaccompanied minors is carried out. This is a process distinct from the assessment of minority and isolation, the sole purpose of which is to direct the person to appropriate care as soon as possible.

According to the Government, since 2019, the State has provided a contribution of €100 per person to carry out an initial assessment of health needs.

Moreover, a guide to good practices in this respect has been published in the Official Health, Social Protection and Solidarity Bulletins of 30 November 2022. It is aimed more particularly at professionals in child welfare - including the referring doctor for child protection. It is also aimed at the departmental child welfare services responsible for implementing procedures and support for people presenting themselves as unaccompanied minors. This guide recommends carrying out a health appointment in several stages: - during the first two days of temporary emergency reception, a first assessment interview of health needs which aims to identify a health problem requiring urgent treatment or a medical history; - followed by a more comprehensive medical appointment, once the person has stabilised in securing their basic needs, to be organized at least three days after the first interview.

The Government states that the unaccompanied minors taken into the care of child welfare services following their assessment and upon their admission to the child welfare services, benefit from complete health coverage. In addition, like every protected minor, upon entry into the child protection system they benefit from a complete health check-up. This assessment should make it possible to initiate regular and coordinated medical monitoring and has been covered by health insurance since 2020.

**3. Assessment of the follow-up**

The Committee takes note of the information provided by the Government.

**A. Violation of Article 17§1 of the Charter**

- *on the shortcomings identified in the national system for the sheltering, assessment and guidance system for unaccompanied foreign minors*

The Committee previously took note that the Ministry of Interior intended to roll out the AEM system across the country and asked information on whether the system had been implemented nationwide. The Committee notes, on the basis of the information provided by the Government, that the Law of 7 February 2022 relating to the protection of children makes use of the AEM system compulsory throughout the country in order to facilitate the determination and verification of the identity of a foreigner who declares him/herself a minor who is temporarily or permanently deprived of the protection of his family. The Committee also takes note that the law now makes it compulsory, under penalty of financial sanctions for departments, to use the AEM file in the minority assessment procedure for young foreigners. From now on, all people declaring themselves minors will be recorded in the file at the prefecture, “except when the person’s minority is obvious”. The Government, nevertheless, does not provide a reply to the Committee’s previous request for data, broken down by *department* on the refusal rates for applications by persons claiming to be minors seeking access to child protection services.

As to shortcomings concerning the system of provisional accommodation pending the outcome of the age and “unaccompanied” status assessment of the applicants, in its

decision on the merits in the present complaint, the Committee noted from the Government's submissions that, given the number of young persons concerned, it was not possible to offer shelter to all of them. The Committee notes the increase in 2021 in the number of arrivals of unaccompanied minors. Between 1 January and 31 December 2021, 11 315 unaccompanied minors recognised as such by the judicial authority were entrusted to the *départements*, an increase by 18.8% compared with the previous year. Between January and December 2022, 14 577 unaccompanied minors were entrusted to the *départements* for child protection by judicial decisions, which is an increase in the flow of 31.7% compared to December 2021 (11 069 unaccompanied minors). According to the Government, this increase is leading to the saturation of reception and support systems.

The Committee takes note of measures intended to improve the effectiveness of the national assessment, shelter and guidance system, including the development of methods of age assessment publication of a guide of good practices for assessing the situation of minors and the implementation of training activities for professionals responsible for assessing the situation of unaccompanied minors. However, in the absence of statistical information in this respect, the Committee considers that the information provided does not show that all young foreigners declaring themselves to be unaccompanied minors are provided with the provisional shelter to which they are entitled under the national provisions.

The Committee also takes note that the 2020-2022 Child Protection Strategy, published in October 2019, designed to improve practices in child protection by providing for specific measures aimed at "facilitating the social and professional integration of former unaccompanied minors when they reach the age of 18". With financial support from the State, the *départements* were able to develop measures allowing, for example, the creation of a system including accommodation in outsourced housing for one or more young adults in shared accommodation. The Government, however, does not address the Committee's request for statistical information on the implementation and results of this strategy.

In the light of the above, the Committee considers that, despite certain positive developments, the situation has not yet been brought into conformity with the Charter.

- *delays in the appointment of an ad hoc administrator for unaccompanied foreign minors*

The Committee takes note of the legal provisions concerning the procedures for appointing and compensating ad hoc administrators and notes that the administrator assists the minor during their retention in the waiting area or during their asylum application and ensures their representation in all administrative and jurisdictional procedures relating to this retention.

With regard to the delays in the appointment of an ad hoc administrator, the Committee notes that practices regarding the appointment of a legal representative vary from one *départements* to another. The Committee also takes note of important delays in the opening of guardianship under the Civil Code, which is more protective for young people, because the provisions of the Civil Code do not expressly consider the case of unaccompanied minors and the practice of judges varies throughout the country.

The Committee already took note of the 2007 and 2009 rulings of the Court of Cassation (Findings 2020) which established the principle of the nullity of maintaining a person in a waiting area if the ad hoc administrator was not appointed immediately. However, in the absence of further information on the implementation of these decisions of the Court of Cassation, the information at the Committee's disposal does not show that the ad hoc administrator is appointed without delay. Considering that

without such a guardian such children may be exposed to serious protection risks, the Committee considers that the situation has not yet been brought into conformity with the Charter.

• *the detention of unaccompanied foreign minors in waiting areas and hotels*

The Government confirms that when a person, including unaccompanied foreign minors, does not meet the conditions for entering French territory, they are placed in a waiting area. These persons have the right to “hotel-type” accommodation under the provisions of CESEDA, but there is no age and isolation assessment in the waiting area, but a medical examination is provided and obligatory for all foreign minors. The Committee also takes note of the statistical information provided concerning the placement of unaccompanied minors in waiting areas in Roissy Charles de Gaulle airport in 2021.

The Committee notes that, under Article 7 of Law of 7 February 2022 (Tarquet Law), it will no longer be possible to use hotels to accommodate minors, even for shelter, and even in the event of an emergency, contrary to current practice. This measure will become effective within two years to allow *départements* to develop alternative and more appropriate care solutions. During this transitional period, no minor can be accommodated for more than two months in a hotel and must be accommodated in reinforced security conditions. However, the majority of the decrees implementing the Tarquet Law have not yet been published.

Reiterating that accommodation of minors living together with adults and the accommodation of minors in hotels is contrary to the Charter, the Committee concludes that the situation is not yet in conformity with the Charter on this point.

• *the use of bone testing to determine the age of unaccompanied foreign minors considered inappropriate and ineffective*

The Committee notes that the use of bone radiological examination is strictly regulated under the Civil Code, and that the guarantees surrounding the use of these examinations have been further strengthened. The Committee reiterates (see Findings 2021) its position that such age assessments based on bone examination can have serious consequences for the juvenile and are inappropriate and ineffective.

The Committee considers that the situation has not been brought into conformity with the Charter.

• *legal insecurity surrounding access to an effective remedy for unaccompanied foreign minors.*

The Committee notes that the report does not contain any information in response to the Committee's conclusions on delays in appointing a legal representative to represent a juvenile in court proceedings.

Consequently, the Committee considers that the situation has not been brought into conformity on this point.

**B. Violation of Article 7§10 of the Charter due to the inappropriate accommodation of minors or their exposure to life on the street**

The Committee notes that the Government does not provide any specific information addressing the issue of the exposure of unaccompanied minors to life on the street. The Committee reiterates that the Government must take the necessary measures to guarantee the minors the special protection against physical and moral risks required by Article 7§10. These risks could represent a serious threat to their enjoyment of the

most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity.

Consequently, the Committee considers that the situation has not been brought into conformity on this point.

**C. Violation of Articles 11§1 and 13§1 of the Charter due to the lack of access to health care for unaccompanied foreign minors and the lack of access to social and medical assistance for unaccompanied foreign minors.**

The Committee notes that unaccompanied minors taken into care by the child welfare services following their assessment and upon their admission to the child welfare, benefit from complete health coverage. In addition, like every protected minor, upon entry into the child protection system, they benefit from a complete health check-up.

The Committee also takes note of the State's financial contribution to carrying out an initial assessment of the health needs of unaccompanied foreign minors. It also takes note of the authorities' efforts concerning the preparation of a guide on good practices for professionals in child welfare services who conduct a first assessment interview concerning health needs requiring urgent treatment.

In its decision on the merits in this complaint, the Committee was concerned by the fact that a certain number of unaccompanied foreign minors, declared to be "adult" by the authorities and not meeting the of three-months residence requirements on the territory, have access neither to universal healthcare coverage, nor to the State medical assistance. In the same decision, the Committee also expressed concern, on the basis of submissions by the Defender of Rights, that the quality of care provided to the unaccompanied foreign minors varies from one *département* to another and that, in some cases, this care was provided under unsatisfactory conditions.

In its previous finding (Findings 2021), the Committee therefore reiterated its request for information on the access to health services of persons who have not been recognised as unaccompanied minors and who have initiated legal proceedings to challenge this assessment. The Committee in particular requested information on the situation of persons declared to be of full age who do not meet the three-month residence requirement in the territory.

The Committee understands, on the basis of the information provided, that during the emergency temporary reception period, an initial assessment of the health needs of unaccompanied minors is carried out. However, the Government provides no information as to the access to health by foreigners declared to be "adult" by the authorities and not meeting the conditions of three months' residence on the territory.

Also, apart from a guide to good practices which was published in the Official Health, Social Protection and Solidarity Bulletins in November 2022 for professionals in child welfare, which will certainly have positive results in the standardisation of the healthcare provided to unaccompanied minors throughout the territory, the Government does not specifically address the issue of different practices in different *départements* in France, as to the provision of healthcare for minors, and does not provide any information as to the measures taken or envisaged in this respect.

Consequently, the Committee considers that the situation has not yet been brought into conformity with the Charter.

**D. Violation of Article 31§2 of the Charter due to the failure to provide housing for unaccompanied minors.**

In the previous finding (Findings 2021), the Committee reiterated its request that the Government specify how it intends to guarantee the right to housing for

unaccompanied foreign minors, and in particular by what means and in what time frame it intends to prevent and mitigate the situation of homeless foreign minors with a view to its elimination.

The Government does not provide any answer in this respect.

The Committee considers that the situation has not been brought into conformity on this point.

*Finding*

The Committee finds that the situation has not been brought into conformity with Articles 17§1, 7§10, 11§1, 13§1 and 31§2 of the Charter.

## 3rd Assessment of follow-up: European Roma and Travellers Forum (ERTF) v. France, Complaint No. 119/2015 decision on the merits of 5 December 2017, Resolution CM/ResChS(2018)4

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there were violations of the following Articles of the Charter:

- Article 17§2 of the Charter alone and read in conjunction with Article E, due to the lack of guarantees ensuring the application of the right to education with respect to the Roma children affected in the context of successive evictions taking place over a short period of time;
- Article E read in conjunction with Articles 10§3, 10§5, 30 and 31 of the Charter, due to a pattern of decisions and actions taken by local authorities and State representatives, which restricted the enjoyment by Roma children and young people of their rights to vocational training, protection against poverty and social exclusion, and housing.

In its Findings 2020, the Committee found that the situation leading to the violation of Article 31 of the Charter read in conjunction with Article E had been brought into conformity with the Charter.

This report will therefore assess the follow-up given to the remaining violations of the Charter, namely as regards Article 17§2 alone and read in conjunction with Article E, and Article E read in conjunction with Articles 10§3, 10§5 and 30.

### 2. Information provided by the Government

The Government provides information about the activities of the Working Group on Schooling and Children's Rights created in 2019, which brought together representatives of the Inter-ministerial Delegation for Housing and Access to Housing (DIHAL), the Directorate-General of School Education (DGESCO), as well as associations and professionals in the field of education (teachers, school heads, headmasters, special education trainers, etc.), to exchange views and testify about innovative systems or approaches (see Findings 2020 for further details). As a result of this initiative, 1 900 children were enrolled in school in 2020, and 3 200 children in 2021; support was provided to ensure regular attendance; contact between families and schools during the periods of lockdown caused by the pandemic was maintained; and the return of numerous children after the resumption of classes was secured. The arrangements in place were strengthened by new openings for school mediators (whose number increased from 30 to 42 in 2022), and by organising capacity-building activities for school mediators.

The Government provides a general description of the arrangements in place with regard to illegal camps which combine prevention and integration activities, previously outlined by the Committee in its Findings 2020, and updates regarding developments during the reference period. In 2020, the interventions forming part of the ongoing slum clearance programme resulted in increased school enrolment, as stated above, 1 000 people being employed and 1 500 people being provided with housing. In 2021, 720 people were employed and 1 300 people were provided with housing.

### 3. Assessment of the follow-up

The Committee notes that the violations at issue were rooted in the circumstances that prevailed at the time, namely the sub-standard living conditions in the Roma camp sites and the forced evictions from those camps. The Committee refers to its previous assessments of follow-up in the present case and other similar cases (see, for example, the 3rd Assessment of the follow-up: *Médecins du Monde - International v. France*, Complaint No. 67/2011, decision on the merits of 11 September 2012) where it found that the situation had been brought into conformity with the Charter, in view of significant progress with respect to plans to improve the living conditions in reception areas for Roma and Travellers, or to eradicate existing slum-like settlements and resettle their inhabitants. As the circumstances that gave rise to the violations concerned no longer apply, the Committee concludes that the situation as regards Article 17§2 of the Charter alone and read in conjunction with Article E, and Article E read in conjunction with Articles 10§3, 10§5 and 30, can now be regarded as being in conformity with the Charter.

*Finding*

The Committee finds that the situation leading to the violation of Articles 17§2 alone and read in conjunction with Article E, and of Article E read in conjunction with Articles 10§3, 10§5 and 30, has been brought into conformity with the Charter.

## 1st Assessment of follow-up: University Women of Europe (UWE) v. France, Complaint No. 130/2016, decision on the merits of 5 December 2019, Recommendation CM/RecChS(2021)7

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of Article 20.c of the Charter on the ground that there had been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay.

### 2. Information provided by the Government

The Government submits information about a wide variety of measures which have been adopted and implemented.

First, there have been measures to enhance transparency accompanied by penalties for unjustified persistent pay gaps between women and men. The Law of 5 September 2018 on the freedom to choose one's professional future subjected companies with at least 50 employees to an obligation of transparency and results by introducing the Professional Equality Index between women and men. The Index, which is scored out of 100 points, is calculated using four or five indicators depending on whether the company has fewer or more than 250 employees. If the overall score is less than 75 points out of 100, the employer is required to negotiate appropriate and relevant corrective measures in order to achieve an overall score of at least 75 points within a maximum of three years. The Law of 24 December 2021, known as the "Rixain" law, which aims to accelerate economic and professional equality, has strengthened the transparency requirement linked to the Index by introducing an obligation to publish these corrective measures. In addition, companies with an overall score of less than 85 points are now required to set and publish improvement targets for each of the Index's indicators. In order to ensure the full effectiveness of this system, sanctions may be imposed.

In addition, the "Rixain" law has generalised the measures to strengthen transparency relating to the Professional Equality Index which, until then, had been applicable to companies with more than 50 employees benefiting from the Recovery Plan, and which were adopted in the Finance Act for 2021. Its implementing decree was published on 25 February 2022.

The detailed analysis of the results obtained with the Index in 2022 has demonstrated the effectiveness of this measure. Indeed, in 2022, the average score on the Index is 86 points out of 100. The average score for companies with 1000 or more employees increased by 6 points between 2019 and 2022, from 83 to 89. The same trend is observed in medium-sized companies with 251 to 999 employees, where the score increased by 4 points from 82 in 2019 to 86 in 2022, and in companies with 50 to 250 employees, where the score increased by 3 points from 83 to 86 between 2020 and 2022. In addition, in 2022, 95% of companies with at least 1 000 employees and 89% of companies with 251 to 999 employees have calculated and declared their Index, demonstrating the good adoption of the system by the largest companies. There is room for improvement in the case of companies with between 50 and 250 employees, 74% of which have met the obligation.

The labour inspection services are mobilised on the Professional Equality Index. Since 2019, 681 formal notices and 42 penalty decisions have been served on companies for failure to publish the results or failure to define adequate and relevant corrective measures. In addition, since 2022, the penalty for failure to achieve results

after three years can be notified to companies with more than 250 employees that have published an index of less than 75 points. At the end of March 2022, 19 companies were identified as likely to be subject to a penalty. Five have already been sanctioned; for five others, proceedings are under way. Two companies had already been subject to other sanctions and were not sanctioned again. One company is in the process of an employment protection plan and will not be sanctioned. In 2023, this penalty will also apply to companies with 50 to 250 employees that have not reached the 75-point threshold by t the deadline. In addition to the specific provisions relating to the Index, there are formal notices issued by the labour inspectorate for the absence or inadequacy of the agreement or action plan for gender equality, giving the company at least one month to rectify its situation. As of 15 January 2021, 358 penalties on this subject have been decided by the labour inspectorate since the sanction mechanism came into force.

Finally, the future directive on wage transparency, currently being negotiated within the European Union, will also provide greater access to information on wages, in a context of persistent wage gaps between women and men within the European Union.

### 3. Assessment of the follow-up

The Committee notes that the Government has adopted many different measures to tackle the gender pay gap. However, the gender pay gap is a persistent problem and reducing it is a complex issue. The Committee notes from Eurostat that the unadjusted gender pay gap in France in 2021 stood at 15.4%, above the EU average (12.7% in 2021). It stood at 16.3% in 2017. In the Committee's view, this cannot be regarded as sufficient measurable progress. The Committee considers, therefore, that the situation has not yet been brought into conformity with the Charter on this point and reiterates its invitation to the authorities to continue implementing the measures adopted in order to promote equal opportunities between women and men in respect of equal pay and reduce further the adjusted and unadjusted gender pay gap.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 20.c of the Charter.

## 2nd Assessment of follow-up: Confédération générale du travail (CGT) v. France, Complaint No. 154/2017, decision on the merits of 18 October 2018, Resolution CM/ResChS(2019)5

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of Article 4§2 of the Charter in respect of the reasonableness of the reference period for calculating the average working hours under flexible working arrangements.

### 2. Information provided by the Government

The Government recalls, as submitted previously (see Findings 2021) that the adjustment of working time over a period longer than one year is a flexible working scheme consisting of varying working hours over a reference period longer than one calendar year, with employees working more than 35 hours a week during high-activity periods and fewer hours during periods of low activity, with an average being calculated for the reference period.

The Government states that only a sectoral agreement in the metalworking industry authorises the implementation of a multi-annualisation system at company level and only five companies applied it in 2020, while respecting the right to fair remuneration, the right to predictability and the right to reasonable working hours, in compliance with the guarantees provided for by the Labour Code and the additional guarantees provided for by the agreement.

The sectoral agreement in the metalworking industry requires company agreements to include clauses on the impact of the system on employment and working conditions and to identify elements capable of reconciling the interests of the company and employees. In application of the sectoral agreement, metallurgical companies which implement the system must necessarily take these elements into account and provide guarantees in terms of supervision of maximum working hours and of employee remuneration.

As regards the right to reasonable working hours, all the agreements concluded must respect the right to a reasonable daily and weekly working time and more particularly the reasonable nature of the reference period within the meaning of Article 4§2 of the European Social Charter. The multi-annualisation system must not lead to an excessively heavy workload during the week or repeated heavy weekly workloads over an excessively long period. The specific agreements in question, limit weekly working hours to 48 hours and 44 hours over a period of twelve weeks. Furthermore, the Government provides detailed information on the regulations in three metallurgic companies which provide even greater guarantees.

As regards the right to fair remuneration, the Labour Code provides for the obligation to set up an “upper” limit, which sets a threshold of hours worked in the week which, once reached, triggers payment of these overtime hours with the month's pay. This mechanism has the effect of guaranteeing payment for overtime worked by the employee within a reasonable time. The company or establishment agreements concluded within the three said companies (ISOTIP-JONCOUX, CEFA SAS and COLORALU) stipulate that hours worked beyond the average of 35 hours per week constitute overtime.

The Government considers that, under the agreements leading to the implementation of multi-annualisation in companies or establishments identified in 2020, the risks linked to workloads over excessively long periods and deprivation of overtime pay to

employees are ruled out. The guarantees provided for by the Labour Code and the guarantees negotiated at the level of the metallurgy branch and at the level of companies and establishments allow the system to be used in a reasoned manner.

**3. Assessment of the follow-up**

The Committee takes note of all the information provided by the Government, which largely corresponds to the information submitted in the previous report (see Findings 2021).

The Committee previously noted that extending reference periods by collective agreement up to a 12-month period would also be acceptable, provided there were objective or technical reasons or reasons concerning the organisation of work justifying such an extension (Conclusions XIX-3, Germany, Article 2§1). It also considered that the existence of longer reference periods for the averaging of working hours was not permissible, irrespective of whether the number of actual hours worked was below 48 hours per week on average, and found that the situation did not comply with the Charter when the reference period for the calculation of average working hours could be extended beyond 12 months (Conclusions XIX-3, Germany, Article 2§1).

The Committee refers to its finding that a reference period longer than 12 months and up to three years has the effect of depriving workers of the increased rate of remuneration for overtime since the weekly working time can be increased over a long period without such overtime being paid at a higher rate.

The Committee notes from the Government's report that only one sector, the metalworking industry, allows recourse to flexible working schemes spanning several years and only a few companies have signed agreements to this effect (Article L.3121-44 of the Labour Code).

In particular, the metal industry agreement requires company agreements to include clauses on the impact of flexible working schemes on jobs and working conditions and to identify factors capable of reconciling corporate and employee interests. Metalworking companies introducing such schemes must take these factors into account and provide guarantees in terms of maximum working hours and employee pay.

The Committee notes that it has already assessed the four agreements identified in 2020 and the guarantees they provide in its previous finding (see Findings 2021).

Despite the information provided by the Government, the Committee observes that there are still some collective agreements which extend the reference period for averaging working hours under flexible working arrangements beyond 12 months. The Committee accordingly considers that it has not been shown that the situation is fully in conformity with Article 4§2 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 4§2 of the Charter.

# GREECE

## 5th Assessment of follow-up: Marangopoulos Foundation for Human Rights (MFHR) v. Greece, Complaint No. 30/2005, decision on the merits of 6 December 2006, Resolution CM/ResChS(2008)1

### 1. Decision of the Committee on the merits of the complaint

#### A. Violation of Article 11§1 to 3

The Committee held that there was a violation of Article 11§1 to 3 of the Charter on the ground that Greece had not managed to strike a reasonable balance between the interests of persons living in the lignite mining areas and the general interest. In particular, the Committee found a series of failures in the institutional framework of environmental controls, such as minimal sanctions with little deterrent effect, an insufficient number of inspections, and insufficient information for populations living in lignite-mining areas.

#### B. Violation of Article 2§4

The Committee found a violation of Article 2§4 of the Charter on the ground that Greek law did not grant workers exposed to occupational health risks compensation in the form of additional time off, nor did it require collective agreements to provide for such compensation.

#### C. Violation of Article 3§2

The Committee also found that there was a violation of Article 3§2 of the Charter due to failure to properly monitor the enforcement of regulations on health and safety at work, given that the Government acknowledged the shortage of supervisory staff and did not submit precise data on the number of accidents in the mining sector.

### 2. Information provided by the Government

#### A. Violation of Article 11§1 to 3

The Government summarises the legislative and other developments since its previous submission contained in the 4th report. Within the framework of the revised National Plan for Energy and Climate (Decision KYSOIP/4/2019) and in accordance with National Climate Law (Law 4936/2022), a lignite phase-out plan has been developed for the withdrawal of all existing lignite-fired power plants and the corresponding mines by 2028. The operation of several plants has already been suspended. Heating solutions to support the local communities during the transitional period were established (Law 4872/2021).

The legislation was revised in 2021 in respect of environmental inspections (Articles 50-53 of Law 4843/2021) aiming at the improvement of environmental management efforts, as well as the establishment of reasonable fines and sanctions proportionate to the seriousness of the infringement, its frequency, duration, recidivism, compliance history, cooperation with the inspection body, the level at which the statutory emission limits are exceeded, the degree to which the environmental standards, terms, and commitments are breached, any other mitigating or aggravating factors such as profit or public interest.

In relation to the environmental licensing of projects and activities (Law 4014/2011), the methodology for the classification of economic activities and their degree of risk to the environment was further defined in 2021 (Joint Ministerial Decision YPEN/SENE/13582/952/2021). Programmes for regular environmental inspections were prepared based on this new classification and the environmental risk

assessment. Also, following a Ministerial Decision published in 2022, the Compliance Action Model and the Remedial Action Plan were established as a framework for carrying out the environmental inspections.

The Government provides data on inspection activities followed by administrative sanctions, prosecution by the Prosecutor's office, and fines in Southern and Northern Greece. Also, it includes data provided by the Environmental Inspection Department (for the Asopos river area), by the Mine Inspection Department (for the compliance with the Mining and Quarrying Regulation and the safety of both workers and residents in the area) and data concerning Public Power Corporation S.A. (PPC S.A. or DEI). Regarding the latter, a new revised Sustainable development policy was approved in mid-2022 and transposed to the Operating regulations of PPC S.A. in addition to the Environmental Policy which applies to every sector of its economic activity. The Environmental policy aims at the continuous improvement in the management of energy resources, waste, air quality, and noise, the prevention of and response to incidents, environmental awareness, staff training, improvement of environmental and natural resource management, sustainable development, etc. In 2022, the Environmental management systems of autonomous power plants on several islands were also developed in accordance with the ISO 14001 standards.

Finally, the Government reports on actions taken to promote safety and health, such as medical screenings to detect occupational diseases (under Preventive medical check-up regulations, revised in 2015, with additional examinations added in 2022), awareness-raising actions concerning Covid-19, psychosocial support services in mines, and other similar actions.

***B. Violation of Article 2§4***

According to the Government, on 1 August 2016, the working schedule was changed in the Western Macedonia Lignite Centre, after consultations with the trade union representatives of the workers and the trade unions. Specifically, a rotating shift schedule was proposed, initially applied during a pilot period and, after a large majority of workers expressed a positive opinion, it was finally adopted. Other mines follow similar shift programmes (Megalopolis, Psathio, and Marathoussa). The indicative monthly work schedules are provided in the Appendix to the report.

The Government also mentions special leave arrangements introduced by Law 4808/2021 (transposing Directive (EU) 2019/1158 on work-life balance for parents and carers), and the PPC S.A. internal directive. The latter specified that all arrangements previously provided by the company to its workers with regard to the possibility of granting special leave are maintained, and the special leave arrangements established by the State are added to these, allowing for the possibility for the most favourable regulations applying in each particular case.

The technical staff at Power Production Plants and Mines belongs to the category of arduous and unhealthy occupations depending on the activity performed, and it are covered by social insurance as such, which implies the entitlement to early retirement.

**C. Violation of Article 3§2**

According to the Government, PPC S.A. updated its Health and safety policy in 2021 and adopted occupational health and safety principles to protect employees and third parties performing work on its premises and facilities. The Government provides a list of occupational health and safety regulations that are applied in steam, thermal, and electric power plants, in mines and quarries. It also states that the Greek legislation specific to occupational safety and health is in accordance with Directive 89/391/EEC (the EU Framework Directive on occupational health and safety) and the individual deriving from it.

The prevention of accidents at power production plants is handled in accordance with the framework of guidelines and regulations developed by the Directorate for Occupational Safety and Health. There is a Written occupational risk assessment study, Emergency response plans (regularly updated), Fire safety studies, training in safety and health issues, an inspection system in place, written reports prepared after internal and external inspections, special inspections at critical points of the premises, and studies prepared to deal with large-scale industrial accidents related to oil tanks.

The training of workers (mainly technical staff who face occupational safety and health issues) is regularly performed by unit safety technicians, except during the period of the Covid-19 pandemic, when training and face-to-face briefings were prohibited. The training was resumed in 2022. During 2020-2021, many internal directives were issued regarding protection measures in high-risk operations at mines and power production plants. In addition, instructions, posters, brochures, booklets, online presentations, videos, and other informational materials were distributed to workers.

The Government provides occupational accident statistics for the entire PPC S.A. which contains indicators of accident severity and frequency. This information is published in the annual Sustainable development report, in which particular attention is given to the measurement of harmful factors in the working and wider environment, the detection, identification, and safe management of hazardous waste, the conduct of a preventive staff medical check-up, the assessment of the workers' suitability for the job for which they are employed based on preventive medical check-up results and the association of the inspection's findings with each group's specific working conditions.

In addition, every year, detailed accident statistics are compiled by activity, and accident indicators are monitored. The Government provides and analyses statistics on accidents in mining units in Western Macedonia and Megalopolis for the period 2003-2021, which concern workers of the Western Macedonia Lignite Centre and Megalopolis Mines.

**3. Assessment of the follow-up**

**A. Violation of Article 11§1 to 3**

The Committee previously asked the Government to provide information regarding the fines imposed on lignite mining companies in the event of environmental damage, to develop and regularly update sufficiently comprehensive environmental legislation, to take specific steps (such as modifying equipment, or similar) to prevent air pollution, to set appropriate supervisory mechanisms to ensure that environmental standards and rules are properly applied, and to assess health risks through epidemiological monitoring of the groups concerned.

The Committee notes that, in its report, the Government provides adequate information regarding the above elements showing that Greece has now managed to strike a reasonable balance between the interests of persons living in the lignite mining areas and the general interest. It also notes that regarding the final ground of violation under Article 11 (insufficient information for populations living in lignite-mining areas), the Government had already provided information in its previous report showing that the situation was satisfactory on this point.

Therefore, the Committee now considers that the situation has been brought into conformity with Article 11.

**B. Violation of Article 2§4**

The Committee previously considered that Greece does not offer workers exposed to risks regular and sufficient time to recover. It also recalled that, under no

circumstances, can financial compensation be considered a relevant and appropriate measure to achieve the aims of Article 2§4. Despite the information provided in the report regarding legislation on special leave arrangements and the new methodology of scheduling working shifts in mines, it cannot be concluded that the situation regarding the provision of regular and sufficient time to recover has changed.

In the absence of other relevant information in the report, the Committee finds that the situation has not been brought into conformity with Article 2§4 of the Charter.

**C. Violation of Article 3§2**

The Committee previously explained that in the areas such as the right to safety and health at work, which are closely linked with the physical integrity of individuals, the State has an obligation to provide precise and plausible explanations and information on the number of occupational accidents and on measures taken to ensure the enforcement of regulations and hence to prevent accidents. It called for better recording of statistical parameters for occupational accidents and considered that the occupational health and safety measures implemented in the PPC S.A. (DEI) represented progress.

The Committee notes from this report recent developments in legislation and regulations that came into force as regards safety and health at work, as well as the statistical data provided by the Government.

On the basis of the information now at its disposal, the Committee considers that the situation has been brought into conformity with Article 3§2 of the Charter.

*Finding*

The Committee finds that the situation has been brought into conformity with Article 11§1 to 3, as well as with Article 3§2 of the Charter.

The Committee finds that the situation has not been brought into conformity with Article 2§4 of the Charter because Greece does not grant compensation in the form of additional time off to workers exposed to occupational health risks that cannot be entirely eliminated.

## 5th Assessment of follow-up: European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, Resolution CM/ResChS(2005)11 and International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece Complaint No. 49/2008, decision on the merits of 11 December 2009, Resolution CM/ResChS(2011)8

### 1. Decision of the Committee on the merits of the complaint

#### European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004

The Committee concluded that there was a violation of Article 16 of the 1961 Charter on the following grounds:

- the insufficiency of permanent dwellings;
- the forced eviction of Roma families.

#### International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Greece Complaint No. 49/2008, decision on the merits of 11 December 2009

The Committee concluded that there was a violation of Article 16 of the 1961 Charter on the following grounds:

- the particular situation of Roma families is not sufficiently taken into account with the result that a significant number of Roma families continue to live in conditions that fail to meet minimum standards;
- Roma families continue to be forcibly evicted in breach of the Charter and the legal remedies generally available are not sufficiently accessible to them.

### 2. Information provided by the Government

#### Sub-standard dwellings

The Government provides information on the targeted measures taken by the General Secretariat of Social Solidarity to improve the living conditions of the Roma population. In the National Strategy and Action Plan for Roma Inclusion 2021-2030, housing is one of the sectoral objectives and systemic interventions have therefore been designed to promote Roma social housing, with the aim of creating the appropriate conditions for their gradual but complete social inclusion. Based on the "Housing first" approach in the process of drafting the Strategy, measures have been designed to improve housing and living conditions taking into account the characteristics of the Roma communities in Greece.

In total, 462 Roma living areas were identified 266 of which are settlements of types I, II, and III, and 196 are locations where Roma live within cities, in houses, apartments, shacks, etc. In particular, based on the updated mapping of Roma in 2021, in Greece there are:

- 77 Type I settlements, where approximately 12 216 inhabitants are located in highly run-down locations with makeshift accommodation (shacks, huts, tents, etc.) usually outside urban areas and urban planning schemes without public infrastructure, roads and access to public transport, etc;

- 122 “mixed” Type II settlements – dwellings, together with huts and shacks, where approximately 46 838 inhabitants are located. These settlements are located in

areas of mixed population that have basic utility infrastructure and adequate housing, although there are a number of shacks and substandard accommodation in the region. This category is mainly found on the outskirts of cities and outside the areas covered by an urban development plan. Under Type II, many settlements are very close to the Type I category and require major interventions.

- 67 Type III Neighbourhoods - houses/apartments, containers, often in run-down areas of the urban fabric), with a number of 34 741 inhabitants. They are located in poor neighbourhoods within the urban fabric with basic, low-quality, utility infrastructure.

According to the Government, type I and II settlements are of high priority for the Greek State, as they are run-down areas that lack basic infrastructure and decent living conditions. In this respect, the Committee takes note of the measures implemented by the Government with a view to relocating Roma populations living in temporary or illegal shacks/settlements.

Among these measures was the temporary relocation of special social groups, which are developed as social housing complexes according to bioclimatic planning principles based on the urgent housing needs of special social groups. The operation of such areas requires a holistic approach (through Community Centres - Roma Branches) - with the provision of social services that help the integration process. The Committee notes in this connection that the Ministry of Labour and Social Affairs in cooperation with the Municipality of Katerini and the European Fundamental Rights Agency (FRA), within the framework of the EEA Grants Programme 2014-2021 "Integration and Empowerment of the Roma", implemented relocation in the municipality concerned.

Other measures include the improvement of living conditions, mainly sanitary infrastructure and environmental conditions, where there is an urgent need to provide immediate individual hygiene services and to create conditions for access to basic public utilities and goods.

The Government also indicates that in Type II and Type III Roma settlements, which lack basic infrastructure, the relevant interventions will be carried out. Eleven municipalities have requested funding for infrastructure interventions.

The Government provides information on the projects, as well as their budgetary allocation implemented in 2022 in various municipalities, including expansion of sewage networks, construction of infrastructure works, development of basic networks in the settlements.

According to the Government, the Secretariat of Social Solidarity has requested from all municipalities to draft local action plans with the aim of supporting Roma social integration actions at the local level and the effective implementation and monitoring of the actions and interventions of the new National Strategy and Action Plan for the Social Integration of the Roma. In addition, the Secretariat of Social Solidarity has intensified its efforts to raise awareness and mobilise local government in terms of making interventions in the housing sector and the submission of proposals by municipalities with an emphasis on ensuring decent living conditions. In the period 2020 - 2022, the General Secretariat has intensified appraisal visits to Roma settlements and has organised meetings, both with representatives of the Roma community and with municipal authorities throughout Greece, in order to promote relevant relocation interventions or the improvement of living conditions according to local needs.

Finally, the Government points to the project funded by the European Economic Area (EEA) “Integrated social housing relocation pilot programme for the integration of Roma” in the Municipality of Katerini, which is the only project that has been

implemented so far and, given that its implementation is based on a combination of funds (EEA grants, European Social Fund + and State Budget), it is considered a pilot programme. According to the Government, the temporary housing relocation project in Katerini is based on Article 159 of Law 4483/2017. These provisions include consultation with Roma communities, as one of the initial steps of the resettlement process.

**Forced eviction of Roma families**

According to the Government, the Greek State is planning to put an end to the forced evictions of Roma families, by promoting the implementation of Article159 of Law 4483/2017.

**3. Assessment of the follow-up**

**Sub-standard dwellings**

As regards the living conditions of the Roma communities, the Committee notes the information about the measures taken since its last examination of the situation in Findings 2021. The Committee notes that a series of measures and programmes have been implemented with a view to improving the living conditions of the Roma communities which fail to meet minimum standards.

The Committee notes that the Government has collected the relevant data concerning the housing situation of the Roma communities and has developed a targeted approach and allocated funds at municipal level aimed at gradually providing assistance to resettle the communities or improving the infrastructure of their settlements.

The Government itself recognises the fact that, in Type I and II dwellings, the living conditions are sub-standard and that, so far, the integrated social housing relocation pilot programme for the integration of Roma has only been completed in the Municipality of Katerini.

Nevertheless, the Committee observes that, within the framework of the National Strategy and Action Plan for the Social Integration of the Roma, the Secretariat of Social Solidarity has intensified its efforts to raise awareness and mobilise local government in terms of making interventions in the housing sector and submitting proposals by municipalities with an emphasis on ensuring decent living conditions. The Committee notes that eleven municipalities have requested funding for infrastructure interventions.

The Committee considers that the initiatives taken by the Government show that important efforts have been made to improve the living conditions of the Roma communities. However, some of the initiatives are still under way and therefore, the Government has not demonstrated that significant measurable progress has been made in this area.

The Committee considers, therefore, that the situation has not been brought into conformity with the Charter as regards sub-standard dwellings.

**Forced eviction of Roma families**

In its Findings 2021, the Committee found that the situation had not been brought into conformity with the Charter as it had not been demonstrated that there is adequate legal protection for Roma families threatened by eviction and that evictions are carried out in conditions respecting the dignity of the persons concerned. In the absence of any information in this regard, the Committee reiterates its previous finding.

Therefore, the Committee considers that the situation has not been brought into conformity the Charter as regards forced eviction.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 16 of the Charter.

## 5th Assessment of follow-up: General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 65/2011, decision on the merits of 23 May 2012, Resolution CM/ResChS(2013)2

### 1. Decision of the Committee on the merits of the complaint

**Violation of Article 4§4 of the 1961 Charter**

In its decision, the Committee concluded that there was a violation of Article 4§4 of the 1961 Charter on the ground that the Section 17§5 of Law No. 3899 of 17 December 2010 did not make provision for notice periods or severance pay in cases where an employment contract, which qualified as "permanent" under the law, was terminated during the probationary period set at one year by the same law.

### 2. Information provided by the Government

The Government states that there have not been any legislative or other developments with regard to the issue under consideration.

### 3. Assessment of the follow-up

The Committee considers that in the absence of any measure to bring the situation into conformity it reiterates its previous finding that there is a violation of Article 4§4 of the Charter on the ground that the law does not make provision for notice periods or severance pay in cases where an employment contract, which qualified as "permanent" under the law, is terminated during the probationary period set at one year.

*Finding*

The Committee finds that the situation has not been brought into conformity.

## 5th Assessment of follow-up: General Federation of Employees of the National Electric Power Corporation (GENOP-DEI) and Confederation of Greek Civil Servants' Trade Unions (ADEDY) v. Greece, Complaint No. 66/2011, decision on the merits of 23 May 2012, Resolution CM/ResChS(2013)3

### 1. Decision of the Committee on the merits of the complaint

#### A. Violation of Article 7§7

The Committee considered that the young persons on apprenticeship contacts are excluded from the scope of the labour legislation and are not entitled to three weeks' annual holiday with pay. Therefore, the Committee held that there was a violation of Article 7§7 of the 1961 Charter.

#### B. Violation of Article 12§3

The Committee considered that the highly limited protection against social and economic risks afforded to minors engaged in "special apprenticeship contracts" under Section 74§9 of Law 3863/2010 had the practical effect of establishing a distinct category of workers who were effectively excluded from the general range of protection offered by the social security system as a whole, and that this represented a deterioration of the social security scheme which did not fulfil the criteria for compatibility with Article 12§3 of the 1961 Charter. The Committee thus considered that there was a violation of Article 12§3 of the 1961 Charter.

### 2. Information provided by the Government

#### A. Violation of Article 7§7

The Government states that, in December 2020, Law 4763/2020 was adopted on the National System of Vocational Education, Training and Lifelong Learning, transposing Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018. Article 9 of Law 4763/2020 stipulates that post-secondary vocational education and training, at level three according to the national qualification framework, is provided by the vocational training schools and apprenticeship vocational education schools under OAED (now DYPA). The purpose of these schools is to provide initial vocational education and training services to graduates with a compulsory education certificate or its equivalent, to combat school drop-out, to upgrade basic skills for holders of compulsory education certificates or its equivalent and to integrate them into the labour market. In particular, the apprenticeship vocational education schools under OAED (now DYPA) apply the dual system, which combines theoretical and laboratory-based training in the classroom with workplace apprenticeships in private and public sector enterprises. Graduates of the vocational training schools receive a level-3 Diploma of Vocational Education and Training after certification.

The workplace learning programme has a duration of eight (8) hours per day and the workplace learning period lasts from 1 October to 31 August of each year. The programme is considered completed when the hours of the specialty laboratory course and the workplace learning days as specified in the training guide relating to each specialty have been completed. The distribution between laboratory course and workplace learning programme is defined in the training guide for each specialty.

Additionally, under the Joint Ministerial Decision 17004/K5/15-2-2022, "Compensation of IEK [Vocational Training Institutes] trainees under the responsibility of the Ministry of Education and Religious Affairs who pursue a workplace learning programme" (B΄800), the apprenticeship of IEK trainees under the responsibility of the Ministry of Education and Religious Affairs combines learning at IEK with work-based learning at workplaces in the private or public sector. The workplace learning programme covers at least fifty percent (50%) of the duration of studies at IEK. The apprenticeship of the IEK trainees under the responsibility of the Ministry of Education and Religious Affairs is in accordance with the provisions of the training guide for the specialty.

**B. Violation of Article 12§3**

The Government states that, in accordance with the legislation in force, all young apprentices are covered by insurance for all risks (full insurance). Specifically, "apprentices are under the insurance scheme of the online National Social Security Institution (e-EFKA) during the apprenticeship period, entitled to sickness benefits both in kind and in cash, and their insurance time can be taken into account in calculating their pension".

According to paragraph 7(b) of Article 11 of Law 4763/2020, as amended by Article 211 of Law 4823/2021 (A΄136,) Apprentices of the OAED Apprenticeship Vocational Education Schools are under the insurance scheme of the Electronic National Social Security Institution (e-EFKA) during the apprenticeship period, entitled to sickness benefits in kind and sickness benefits in cash and their insurance time can be counted for pension purposes. For social security contributions, Article 3 (1c) of Law 2335/1995 (A΄185) is applied, with contributions being calculated on the basis of half of the contributions actually paid.

According to the Joint Ministerial Decision FB7/121875/K3/2021 "Subsidy for Apprentices of the Secondary School Year – Apprenticeship Class" (B΄4531), during the workplace learning programme period, apprentices are entitled to sickness benefits in kind and sickness benefits in cash. Thus, their insurance period is counted for pension purposes since contributions are paid for the respective main and supplementary pension schemes.

**3. Assessment of the follow-up**

**A. Violation of Article 7§7**

The Committee recalls that, in its Findings 2021, it considered that, given that the provision of Section 74§9 of Law 3863/2010, according to which apprentices were not subject to the provisions of labour law, with the exception of provisions on the health and safety of workers, was still in force they were therefore not entitled to three weeks' annual holiday with pay, the situation had not been brought into conformity with the Charter.

Having taken note of the Government's submissions, the Committee also refers to its Finding in the Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014 and considers that Law 4763/2020 on the National System of Vocational Education, Training and Lifelong Learning that provides for the dual system of learning and training for the apprentices, ensures that their working time and rest time are adapted to the needs of this specific group of young workers. The Committee considers that the situation is in conformity with the Charter.

### B. Violation of Article 12§3

The Committee recalls that Article 12§3 requires States Parties to endeavour to raise progressively the system of social security to a higher level. In this respect, the Committee recognises that it may be necessary to introduce measures to consolidate public finances in times of economic crisis, to ensure the maintenance and sustainability of the existing social security system.

The Committee notes that, according to paragraph 7(b) of Article 11 of Law 4763/2020, as amended by Article 211 of Law 4823/2021 (A΄136), Apprentices of the OAED apprenticeship vocational education schools fall under the insurance scheme of the Electronic National Social Security Institution (e-EFKA) during the apprenticeship period, are entitled to sickness benefits in kind and sickness benefits in cash and their insurance time can be counted for pension purposes.

The Committee therefore considers that apprentices are no longer excluded from the general range of protection offered by the social security system and therefore, the situation has been brought into conformity with the Charter.

*Finding*

The Committee finds that the situation has been brought into conformity with Article 7§7 and 12§3 of the Charter.

## 5th Assessment of follow-up: International Federation for Human Rights (FIDH) v. Greece, Complaint No. 72/2011, decision on the merits of 23 January 2013, Resolution CM/ResChS(2013)15

### 1. Decision of the Committee on the merits of the complaint

The Committee held that there was a violation of Article 11§§1 and 3 of the 1961 Charter on the ground that, in view of the pollution of the Asopos River, the Greek authorities had failed to take appropriate measures to remove as far as possible the causes of ill-health and to prevent as far as possible diseases.

### 2. Information provided by the Government

The Government provides updated information on ongoing activities and measures to limit environmental pollution and its impact on the quality of drinking water, already described in its previous reports. In addition, the Government provides information about a new two-year project initiated by the Municipality of Tanagra in April 2022, which seeks to upgrade the existing wastewater treatment plant and connect neighbouring localities to the existing and operational plant. After the project is completed, the authorities believe that the situation will improve further, due to better wastewater treatment. Tests on the quality of the drinking water are conducted regularly.

The Government also provides information on new investigation and control measures regarding the pollution of the Asopos River undertaken by the Region of Central Greece (Sterea Ellada). The region has an integrated strategic intervention plan (Integrated Territorial Investment of Asopos River Basin) which includes numerous strategic interventions for the environmental rehabilitation of the area, including a study on the delimitation of the Asopos riverbed, monitoring, recording and responding to pollution, and the creation of an Environmental and Health Observatory in Oinofyta. The Environmental Observatory operated in cooperation with the National Centre for Scientific Research "Demokritos" and the Chemical Service of Livadia. Its team members included engineers, healthcare supervisors, and staff members from relevant directorates of the Region of Central Greece (Sterea Ellada). The results are published on the Region's website.

According to the Government, steps are being taken to establish the reoperation of the Environmental Observatory, together with the Health Observatory. This project, entitled "Development and Operation of a Digital Observatory for Health, Environment and Preventive Interventions in the wider area of the Asopos River Basin", is to be included in and funded by the Central Greece (Sterea Ellada) Operational Programme. The action involves an intervention within the framework of the Strategic and Operational Plan (Action Plan) for the wider Asopos River Basin area - urban, social, environmental and business revitalisation and rehabilitation. It concerns the development and operation of the Environmental and Health Observatory in the wider area of Oinofyta-Asopos of the Regional Unit of Boeotia in the Region of Central Greece (Sterea Ellada) in both a physical (surveys, studies, prevention, and other similar actions) and an electronic form.

The Observatory aims to:

a) record and assess the area's environmental load,

b) adopt a complex set of policies for preventing and promoting public health, including detecting rapidly and accurately environment-related health risks, as well

as proposals to establish more effective and preventive systems for assessing, monitoring, and managing these risks, and

c) formulate proposals to minimise environmental nuisance and improve health protection for residents and workers in the area.

The envisaged actions concern the investigation, monitoring, and evaluation of the health profile of the local population, risk prevention and assessment, identification of sources of pollution, development of ICT tools for systematic environmental and health risk monitoring, remediation, electronic dissemination of relevant data to institutions, the scientific community and citizens, and awareness-raising on public health and environmental protection among the local population.

Lastly, the Region of Central Greece (Sterea Ellada) recently completed two projects, on the one hand, a study of the riverbed's delimitation and protection against the Asopos River flooding and, on the other hand, an exploratory and remediation study on the pollution of the Asopos. Along with the creation of the biological treatment plant within the ongoing Rehabilitation Business Park and the other measures envisaged in the "Strategy for the Integrated Territorial Investment of the Asopos River Basin", these studies should contribute to restoring and decontaminating the area and will prevent further deterioration.

**3. Assessment of the follow-up**

The Committee recalls that, in its decision, it held that there was a violation of Article 11§§1 and 3 of the Charter due to deficiencies in the implementation of existing regulations and programmes regarding the Asopos River pollution and the resulting negative effects on health. In its previous Findings (2021), the Committee found that the measures taken by the Government during the 2014-2020 period represented progress but did not adequately remedy the environmental problems and the negative health effects of the Asopos River pollution. The Committee asked for the next report to demonstrate any measurable progress achieved in this regard.

Based on the information provided, the Committee notes the steps taken aiming at the prevention and promotion of public health, the timely and accurate detection, monitoring, and management of environment-related health risks, the reduction of environmental pollution, the decontamination of polluted areas, and the improvement of health protection of residents and workers in the Asopos River area. Moreover, the Government confirms that all the measures described in previous reports continue to be applied. On this basis, the Committee considers that the situation is now compatible with the Charter.

*Finding*

The Committee finds that the situation has been brought into conformity with Article 11§§1 and 3 of the Charter.

## 5th Assessment of follow-up: Federation of employed pensioners of Greece (IKA-ETAM) v. Greece, Complaint No. 76/2012, decision on the merits of 7 December 2012, Resolution CM/ResChS(2014)7; Panhellenic Federation of Public Service Pensioners (POPS) v. Greece, Complaint No. 77/2012, decision on the merits of 7 December 2012, Resolution CM/ResChS(2014)8; Pensioner's Union of the Athens – Piraeus Electric Railways (I.S.A.P.) v. Greece, Complaint No. 78/2012, decision on the merits of 7 December 2012, Resolution CM/ResChS(2014)9; Panhellenic Federation of pensioners of the Public Electricity Corporation (POS – DEI) v. Greece, Complaint No. 79/2012, decision on the merits of 7 December 2012, Resolution CM/ResChS(2014)10; Pensioners' Union of the Agricultural Bank of Greece (ATE) v. Greece, Complaint No. 80/2012, decision on the merits of 7 December 2012, Resolution CM/ResChS(2014)11

### 1. Decision of the Committee on the merits of the complaint

In these decisions, the Committee concluded that there was a violation of Article 12§3 of the 1961 Charter on the ground that the cumulative effect of the restrictive measures and the procedures adopted in respect of pension entitlements did not allow a sufficient level of protection to be maintained for the pensioners in question. The cumulative effect of the restrictions was bound to bring about a significant deterioration of the standard of living and the living conditions of many of the pensioners affected.

### 2. Information provided by the Government

#### Violation of Article 12§3

The Government states that it considers that the Complaints Nos. 76/2012, 77/2012, 78/2012, 79/2012, and 80/2012 are linked to the decision in the context of the more recent Complaint No. 165/2018 (PAP-OTE v. Greece). The Government recalls that in this latest decision, the Committee held that there was (no longer) a violation of Article 12§3 in respect of pension rights.

### 3. Assessment of the follow-up

#### Violation of Article 12§3

The Committee recalls that its findings in Complaints Nos. 76-80/2012 were predicated on the absence of a minimum level of research and analysis conducted by the Greek authorities into the effects of the measures in question, as well as on the absence of consultation with relevant stakeholders. The Government appears to have rectified these shortcomings, at least to some extent, by conducting extensive preparatory work before Law No. 4387/2016 was adopted. In particular, an actuarial study was performed by the Greek authorities in 2015. It was based on a sound scientific methodology and yielded consistent and reliable findings, taken into account when drafting a new social security law.

In PAP-OTE vs. Greece, Complaint No 165/2018, decision on the merits of 17 May 2022, the Committee concluded that the 2016 reform has had an overall positive impact on the social security system, mainly by addressing pre-existing inequalities and placing it on more solid footing for the future. In that sense, it held that the

impugned legislation should be distinguished from the austerity measures that had been previously found to be in breach of the Charter and that there was no violation of Article 12§3 of the Charter. Accordingly, the Committee considers that the violations identified in its decisions in Complaints Nos. 76/2012, 77/2012, 78/2012, 79/2012, and 80/2012 have been remedied.

*Finding*

The Committee finds that the situation in Greece has been brought in conformity with Article 12§3 of the Charter.

**3rd Assessment of follow-up: Greek General Confederation of Labour (GSEE) v. Greece, Complaint No. 111/2014, decision on the merits of 23 March 2017, Resolution CM/ResChS(2017)9 and Resolution CM/ResChS(2018)12**

**1. Decision of the Committee on the merits of the complaint**

**A. Violation of Article 2§1**

The Committee held that there was a violation of Article 2§1 of the Charter on the grounds of:

1) the excessive length of weekly work authorised; and

2) the lack of sufficient collective bargaining guarantees.

**B. Violation of Article 4§1**

The Committee held that there was a violation of Article 4§1 of the 1961 Charter on the ground that fair remuneration was not guaranteed. In particular, the Committee considered that that the gross minimum wage, including bonuses, corresponds to approximately 46% of gross average wage.

**C. Violation of Article 4§4**

The Committee held that there was a violation of Article 4§4 of the 1961 Charter on the ground that the Section 17§5 of Law No. 3899/2010 did not make a provision for notice periods or severance pay in cases where an employment contract, which qualified as "permanent" under the law, was terminated during the probationary period set at one year by the same law.

**D. Violation of Article 7§5**

The Committee held that there was a violation of Article 7§5 of the 1961 Charter as the minimum wage of young workers aged 15 to 18 years was not fair.

**E. Violation of Article 7§7**

The Committee held that the young persons concerned were excluded from the scope of the labour legislation and are not entitled to three weeks' annual holiday with pay. Therefore, the Committee held that there was a violation of Article 7§7 of the Charter.

**F. Violation of Article 3 of the Additional Protocol to the 1961 Charter**

The Committee held that there was a violation of Article 3 of the 1988 Additional Protocol to the 1961 Charter since the previously applicable collective bargaining system was abolished and the effective exercise of the right of workers to participate in the determination and improvement of working conditions was not ensured.

**2. Information provided by the Government**

**A. Violation of Article 2§1**

The Government states that there have been recent amendments to the provisions concerning working time. Article 58 of Law 4808/2021 regulates working time in excess of the ordinary working time limits and distinguishes between overwork and overtime. In Greece, contractual working hours in enterprises may be up to 40 hours per week. Overwork comprises the first 5-8 hours in excess of the weekly working hours. More specifically, in the case of a five-day working week, a worker may work 5 additional hours per week at the discretion of the employer. These 5 hours (41st,

42nd, 43rd, 44th, 45th hour) are paid at the hourly rate of pay plus 20% and they are not included in the overtime limits allowed under the applicable provisions. For workers who work six days per week, an employee may work up to 8 hours per week (from the 41st to the 48th hour).

Any additional hours of work that exceed forty-five (45) hours per week for a worker with a five-day working week, or 48 hours per week in case of a worker with a six-day working week are considered to be overtime work, subject to approval procedures (by the Ministry of Labour and Social Affairs). Overtime gives rise to remuneration equal to the hourly wage paid increased by 40% for each hour of overtime, for up to 3 hours per day and up to a maximum of 150 hours per year.

Any overtime that does not comply with the above formalities and approval procedures is considered illegal. For each hour of illegal overtime, the worker is entitled to compensation equal to the hourly wage paid increased by 120%. Moreover, by decision of the competent body of the Ministry of Labour and Social Affairs, overtime may be granted on a case-by-case basis to workers of all enterprises and operations, in addition to the maximum permissible annual overtime limits in cases where the work is deemed to be of an urgent nature, the performance of which is necessary and cannot be postponed. For the overtime work referred to above, employees are entitled to remuneration equal to the hourly wage paid plus sixty percent (60%).

The Government confirms that daily working time cannot exceed 12 hours per five-day period or 11 hours per six-day period, and on a weekly basis 60 hours per five-day period or 66 hours per six-day period. These limits are, in parallel, subject to compliance with the maximum limit of 48 hours per week on average over a four-month period.

**B. Violation of Article 4§1**

The Government states that, as of 1 May 2022, and in accordance with Ministerial Decision No. 38866/2022, the statutory minimum monthly salary for full-time workers is set at €713, and the minimum daily wage for blue-collar workers at €31.85. These amounts are applied throughout the country and without discrimination based on age.

**C. Violation of Article 4§4**

The Government states that according to Article 65 of Law 4808/2021, upon notification of the termination of the employment contract, the worker is exempt from the duty to work, the employer has no obligation to accept any work from that worker, and the salary is paid in full until the expiry of the notice period. During the period of notice, the worker has the right to work for a different employer, which does not influence the foreseen date of termination of the contract nor the amount of compensation.

**D. Violation of Article 7§5**

The Government states that according to Joint Ministerial Decision No. 86899/2021 on the "Determination of compensation for apprentices of the Apprenticeship Vocational Education Schools of OAED of Law No. 4763/2020" the apprentices' compensation is set at a rate of 75% of the statutory minimum daily wage of an unskilled worker. The remuneration of the apprentices of the Experimental Vocational Apprenticeship Schools of DYPA in the tourism and hospitality sector is set at 80%, while there are also certain other categories of apprentices whose wage is set at 95%.

The Government did not make any reference to the provisions of Section 74 of Law 3863/2010 on the social security protection of minors who conclude special

apprenticeship contracts, whose wage is set at 70% of the minimum daily wage, on which the Committee's finding of violation was initially based.

### E. Violation of Article 7§7

The Government provides information on the framework of apprenticeship and more specifically, on Apprenticeship Vocational Education Schools – Experimental Vocational Apprenticeship Schools of DYPA, on Post-secondary Apprenticeship Year under the responsibility of the Ministry of Education and Religious Affairs, and on Vocational Training Institutes under the responsibility of the same Ministry.

The Government did not make any reference to the provisions of Section 74 of Law 3863/2010 on the social security protection of minors who conclude special apprenticeship contracts, on which the Committee's finding of violation was initially based.

### F. Violation of Article 3 of the Additional Protocol to the 1961 Charter

The Government refers to a previous report, namely Greece's third simplified report submitted in February 2020. In this report, it stated that any worker in any enterprise, even where there are no unions or works councils, has the right to take part in the improvement of working conditions, either through their selected representatives having special responsibility for issues relating to workers' health and safety, or directly on their own initiative. In that report, the Government further indicated that no change had occurred with respect to the legal framework applying to workers in public services and public bodies as regards their right to take part in the determination and improvement of their working conditions and environment described in Presidential Decree No. 17/1996 and Sections 2 and 3 of Law 2738/1999, according to which health and safety measures are the subject of collective bargaining and are specified in labour collective agreements. The third simplified report further referred to the National Strategy in the field of Occupational Health and Safety, to the Strategic Framework for Occupational Health and Safety, and to the role and activities of the Greek Institute for Occupational Health and Safety.

## 3. Assessment of the follow-up

### A. Violation of Article 2§1

1) excessive length of weekly work authorised

From the information provided by the Government, the Committee notes that legislative changes were introduced concerning excessive working, but that these changes did not improve the situation. On the contrary, the Committee understands that, for the period 2017-2020, the number of days during which legal overtime could take place was set at a maximum of 120 days whereas, under the new rules, the number has increased to 150 days. Moreover, any overtime that exceeds 150 hours (and is thus considered to be illegal) and which would result in a compensation of 120% on top of a regular wage, may now be rendered legal upon a decision of a competent body of the Ministry of Labour and Social Affairs and would result in an increase of only 60%. In any event, the Committee recalls that a total working week (usual hours plus overtime) which may reach or exceed 60 hours per week is unreasonable (Conclusions XIV-2 (1998), Article 2§1, the Netherlands, Conclusions 2018, Article 2§1, Turkey). In its initial decision on the merits, the Committee noted that, in 2015, Greek workers were at the top of the list with respect to average hours worked at pan-European level (with 2 042 hours worked yearly) and that there was a significant gap between Greek workers and their counterparts in other European countries (which ranged between 1 371 hours of work for German workers to 1 541

hours yearly for Belgian workers). The Committee notes that, according to OECD statistics for 2022, Greek workers remain at the top with 1 886 yearly hours worked whereas the EU average is 1 571 hours worked per year.

The Committee considers that the situation as regards excessive length of working time has not been brought into conformity.

2) lack of sufficient collective bargaining guarantees

As regards collective bargaining guarantees, in its decision on the merits, the Committee recalled that, to be in conformity with the Charter, national law and regulations must also operate within a precise legal framework that clearly delimits the scope left to employers and workers to modify, by collective agreement, working time. It considered that the law itself did not define the scope available to the negotiating parties. Moreover, the national collective agreements which alone determined the arrangements in this field were terminated in application, *inter alia*, of the Council of Ministers Act No. 6/2012.

The Committee takes note of the latest National General Collective Labour Agreement is the "National General Collective Labour Agreement 2022, extension of the validity of the NGCLA 2021" of the Ministry of Labour and Social Affairs, and that the validity period was extended until 30 June 2023. Nevertheless, the Committee considers that it has not been demonstrated by the Government that collective agreements, whether national-level agreement or agreements concluded at company level, in practice ensure that reasonable weekly working time is guaranteed in the manner required by the Charter.

In conclusion, the Committee considers that the situation has not been brought into conformity on this count either.

**B. Violation of Article 4§1**

The Committee recalls that to be considered fair within the meaning of Article 4§1, the minimum or lowest net remuneration or wage paid in the labour market must not fall below 60% of the net average wage. The Committee's assessment is based on net amounts, i.e. after deduction of taxes and social security contributions. Where net figures are difficult to establish, it is for the States Parties concerned to conduct the needed inquiries or to provide estimates. The Committee notes that the Government provides information on the minimum wage (the statutory minimum monthly salary for 2022 was set at €713 and minimum daily wage at €31.85) but does not provide information concerning the values of the minimum wage after the deduction of social security contributions and income tax (net value of the minimum wage), or the net average wage for 2022.

The Committee observes that, according to public domain data from the Business Service Information System of the Ministry of Labour and Social Affairs (ERGANI), the average gross salary of full-time workers in the private sector in 2022 was €1 176.5. The gross amount of minimum wage would therefore amount to 60% of the average gross salary. However, since its assessment is based on net amounts, which were not available in Eurostat and OECD databases at the time of its examination of the situation, the Committee considers that it has not been demonstrated that fair remuneration is guaranteed.

Therefore, the situation has not been brought into conformity with the Charter.

**C. Violation of Article 4§4**

The Committee considers that Law No. 2808/2021 did not result in legislative developments in respect of the points deemed not in conformity, namely the absence of a notice period or severance pay in the case of termination of employment during

the probationary period, and that, consequently, the situation has not been brought into conformity with Article 4§4 of the Charter.

**D. Violation of Article 7§5**

In its decision on the merits, the Committee held that, given its decision on Article 4§1 of the 1961 Charter, and due to the extent to which the minimum wage falls below the established threshold for adult workers, the wage paid to workers aged 15-18 was not fair within the meaning of Article 7§5 of the 1961 Charter.

In its previous finding, the Committee already referred to its conclusion on Article 7§5 (Conclusions 2019, Article 7§5, Greece) where it considered that any difference between young workers' and adult workers' wages must be reasonable, and the gap must close quickly. For 15/16-year-olds, a wage of 30% lower than the adult starting wage is acceptable. For 16/18-year-olds, the difference may not exceed 20%. The adult reference wage must, in any case, be of an amount sufficient to comply with Article 4§1 of the Charter. If the reference wage is too low, a young worker's wage is not considered fair, even if it respects the prescribed percentages.

The Committee notes from the information submitted by the Government that the wage of some categories of young workers and apprentices, who are above 16 years old is still set at 75% of the minimum wage, or even 70% according to Article 74§9 of Law No. 3863/2010. The Committee considers, therefore, that the situation has not been brought into conformity with the Charter.

**E. Violation of Article 7§7**

The Committee notes that, in its report, the Government does not refer to Article 74§9 of Law No. 3863/2010, according to which labour law, other than provisions relating to workers' health and safety, does not apply to apprentices and therefore they were not entitled to a three weeks' annual holiday with pay within the year of their "Special apprenticeship contract". The Committee understands that this provision is still in force.

In its report, the Government described the legal framework of post-secondary vocational training (apprenticeship through educational structures) carried out by Vocational Education Schools (DYPA, formerly OAED), Vocational Training Institutes (IEK), and post-secondary year of apprenticeship classes (of EPAL schools). It summarised the scope, daily working hours, and remuneration of the apprentices without a particular reference to the entitlement of apprentices to annual leave. However, the Committee noted that, according to Article 7 of Ministerial Decision No. F. B8/108652/K3/2021, the apprentices who are subject to labour provisions are entitled to annual leave established by Law No. 1346/1983. According to the provisions of that law, paid annual leave for a full-time worker corresponds to 20 working days and in the case of part-time work, it is reduced accordingly. The Committee understands from the report that most apprentices' contracts fall within the described framework.

The Committee notes from other sources (such as the Hellenic Labour Inspectorate and the Athens Chamber of Tradesmen), that except for the "Special apprenticeship contract" and the "Apprenticeship contract through educational structures", there are other types of apprenticeship contracts in Greece, which existed at the time of the submission of the collective complaint. Under the "Genuine apprenticeship contract", the work performed by the apprentice does not have the purpose of carrying out productive work but rather consists of training and familiarisation with a future profession or craft. This type of contract is governed by the provisions of the Civil Code. In contrast, the "Contract of dependent work of an apprentice" (as opposed to the apprenticeship contract) has as its primary purpose is the provision of work for a business company. In this case, neither the parallel acquisition of knowledge or skills

nor the training of the employee constitutes a particular obligation of the employer. Any parallel acquisitions in certain professions or the learning of an art are merely automatic consequences of these contracts. This type of contract is subject to the provisions of labour law.

The "Special apprenticeship contract" is an exceptional contract that was found to be in violation of Article 7§7 of the Charter. This type of apprenticeship contract is concluded between the employer and persons who are aged 15 years up to and including 18 years (Article 74 par. 9 of Law No. 3863/2010 and Article 1 par. 1 PYS 6/2012). Its maximum duration cannot exceed one year. The remuneration, insurance, and working hours of the above apprentices are also regulated by the same provision. The provisions of labour law do not apply in this particular case with the exception of the provisions concerning workers' health.

Taking into account the very particular nature and objectives of the "Special apprenticeship contract" and noting that the legal framework of vocational and occupational training offers apprentices a genuine choice in selecting the type of apprenticeship contract suitable to their needs, the Committee concludes that the situation is compatible with the Charter on this point.

**F. Violation of Article 3 of the Additional Protocol to the 1961 Charter**

Based on the information provided, the Committee considers that the Government has not demonstrated that relevant measures have been adopted or that workers or their representatives were encouraged and enabled, by national legislation and practice, to contribute to the determination and the improvement of working conditions. The Committee also notes that the Government has not referred to any participation of workers in the determination of working conditions listed in Article 3, other than health and safety.

The Committee considers that, in the absence of any legislative developments, the situation has not been brought into conformity with Article 3 of the Additional Protocol to the 1961 Charter (Article 22 of the Revised Charter by which Greece is now bound).

*Finding*

The Committee finds that the situation in Greece has been brought into conformity regarding Article 7§7, while it is has not been brought into conformity regarding Articles 2§1, 4§1, 4§4, 7§5 and 3 of the Additional Protocol to the 1961 Charter (Article 22 of the Revised Charter).

## 1st Assessment of follow-up: University Women of Europe (UWE) v. Greece, Complaint No. 131/2016, decision on the merits of 6 December 2019, Recommendation CM/RecChS(2021)8

### 1. Decision of the Committee on the merits of the complaint

#### A. Violation of Articles 4§3 and 20.c of the Charter regarding access to effective remedies not being ensured

In its decision, the Committee noted that the existing legal framework allows victims of gender pay discrimination to claim their right to equal pay. However, the Committee considered that, in view of the limited number of equal pay cases and in the absence of indications of efforts deployed to address the remaining obstacles in practice (such as costs of proceedings, inadequate legal aid and length of proceedings), the obligation to ensure access to effective remedies has not been satisfied.

#### B. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency

In its decision, the Committee considered that pay transparency was not ensured because of the existing important limitations relating to the non-binding nature of job classification systems and the absence of monitoring of pay exceeding those stipulated by collective agreements.

#### C. Violation of Article 20.c of the Charter regarding insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay

In its decision, the Committee considered that the significant part of measures and policies were still under way and data collection tools were only under development; thus, the obligation to collect reliable, standardised statistics and to adopt measures to promote equal opportunities with respect to equal pay had not been satisfied.

#### D. Violation of Article 20.d of the Charter regarding insufficient progress in ensuring a balanced representation of women in decision-making bodies within private companies

In its decision, the Committee considered that the measures taken had neither led to a balanced representation of women in decision-making positions in private companies nor to a clear and significant trend for improvement in such representation in recent years.

### 2. Information provided by the Government

#### A. Violation of Articles 4§3 and 20.c of the Charter regarding access to effective remedies not being ensured

The Government states that, by virtue of Law 3896/2010 on the Implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation – aligning current legislation with Directive 2006/54/EC of the European Parliament and of the Council, a special framework was created to implement the principle of equal opportunities and equal treatment of men and women in employment and occupation. Article 3 of Law 3896/2010 provides for the principle of equal treatment and the prohibition of any discrimination on grounds of gender,

whereas Article 4 of the same law enriches, in terms of content, the rule of equal pay for women and men.

According to Article 25 of Law 3896/2010, the Ombudsman is the national body for monitoring and promoting the implementation of the principle of equal opportunities and equal treatment of men and women in the private and public sectors. Moreover, Article 2(g) of Law 3996/2011 stipulates that the Labour Inspectorate (SEPE) monitors the implementation of the principle of equal opportunities and equal treatment of men and women in work and employment and especially of Law 3896/2010 (A'207), whereas under Law 4443/2016, SEPE in the case of unequal treatment based on gender, may impose administrative sanctions ranging from €1 000 to €5 000.

Therefore, according to the Government, the Ombudsman and the Labour Inspectorate act in a coordinated, independent and complementary manner to combat gender discrimination at all stages of the complaints' examination, in case such an infringement is reported or found by the Labour Inspectors.

The cooperation of the two bodies has, according to the Government, brought satisfactory results in terms of both detecting unequal treatment and imposing direct sanctions against infringing undertakings.

In the years 2019-2021, seven complaints on issues of direct gender discrimination were filed with the local Labour Inspectorate departments, of which two cases were resolved by the Labour Inspectors, three cases were forwarded to the Ombudsman and two were referred to the courts.

Also, by virtue of Law 4443/2016, the current legislative framework is improved and enhanced for the implementation of the principle of equal treatment and the prohibition of discrimination in employment and occupation in general. To this end, a broader scope of application is developed for the principle of equal treatment by introducing new grounds of discrimination and the Ombudsman is assigned the task of monitoring the implementation of the principle of equal treatment in a uniform manner for the public, the broader public and the private sector.

The Government states that Laws 3896/2010 and 4443/2016 provide for important institutional tools to combat discriminatory treatment at the workplace.

**B. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency**

As regards the issue of equal pay of women and men, the content of the rule of equal pay of men and women is enriched, in compliance with Article 22, para. 1 section b΄ of the Greek Constitution, Article 4 of Directive 2006/54/EC, and the International Labour Law (ILC 100), and stipulates that: "Men and women are entitled to equal pay for similar work and for work of equal value".

According to the Government, where an occupational classification system is used to determine wages, this system should be based on common criteria for male and female workers and should exclude discrimination on the grounds of sex. When designing and implementing staff appraisal systems related to their pay progression, the principle of equal treatment should be respected and discrimination on the grounds of sex or marital status should not be permitted.

The Government states that the use of occupational classification and staff appraisal systems is not imposed on companies to determine wages. However, in cases where companies apply such systems, they should respect the principle of equal treatment of men and women and not allow discrimination on the grounds of sex in pay.

**C. Violation of Article 20.c of the Charter regarding insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay**

The Government provides information about the National Action Plan for Gender Equality 2021-2025, in the context of which a series of flagship programmes and measures are being implemented to promote the equal participation of women in the labour market. These measures and programmes include the transposition of the Work-life Balance Directive, combating gender pay and pension gap, supporting female entrepreneurship and promoting education and training of women and girls. The Government indicates that in the framework of the Pegasus project, the issue of gender pay gap was examined on a multifaceted basis.

The Government also states that Law 4808/2021 includes provisions that aim at the empowerment of women and gender equality in the workplace. The overall objective of this law is to address the issue of the effective implementation of the principle of equality between men and women, in terms of labour market opportunities and equal treatment at work, by improving access to work-life balance arrangements.

**D. Violation of Article 20.d of the Charter regarding insufficient progress in ensuring a balanced representation of women in decision-making bodies within private companies**

The Government indicates that the promotion of women in decision making processes and in public life in general has always been among the strategic priorities of Greece's National Action Plans for Gender Equality.

The National Action Plan 2021-2025 includes a comprehensive set of actions regarding the increase of the number of women in positions of responsibility (legislative interventions, awareness-raising campaigns, monitoring women's representation in management positions, enhancing women's networking).

Moreover, in the legislative field, Greece has introduced Law 4706/2020, dealing with corporate governance aiming at modernising the internal structure of the listed companies with a view of strengthening their autonomy in order to meet modern Capital Markets' requirements. Article 3 par. 1 provides for the first time in Greece a gender quota of at least 25% of women on listed company boards. Therefore, the new law envisages provisions regarding a more comprehensive gender representation in the Board of Directors, by introducing mandatory quotas and stipulates the company's obligation to set diversity criteria for the selection of its directors. Companies had a 12- month period to comply with the quota. Today, according to data from the Hellenic Capital Market Commission, they all meet this obligation.

### 3. Assessment of the follow-up

**A. Violation of Articles 4§3 and 20.c of the Charter regarding access to effective remedies not being ensured**

In its decision, the Committee had noted that as regards national case law concerning equal pay, even if the Government recognises that wage differentials based on gender might exist where wages paid by employers exceed those stipulated in collective agreements, no complaints had been lodged for violation of the equal pay provisions of Law No. 3896/2010. Most pay discrimination judgments concern grounds of discrimination other than gender.

The Committee notes that, according to the Government, the SEPE and the Ombudsman cooperate to identify and resolve gender discrimination cases. The

Committee noted that in 2019-2021, seven complaints on issues of direct gender discrimination were filed with the local Labour Inspectorate departments, of which two cases were resolved by the Labour Inspectors, three cases were forwarded to the Ombudsman and 2 were referred to the courts.

The Committee considers that some progress has been made in detecting gender discrimination in employment. However, there is no indication of how many of these claims relate to equal pay and whether other obstacles have been overcome in cases of pay discrimination, such as the costs of proceedings, inadequate legal aid and the length of proceedings. The Committee, therefore, considers that the violation has not yet been brought into conformity.

**B. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency**

The Committee recalls that, in its decision, it had noted that job classification systems were not imposed on companies and that pay higher than that stipulated by the collective labour agreements was not monitored. It also observed that there was no evidence as to whether a potential victim of pay discrimination could gain access to the essential pay information of a co-worker in the context of judicial proceedings.

In its Recommendation CM/RecChS(2021)8, the Committee of Ministers recommended that Greece continue to adopt measures to improve pay transparency by means of imposing job classification systems on all companies and ensuring that private agreements that exceed the pay levels provided for in collective labour agreements are also monitored in terms of gender equality in pay.

However, as the Government indicates, the use of occupational classification and staff appraisal systems is not imposed on companies to determine wages. The Committee notes in this respect that there have been no developments in improving pay transparency. Therefore, it considers that the situation has not been brought into conformity.

**C. Violation of Article 20.c of the Charter regarding insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay**

The Committee recalls that, in its decision, it considered that the obligation to promote the right to equal pay entails that measures and policies are designed in response to shortcomings identified through data analysis, with a view to taking more targeted action. The Committee considered that the obligation to collect reliable, standardised statistics and to adopt measures to promote equal opportunities with respect to equal pay had not been satisfied.

In its Recommendation CM/RecChS(2021)8, the Committee of Ministers recommended that Greece pursue and finalise development of data collection tools to meet the obligation to collect reliable, standardised statistics with a view to measuring and analysing the gender pay gap.

The Committee takes note of the measures taken to promote equal opportunities of women in the labour market. It notes from Eurostat that the gender pay gap in 2018 stood at 10.4%, down from 12.5% in 2014. The Committee notes however that the Government does not provide any information concerning progress made in collecting and analysing statistics on gender equality and the pay gap in particular, which is an obligation under Article 20.c of the Charter. The latest indicator for the gender pay gap in Greece is from 2018.

Therefore, the Committee considers that the situation has not been brought into conformity.

**D. Violation of Article 20.d of the Charter regarding insufficient progress in ensuring a balanced representation of women in decision-making bodies within private companies**

In its Recommendation CM/RecChS(2021)8, the Committee of Ministers recommended that Greece consider adopting any new measures that may bring about measurable progress within reasonable time in reducing vertical segregation in the labour market.

The Committee takes note of the new law which has introduced a gender quota for management boards of listed companies. The Committee notes in this respect from the European Institute for Gender Equality (EIGE) that, in 2023, the percentage of women, members of management boards in listed companies reached 24.5%.

While noting that the indicator of the representation of women in decision making bodies within private companies still falls well below the European average of 34%, the Committee considers that Greece has made a measurable progress in increasing this representation.

The Committee therefore considers that the situation has been brought into conformity.

*Finding*

The Committee finds that the situation has not been brought into conformity with Articles 4§3 and 20.c as regards access to effective remedies and ensuring pay transparency.

The situation has been brought into conformity with Article 20.d as regards measurable progress with increasing the representation of women on decision making boards in private listed companies.

Finally, the Committee finds that the situation has not been brought into conformity with Article 20.c as regards measurable progress with reducing the gender pay gap.

# IRELAND

## 4th Assessment of follow-up: European Confederation of Police (EuroCOP) v. Ireland, Complaint No. 83/2012, decision on admissibility and the merits of 2 December 2013, Resolution CM/ResChS(2014)12

### 1. Decision of the Committee on the merits of the complaint

The Committee concluded that there was a violation of Article 6§4 of the Charter on the ground that the domestic legislation amounted to a complete prohibition of the right to strike as far as the police is concerned.

The Committee also found a violation of Article 5 of the Charter on the grounds of the prohibition against police representative associations from joining national employees' organisations, depriving them of the possibility of being represented by national organisations in negotiations on pay, pensions and service conditions. This was considered to have been brought in conformity in Findings 2021, and the follow-up was terminated in this respect. Moreover, the Committee had found a violation of Article 6§2 of the Charter on the ground that the police representative associations were not provided with a means to effectively represent their members in all matters concerning their material and moral interests. This was considered to have been brought in conformity in Findings 2021, and the follow-up was terminated in this respect.

### 2. Information provided by the Government

As regards the violation of Article 6§4 of the Charter, no new information is provided by the Government.

### 3. Information provided by the Irish Human Rights and Equality Commission and the Government's response

The Irish Human Rights and Equality Commission submits that the situation has not been brought into conformity with Article 6§4 of the Charter as the complete prohibition of An Garda Síochána members' right to strike remains in place. The Government submits that the unique position of the Garda Síochána is such that the withdrawal of labour in any strike action is likely to impact on policing, the security of the State or the maintenance of public authority.

### 4. Assessment of the follow-up

As regards Article 6§4 of the Charter, the sole remaining aspect of the complaint to be assessed under this follow-up procedure, the Committee notes that the domestic legislation still provides for a complete prohibition of the right to strike as far as the police is concerned. No new information was submitted by the Government. Accordingly, the Committee is unable to consider that the situation has been remedied.

The Committee reiterates its finding that the situation has not been brought in conformity with Article 6§4 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 6§4 of the Charter.

## 4th Assessment of follow-up: European Roma Rights Centre (ERRC) v. Ireland, Complaint No. 100/2013, decision on the merits of 1 December 2015, Resolution CM/ResChS(2016)4

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there were multiple violations of Article 16 of the Charter on the following grounds:

A. The insufficient provision of Traveller accommodation;

B. The inadequate condition of many Traveller sites;

C. The Criminal Justice (Public Order) Act 1994 (as amended) provides for inadequate safeguards for Travellers threatened with eviction;

D. The Housing (Miscellaneous Provisions) Act 1992 (as amended) provides for inadequate safeguards for Travellers threatened with eviction, and

E. Evictions carried out in practice without the necessary safeguards.

### 2. Information provided by the Government

### A. On the insufficient provision of Traveller accommodation

The Government states that the new policy framework "Housing for All" covering the period up to 2030 was published in September 2021 and that it contains a specific policy objective to increase and improve Traveller accommodation.

The annual funding budget for Traveller-specific accommodation for 2023 amounts to €20 million, an increase of €2 million on the 2022 provision. The Government works with local authorities to ensure that all allocated funds are spent and reports that this has been achieved with respect to the budgets for 2020, 2021 and 2022.

During 2022, a Pilot Caravan Loan Scheme was expanded nationwide on a temporary basis to provide full funding to local authorities for preferential rate loans to members of the Traveller community for the purchase of caravans. The Government notes that the scheme is due to be reviewed with a view to potentially extending it on an enduring basis.

The Government presents the findings from various surveys on Traveller housing needs. The 2021 Social Housing Needs Assessment on the number of households qualifying for social housing support, but whose social housing needs was not met, reveals that 996 households identified as members of the Travelling community (1.6% of the total number). The 2021 Annual Estimate of Accommodation of Traveller Families indicates that there were 11 680 Traveller households in the State (an increase of 562 families on 2020). A total 80% of families (9 273) were in standard accommodation, including 5 238 households in social housing, while the remaining 20% (2 407) were in Traveller-specific accommodation. The Assessment of Housing Needs carried out by local authorities identified a general preference among Travellers for standard housing.

The Government states that work on 24 of the 32 recommendations contained in the Traveller Accommodation Expert Review report published in July 2019 is currently underway or complete (for further details about the process leading to the publication of the report, see Findings 2020 and Findings 2021). This work is reflected in updates published regularly by the Department of Housing, Local Government and Heritage.

As regards data collection, the Government notes that a new Traveller identifier was included on the statutory Social Housing Support application form which came into operation on 14 March 2022, and which should provide more accurate information on Traveller housing needs in due time.

**B. On the inadequate condition of many Traveller sites**

The Government refers to estimates from local authorities to the effect that a total of 110 Traveller families live on unauthorised sites without access to services.

**C. On the Criminal Justice (Public Order) Act 1994 (as amended)**

No specific information on new measures is submitted. The Government reiterates that the act concerned will be looked at in light of the Traveller Accommodation Expert Review recommendations, with the participation of the Department of Justice.

**D. On the Housing (Miscellaneous Provisions) Act 1992 (as amended)**

The Government notes that the Department of Justice is currently engaging with stakeholders through a newly established sub-group of the Programme Board set up to oversee the implementation of the Traveller Accommodation Expert Review recommendations, with a view to drafting a protocol on evictions for the use of local authorities.

**E. On evictions being carried out in practice without the necessary safeguards**

The Government reiterates that, while there is no statutory obligation to do so, in practice, local authorities seek to consult and negotiate with affected persons and families in advance of issuing removal orders under Section 10 of the Housing (Miscellaneous Provisions) Act 1992 (as amended).

3. **Comments provided by the Irish Human Rights and Equality Commission**

The Irish Human Rights and Equality Commission (IHREC) provided information as concerns relevant developments in connection to the present decision on the merits, following similar submissions filed in 2018, 2020 and 2021. The Government submitted a response to these comments.

**A. On the insufficient provision of Traveller accommodation**

The IHREC notes that, according to the most recent data, the number of Traveller households living on local authority halting sites has marginally increased (namely, from 1 047 in 2020 to 1 054 in 2021), while the number of Traveller households living on unauthorised sites has marginally decreased (namely, from 529 families in 2019, to 468 in 2020, and 487 in 2021). Furthermore, the use of non-Traveller specific accommodation has increased. Namely, from 2019 to 2021, the number of Traveller households living in 'standard' local authority housing increased by 560, while the number of Traveller households accommodated by voluntary bodies increased by 218.

While the IHREC notes that the inclusion of a commitment to improve Traveller accommodation in the "Housing for All" policy framework is not accompanied by further details or targets.

The IHREC welcomes the third consecutive year of Traveller accommodation budget being fully drawn down. However, it expresses concern that the accommodation

targets were not being achieved in every local authority, citing the case of the Dublin City Council which failed to deliver sufficient new units to meet existing demand.

The IHREC questions the methodology used for collecting Traveller accommodation data, despite recent attempts to reform it, as it does not reflect the actual circumstances of the group concerned. For example, it is not clear if local authorities counted 'households' or 'families', or whether Travellers living in unauthorised sites without basic amenities were classified as 'homeless'.

Furthermore, the IHREC questions the Government's assertion that Travellers have a general preference for standard housing, based on its ongoing engagement with Traveller organisations. The IHREC notes that, given the scarcity of Traveller-specific accommodation, many Travellers felt pressured to apply for social housing and, in some cases, to accept unsuitable accommodation. Moreover, the Government's increasing reliance on private rental accommodation to meet Traveller housing needs does not sufficiently take into account the widespread discrimination against them in the private rental market. Social housing, another option advanced by the State in this context, often fails to account for the size of Traveller families.

The IHREC submits that the Government failed to engage sufficiently with the Traveller Accommodation Expert Review recommendations, including notably by establishing an independent authority responsible for Traveller accommodation, which would provide focus in a policy area that remains incoherent and inadequate.

The IHREC also expresses regret about the significant delay in the development of the successor to the National Traveller and Roma Inclusion Strategy, which lapsed in 2021.

Finally, the IHREC indicates that, in 2021, it published the results from a review of local authority practice in relation to Traveller accommodation, which highlighted the following key themes – underspend in the drawdown of allocated funds, evidence of poor information gathering to inform decision-making, and difficulties identifying Travellers' true accommodation preferences.

**B. On the inadequate condition of Traveller sites**

The IHREC refers to research showing that many Traveller families continue to live in inadequate, unsafe, and impermanent conditions, with thousands lacking access to electricity, running water or sanitation.

**C. On the Criminal Justice (Public Order) Act 1994 (as amended)**

The IHREC notes that although there have been other calls to repeal and replace this legislation, notably from the Traveller Accommodation Expert Group and the Joint Committee on Key Issues Affecting the Traveller Community, there has been a lack of tangible progress in this regard.

**D. On the Housing (Miscellaneous Provisions) Act 1992 (as amended)**

The IHREC reiterates concerns regarding access to legal aid, speed of proceedings, judicial review, requirements to consult and ensure alternative accommodation, in the context of eviction proceedings.

**E. On evictions being carried out in practice without the necessary safeguards**

The IHREC questions the Government's assertions that, in practice, local authorities engage with persons and families threatened by evictions, in the absence of documentary evidence of such consultations and outcomes achieved.

### 3. Assessment of the follow-up

The Committee firstly considers it relevant to refer to the recent findings of the European Commission against Racism and Intolerance (ECRI) regarding the implementation of the recommendations from its latest report in respect of Ireland, published on 3 March 2022. While noting that the Traveller-specific accommodation budget for 2020 had been spent, ECRI expressed concern as regards the lack of sufficient action on ensuring greater accountability in the use of the Traveller accommodation funds and the delays in implementing the Expert Group recommendations, particularly those concerning the increased national oversight of the delivery of Traveller accommodation. ECRI also emphasised that there had been no major improvement in the accommodation conditions of Travellers.

**A. On the insufficient provision of Traveller accommodation** and

**B. On the inadequate condition of Traveller sites**

The Committee considers that some measures have been taken to improve the situation, including by ensuring that the funds from the Traveller-specific annual accommodation budget were fully spent, expediting the implementation of the Traveller Accommodation Expert Review recommendations, or improving data collection as regards Traveller housing needs.

However, the Committee notes that the report does not provide any evidence of tangible and meaningful improvements as regards the provision of accommodation for Travellers or living conditions on halting sites. Furthermore, crucial Traveller Accommodation Expert Review recommendations, including those on national oversight, data collection and governance, have yet to be implemented, and work on the new strategy on Roma and Traveller issues, which has previously served as an important vehicle for coordinating policy in area of Traveller accommodation, appears to have stalled. The Committee also notes that the report does not address some of the issues previously raised by the IHREC, including in respect of the absence of sufficient provision for culturally appropriate Traveller-specific accommodation, long waiting times for social housing, or living conditions on local authority halting sites (also see Findings 2020 and Findings 2021).

The Committee finds that the situation has not been brought into conformity with Article 16 of the Charter.

**C. On the Criminal Justice (Public Order) Act 1994 (as amended),**

**D. On the Housing (Miscellaneous Provisions) Act 1992 (as amended),** and

**E. On evictions being carried out in practice without the necessary safeguards.**

The Committee notes that the relevant provisions of the Criminal Justice (Public Order) Act 1994 and the Housing (Miscellaneous Provisions) Act 1992 (as amended) have not yet been revised in light of the violations found in its decision on the merits.

The Committee finds that the situation has not been brought into conformity with Article 16 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 16 of the Charter and that this applies to all violations found in its decision on the merits.

## 4th Assessment of follow-up: International Federation for Human Rights (FIDH) v. Ireland, Complaint No. 110/2014, decision on the merits of 12 May 2017, Resolution CM/ResChS(2018)1

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee held that there was a violation of Article 16 of the Charter on the ground that a significant number of local authority tenants resided in poor housing conditions amounting to housing that was inadequate in nature. In doing so, the Committee also took into account the lack of up-to-date statistics on the condition of the local authority housing stock, the slow pace of regeneration work on local authority estates, and the lack of a national timetable for that work.

### 2. Information provided by the Government

The Government states that the relevant authorities agreed on a national standardised stock condition survey template, that work is underway on the necessary ICT infrastructure, and that funding was allocated with a view to completing a comprehensive assessment of local authority housing stock within the next four to five years.

The Government describes several initiatives aimed at maintaining and improving local authority housing stock, with local authority and Government funding. The Energy Efficiency Retrofitting Programme (EERP), implemented from 2013 until 2021, provided funding for retrofitting social housing requiring insulation and energy upgrade works, benefiting over 75 000 social housing units retrofitted at a total cost of €183 million. In 2021, another retrofitting initiative was launched, which is expected to benefit 500 000 homes by 2030, including 36 500 local authority owned homes.

According to the Government, 3 607 social housing units were refurbished or upgraded in 2020 and 2 425 units in 2021, at a total cost of €88.5 million in Government funding. The Department of Housing, Local Government and Heritage continues to support large-scale regeneration projects in Dublin, Cork, and Limerick, in addition to smaller projects in Tralee, Sligo and Dundalk, which target disadvantaged communities. From 2016 to date, over 668 units were delivered, at a cost of €323 million. The regeneration projects currently underway are expected to deliver a further 639 new units until 2027, at an estimated cost of €212 million. The report additionally includes an appendix on the state of execution of the regeneration projects referenced in the original collective complaint.

In response to criticism by non-governmental organisations, the Government notes that the Department of Housing, Local Government and Heritage continues to engage with relevant local authorities to address the issues raised in the Committee's decision on the merits.

### 3. Information provided by non-governmental organisations

The Committee received comments from the Irish Human Rights and Equality Commission (IHREC), as well as from the Community Action Network (CAN) jointly with the Centre for Housing Law, Rights and Policy (CHLRP). These comments include information as concerns relevant developments in connection to this decision on the merits, following similar submissions filed in 2018, 2020 and 2021. The Government submitted a response to these comments.

As a general proposition, the comments assert that the State lacks any targets, a clear timeline, or any action plan against which progress as regards the measures required in the present case can be measured.

The comments emphasise that the national stock condition survey to be completed in the next four to five years is greatly overdue, and that the absence of comprehensive data on the adequacy of local authority housing hampers any efforts towards preparing a national timetable for refurbishment or reviewing the progress of current activities.

The comments refer to research showing that a significant share of local authority tenants across a number of communities continued to experience conditions such as overcrowding, damp and mould, faulty sewage, water ingress, infestation, fire safety concerns and/or poor insulation. Many residents lacked one or more of the following: central heating, cold or hot running water, suitable refuse storage, safe play space for children. Local authority housing that has not been retrofitted may potentially force tenants into energy poverty and place additional burdens on the households.

The IHREC notes that the "Housing for All" national policy framework, adopted in 2021, included the objective for all local authorities to move to a planned management and maintenance approach by the first quarter of 2024. This follows similar commitments included in the previous national policy framework, "Rebuilding Ireland". At the same time, the IHREC refers to the results of a survey indicating that social housing tenants experience significant difficulties getting repairs done in a timely and professional manner.

While welcoming the information on regeneration work included in the State's report, the comments note the slow progress to date and certain inconsistencies in the reporting on the delivery of these projects. For example, the work carried out at the Dolphin House, also mentioned in the Committee's decision on the merits, had been reported in 2019 as being in phase 1B and projected to provide 35 units. In 2022, the State reports that this project is still in stage 1, the preliminary discussion stage, and is expected to provide 28 units.

**3. Assessment of the follow-up**

Based on the information at its disposal, the Committee finds that progress on the adoption and implementation of measures to improve the situation found to be in violation of the Charter appears to have stalled since its previous assessment (Findings 2021). While a national stock condition survey is scheduled to be completed in the next four to five years, it continues to be the case, as noted in the decision on the merits, that the Government lacks a full set of data that would enable planning the necessary work and reviewing the impact of the strategies adopted. In the absence of a clear timetable at the national level, it is not possible to assess the effectiveness of current regeneration work in relation to the aims set out in the decision on the merits. Furthermore, it appears that there are inconsistencies in the data sets regarding regeneration work presented by the Government from one reporting cycle to another.

The Committee notes that a significant number of local authority tenants continue to live in inadequate housing conditions, in violation of Article 16 of the Charter. The Committee further points out that that some of the regeneration projects identified in its decision on the merits as greatly delayed, have still not been completed, and consequently that the tenants living in these estates continue to experience inadequate housing conditions, as illustrated by the situation as regards Dolphin House among others.

The Committee notes that some of the difficulties in this case may be ascribed to fact that housing comes under the purview of local authorities, as opposed to the national government. In that sense, the Committee recalls that "the ultimate responsibility for policy implementation, involving at a minimum supervision and regulation of local action, lies with the Government which must be able to show that both local authorities and itself have taken practical steps to ensure that local action is effective" (*European Roma Rights Centre (ERRC) v. Italy*, Complaint No. 27/2004, decision on the merits of 7 December 2005, §26; *European Federation of National Organisations Working with the Homeless (FEANTSA) v. France*, Complaint No. 39/2006, decision on the merits of 5 December 2007, §79).

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 16 of the Charter.

## 3rd Assessment of follow-up: European Organisation of Military Associations (EUROMIL) v. Ireland, Complaint No. 112/2014, decision on the merits of 12 September 2017, Resolution CM/ResChS(2018)2

### 1. Decision of the Committee on the merits of the complaint

The Committee concluded that there was a violation of Article 5 of the Charter on the ground that the complete prohibition against military representative associations joining national workers' organisations was not necessary and proportionate.

As regards Article 6§2 of the Charter, the Committee found a violation on the ground that military representative associations were unable to meaningfully participate in national pay agreement negotiations. This was considered to have been brought in conformity in Findings 2020, for which reason the follow-up was terminated in this respect.

### 2. Information provided by the Government

The Government states that both of the Permanent Defence Forces Representative Associations (PDFORRA and RACO) have sought associate membership with the Irish Congress of Trade Unions (ICTU) for the purpose of being involved in central public sector pay negotiations. As provided for in the Defence Acts, conditional temporary consent for this purpose was provided to both organisations in late May and early June 2022. The associate membership is temporary until the appropriate legislative provision is put in place.

### 3. Information provided by EUROMIL and the Irish Human Rights and Equality Commission and the Government's response

EUROMIL submits that the grant of temporary associate status is disconcerting, especially as no indication has been provided to the representative bodies regarding when the appropriate legislative framework will be put in place and what caveats, if any, may be attached to granting of associate status in the future. The Irish Human Rights and Equality Commission submits that as the prohibition against military representative bodies from joining national employees' organisations has yet to be removed, the current legislative framework continues to be in non-conformity with Article 5 of the Charter.

The Government submits that both Defence Forces Representative Associations – the Representative Association of Commissioned Officers and Permanent Defence Forces Other Ranks Representative Association – sought associate membership with the Irish Congress of Trade Unions for the purpose of being involved in central public sector pay negotiations. The Minister for Defence provided his conditional temporary consent, and the Department of Defence continues to work on a legislative solution to ensure this.

The Government further submits that Ireland is not unique in imposing limitations on rights of association for military personnel.

### 4. Assessment of the follow-up

The Committee takes note of the developments described in the Government's report and the information submitted by EUROMIL and the Irish Human Rights and Equality Commission and the Government's reply. However, the Committee notes that Ireland has not yet removed the complete prohibition against military representative

associations joining national workers' organisations. The situation therefore has not been brought in conformity with Article 5 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 5 of the Charter.

## 1st Assessment of follow-up: University Women of Europe (UWE) v. Ireland, Complaint No. 132/2016, decision on the merits of 5 December 2019, Recommendation CM/RecChS(2021)9

### 1. Decision of the Committee on the merits of the complaint

#### A. Violation of Articles 4§3 and 20.c of the Charter on the ground that the pay transparency is still not ensured in practice

In its decision, the Committee considered that, as regards the obligation to ensure pay transparency in practice, it had not yet been satisfied, pending the implementation of the measures foreseen under the Gender Pay Gap Information Bill.

#### B. Violation of Article 20.c of the Charter on the ground that there is an absence of indicators showing measurable progress in promoting equal opportunities between women and men in respect of equal pay

In its decision, the Committee noted that the Government had not transmitted complete data to Eurostat that would show the evolution of the gender pay gap in the course of the last decade. The Committee considered that in the absence of such information and therefore of indicators of measurable progress, it had not been demonstrated that the obligation to achieve measurable progress in reducing the gender pay gap had been fulfilled.

#### C. Violation of Article 20.d of the Charter on the ground that there has been insufficient progress in ensuring a balanced representation of women in decision-making positions within private companies

In its decision, the Committee noted that the Government has taken certain measures to meet its positive obligation to tackle vertical segregation of women in the labour market. However, these measures had not led to a balanced representation of women in decision-making positions in private companies nor to a clear trend for improvement. The Committee therefore considered that the obligation laid down by the Charter in this respect had not been satisfied.

### 2. Information provided by the Government

#### A. Violation of Articles 4§3 and 20.c of the Charter on the ground that the pay transparency is still not ensured in practice

According to the Government, the Gender Pay Gap Information Act 2021 introduced legislative basis for gender pay gap reporting in Ireland. The Act, along with Regulations which set out the detail on how these calculations will be made, entered into force on 31 May 2022.

The Regulations require organisations to choose a ‘snapshot’ date of their employees in June 2022 and to report back on the same date in December 2022. For this year, organisations with 250+ employees are required to report. The reporting obligation will be extended to organisations with 150+ employees from 2024 and to organisations with 50+ employees from 2025.

Organisations to which the Regulations apply are asked to prepare a report annually on the mean and median hourly wage gap, data on bonus pay and employees in receipt of benefits in kind, the mean and median pay gaps for part-time and temporary

contracted employees and proportions of male and female employees in the lower, lower-middle, upper-middle and upper quartiles pay bands.

According to the Government, Ireland plans to develop an online reporting system for the 2023 reporting cycle which will consist of a central portal where all employer reports will be uploaded and be accessed publicly.

**B. Violation of Article 20.c of the Charter on the ground that there is an absence of indicators showing measurable progress in promoting equal opportunities between women and men in respect of equal pay**

According to the Government, the unadjusted Gender Pay Gap in hourly pay in Ireland (as measured according to the common Eurostat definition) has fluctuated over the past decade from 12.2% in 2012 to 14.4% in 2017, before falling to 11.3% in 2018 - the latest date for which figures are currently published.

A recently published analysis by Ireland's Economic and Social Research Institute (ESRI) of the gender pay gap in Ireland found a consistently high unexplained gap at the upper end of the wage distribution, which suggests that efforts to tackle the pay gap should address the glass ceiling in the private sector.

The obstacles and factors involved which disadvantage women are persisting gender stereotypes (unconscious biases); unequal caring responsibilities; lack of flexibility and long-hours cultures in higher positions; and inequalities in access to training opportunities, networks and assignments.

The over-representation of women in minimum-wage employment means the rate at which it is set remains crucial for the economy-wide gender pay gap.

Actions being taken by Government: Additional paid and unpaid leave has been introduced for employees with parental responsibilities. The Work Life Balance and Miscellaneous Provisions Bill, which will transpose elements of Directive (EU) 2019/1158, known as the EU Work Life Balance Directive, is currently before the *Oireachtas* (Ireland's national parliament) and will provide for new and extended rights to parents and carers, including a right to request flexible working and the right to request compressed or reduced hours.

**C. Violation of Article 20.d of the Charter on the ground that there has been insufficient progress in ensuring a balanced representation of women in decision-making positions within private companies**

The Government indicates that significant advances have been made towards greater gender balance in business leadership in Ireland. As noted in the European Gender Equality Index 2022, which was published by European Institute for Gender Equality (EIGE), women now account for at least a third of board members of the largest listed companies in Ireland.

Balance for Better Business (B4BB) is a Government-sponsored, business-led group whose aim it is to ensure that more women play a role at board level and in senior leadership teams. The Balance for Better Business review group was established by Government in July 2018 under actions 4.1 and 4.2 of the National Strategy for Women and Girls 2017-2020, with the aim of promoting better gender-balance leadership in Ireland.

In 2018, the average representation of women on the boards of the largest Irish-listed companies was 8 percentage points lower than the EU-28 average. As of September 2021, this gap had reduced to 0.4 percentage points, with an average of 30.2% women directors on the Irish-listed companies, as compared to 30.6% for the EU-27 on average.

According to the Government, the most recent report highlighted the continued progress being achieved against the targets for female representation on boards and leadership teams of Ireland's 39 listed companies, 19 of which had met the 2022 interim targets of 30% female representation for the ISEQ20and 22% for the other listed companies.

### 3. Comments from the Irish Human Rights and Equality Commission

In its comments, the Irish Human Rights and Equality Commission states that the Commission has been provided with legal powers to tackle gender pay gaps in organisations through the Gender Pay Gap Information Act 2021. Where the Commission has reasonable grounds for believing that an employer has failed to comply with the requirement to publish gender pay gap information, the Commission may apply to the Circuit Court or the High Court for an order requiring the employer to comply. An employer that fails to comply with a Circuit Court or High Court order will be in contempt of that Court. The Commission may also carry out, or invite a particular undertaking, group of undertakings or the undertakings making up a particular industry or sector, to carry out an equality review or prepare and implement an equality action plan. The Minister for Justice and Equality may also request the Commission to consider exercising these powers of review.

According to the Irish Human Rights and Equality Commission, despite recent legislative measures, there remains a persistent gender pay gap in Ireland and obstacles for victims seeking to enforce their rights. The Commission notes, in particular, the limited scope of companies covered by the Gender Pay Gap Information Act 2021 and the lack of progress in introducing an online reporting system. The Commission also welcomes the recent adoption of the EU Pay Transparency Directive, to be transposed by Member States by June 2026. The Directive goes further than Ireland's Gender Pay Gap Information Act 2021, as it provides for intersectional discrimination and contains provisions ensuring that the needs of disabled workers are taken into account. The Directive additionally requires publication of the gender pay gap by "categories of worker", which includes job functions or grades of worker, in contrast to current Irish legislation requiring employers to calculate the gender pay gap both for its entire workforce and for between part-time and full-time employees.

### 4. Reply of the Government to the comments from the Irish Human Rights and Equality Commission

According to the Government, gender pay gap data are currently compiled and published in respect of the economy as a whole by the Central Statistics Office (CSO), and by relevant individual employers in respect of their own organisations. In line with EU statistical obligations, the CSO collects and submits data on pay and hours worked to Eurostat in order that analyses of these data may be produced for the EU, disaggregated by gender and age of the employee.

A working group, led by the Central Statistics Office and the Department of Children, Equality, Disability, Integration and Youth, that brings together a range of stakeholders from across Government, including the Human Rights and Equality Commission as well as civil society and research bodies, has developed and consulted widely on a draft strategy. It is expected the Strategy will be finalised and published in 2023.

At the level of an individual organisation, employers subject to mandatory gender pay gap reporting are obliged in their reports to include an analysis of the reasons behind the reported gender pay gaps, as well as measures that are or will be taken by the employer to address the gap.

The increasing presence of women is a noticeable feature of the Irish labour market since 2019. This is a period in which family leaves have expanded and a new National Childcare Scheme has been introduced, with greater emphasis on supports for working parents and on facilitating greater sharing of caring roles between women and men.

According to the Government, it is acknowledged that the labour market activation rate of women is still approximately 10 percentage points lower than the activation rate of men. A similar gap exists between the employment rates. For both women and men, the employment rate dipped in 2020 coinciding with the start of the Covid-19 pandemic but showed recovery in 2021.

The proportion of inactive women who are inactive in the labour market due to caring responsibilities has fallen from 56.5% in 2016 to 51.1% in 2019 and was 44.7% in 2020. The share of women of working age who are active increased slightly between 2017 and 2019, from 66.6% to 67.4% and was 69.9% in 2021.

**5. Assessment of the follow-up**

**A. Violation of Articles 4§3 and 20.c of the Charter on the ground that pay transparency is still not ensured in practice**

In its decision, the Committee considered that the measures to improve pay transparency were still under way, in particular as regards those foreseen under the Gender Pay Gap Information Bill. In this context, the Committee considers that the lack of pay transparency does not help shed light on the reasons for pay inequalities and may become a major obstacle for victims of pay discrimination to prove discrimination and thus effectively enforce their rights in practice.

The Committee notes that the Gender Pay Gap Information Act 2021 has entered into force. The Committee notes that the introduction and gradual implementation of the Gender Pay Gap Information Act represents progress in strengthening pay transparency.

The Committee considers that the situation has been brought into conformity in this respect.

**B. Violation of Article 20.c of the Charter on the ground that there is an absence of indicators showing measurable progress in promoting equal opportunities between women and men in respect of equal pay**

In its decision, the Committee considered that, in the absence of indicators of measurable progress, it has not been demonstrated that the obligation to achieve measurable progress in reducing the gender pay gap has been fulfilled.

The Committee notes from Eurostat that the unadjusted gender pay gap in 2018 stood at 11.3%, in 2019 at 10.8% and in 2020 at 9.9%. It also notes that Ireland has produced and analysed statistical data concerning the pay gap, which has been decreasing since 2014 when it stood at 13.4%.

The Committee considers that measures have been taken to collect reliable and standardised data, indispensable to the formulation of rational policy to fight against the gender pay gap. It also notes that these data are indicators of measurable progress which has been achieved in reducing the gender pay gap.

Therefore, the situation has been brought into conformity.

**C. Violation of Article 20.d of the Charter on the ground that there has been insufficient progress in ensuring a balanced representation of women in decision-making positions within private companies**

In its decision, the Committee considered that the measures taken to increase the representation of women in decision-making positions did not lead to a clear trend for improvement. The Committee therefore considers that the obligation laid down by the Charter in this respect has not been satisfied.

The Committee notes from the European Institute for Gender Equality (EIGE) that there has been a positive evolution in female participation on boards of large listed companies: in 2019, at 22.4% (EU average was 27.8%), in 2021 at 30%, in 2022 at 33.2% and in 2023 at 36%, against 34% in the EU.

The Committee considers that this positive trend shows measurable progress and therefore, the situation has been brought into conformity.

*Findings*

The Committee finds that the situation has been brought into conformity with Articles 4§3 and 20.c and Article 20.d of the Charter.

# ITALY

## 5th Assessment of follow-up: European Roma Rights Centre (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005, Resolution CM/ResChS(2006)4

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee found the following violations:

#### A. Violation of Article E taken together with Article 31§1 of the Charter

The Committee concluded that there was a violation of Article E, read in conjunction with Article 31§1, on account of the inadequate living conditions in camps or similar settlements for Roma who choose to follow an itinerant lifestyle or who are forced to do so (§12 of the decision). In particular, the Committee found that Italy failed to show that it had taken adequate steps to ensure that Roma are offered housing of sufficient quantity and quality to meet their particular needs, and to ensure or taken steps to ensure that local authorities are fulfilling their responsibilities in this area (§37 of the decision).

#### B. Violation of Article E, read in conjunction with Article 31§2 of the Charter

The Committee concluded that there was a violation of Article E, read in conjunction with Article 31§2 on the grounds that Italy had failed to establish that the eviction procedures of Roma were adequate and had not provided credible evidence to refute the claims that Roma had suffered unjustified force during such evictions. As regards the adequacy of eviction procedures, the Committee recalled that evictions must be justified, carried out in conditions that respect the dignity of the persons concerned, and that alternative accommodation must be available. Furthermore, eviction procedures must be established by the law, which must also specify when they may not be carried out (for example, at night or during winter). The law must also provide for legal remedies and for legal aid to be granted to those who need it to seek redress from the courts, as well for compensation for illegal evictions (§41 of the decision).

#### C. Violation of Article E, read in conjunction with Articles 31§1 and 31§3 of the Charter

The Committee concluded that there was a violation of Article E, read in conjunction with Articles 31§1 and 31§3 due to the lack of permanent dwellings of an acceptable quality to meet the needs of Roma wishing to settle. The Committee found that Italy had failed to provide any information to show that the right of access to social housing is effective in practice or that the criteria regulating access to social housing are not discriminatory. The Committee recalled in this respect that the principle of non-discrimination in Article E also includes indirect discrimination and considered that the failure to take into consideration the different situation of Roma or to introduce measures specifically aimed at improving their housing conditions, including the possibility for effective access to social housing, meant that Italy was in violation of the Charter (§46 of the decision).

### 2. Information provided by the Government

#### A. Violation of Article E, read in conjunction with Article 31§1 of the Charter

The Government indicates that, in May 2022, the National Roma and Sinti equality, inclusion and participation Strategy (2021 – 2030) (Hereinafter, "RSC Strategy") has

been adopted. This Strategy sets out measures for the non-discrimination and social and socio-economic inclusion of Roma, Sinti and Caminanti. According to the report, the new Strategy (1) concerns a new framework dedicated to identifying the most critical issues that emerged in the previous strategic framework, defining the principles and national priorities and presenting the current conditions of those communities; (2) focuses on the new "Governance and Participation" process and pays particular attention to the role of the National Platform and the Community Forum; (3) indicates the six main axes on which the Strategy is built: antigypsyism, education, employment, housing, health and cultural promotion.

The Government explains that in the implementation of the previous RSC Strategy for 2012-2020, progress and political advances were noted in several areas and the Italian Office against Racial Discrimination [*Ufficio Nazionale Antidiscriminazioni Razziale – UNAR*] has identified several obstacles in the implementation of individual regional and local strategies: only ten regions had signed up to the idea of implementing a regional strategy by setting up dedicated consultation groups (for coordination, monitoring and exchange with institutional stakeholders) although this number is expected to increase; the commitment of the competent administrations in implementing measures and active policies concerning Roma and Sinti groups was of a discontinuous nature; there was difficulty in making the actions of local authorities consistent and in line with the principles of the RSC Strategy 2012-2020 and in harmonising the regulations on access to social housing, which is a regional responsibility.

On the basis of these findings concerning the obstacles in the implementation of the previous strategy, UNAR is now able to take a more mature and conscious approach to the governance of the new 2021-2030 Strategy. UNAR has therefore coordinated an inter-institutional coordination group which envisages the development of strategic and policy guidelines aimed at monitoring the degree of national and territorial adherence to the principles of the Strategy, assessing its state of implementation and the efficiency of the measures put in place. A new model of interaction and inter-institutional dialogue between national institutions and regional and municipal authorities has been put in place and has been strengthened with the establishment of a network of regions and metropolitan cities and municipalities. The specific goal of the network is to create and implement regional action plans, directly involving the Roma and Sinti communities. The Government also affirms that the importance of these regional initiatives is also seen in the regulatory provisions adopted: in three regions (Emilia Romagna, Abruzzo and Calabria), new regional laws have been approved in line with the RSC Strategy for 2012 – 2020.

Moreover, the formal connection between the national network of municipalities and regions and the network of anti-discrimination centres (such as UNAR) has strengthened the identification and removal of all forms of discrimination and facilitated dialogue. The role of UNAR was reinforced in terms of human resources and instruments, and its autonomous management of financial resources was recognised in order to enhance its ability to coordinate the Strategy at national level. Also, a monitoring and assessment system to be activated from the beginning of 2023, will assess the effectiveness of Roma and Sinti inclusion programmes. The role and operation of the National Platform and the Roma Forum in terms of access and participation have been strengthened, and civil society is therefore involved in the creation and running of regional and municipal groups to develop dialogue and guidelines for policies and measures for social and educational inclusion.

The Government refers to the ANCI-Cittalia national survey on camps which estimated the number of persons living in the camps as fewer than 30 000 (2016). According to a more recent survey, carried out by ISTAT (2019 – 2020), the number

of camps in Italy is 376, in 126 municipalities, with a reduced presence amounting to about 15 000 people.

The Government provides updated information on previously reported examples of good practices developed at local level, concerning measures taken to facilitate the transfer of households from camps to housing units and to achieve real inclusion of RSC communities. These practices include (but are not limited to):

- In May 2021, Milan City Council offered the families living in the settlements of Via Bonfadini alternative accommodation, but only one of the families accepted the offer;
- In Como, families settled in containers on private land are regularly monitored by social services;
- In Turin, two settlements were closed and the families have been relocated and some families received an economic incentive to leave the settlement (€1 000 per family);
- Concerning Liguria, a project financed by the Ministry of Employment is intended to move the family units to social housing solutions, through certain facilitations (such as payment of charges for two years);
- In Treviso, many RSC family units live in public residential housing which are made available to families in order to close the settlements;
- In Emilia-Romagna, self-financed housing and other alternative housing solutions have been promoted;
- In San Lazzaro di Savena, an integrated territorial team has been established seeking solutions to close the settlements and the team has promoted access to conventional housing for six family units;
- In Friuli Venezia-Giulia, RSC communities are authorised to buy agricultural lands owned by the municipalities and to install mobile homes;
- In Rimini, the municipal council approved a programme aiming to close the existing settlement, with the assignment of equipped micro areas to six Sinti families and conventional housing to four families.

In addition, the Government refers to several good practices in different regions and municipalities, in order to promote the schooling of minors to help the integration of RSC communities. Some municipalities have planned interventions of local services to prevent RSC pupils dropping out of school and health and educational courses have been planned for each family (Municipality of Budrio); initiatives have been taken by some municipalities in Friuli Venezia-Giulia to fight early school leaving (through cultural mediators, after-school activities etc.); school buses, social, sporting and cultural assistance services were made available (Sardinia); in some municipalities, initiatives are under way to provide elderly or disabled people from the RSC communities with training to carry out a professional activity (Castelfranco Veneto).

The Government refers to a number of laws, regional projects and agreements, regional resolutions and memoranda signed at municipal level on the basis of which the above-mentioned measures have been taken in order to implement the national strategies for the integration and social inclusion of RSCs.

**B. Violation of Article E read in conjunction with Article 31§2 of the Charter**

In addition to the information provided above under Article E read in conjunction with Article 31§1 of the Charter, the Government states that in the new RSC Strategy 2021-2030, there is a tendency not to build new camps and that, during the reference

period, there was a substantial reduction in the practice of evictions implemented without compliance with standards and the provision of suitable alternative tools. However, the Government also notes that the weakness of governance and inter-institutional cooperation had sometimes led to a lack of local adherence to the standards and goals of the RSC Strategy. As a result, positive developments and trends in respect of the housing of RSC communities, co-exist with arbitrary and impromptu actions, such as repeated evictions and temporary relocations to facilities that do not meet people's needs.

The Government refers to the 2021 Report prepared by Associazione 21 luglio (*Roma Communities in Formal and Informal Camps in Italy)* according to which, approximately 70 "forced eviction" operations took place in Italy in 2020 (145 evictions in 2019, 195 in 2018, 230 in 2017 and 250 in 2016). By 2020, this practice appears to have decreased by 51.7% compared with 2019 and 72% compared with 2016.

**C. Violation of Article E read in conjunction with Article 31§1 and 31§3 of the Charter**

The housing policies taken in favour of RSC are described by the Government in connection with the above-mentioned information concerning the RSC Strategy (2021-2030). The report mentions examples of regions (Lombardy, Liguria, Veneto, Friuli-Venezia Giulia, Emilia-Romagna, Tuscany) where social housing has been allocated to RSC households or where projects are under way to this effect.

The Government indicates that in the new National Strategy, housing is considered to be a key element, and no longer a secondary one, in the process of overcoming social deprivation and harmonious integration, in order to combat extreme poverty. In this context, UNAR has promoted an institutional coordination measure aimed at ensuring the correct use of resources, monitoring the non-discriminatory access to social housing, monitoring the activities and measures taken at local level with the active involvement of those directly concerned. According to the Government, the downward trend in the number of persons living in camps, shows that there is a positive causal link between the impulse provided by the RSC Strategy and the process of housing transition from some types of camps to different forms of accommodation.

**3. Assessment of the follow-up**

**A. Violation of Article E read in conjunction with Article 31§1 of the Charter**

The Committee refers to its previous findings (Findings 2018, 2020 and 2021), as well as to its latest conclusion concerning Article 31§1 (Conclusions 2019), where it maintained that the situation in Italy was not in conformity with the Charter because of the inadequate living conditions of Roma and Sinti in camps and similar settlements.

The Committee notes the detailed information provided on the implementation of the RSC Strategy 2012-2020 and the adoption of the new Roma and Sinti equality, inclusion and participation Strategy (2021 – 2030). The Committee also takes note of the examples provided concerning the measures taken by certain municipalities and regions and those still under way. It notes with interest the examples of good practices at local and municipal level which show the real efforts made by the authorities during the reference period to find housing solutions for RSC communities. The Committee welcomes the important decrease, since 2016, in the number of camps and the number of RSC people living in those camps.

The Committee also notes, however, the difficulties in adopting a coherent and coordinated national approach towards inclusion: in particular, the local efforts were of discontinuous nature, were neither harmonised nor consistent. It notes the difficulties in ensuring that the actions of the local authorities in respect of the RSC communities are in conformity with the national Strategy. The Committee recognises the efforts made by UNAR in order to better coordinate and address the governance of the new RSC Strategy at the national level, in particular, by setting up a coordination group for monitoring the regions' adherence to the principles of the Strategy, and by strengthening the dialogue between national institutions and regional and municipal authorities. The Committee considers that boosting UNAR's budget and human resources is an important step forward to ensure its ability to coordinate a national strategy in this respect.

Despite the genuine efforts made, the Committee still considers that no long-term solution based on a coordinated national approach to the segregation of RSC has yet been put in place. Accordingly, the Committee considers that the situation has not been brought into conformity with the Charter.

**B. Violation of Article E read in conjunction with Article 31§2 of the Charter**

The Committee refers to its previous findings (Findings 2018, 2020 and 2021), as well as to its latest conclusion concerning Article 31§2, where it noted that other international bodies and actors continued to report cases of the forced eviction of RSC (see for details Conclusions 2019 on Article 31§2). The Committee recalls in this connection that, on 4 July 2019, it declared admissible a new complaint (Amnesty International v. Italy, Complaint No. 178/2019) concerning notably allegations of forced evictions of RSC and decided that Italy should immediately adopt all possible measures to eliminate the risk of serious and irreparable harm to which the persons evicted and concerned by that complaint were exposed, in particular, to ensure that persons evicted are not rendered homeless and to ensure that evictions do not result in the persons concerned experiencing unacceptable living conditions.

The Committee considers, on the basis of the figures provided by the Government, that although there is a falling trend in the number of forced evictions in recent years (from 250 in 2016 to 70 in 2020), mass evictions and demolitions of Roma camps still persist in Italy. Moreover, despite the overall decrease in the number of forced evictions, the Committee also notes from outside sources (figures published by Statista) that the number of forced evictions in Rome increased from 28 in 2016 to 45 in 2019. The Committee also reiterates that, according to Amnesty International, in March 2020, the Government suspended evictions and subsequently extended the measure until the end of the year. However, in August 2020, local authorities forcibly evicted the Roma settlement of Foro Italico in Rome. According to Amnesty International, as a result of the evictions, many families were left homeless and many homeless people across the country could not access safe accommodation during the lockdown.

The Committee also notes that the RSC Strategy (2021-2030) indicates that the previous Strategy (2012-2020) have not prevented the practice of evictions carried out without regard for international standards and recommendations. The Strategy also draws the attention to less conspicuous but nevertheless critical eviction practices for the people affected, carried out by means of constant pressure aimed at spontaneous abandonment of the camps.

As in previous findings, the Committee reiterates that it is not clear whether, in law and in practice, the Charter's requirements are respected. In particular, the report does not clarify what restrictions apply to evictions, what remedies and legal aid is available to prevent and to contest them, and whether alternative accommodation is

systematically offered to those evicted. The Government furthermore does not explain how these guidelines have been applied in the evictions of RSC settlements, how many persons have been concerned by such evictions and what steps have been taken to ensure the effective investigation and sanctioning in cases of unjustified use of force.

The Committee considers therefore that the situation has not been brought into conformity with the Charter.

**C. Violation of Article E read in conjunction with Article 31§1 and Article 31§3 of the Charter**

The Committee refers to its previous findings (Findings 2018, 2020 and 2021) as well as to its latest conclusion concerning Article 31§3, where it found that it had not been established that sufficient resources had been invested throughout the country to improve access for RSC to social housing without discrimination in practice (see Conclusions 2019) and asked for updated information on the measures taken throughout the country in relation to access for RSC to social housing.

The Committee notes with interest the increasing number of municipalities where RSC households have been able to access social housing and of the various coordination activities conducted by UNAR, such as the organisation of inclusive meetings of central administration and metropolitan cities, and regional action plans in order to develop local policies for housing issues.

However, in the light of the information at its disposal and of its finding above (the situation is still not in conformity with Article E read in conjunction with Article 31§1 of the Charter) related to the persistent patterns of segregated housing, the Committee considers that the situation has not yet been brought into conformity with the Charter.

*Finding*

The Committee finds that the situation with respect to Article E, read in conjunction with Article 31§1, Article E read in conjunction with Article 31§2 and Article E read in conjunction with Articles 31§1 and 31§3 has not been brought into conformity with the Charter.

## 5th Assessment of follow-up: Centre on Housing Rights and Evictions (COHRE) v. Italy, Complaint No. 58/2009, decision on the merits of 25 June 2010, Resolution, CM/ResChS(2010)8

### 1. Decision of the Committee on the merits of the complaint

### A. Violation of Article E read in conjunction with Article 31§1

The Committee concluded that there was a violation of Article E, read in conjunction with Article 31§1 on account of the inadequate living conditions of Roma and Sinti in camps or similar settlements in Italy. In particular, the Committee found that the living conditions of Roma and Sinti in camps had worsened following the adoption of certain "security measures" between 2006 and 2009 which, on the one hand, directly targeted these vulnerable groups and, on the other hand, were not accompanied by adequate measures to take due and positive account of the differences of the population concerned, thus leading to stigmatisation, amounting to discriminatory treatment (§58 of the decision).

### B. Violation of Article E read in conjunction with Article 31§2

The Committee concluded that there was an aggravated violation of Article E, read in conjunction with Article 31§2 because of the continuing practice of evicting Roma and Sinti without respecting the dignity of the persons concerned and without alternative accommodation being made available, with the aggravating factor that such evictions had involved unjustified force towards Roma, including by the police, without leading to systematic investigations and sanctions for the perpetrators and without any concerted action by the Government to counter stigmatisation. The Committee found, on the one hand, that the measures taken by the authorities violated human rights specifically targeting and affecting vulnerable groups and, on the other hand, public authorities not only were passive and did not take appropriate action against the perpetrators of these violations, but they contributed to such violence (§§73-79 of the decision).

### C. Violation of Article E read in conjunction with Article 31§3

The Committee concluded that there was a violation of Article E, read in conjunction with Article 31§3 because of the lack of effective access to social housing and resulting segregation of Roma and Sinti in camps. In particular, the Committee held that notwithstanding the complex distribution of competences between the national level and the Regions, the ultimate responsibility for policy implementation, involving a minimum of oversight and regulation of local action lay with the State (§§86-91 of the decision).

The Committee concluded that there was a violation of Article E, read in conjunction with Article 31§3 because of the lack of effective access to social housing and the resulting segregation of Roma and Sinti in camps. In particular, the Committee held that notwithstanding the complex distribution of competences between the national level and the Regions, the ultimate responsibility for policy implementation, involving a minimum of oversight and regulation of local action lay with the State (§§86-91 of the decision).

### D. Violation of Article E read in conjunction with Article 30

The Committee concluded that there was a violation of Article E, read in conjunction with Article 30 on account of the situation of poverty and social exclusion of Roma and Sinti, notably due to their substandard housing conditions and discriminatory restrictions on the exercise of their civil and political rights.

In particular, the Committee found that Italy had failed to adopt an overall and co-ordinated approach to promote effective access to housing and to prevent or eradicate the poverty situation affecting in particular Roma and Sinti people who were evicted and rendered homeless without any social assistance and adequate access to public infrastructure or services. Furthermore, the Committee observed that the segregation and poverty situation affecting most of the Roma and Sinti population in Italy (especially those living in the camps) was linked to a civil marginalisation due to the failure of the authorities to address the Roma and Sinti's lack of identification documents, resulting in a discriminatory restriction of access to residence and citizenship and, accordingly, to participation in decision-making processes (§§98-110 of the decision).

### E. Violation of Article E read in conjunction with Article 16

The Committee concluded that there was a violation of Article E, read in conjunction with Article 16 on the grounds that, on the one hand, Roma and Sinti families did not have access to adequate housing and, on the other hand, they were not protected against undue interference in their family life.

### F. Violation of Article E read in conjunction with Article 19§1

The Committee concluded that there was an aggravated violation of Article E, read in conjunction with Article 19§1 on account of the use of xenophobic political rhetoric or discourse against Roma and Sinti, which was indirectly allowed or directly emanating from the Italian authorities (§§136-140 of the decision).

### G. Violation of Article E read in conjunction with Article 19§4 c)

The Committee concluded that there was a violation of Article E, read in conjunction with Article 19§4 c) because of the violation of Article E, read in conjunction with Article 31. The Committee found in this respect that the shortcomings related to the housing conditions of Roma and Sinti in general also constituted a specific violation of the rights of Roma and Sinti migrant workers from other States Parties to the Charter, who are in a legal situation and should therefore not be discriminated against in their access to public and private housing or to housing assistance (§§145-147 of the decision).

## 2. Information provided by the Government

### A. Violation of Article E read in conjunction with Article 31§1

The Government indicates that, in May 2022, the National Roma and Sinti equality, inclusion and participation Strategy (2021 – 2030) (hereinafter, the "RSC Strategy") was adopted. This Strategy sets out measures for the non-discrimination and social and socio-economic inclusion of Roma, Sinti and Caminanti. According to the report, the new Strategy (1) concerns a new framework dedicated to identifying the most critical issues that emerged in the previous strategic framework, defining the principles and national priorities and presenting the current conditions of those communities; (2) focuses on the new "Governance and Participation" process and pays particular

attention to the role of the National Platform and the Community Forum; (3) indicates the six main axes on which the Strategy is built: antigypsyism, education, employment, housing, health and cultural promotion.

The Government explains that in the implementation of the previous RSC Strategy for 2012-2020, progress and political advances were noted in several areas and the Italian Office against Racial Discrimination [*Ufficio Nazionale Antidiscriminazioni Razziale – UNAR]* has identified several obstacles in the implementation of individual regional and local strategies: only ten regions had signed up to the idea of implementing a regional strategy by setting up dedicated round-tables (to coordinate, monitor and exchange with institutional stakeholders) although this number is expected to increase; the commitment of the competent administrations in implementing measures and active policies concerning Roma and Sinti groups was of a discontinuous nature; there was difficulty in making the actions of local authorities consistent and in line with the principles of the RSC Strategy 2012-2020 and in harmonising the regulations on access to social housing, which is a regional responsibility.

On the basis of these findings, UNAR is now able to take a more mature and better informed approach to the governance of the new 2021-2030 Strategy. UNAR has therefore coordinated an inter-institutional coordination group which envisages the development of strategic and-policy guidelines aimed at monitoring the degree of national and territorial adherence to the principles of the Strategy, assessing its state of implementation and the efficiency of the measures put in place. A new model of interaction and inter-institutional dialogue between national institutions and regional and municipal authorities has been put in place and has been strengthened with the establishment of a network of regions and metropolitan cities and municipalities. The specific goal of the network to create and implement regional action plans, directly involving the Roma and Sinti communities. The Government also affirms that the importance of these regional initiatives is also seen in the regulatory provisions adopted: in three regions (Emilia Romagna, Abruzzo and Calabria), new regional laws have been approved in line with the RSC Strategy for 2012 – 2020.

Moreover, the formal connection between the national network of municipalities and regions and the network of anti-discrimination centres (such as UNAR) has strengthened the identification and removal of all forms of discrimination and facilitated dialogue. The role of UNAR was reinforced in terms of human resources and instruments and its autonomous management of financial resources was recognised in order to enhance its ability to coordinate the Strategy at national level. Also, a monitoring and assessment system to be activated from the beginning of 2023, will assess the effectiveness of Roma and Sinti inclusion programmes. The role and operation of the National Platform and the Roma Forum in terms of access and participation have been strengthened and civil society is therefore involved in the creation and running of regional and municipal roundtables as a means for developing dialogue and guidelines for policies and measures for social and educational inclusion.

The Government refers to the ANCI-Cittalia national survey on camps which estimated the number of persons living in the camps as fewer than 30 000 (2016). According to a more recent survey carried out by ISTAT (2019 – 2020) the number of camps in Italy is 376, in 126 municipalities, with a reduced presence amounting to about 15 000 people.

The Government provides updated information on previously reported examples of good practices developed at local level, concerning measures taken to facilitate the transfer of households from camps to housing units and to achieve real inclusion of RSC communities. These practices include (but are not limited to):

- In May 2021, Milan City Council offered the families living in the settlements of Via Bonfadini alternative accommodation, but only one of the families accepted the offer.
- In Como, families settled in containers on private land are regularly monitored by social services;
- In Turin, two settlements were closed and the families have been relocated and some families received qn economic incentive to leave the settlement (€ 1,000 per family);
- Concerning Liguria, a project financed by the Ministry of Employment is intended to move the family units to social housing solutions, through certain facilitations (such as payment of charges for two years);
- In Treviso, many RSC family units live in public residential housing which are made available to families in order to close the settlements;
- In Emilia-Romagna, self-financed housing and other alternative housing solutions have been promoted;
- In San Lazzaro di Savena, an integrated territorial team has been established seeking solutions to close the settlements and the team has promoted access to conventional housing for six family units;
- In Friuli Venezia-Giulia, RSC communities are authorised to buy agricultural lands owned by the municipalities and to install mobile homes;
- In Rimini, the municipal council approved a programme aiming to close the existing settlement, with the assignment of equipped micro areas to six Sinti families and conventional housing to four families.

In addition, the Government refers to several good practices in different regions and municipalities, in order to promote the schooling of minors to help the integration of RSC communities. Some municipalities have planned interventions of local services to prevent RSC pupils dropping out of school and health and educational courses have been planned for each family (Municipality of Budrio); initiatives have been taken by some municipalities in Friuli Venezia-Giulia to fight early school leaving (through cultural mediators, after-school activities, etc.); school buses, social, sporting and cultural assistance services were made available (Sardinia); in some municipalities, initiatives are underway to provide elderly or disabled people with training to carry out a professional activity (Castelfranco Veneto).

The Government refers to a number of laws, regional projects and agreements, regional resolutions and memoranda signed at municipal level on the basis of which the above-mentioned measures have been taken in order to implement the national strategies for the integration and social inclusion of RSCs.

### B. Violation of Article E read in conjunction with Article 31§2

In addition to the information provided above under Article E, read in conjunction with Article 31§1 of the Charter, the Government states that in the new RSC Strategy 2021-2030, there is a tendency not to build new camps and that during the reference period, there was a substantial reduction in the practice of evictions implemented without compliance with standards and the provision of suitable alternative tools. However, the report also notes that poor governance and inter-institutional cooperation had sometimes led to a lack of local adherence to the standards and goals of the RSC Strategy. As a result, positive developments and trends in respect of the housing of RSC communities, co-exist with arbitrary and impromptu actions, such as the

repeated evictions and temporary relocations to facilities that do not meet people's needs.

The Government refers to the 2021 Report prepared by Associazione 21 luglio (Roma Communities in Formal and Informal Camps in Italy) according to which, approximately 70 "forced eviction" operations took place in Italy in 2020 (145 evictions in 2019, 195 in 2018, 230 in 2017 and 250 in 2016).; By 2020, this practice appears to have decreased by 51.7% compared with 2019 and by 72% compared with 2016. **C. Violation of Article E read in conjunction with Article 31§3**

The housing policies taken in favour of RSC are described in the report in connection with the above-mentioned information concerning the RSC Strategy (2021-2030). The Government mentions examples of regions (Lombardy, Liguria, Veneto, Friuli Venezia Giulia, Emilia-Romagna, Tuscany) where social housing has been allocated to RSC households or where projects are under way to this effect.

The Government indicates that in the new National Strategy, housing is considered to be a key element and no longer secondary one in the process of overcoming social deprivation and promoting harmonious integration, in order to combat extreme poverty. In this context, UNAR has promoted an institutional coordination measure aimed at ensuring the correct use of resources, monitoring the non-discriminatory access to social housing, monitoring of the activities and measures taken at local level with the active involvement of those directly concerned. According to the Government, the downward trend in the number of persons living in camps, shows that there is a positive causal link with the impulse provided by the RSC Strategy to the process of housing transition from some types of camps to different forms of accommodation.

**D. Violation of Article E read in conjunction with Article 30**

With regard to housing, the Government refers to the information provided above in connection with Article E, read in conjunction with Article 31 of the Charter (notably concerning the National RSC Strategy 2021-2030).

As regards other aspects of social inclusion of RSC and their participation in the decision-making process, the Government refers to the above information concerning initiatives aiming to foster dialogue between national and local institutions and RSC communities. The report stresses the important role played by the National Roma, Sinti and Caminanti Platform and the Forum of Roma and Sinti communities, as operational tools of dialogue between the UNAR, civil society, the central administration and the local administrations involved in the preparation and implementation of the National Strategy. According to the Government, the RSC communities were involved, through the Platform and the Forum, in particular, in the implementation of the national strategy.

According to the Government, in the implementation of the RSC Strategy 2021-2030, there is a need to define and promote active and qualified participation of the Roma and Sinti communities in the various consultative and decision-making process. The report provides a list of proposals in order to foster dialogue between UNAR and other administrations and RSC communities and in order to reinforce the active and qualified participation of the RSC communities in the monitoring of national strategies.

**E. Violation of Article E read in conjunction with Article 16**

With regard to housing, the Government refers to the information provided above in connection with Article E read in conjunction with Article 31 of the Charter.

**F. Violation of Article E read in conjunction with Article 19§1**

The Government provides a list of actions provided in the new RSC Strategy 2021-2030 in the fight against "antigypsyism" and hate speech. According to the report, the role of the UNAR Contact Centre, in the collection of reports of direct and indirect discrimination against RSC communities, in monitoring hate speech and in supporting the victims of discrimination, will be strengthened. The continuing training activities for categories of public officials (healthcare workers, doctors, nurses, police, social workers, etc.) will be promoted in order to inform them on RSC communities' cultures, languages, and history. A specific survey on the level of antigypsyism in society will be launched. The new Strategy will also promote information campaigns, communication and positive narratives through an institutional campaign against antigypsyism.

The Government adds that, to achieve significant results, the project will have to make use of experts and consultants with in-depth knowledge of the value and language of RSC communities: associations, youth organisations and networks of facilitators will be able to guarantee the quality of the interventions and the impact of actions on the communities.

**G. Violation of Article E read in conjunction with Article 19§4 c)**

With regard to housing, the Government refers to the information provided above in connection with Article E read in conjunction with Article 31 of the Charter.

**3. Assessment of the follow-up**

**A. Violation of Article E read in conjunction with Article 31§1**

The Committee refers to its previous findings (Findings 2018, 2020 and 2021), as well as to its latest conclusion concerning Article 31§1 (Conclusions 2019), where it held that the situation in Italy was not in conformity with the Charter because of the inadequate living conditions of Roma and Sinti in camps and similar settlements.

The Committee notes the detailed information on the implementation of the RSC Strategy 2012-2020 and the adoption of the new Roma and Sinti equality, inclusion and participation Strategy (2021 – 2030). The Committee also notes the examples provided concerning the measures taken by certain municipalities and regions and those still under way. It notes with interest the examples of good practices at local and municipal level which show the real efforts made by the authorities during the reference period to find housing solutions for RSC communities. The Committee welcomes, the important decrease, since 2016, in the number of camps and the number of RSC people living in those camps.

The Committee also notes, however, the difficulties in adopting a coherent and coordinated national approach towards inclusion: in particular, the local efforts were of discontinuous nature, were neither harmonised nor consistent. It notes the difficulties in ensuring that the actions of the local authorities in respect of the RSC communities are in conformity with the national Strategy. The Committee recognises the efforts made by UNAR in order to better coordinate and address the governance of the new RSC Strategy at the national level, in particular, by setting up a coordination group for monitoring the regions' adherence to the principles of the Strategy, and by strengthening the dialogue between national institutions and regional and municipal authorities. The Committee considers that boosting of UNAR's budget and human resources is an important step forward to ensure its ability to coordinate a national strategy in this respect.

Despite the genuine efforts made, the Committee still considers that no long-term solution based on a coordinated national approach to the segregation of RSC has yet been put in place. The Committee therefore considers that the situation has not been brought into conformity with the Charter.

**B. Violation of Article E read in conjunction with Article 31§2**

The Committee refers to its previous findings (Findings 2018, 2020 and 2021), as well as to its latest conclusion concerning Article 31§2, where it noted that other international bodies and actors continued to report cases of the forced eviction of RSC (see for details Conclusions 2019 on Article 31§2). The Committee recalls in this connection that, on 4 July 2019, it declared admissible a new complaint (Amnesty International v. Italy, Complaint No. 178/2019) concerning notably allegations of forced evictions of RSC and decided that Italy should immediately adopt all possible measures to eliminate the risk of serious and irreparable harm to which the persons evicted and concerned by that complaint were exposed, in particular, to ensure that persons evicted are not rendered homeless and to ensure that evictions do not result in the persons concerned experiencing unacceptable living conditions.

The Committee considers, on the basis of the figures provided by the Government, that although there is a falling trend in the number of forced evictions in recent years (from 250 in 2016 to 70 in 2020), mass evictions and demolitions of Roma camps still persist in Italy. Moreover, despite the overall decrease in the number of forced evictions in Italy, the Committee also notes from outside sources (figures published by Statista) that the number of forced evictions in Rome increased from 28 in 2016 to 45 in 2019. The Committee also reiterates that according to Amnesty International, in March 2020, the Government suspended evictions and subsequently extended the measure until the end of the year. However, in August 2020, local authorities forcibly evicted the Roma settlement of Foro Italico in Rome. According to Amnesty International, as a result of the evictions, many families were left homeless and many homeless people across the country could not access safe accommodation during the lockdown.

The Committee also notes that the RSC Strategy (2021-2030) indicates that the previous Strategy (2012-2020) has not prevented the practice of evictions carried out without regard for international standards and recommendations. The Strategy also draws the attention to less conspicuous but nevertheless critical eviction practices for the people affected, carried out by means of constant pressure aimed at spontaneous abandonment of the camps.

As in the previous findings, the Committee reiterates that it is not clear from the information provided by the Government whether, in law and in practice, the Charter's requirements are respected. In particular, the report does not clarify what restrictions apply to evictions, what remedies and legal aid is available to prevent and to contest them and whether alternative accommodation is systematically offered to those evicted. The Government furthermore does not explain how these guidelines have been applied in the evictions of RSC settlements, how many persons have been concerned by such evictions and what steps have been taken to ensure the effective investigation and sanctioning in cases of unjustified violence.

Accordingly, the Committee considers that the situation has not been brought into conformity with the Charter.

**C. Violation of Article E read in conjunction with Article 31§3**

The Committee refers to its previous findings (Findings 2018, 2020 and 2021) as well as to its latest conclusion concerning Article 31§3, where it found that it had not been

established that sufficient resources had been invested throughout the country to improve access for RSC to social housing without discrimination in practice (see Conclusions 2019) and asked for updated information on the measures taken throughout the country in relation to access for RSC to social housing.

The Committee takes note of the increasing number of municipalities where RSC households have been able to access social housing and of the various coordination activities conducted by UNAR, such as the organisation of inclusive meetings of central administration and metropolitan cities and Regional Action Plans in order to develop local policies for housing issues.

In the light of the information at its disposal and of its finding above (situation still not in conformity with Article E read in conjunction with Article 31§1 of the Charter) related to the persistent patterns of segregated housing, the Committee considers that the situation has not yet been brought into conformity with the Charter.

**D. Violation of Article E, read in conjunction with Article 30**

The Committee refers to its latest conclusion concerning Article 30 in respect of Italy, where it maintained that Italy was not in conformity with the Charter on the ground that there was no adequate overall and coordinated approach to combating poverty and social exclusion (see Conclusions 2017) as well as to its latest assessments (2020 and 2021) of the follow-up to the decision in this complaint. It takes note of the developments described in the report but notes that most of the measures referred to in the report are still under way and do not allow it to conclude that the situation of marginalisation and social exclusion of Roma and Sinti has been remedied.

In the light of the information at its disposal on social inclusion and participation and of the findings concerning the housing situation (see above), the Committee considers that the situation has not been brought into conformity with the Charter on this point.

**E. Violation of Article E, read in conjunction with Article 16**

The Committee refers to its previous findings in 2020 and 2021, as well as to its latest Conclusion concerning Article 16, in which it found that it had not been established that sufficient resources had been invested throughout the country to improve access for RSC to social housing without discrimination in practice (see Conclusions 2019) and asked for updated information on the measures taken throughout the country to this effect.

Since the information provided in respect of Article E read in conjunction with Article 31 did not make it possible to conclude that the situation had been brought into conformity with the Charter, the Committee finds that the situation has also not been brought into conformity with Article E, read in conjunction with Article 16.

**F. Violation of Article E, read in conjunction with Article 19§1**

The Committee refers to its previous findings in 2020 and 2021, as well as to its latest conclusion concerning Article 19§1 in which it held that the situation was not in conformity with the Charter on the ground that the measures against misleading propaganda concerning emigration, in particular to prevent racism and xenophobia in politics, and, more specifically, misleading propaganda against Roma and Sinti migrants, were not sufficient and asked for detailed, updated information on measures taken in this respect (see Conclusions 2019).

The Committee takes note of the planned measures and actions in the framework of the RSC Strategy 2021-2030 in the fight against xenophobic political rhetoric against RSC communities. The Committee considers that the measures and actions referred

to by the Government are still ongoing and do not allow it to conclude that the situation has been brought into conformity with the Charter.

Accordingly, the Committee considers that the situation has not been brought into conformity with the Charter.

**G. Violation of Article E, read in conjunction with Article 19§4 c)**

The Committee refers to its previous findings in 2018 and 2020, as well as to its latest Conclusion concerning Article 19§4 c), where it found that it had not been established that Italy had taken adequate practical steps to eliminate all legal and *de facto* discrimination concerning the access to accommodation (Conclusions 2019).

Since the information provided in respect of Article E, read in conjunction with Article 31 did not make it possible to conclude that the situation had been brought into conformity with the Charter, the Committee considers that the situation has also not been brought into conformity with Article E, read in conjunction with Article 19§4 c).

*Finding*

The Committee finds that the situation with respect to Article E, read in conjunction with Article 31§1, Article E read in conjunction with Article 31§2, Article E, read in conjunction with Article 31§3, Article E, read in conjunction with Article 30, Article E read in conjunction with Article 16, Article E, read in conjunction with Article 19§1 and Article E, read in conjunction with Article 19§4 c) has not been brought into conformity with the Charter.

## 4th Assessment of follow-up: International Planned Parenthood Federation – European Network (IPPF EN) v. Italy, Complaint No. 87/2012, decision on the merits of 10 September 2013, Resolution CM/ResChS(2014)6

### 1. Decision of the Committee on the merits of the complaint

#### A. Violation of Article 11§1 of the Charter

The Committee found a violation of Article 11§1 of the Charter because, with respect to women who decide to terminate their pregnancies, the competent authorities have not taken the necessary measures to ensure that, as provided by Section 9§4 of Law No. 194/1978, abortions requested in accordance with the applicable rules are performed in all cases, even when the number of objecting medical practitioners and other health personnel is high (see, in particular, notably §§169-177 of the decision).

#### B. Violation of Article E read in conjunction with Article 11 of the Charter

The Committee found a violation of Article E, read in conjunction with Article 11 of the Charter because of the discrimination suffered by women wishing to terminate their pregnancy, who are forced, at risk to their health, to move from one hospital to another within the country or to travel abroad because of a lack of impartial health staff in a number of hospitals in Italy (see notably §§190-194 of the decision). The Committee considered, in particular, that women who are denied access to abortion facilities may have to incur substantial economic costs if they are forced to travel to another region or abroad to seek treatment and may be deprived of any effective opportunity to exercise their legal right to such services.

### 2. Information provided by the Government

#### A. Violation of Article 11§1 of the Charter

In its report, registered on 21 February 2023, the Government updates and supplements the information previously provided on the follow-up given to a collective complaint on voluntary termination of pregnancy (VTP) and conscientious objection of medical practitioners in relation to the termination of pregnancy. The Government states that, during the reference period, no changes were made to Law No. 194 of 22 May 1978 (Law No. 194/78) according to which authorised care homes and hospital facilities are required to perform the requested termination of pregnancy procedures, while Regions must monitor and guarantee the correct application of the law.

The Government refers to the report of the Minister of Health on the implementation of the Law No. 194/78, presented to Parliament on 8 June 2022, which analyses and illustrates the data relating to 2019 and 2020 in respect to abortion services. According to the data contained in the report of the Minister of Health:

- in 2019, a total of 73 207 VTP (a decrease of 4.1% compared to 2018 – 76,328 cases) and in 2020, a total of 67,638 VTP procedures were performed (a decrease of 7.6% compared to 2019), confirming the continuously decreasing number of VTP performed since 1983.
- the percentage of VTP procedures performed within 14 days of the release of the certificate by appointed healthcare staff (as possible indicator of the services' efficiency) has slightly increased: 72.6% in 2019 compared to 70.2% in 2018. The

percentage of VTPs performed after a waiting time of more than three weeks has progressively fallen: 9.9% in 2019 compared to 10.8% in 2018.

• In 2019, the Regions reported that 67% of gynaecologists, 43.5% of anaesthetists and 37.6% of non-medical personnel claimed conscientious objection. According to the report, these data are slightly lower than those of 2018 and show considerable regional variations in all three categories.

The report indicates that to better assess the availability of the service and the workload of the non-objecting staff, the Ministry of Health used specific parameters:

• Parameter 1: Offer of the VTP service in terms of available facilities: at national level, there were a total of 564 facilities with obstetrics and/or gynaecology wards in 2019 (558 in 2018 and 591 in 2017), while the number of structures performing VTPs was 356 (362 in 2018 and 381 in 2017), i.e., 63.1% of the total number (in 2018, 64.9% and in 2017, 64.5% of the total number). According to the figures provided in the report, only two regions (Autonomous Province of Bolzano and Campania) recorded a percentage lower than 30% of facilities in which VTP procedures were performed, compared to the total number of facilities equipped with obstetrics and/or gynaecology services. In eight regions, the percentage of VTP points exceeded 70% and in the remaining regions and autonomous provinces, the data ranged between 30% and 70%.

• Parameter 2: Offer of VTP services and operators' right to conscientious objection: the report refers to the weekly average workload of non-objecting VTP gynaecologists, recorded over 44 working weeks per year. The national data for 2019 show a workload of 1.1 VTPs per non-objecting gynaecologist per week (those figures were 1.2 in 2017 and 2018, and 1.6 in 2016). In 2019, at regional level, the lowest value was recorded in Valle d'Aoste, with an average of 0.5 VTP per week per non-objecting gynaecologist (0.3 in 2018 and 0.2 in 2017). The highest value was recorded in Molise, with a weekly average of 6.6 VTPs (3.8 in 2018 and 8.6 in 2017). The data provided in the report concerning the weekly workload for VTP procedures for each non-objecting gynaecologist (from 2018 to 2019) shows a slight decrease in eight regions, a slight increase in seven regions and that, in five regions, the situation remained the same. According to the report, the 2019 data indicate that, in four regions, there were facilities with a workload of over 9 VTP procedures per week (11.9 in Abruzzo, 10.9 in Campania, 12.3 in Apulia and 17.7 in Sicily), whereas, in 2018, this was the case in only two regions (14.6 in Puglia and 9.5 in Calabria).

The report also states that some facilities have declared performing VTP procedures despite the lack of available non-objecting gynaecologists in the workforce and highlights the regions' capacity to assure the service by mobilising non-objecting staff available in other facilities. The report also indicates that, in 2019, 69.2% of family planning centres had carried out activities relating to VTP procedures.

In response to the previous question raised by the Committee (Findings 2021) as to how the regions organise healthcare services to grant access to VTPs for all women, the Government indicates that in order to assure an effective collaboration among central institutions, the regions and healthcare professionals, the Ministry of Health has set up a Permanent Group to work on the full application of Law No. 194/78. It monitors any critical issues regarding the exercise of the right to conscientious objection by healthcare staff. According to the Government, the regions, with their full and complete organisational autonomy, must ensure the performance of the procedures contained in Law 194/78, also considering the possible claiming of conscientious objection by operators.

In reply to the previous question raised by the Committee (Findings 2021) as to the number or percentage of VTP procedures not performed, both at the individual hospital facility or at regional level, due to the insufficient availability of non-objecting doctors and healthcare staff, the report indicates that no such data are available. However, the report indicates that, in most cases, VTP procedures carried out in each region involved women resident in the same region: in 2019, this concerned 92.7% of the total number of VTP procedures performed (92.3% in 2018, 92.1% in 2017 and 91.4% in 2016). The report also indicates that, in 2019, percentages of over 20% of intra-regional mobility (in order to perform VTPs) were recorded in five regions; and in four regions, at least 10% of VTP procedures concerned women coming from other regions (Valle d'Aosta in the North, Umbria in the Centre, Molise and Basilicata in the South).

As to the number of clandestine abortions, the latest data provided by the report are from 2016, and the number of clandestine abortions was between 10 000 and 13 000. The report indicates that the 2022 Project on "Interventions to improve the quality of data, the offer and appropriateness of execution procedures and the dissemination of information on voluntary termination of pregnancy" financed from the funds allocated by the National Centre for Disease Prevention and Control", in order to establish if the reduction in VTP procedures recorded in the country is related to an increase in clandestine abortions, will re-estimate the phenomenon by using internationally-validated methods.

As to the number of pharmacy and family planning centre staff who are conscientious objectors and the impact that this can have on effective access to VTP, the report indicates that, although it is accepted that pharmacists fall within the category of healthcare staff, no national rule grants them a generalised right to claim conscientious objection. Consequently, no data are available in respect of pharmacists. According to the report, the need to record data concerning family planning centres' staff was agreed with the regions who were asked to provide that information and these data will be included in the next Report to Parliament in relation to VTPs monitoring.

**B. Violation of Article E read in conjunction with Article 11 of the Charter**

See above.

**3. Assessment of the follow-up**

**A. Violation of Article 11§1 of the Charter**

The Committee takes note of the information provided by the Government, as well as the information concerning *Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No. 91/2013, decision on the admissibility and the merits of 12 October 2015. It also refers to its previous findings in 2020 and 2021, where it noted that, despite certain signs of improvement, the information submitted did not demonstrate the compliance of the measures designed to guarantee that all abortions requested in accordance with the applicable rules are actually carried out, or that the disparities at the local and regional level had been reduced.

The Committee takes note of the positive developments indicated by the Government with regard to access to services on voluntary termination of pregnancy: it notes, in particular, the slight decrease, from 2018 to 2019, in the percentage of healthcare professionals who claimed conscientious objection, but also notes from the Government's information the considerable regional disparities in this respect. The Committee also notes the reduction in the average waiting time between the issue of the certification by the healthcare personnel and the intervention, notably the slight

increase in the percentage of VTPs performed within 14 days of the issue of the certificate, while the total number of VTPs performed continuously decreased over the past several years (a decrease of 4.1% from 2018 to 2019).

Nevertheless, the Committee also notes, on the basis of various parameters used by the Ministry of Health, the decrease in the absolute number of facilities with obstetrics and/or gynaecology wards between 2017 (591) and 2019 (564), and the decrease in the number of structures performing VTPs (from 381 in 2017 to 356 in 2019). The Committee notes the large differences between regions concerning the percentage of facilities in which VTP procedures were performed relative to the total number of facilities with obstetrics and/or gynaecology wards: while in two regions, this percentage is below 30%, in eight regions it exceeds 70% and, in the remaining regions, the data ranged between 30% and 70%. However, the Government, apart from stating that the regions have the duty to control and guarantee the correct application of Law No. 194/78, does not provide information on any specific measures taken in the regions where this percentage is particularly low (i.e. the Autonomous Province of Bolzano and Campania).

The Committee also notes that, despite the general decrease in Italy in the weekly average VTP workload s of non-objecting gynaecologists recorded over 44 working weeks per year (from 1.6 in 2016 and 1.2 in 2017 to 1.1 in 2019), there are important differences among the regions in this regard: in 2019, whereas in Valle d'Aoste, there was an average workload of 0.5 VTPs per week, in Molise, the weekly average in the same period was 6.6 VTP (which has considerably increased since 2018 (when there were 3.8 VTPs per week)). The Committee notes, in this respect, that although there is a slight decrease in the average workload with regard to VTP in 8 regions, there is a slight increase in seven other regions. The Government does not provide information on any specific measures taken with regard to regions where this average is particularly high compared to other regions: in particular, in the four regions indicated in the report (Abruzzo, Campania, Apulia and Sicily) where there is a workload higher than nine VTPs per week (in 2018, there were two regions with an average workload of more than nine VTPs per week).

Lastly, the Committee notes from its decision on the merits of 10 September 2013 (§§93, 101, 171) that, since 2010, the national health service has organised "pharmacological abortion services". This method is increasingly used by women and is provided by an increasing number of facilities in order to reduce the impact of conscientious objection on accessing abortion services. However, the absence of any data concerning the number of pharmacists who are conscientious objectors does not allow the Committee to thoroughly assess the situation in practice as to the positive effect of the introduction of pharmacological abortion in accessing abortion services. The Committee welcomes the information that the regions are now required to provide these data, which will be included in the next report to Parliament in relation to VTP monitoring.

In view of the above, the Committee considers that the situation has not yet been brought into conformity with the Charter with regard to women's right to access to VTPs in accordance with applicable rules in all cases (Article 11§1).

**B. Violation of Article E, read in conjunction with Article 11 of the Charter**

The Committee takes note from the information provided by the Government that in 2019, in most cases, VTP procedures carried out in each region involved women resident in the same region. In four regions (Valle d'Aosta in the North, Umbria in the Centre, Molise and Basilicata in the South), no fewer than 10% of the VTP procedures concerned women coming from other regions.

Nevertheless, this positive trend, in the absence of data as to the number of VTP procedures not performed due to the insufficient availability of non-objecting doctors and of updated data as to the number of clandestine abortions (the data provided by the Government is from 2016), does not allow the Committee to find that the situation has been brought into conformity with the Charter.

The Committee refers to its assessment above, concerning Article 11 of the Charter and finds, for the same reasons, that the situation has not yet been brought into conformity with the Charter as regards the discrimination against women wishing to terminate their pregnancy and violation of their right to health because of problems with access to abortion services (Article E, read in conjunction with Article 11 of the Charter).

*Finding*

The Committee finds that the situation with respect to Article 11 and Article E, read in conjunction with Article 11, has not been brought into conformity with the Charter.

## 4th Assessment of follow-up: *Confederazione Generale Italiana del Lavoro* (CGIL) v. Italy, Complaint No. 91/2013, decision on admissibility and the merits of 12 October 2015, Resolution CM/ResCHS(2016)3

### 1. Decision of the Committee on the merits of the complaint

#### A. Violation of Article 11§1 of the Charter

The Committee found that there was a violation of Article 11§1 of the Charter because of shortcomings in the services for the termination of pregnancies in Italy, which, despite the applicable legislation, make access to these services difficult for the women concerned who face substantial difficulties in obtaining access to such services and who are forced to seek alternative solutions at risk to their health, and the failure of health facilities to take the necessary measures to compensate for the deficiencies in service provision arising from health personnel who claim conscientious objection.

#### B. Violation of Article E, read in conjunction with Article 11 of the Charter

The Committee found that there was a violation of Article E, read in conjunction with Article 11 of the Charter, because of the discrimination suffered by women wishing to terminate their pregnancy, who are forced, at risk to their health, to move from one hospital to another within the country or to travel abroad because of shortcomings in the implementation of Law No. 194/1978. The Committee considered in particular that there was a discrimination on the grounds of territorial and/or socio-economic status between women who have relatively unimpeded access to legal abortion facilities and those who do not and a discrimination on the grounds of gender and/or health status between women seeking access to lawful termination procedures and women seeking access to other lawful forms of medical procedures which are not provided on a restricted basis.

#### C. Violation of Article 1§2 of the Charter

The Committee found that there was a violation of Article 1§2 of the Charter, first ground (discrimination), because it considered that there was no reasonable or objective reason justifying the difference in treatment between objecting and non-objecting medical practitioners, namely the cumulative disadvantages the latter suffered at work, both directly and indirectly, in terms of workload, distribution of tasks, career development opportunities etc. The Committee found that this difference in treatment arises simply on the basis that certain medical practitioners provide abortion services in accordance with the law and that, therefore, there was no reasonable or objective reason for this difference in treatment.

#### D. Violation of Article 26§2 of the Charter

The Committee found that there was a violation of Article 26§2 of the Charter because of the lack of preventive training or awareness-raising measures taken by the Government to protect non-objecting medical practitioners from moral harassment.

### 2. Information provided by the Government

#### A. Violation of Article 11§1 of the Charter

The Government updates and supplements the information previously provided (20th report submitted by the Government) on the follow-up given to the Committee's decision on voluntary termination of pregnancy (VTP) and conscientious objection of medical practitioners in relation to the termination of pregnancy. The Government states that, during the reference period, no changes have been made to Law No. 194 of 22 May 1978 (Law No. 194/78) according to which authorised nursing homes and hospital facilities are required to perform the requested termination of pregnancy procedures, while regions must control and guarantee the correct application of the law.

The Government indicates that, according to the report of the Minister of Health on the implementation of the Law No. 194/78, presented to Parliament on 8 June 2022, the number of VTPs performed since 1983 has been decreasing continuously: in 2019, a total of 73 207 VTPs (a decrease of 4.1% compared to 2018) and in 2020, a total of 67 638 VTPs were performed (a decrease of 7.6% compared to 2019). According to this report, the percentage of VTPs performed within 14 days of the issue of the certificate by appointed healthcare staff has slightly increased (72.6% in 2019 compared to 70.2% in 2018). The percentage of VTPs performed after a waiting time of more than three weeks has progressively fallen: 9.9% in 2019 compared to 10.8% in 2018. According to the Minister of Health's report, in 2019, the regions reported that 67% of gynaecologists, 43.5% of anaesthetists and 37.6% of non-medical personnel claimed conscientious objections and these data are slightly lower than those of 2018 and show considerable regional variations for all three categories.

The Government indicates that, at national level, there was a total of 564 facilities with obstetrics and/or gynaecology wards in 2019 (558 in 2018 and 591 in 2017), while the number of structures performing VTPs was 356 (362 in 2018 and 381 in 2017), i.e., 63.1% of the total number (in 2018, 64.9% and in 2017, 64.5% of the total number). According to the figures provided in the report, only two regions (the Autonomous Province of Bolzano and Campania), recorded a percentage of lower than 30% of facilities in which VTP procedures were performed, compared to the total number of facilities equipped with obstetrics and/or gynaecology wards. In eight regions, the percentage of VTP points exceeded 70% and in the remaining regions and autonomous provinces, the data ranged between 30% and 70%.

The Government also refers to the weekly average workload of VTPs performed by non-objecting gynaecologists, recorded over 44 working weeks per year. The national data for 2019 show a workload of 1.1 VTPs per non-objecting gynaecologist per week (those figures were 1.2 in 2017 and 2018, and 1.6 in 2016). In 2019, at regional level, the lowest value was recorded in Valle d'Aoste, with an average of 0.5 VTPs per week per non-objecting gynaecologist (0.3 in 2018 and 0.2 in 2017). The highest value was recorded in Molise, with a weekly average of 6.6 VTPs (3.8 in 2018 and 8.6 in 2017). The data provided in the report concerning the weekly workload for VTP procedures for each non-objecting gynaecologist (from 2018 to 2019) shows a slight decrease in 8 regions, a slight increase in 7 regions and that, in 5 regions the situation remained the same. According to the Government, the 2019 data indicate that in four regions there were facilities with a workload higher than 9 VTP procedures per week (11.9 in Abruzzo, 10.9 in Campania, 12.3 in Apulia and 17.7 in Sicily), whereas, in 2018, this was the case in only two regions (14.6 in Puglia and 9.5 in Calabria).

According to the Government, in order to assure an effective collaboration among central institutions, regions and healthcare professionals, the Ministry of Health has set up a Permanent Working Group for the complete application of Law No. 194/78 which monitors any critical issues regarding the exercise of the right to conscientious objection by healthcare staff. According to the Government, the regions, with their full and complete organisational autonomy, must ensure the performance of the

procedures contained in Law No. 194/78, also considering the possible submission of conscientious objection by operators.

In reply to the previous question raised by the Committee (Findings 2021) as to the number or percentage of VTP procedures not performed, both at the individual hospital facility or at regional level, due to the insufficient availability of non-objecting doctors and healthcare staff, the report indicates that no such data are available. However, the Government indicates that in most cases, VTP procedures carried out in each region involved women resident in the same region: in 2019, this concerned 92.7% of the total number of VTP procedures performed (92.3% in 2018, 92.1% in 2017 and 91.4% in 2016). The report also indicates that, in 2019, percentages of over 20% of intra-regional mobility (in order to perform VTPs) were recorded in five regions; and in four regions, at least 10% of VTP procedures concerned women coming from other regions (Valle d'Aosta in the North, Umbria in the Centre, Molise and Basilicata in the South).

As to the number of clandestine abortions, the latest data provided by the Government are from 2016, and the number of clandestine abortions was between 10 000 and 13 ,000.

As to the number of pharmacy and family planning centre staff who are conscientious objectors and the impact that this can have on effective access to VTP, the report indicates that no data are available in respect of pharmacists. According to the Government, the need to record data concerning the staff of family planning centres, has been agreed with the regions who were asked to provide such data and these data will be included in the next Report to Parliament in relation to VTP monitoring.

**B. Violation of Article E read in conjunction with Article 11 of the Charter**

The Government refers to the information provided in respect of Article 11§1 of the Charter (see above).

**C. Violation of Article 1§2 of the Charter**

The Government refers to the information provided in the previous report and indicates that no changes have been made to the relevant legislation.

**D. Violation of Article 26§2 of the Charter**

The Government refers to the information provided in the previous report and indicates that no changes have been made to the relevant legislation.

**3. Assessment of the follow-up**

**A. Violation of Article 11§1 of the Charter**

The Committee takes note of the information provided by the Government, as well as the information provided concerning International Planned Parenthood Federation – European Network (IPPF EN) v. Italy, Complaint No. 87/2012, decision on the merits of 10 September 2013. It also refers to its previous findings in 2021, where it noted that, despite certain signs of improvement, the information submitted did not demonstrate the compliance of the measures designed to guarantee that all abortions requested in accordance with the applicable rules are actually carried out, or that that the disparities at local and regional level had been reduced.

The Committee takes note of the positive developments indicated by the Government with regard to access to services on voluntary termination of pregnancy: it notes, in

particular, the slight decrease, from 2018 to 2019, in the percentage of healthcare professionals who claimed conscientious objection, but also notes from the Government's information the considerable regional disparities in this respect. The Committee also notes the reduction in the average waiting time between the issue of the certification by the healthcare personnel and the intervention, notably the slight increase in the percentage of VTPs performed within 14 days of the issue of the certificate, while the total number of VTPs performed continuously decreased over the past several years (a decrease of 4.1% from 2018 to 2019).

Nevertheless, the Committee also notes on the basis of various parameters used by the Ministry of Health, the decrease in the absolute number of facilities with obstetrics and/or gynaecology wards from 2017 (591) to 2019 (564), and the decrease in the number of structures performing VTPs (from 381 in 2017 to 356 in 2019). The Committee notes the important differences between regions concerning the percentage of facilities in which VTP procedures were performed relative to the total number of facilities with obstetrics and/or gynaecology wards: while in two regions this percentage is below 30%, in eight regions it exceeds 70% and, in the remaining regions, the data ranged between 30% and 70%. However, the Government, apart from stating that the regions have the duty to control and guarantee the correct application of Law No. 194/78, does not provide information on any specific measures taken in the regions where this percentage is particularly low (i.e. the Autonomous Province of Bolzano and Campania).

The Committee also notes that, despite the general decrease in Italy in the weekly average VTP workload of non-objecting gynaecologists recorded over 44 working weeks per year (from 1.6 in 2016 and 1.2 in 2017 to 1.1 in 2019), there are important differences among the regions in this regard: in 2019, whereas in Valle d'Aoste, there was an average workload of 0.5 VTPs per week, the weekly average in the same period was 6.6 VTPs in Molise (which has considerably increased since 2018 (3.8 VTPs per week)). The Committee notes in this respect that although there is a slight decrease in the average workload with regard to VTPs in eight regions, there is a slight increase in seven other regions. The Government does not provide information on any specific measures taken with regard to regions where this average is particularly high compared to other regions: in particular, in the four regions indicated in the report (Abruzzo, Campania, Apulia and Sicily) with a workload higher than nine VTPs per week (in 2018, there were two regions with an average workload of more than nine VTPs per week).

Lastly, the Committee notes from its decision on the merits of 10 September 2013 (§§93, 101, 171) that, since 2010, the national health service has organised "pharmacological abortion services". This method is increasingly used by women and is provided by an increasing number of facilities in order to reduce the impact of conscientious objection on accessing abortion services. However, the absence of any data concerning the number of pharmacists who are conscientious objectors does not allow the Committee to thoroughly assess the situation in practice as to the positive effect of the introduction of pharmacological abortion in accessing abortion services. The Committee welcomes the information that the regions are now required to provide these data, which will be included in the next report to Parliament in relation to VTP monitoring.

In view of the above, the Committee considers that the situation has not yet been brought into conformity with the Charter with regard to women's right to access to VTPs in accordance with applicable rules in all cases (Article 11§1).

**B. Violation of Article E read in conjunction with Article 11 of the Charter**

The Committee takes note from the information provided by the Government that, in 2019, in most cases, VTP procedures carried out in each region involved women resident in the same region. In four regions (Valle d'Aosta in the North, Umbria in the Centre, Molise and Basilicata in the South), no fewer than 10% of the VTP procedures concerned women coming from other regions.

Nevertheless, this positive trend, in the absence of data as to the number of VTP procedures not performed due to the insufficient availability of non-objecting doctors and of updated data as to the number of clandestine abortions (the data provided by the Government is from 2016), does not allow the Committee to find that the situation has been brought into conformity with the Charter.

The Committee refers to its assessment above, concerning Article 11 of the Charter and considers, for the same reasons, that the situation has not yet been brought into conformity with the Charter as regards the discrimination against women wishing to terminate their pregnancy and violation of their right to health because of problems with access to abortion services (Article E, read in conjunction with Article 11 of the Charter).

**C. Violation of Article 1§2 of the Charter**

In the previous finding (Finding 2021), the Committee reiterated its previous request for information (Finding 2020) concerning the implementation of Legislative Decree No. 216/2003 (which transposed EU Council Directive 2000/78/EC concerning equal treatment in terms of employment and working conditions) providing for equal treatment and protection from discrimination on grounds *inter alia* of personal beliefs. The Committee also asked for information in the previous finding (Finding 2021) about any measures taken to raise the awareness of medical and non-medical staff about discrimination on account of personal belief, including conscientious objection, and to train them in order to prevent direct or indirect discrimination and harassment towards non-objecting practitioners. The Committee also recalled that this information was necessary with a view to assessing whether in practice there is direct or indirect discrimination in the workload and career perspectives of non-objecting health staff in comparison to health staff who are objectors.

The Government does not provide any information in these respects. The Committee therefore considers that the situation has not been brought into conformity with the Charter with regard to discrimination against non-objecting medical practitioners.

**D. Violation of Article 26§2 of the Charter**

The Committee refers to its assessment above, concerning Article 1§2 of the Charter and considers, for the same reasons, that the situation has not been brought into conformity with the Charter as regards the protection of non-objecting medical practitioners from moral harassment.

*Finding*
The Committee finds that the situation with respect to Article 11§1, Article E, read in conjunction with Article 11, Article 1§2 and Article 26§2, has not been brought into conformity with the Charter.

## 1st Assessment of follow-up: University Women of Europe (UWE) v. Italy, collective complaint no. 133/2016, decision on the merits of 5 December 2019, Recommendation CM/RecChS(2021)10

### 1. Decision of the Committee on the merits of the complaint

### A. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency

In its decision, the Committee considered that it had not been shown that job classification systems are applied and used effectively in practice to prevent gender pay discrimination and there was no evidence that the notion of equal value was adequately defined in domestic case law. The Committee considered that it had not been demonstrated that a potential victim of pay discrimination may have access to all the necessary information with a view to effectively bringing a case to court. Therefore, the Committee considered that the obligation to ensure pay transparency in practice has not been satisfied.

### B. Violation of Article 20.c of the Charter as the obligation to collect statistical data on pay has not been ensured and as there has been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay

The Committee observed that the gender pay gap is relatively low compared to the EU average. It also noted that positive action to fight gender discrimination and promote gender equality in employment is provided for in the legislation, in particular in Legislative Decree No. 198/2006. However, taking into account the size of the informal economy, the Committee considered that the gender pay gap indicator, which is based on statistics collected in the formal labour market and excludes activities in the informal economy does not fully reflect the reality.

Therefore, the Committee considered that neither the obligation to collect statistical data on pay nor the obligation to adopt measures to promote the right to equal opportunities of women in the labour market had been satisfied.

### 2. Information provided by the Government

### A. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency

The Government states that Italy recently adopted measures to strengthen the position of the woman in the labour market. Law No. 162 of 5 November 2021 amended the code of equal opportunities for men and women (Legislative Decree No. 198 of 11 April 2006), introducing additional provisions on equality in the workplace.

According to the Government, the new regulations require employers to prepare for the two-yearly reports on the situation of male and female staff, envisaged by Art. 46 of Legislative Decree No. 198/2006. This provision has been implemented by the Decree adopted on 29 March 2022 by the Minister of Labour and Social Policies, together with the Minister for Equal Opportunities and Family. In line with the previous Ministerial Decree (MD) of 3 May 2018 – it permits the presentation of the report exclusively through telematic tools, by a specifically dedicated ministerial platform, in order to standardise and analyse the information acquired by companies.

The main innovations of the new regulation are as follows:

*Companies required to submit the report*

Since 2022, the obligation to submit the report has been extended to those with more than 50 employees. Non-compliant companies are excluded from public tenders funded entirely or partly by resources coming from the National Recovery and Resilience Plan or Complementary National Plan. Moreover, even the smaller companies, with more than 15 employees, are required to submit to the contractor a report on the gender situation after contract award. The report should contain information which, although simplified, reflects its essential contents. In this respect, the Government indicates that the MD of 29 March 2022 (Article 1, paragraph 3) also allows companies with at least 15 employees to use the platform to submit the report on a voluntary basis. In this way, companies should be provided with a template to submit the report, extending, at the same time, the data available for compiling gender statistics.

*Extension of the set of information to be submitted*

The new report must provide an overview of the situation in terms of recruitment, training, professional promotion, levels, progression in category or career qualification, other mobility cases, the intervention of the redundancy fund, dismissals, early retirements and retirements, and the remuneration effectively paid.

*Extension of the list of subjects directly accessing reports on the ministerial platform*

Equality advisors in the provinces or metropolitan cities where companies are located, can access the reports (MD of 29 March 2022, Article 2, paragraph 6). As before, however, the company trade union representatives and the unitary workplace trade union representatives do not have access to the application: companies must send them an electronic copy of the report which they have previously downloaded from the ministerial platform. In addition, this regulatory change has ensured that all subjects entitled to take legal action against discriminatory conduct can access the two-yearly reports through which the aforementioned discriminatory conduct can be detected.

Moreover, for the purpose of judicial protection, the new provision also states that individual workers can access the reports only through equality advisers or the company trade union representatives and the unitary workplace trade union representatives (MD of 29 March 2022, Article 2, paragraph 8). In the context of anti-discrimination proceedings, this aspect aims at ensuring the application of the provision that establishes the reversal of the burden of proof to prove discrimination through purely statistical data such as those provided by the report.

The councillors process the results of the reports and transmit them to the subjects already envisaged by the law previously in force (National Equality Advisor, Ministry of Labour and Social Policies and Department of Equal Opportunities), as well as the National Labour Inspectorate, the National Institute of Statistics and the National Committee for Economic and Employment (MD of 29 March 2022, Art. 2, paragraph 5). This provision aims at ensuring the effectiveness of the sanction system, for which the National Labour Inspectorate is responsible; the availability of data to process more accurate statistics on the gender pay gap, through the National Institute of Statistics; useful information for any legislative initiatives by the National Committee for Economic and Employment.

The Government also indicates that Article 4 of Law No. 162/2021 introduced Art. 46 *bis* into the Code of Equal Opportunities. It establishes the certification of gender equality, as a system that can encourage employers to reduce the gender gap, assuring equal opportunities for qualification within the company, equal pay and appropriate corporate gender policies and maternity protection.

**B. Violation of Article 20.c of the Charter as the obligation to collect statistical data on pay has not been ensured and as there has been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay**

According to the Government, as regards interventions aimed at increasing female employment, the National Recovery and Resilience Plan was adopted, which is, structured into six specific missions and considers gender equality as one of the three transversal priorities, to the achievement of which, therefore, all missions contribute. Within the individual missions, some measures appear to be particularly promising for reducing the gender gap and promoting female employment, such as, for example, the interventions aimed at:

- **strengthening services to reduce care burdens**, that disproportionately affect women, enabling them to access quality and full-time employment (strengthening nurseries, early-childhood services and the extension of full-time schooling, through canteens and sport activities;

- **promoting the eliminating of vertical segregation** (glass ceiling), through new recruitment mechanisms to be adopted within the scope of the public administration reform, which could facilitate the gender balance in public sector senior positions;

- **acting on horizontal segregation** by promoting STEM (Science, Technology, Engineering and Mathematics), languages and digital technologies, to foster a greater female presence in technical and scientific areas, which traditionally grant access to better quality and well-paid jobs;

- **reducing illegal employment** by adopting a **National Plan to Fight against Undeclared Work**, particularly focusing on sectors with the greatest rates of illegal employment, including those with a predominantly female presence (e.g. domestic and care work).

However, the Legislative Decree No. 105 of 30 June 2022, transposing the Directive EU/2019/1158 on work-life balance, intervened on leave (paternity, parental and caregiver leaves) to promote its use by fathers, to assure a more equitable balance of care-taking responsibilities in favour of women, so that they can choose more demanding, and better paid jobs.

The Government also states that, as evidence of the Italian government's commitment to fight against gender inequality, at international level too, it should be noted that, in February 2020, Italy joined the Equal Pay International Coalition (EPIC). Italy's accession to the Coalition took place followed careful examination, by international control bodies, of the fulfilment of certain conditions strictly provided for the countries that presented the request for participation.

**3. Assessment of the follow-up**

**A. Violation of Articles 4§3 and 20.c of the Charter regarding pay transparency**

In its Recommendation CM/RecChS(2021)10, the Committee of Ministers recommended that Italy reinforce measures to implement pay transparency legislation in practice as an enabling tool for workers or social partners to take appropriate action, such as to challenge pay discrimination before the courts.

The Committee notes that the Government has implemented legislative measures to improve pay transparency and make pay information more available and accessible.

The Committee also notes from the report on Gender Equality of the European Network of Legal Experts on Gender Equality and Non-Discrimination (2022) that Article 46 has been amended by Law No. 162/2021, which provides that the biennial report concerning the ratio of male and female employees in all job categories of a company will be compulsory for enterprises employing more than 50 workers (100 employees under the previous wording of the provision). The report will be filed online on the website of the Ministry of Labour and regional equality advisers will be responsible for analysing the results to be transmitted to the territorial offices of the National Labour Inspectorate, the Ministry of Labour, the Department for Equal Opportunities at the Prime Minister Office, the National Institute for Statistics (ISTAT) and the National Council for Labour and Economy (CNEL). A list of failing companies will be available on the Ministry of Labour's website. An administrative sanction may be applied by the Labour Inspectorate in the event that a report is incomplete or presents false data. The Committee also takes note of Law 162/2021 which introduced a certification system on Gender Equality.

The Committee takes note of Article 10 Paragraph 1(h) of the Equal Opportunities Code, according to which the National Equality Committee can ask the local labour inspectorate to obtain gender-differentiated data at the workplace in respect of hiring, vocational training and career opportunities.

The Committee also notes that the European Commission's Recommendation of 7 March 2014 on strengthening the principle of equal pay between men and women has not yet been applied by Italy.

The Committee considers that, despite some improvements that the Government has presented, especially as regards access to pay information, it has not demonstrated that any progress has been made in terms of whether job classification systems are applied and used effectively in practice to prevent gender pay discrimination and there is no evidence that the notion of 'equal value' is adequately defined in domestic case law.

Therefore, the Committee considers that the situation has not been brought into conformity.

**B. Violation of Article 20.c of the Charter as the obligation to collect statistical data on pay has not been ensured and as there has been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay**

In its Recommendation CM/RecChS(2021)10, the Committee of Ministers recommended that Italy review and reinforce existing positive action aimed at promoting greater participation of women in the labour market and reducing occupational segregation. It also recommended that Italy consider adopting new measures to increase participation of women in the formal labour market and to collect additional data about such participation.

The Committee takes note of the information provided by the Government. It notes in particular the measures taken to reduce informal employment within the framework of the National Plan to Fight against Undeclared Work, particularly focused on areas marked by a prevalent female presence. The Committee also takes note of actions implemented to promote employment of women. The Committee notes, however, that the female employment rate, although it has increased in recent years, is still the lowest in the EU and stood at 55% in 2022, while the EU average stood at 69.3%.

The Committee also notes that the gender pay gap stood at 4.2% in 2020 and at 5.0% in 2021. Although this indicator remains significantly below the EU average, the Committee observes that the Government has not provided any concrete evidence of

measures taken to reduce the size of the informal economy and to improve the collection of data that more accurately reflect the reality as regard female employment and remuneration.

Therefore, the Committee considers that the situation has not been brought into conformity.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 20.c as regards pay transparency and the collection of data.

## 2nd Assessment of follow-up: Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 140/2016, decision on the merits of 22 January 2019, Resolution CM/ResChS(2019)6

### 1. Decision of the Committee on the merits of the complaint

#### A. Violation of Article 5

The Committee concluded that there was a violation of Article 5 of the Charter on account of the fact that the restriction on the right of members of the *Guardia di Finanza* to organise is excessive in that the creation of trade unions or professional organisations by its members is subject to the prior consent of the Minister of Defence, in the absence of administrative and judicial remedies against an arbitrary refusal of registration.

The Committee also held, with regard to freedom to join or not to join organisations, that the absolute ban on members of *Guardia di Finanza* under Article 1475(2) of the Military Code, to join "other trade unions", where the *Guardia di Finanza* is functionally equivalent to a police force or to an armed force, is disproportionate since it deprives its members of an effective means of asserting their economic and social interests and is not necessary in a democratic society in breach of Article 5 of the Charter (§§83, 88 and 98 of the decision)

#### B. Violation of Article 6§2

The Committee concluded that there was a violation of Article 6§2 of the Charter on the grounds that the representative bodies of *Guardia di Finanza* were not provided with means to effectively negotiate the terms and conditions of employment, including remuneration. In particular, concerning the procedure laid down by the legislation with regard to consultations of the representative bodies of the *Guardia di Finanza*, the Committee held that it was not demonstrated that this procedure effectively ensures meaningful negotiations as opposed to a simple hearing and that the representative bodies were, in practice, able to meet frequently with the Ministers concerned or their representatives in order to negotiate on matters relating to working conditions and pay of the members of the *Guardia di Finanza*.

The Committee also considered that in the event of disagreement, the representative bodies may only send their observations to the respective Ministers and that this procedure did not present the characteristics of a real negotiation between two parties and a reasonable alternative to the bargaining process (§§ 130-132 of the decision).

#### C. Violation of Article 6§4

The Committee concluded that there was a violation of Article 6§4 of the Charter on account of the absolute prohibition of the right to strike imposed on members of the *Guardia di Finanza*.

The Committee considered that although restrictions on the right to strike in the context of "minimum service" requirements in the event of a strike in the defence sector, or the provision of a regular and effective procedure of negotiations between the members of the *Guardia di Finanza* and the command authority, would be proportionate and compatible with the Charter, the absolute prohibition of the right to strike imposed on members of the *Guardia di Finanza* cannot be considered as being

necessary in a democratic society in violation of Article 6§4 of the Charter (§152 of the decision).

### 2. Information provided by the Government

### A. Violation of Article 5

The Government reiterates that the Constitutional Court, in its decision No. 120/2018 of 11 April 2018, declared unconstitutional the first part of Article 1475(2) of the Military Code with regard to the prohibition on military personnel to form trade unions.

The Government also indicates that Law No. 46/2022 concerning "Rules on the exercise of trade union freedom by personnel of the Armed Forces and Police Forces with military order, as well as delegation to the Government for regulatory coordination" (hereinafter, "Law No. 46/2002") was published in the Official Journal and came into force on 27 May 2022. According to the Government, this law introduces the principles governing the application of the right to organise to the members of the armed forces and determines the extent to which they apply to persons in this category and the conditions that are necessary in order to safeguard the neutrality and impartiality of the armed forces.

The Government indicates that this law envisages the possibility for military personnel to form and join professional trade union associations (Art. 1) and sets out the principles to which these trade union associations must conform, including the democratic nature of the organisation (to be achieved through the elective nature of the functions), neutrality, transparency, and the absence of profit-seeking and purposes incompatible with the obligations arising from the military oath (Art. 2).

*Prior authorisation from the Ministry of Defence*

According to the Government, Law No. 46/2022 has abolished the obligation to obtain prior ministerial authorisation for the establishment of military trade union associations which can now be freely established. The only obligation concerning military trade unions, under Article 3 of this Law, is the entry of these associations in a specific register held by the Ministry of Defence (for associations referring to the armed forces, including the *Carabinieri* corps) and the Ministry of Economy and Finance (for the associations concerning *Guardia di Finanza*). According to the report, the obligation to register is a general obligation for all trade unions under Article 39 of the Constitution.

The Government explains that, in accordance with Article 3 of the Law, within five days from their establishment, military trade unions must deposit their statutes with the Ministry (Ministry of Defence or Ministry for the Economy and Finance). The competent Ministry has sixty days within which it verifies (in an objective and non-discretionary manner) whether the legal requirements are met. If the legal requirements are met, the Ministry concerned rules on the registration of the association, which, from that point onwards, is fully entitled to perform trade union activities. If any statutory provisions are found to be in violation with the law, the Ministry must promptly notify the applicant association, which is given 15 days within which to submit any relevant, formal, written observations. The Ministry then has a further 30 days within which to issue its final ruling.

Concerning administrative and judicial remedies against the arbitrary refusal of registration, the Government indicates that, since the refusal to register is an administrative measure, the association can seek the ordinary remedies envisaged by the national law to appeal against the Minister's final ruling (in particular, petitioning the administrative court, which, by virtue of Article 17 of Law No. 46/2022, must rule with the abbreviated trial procedure). The Government also underlines that the risk of

"arbitrary refusal of registration" is extremely remote, as the only control performed by the Ministry is limited to the verification that the legal requirements for registration, including legal deadlines and rules concerning the financing of associations, are met, without any room left for discretion.

*Prohibition for the members of Guardia di Finanza to join "other trade unions"*

The Government indicates that in order to ensure the "compactness" and "unity" of military institutions, Law No. 46/2022 expressly maintained in particular the following prohibitions (i) members of the Armed Forces and Police Forces cannot join trade union associations other than those established in accordance with Article 1475(2) of the Military Code (Article 1§3) ; (ii) professional trade union associations among military personnel cannot assume the representation of workers who do not belong to the military or police forces (Article 4§1 (a)) ; (iii) professional trade union associations among military personnel cannot join union associations other than those established under Law No. 46/2022 (Article 4§1 (i)).

The Government underlines that the ban on military personnel joining non-military trade unions, i.e., a "closed" union system is dictated by the principle of neutrality in specific contexts, is not new to the national legal system, as the prohibition existed in other civil contexts, such as the *Polizia di Stato*, the general civil police force, the members of which cannot join trade unions other than those established for police personnel and which cannot represent other workers. According to the Government, allowing members of the Armed Forces or Police Forces to join non-military trade unions would give them the possibility to avoid the lawful limitations to military trade union associations.

In this respect, the Government underlines that Law No. 46/2022 allows for the establishment of military trade union associations that are not necessarily limited to a single armed force or military police force, but rather, are also open to joint forces (and which potentially also allows both Armed Forces and *Guardia di Finanza* personnel to join). The Law thereby indefinitely extends the choice of associations that personnel can join to protect their collective interests and rights. The Government states that the involvement of extraneous trade union organisations in negotiations concerning the collective interests of military personnel, would not assure greater negotiating power precisely due to the specificity and nature of the sector in question.

**B. Violation of Article 6§2**

The Government indicates that with the entry into force of Law No. 46/2022 (Article 11), the representative military trade union associations were acknowledged as having full power of negotiation in determining the content of the contract of employment of military personnel, ensuing from collective bargaining between the public employer (consisting of the relevant ministers) and the trade union delegation (representatives of the nationally representative military trade union), according to the procedures provided for in the regulations currently in force for civil police forces.

**C. Violation of Article 6§4**

The Government states that there is an absolute incompatibility between the possibility for military personnel (including members of the *Guardia di Finanza*) to abstain autonomously from work and the duties and obligations deriving from the statute of military personnel, confirmed by the oath whereby the personnel carry out the military duties of defending the country and its citizens.

The Government also states that the absolute ban on the right to strike for military fully satisfies the institutional need to safeguard the specific characteristics of the

military organisation and point outs that national law also excludes the right to strike for the civil police and prison officers.

According to the Government, in order to preserve the operational readiness of the military organisation (including the *Guardia di Finanza*), the ban on the exercise of the right to strike, already provided in the Military Code, has also been provided for by Article 4§1 of Law No. 46/2022. The Government recalls that the Constitutional Court, in its decision No. 120/2018 of 11 April 2018, considered that this prohibition is "justified by the need to guarantee the exercise of other freedoms that are no less essential and to protect constitutional interests".

The Government underlines that all the main European legal orders limit the right to strike in the defence and security segment similarly to Italian legislation and concludes that the ban on the right to strike for military personnel, including members of *Guardia di Finanza,* is legitimate, proportionate, and necessary.

**3. Comments by the European Organisation of Military Associations and Trade Unions (EUROMIL)**

In their comments recorded on 2 May 2023, EUROMIL provides information on the resolution adopted by the General Assembly of EUROMIL on the occasion of its 127th meeting. The resolution noted that the current Italian legal framework recognises trade union rights under the name of professional associations with a trade union character and acknowledged the recognition by law of no fewer than twenty-five such military associations.

In this resolution, EUROMIL also considered that the prohibition imposed on military professional associations from having any links with trade union confederations or other unions limits the ability of military personnel to effectively advocate for their rights. The resolution stresses that the law still deals with trade union rights as incompatible with military efficiency or discipline, although this has proven to be incorrect as demonstrated in several other European countries, such as the Netherlands, Belgium, Germany, Denmark, Sweden, Malta and Hungary.

The resolution further acknowledges that the new law represents an initial step towards granting trade union rights but considers that it should be amended to establish legitimate representative bodies that can participate in constructive discussions and collective bargaining with the relevant authorities. The resolution states that the existing law fails to establish an adequate framework for granting trade union rights to military personnel, as it merely fulfils the formal obligation of allowing trade union freedom, without providing the necessary conditions for its effective use and exercise.

The resolution concludes that the current legal framework and the limited competences granted to associations, do not effectively ensure the right to genuine representation.

**4. The Government's response to the comments by EUROMIL**

In their response registered on 12 May 2023, the Government provides detailed information on the provisions of Law No. 46/2022 regarding the application of trade union rights to the members of the Armed Forces. According to the Government, Law No. 46/2002 affirmed the right to free trade union organisation in favour of the members of the Armed Forces and military police, who can also join associations of an "inter-force" nature. Moreover, in order to safeguard the internal cohesion, efficiency, neutrality and operational readiness of the military administration, the law excludes the possibility for those associations to announce a strike or to take part in a strike proclaimed by other trade union organisations unrelated to the military

personnel, as well as to join, federate, affiliate, or have relations of an organisational nature with trade unions other than military ones.

The Government also states that the negotiation procedures indicated under Article 16 of Law No. 46/2022 provide for the participation of a "public party" (consisting of a delegation composed of the relevant ministries and the top military authorities) and a "trade union party" (composed of representatives of the nationally representative association of a trade union character) and the transposition of the trade union agreements by separate Presidential Decrees. The Government underlines that the bargaining procedures for Armed Forces and military police personnel are similar to those in force for the personnel of the Police Forces with civilian regulations.

**5. Assessment of the follow-up**

**A. Violation of Article 5**

The Committee takes note of the information submitted by the Government, as well as the comments made by EUROMIL.

The Committee notes that Law No. 46/2022 on the exercise of freedom of association by personnel of the Armed Forces and Police Forces came into force in May 2022. The law provides that military personnel may form and join professional associations having a "trade union character" and sets out the principles with which these association must comply. It takes note, on the basis of EUROMIL submissions, that under the current law no fewer than twenty-five military associations with a trade union character have been already recognised.

*Prior consent of the Ministry of Defence*

The procedure of "prior consent" of the relevant minister for the creation of military trade unions, in the absence of administrative and judicial remedies against the arbitrary refusal of registration, led the Committee to find a violation of Article 5 of the Charter.

The Committee notes, on the basis of the provisions of Law No. 46/2022 and the submissions of the Government, that professional associations of a trade union character must, within five working days from their constitution, deposit their statutes with the Ministry of Defence, or, for trade unions concerning members of the *Guardia di Finanza*, with the Ministry of Economy and Finance (Article 3 of Law No. 46/2022). The competent ministry must ascertain, within sixty days, whether the requirements of Law No. 46/2022 are respected (including the prohibitions provided under Article 4 of this law concerning professional associations of a trade union character among military personnel) and provides for their registration in a special register to enable the trade union to conduct its activities and to collect union dues in the manner provided by Article 7 of this Law.

In the event that the provisions of the trade union's statutes are in violation with the applicable provisions, the competent ministry must promptly notify the trade union, which may submit written observations within 15 days. Within the subsequent 30 days, the ministry must take its decision concerning registration of the trade union. According to Article 3§6 of Law No. 46/2022, the administrative courts are competent concerning disputes arising from this procedure.

The Committee also notes from the Government's information, that the new law has abolished the obligation to obtain ministerial consent for the constitution of a trade union among military personnel and the control exercised by the relevant ministry is limited to the verification of the legal requirements for registration and that the ministry does not use any discretion in this respect. The Committee also notes that the obligation to register is a general requirement for all trade unions under Article 39 of

the Constitution, and the condition for the registration of trade unions under this provision, is that their statues define their internal organisation on a democratic basis.

In view of the above, the Committee concludes that the situation has been brought into conformity with Article 5 of the Charter in this regard.

*Prohibition for the members of Guardia di Finanza to join "other trade unions"*

The Committee notes that the absolute prohibition on members of *Guardia di Finanza* to join "other trade unions" under Article 1475(2) of the Military Code is still in force, and Article 1§3 of Law No. 46/2022 maintains this absolute prohibition in order to ensure, according to the Government, the "compactness" and "unity" of military institutions.

Therefore, the Committee finds that the situation has not been brought into conformity with Article 5 of the Charter in this respect.

**B. Violation of Article 6§2**

The Committee takes note that according to Article 11 of Law No. 46/2022, professional associations with a trade union character, recognised as representative at national level, are granted negotiating powers for the purposes of sectoral collective bargaining. According to this provision, the bargaining procedure regarding the employment relationship of military personnel is concluded with the issuance of separate decrees of the President of the Republic, concerning the personnel of the Armed Forces and of the Military Police Forces respectively.

The Committee notes that, according to paragraph 3 of Article 11 of Law No. 46/2002, the decrees of the President of the Republic are issued following trade union agreements concluded by (a) for the public authority: a delegation consisting of the Minister for Public Administration who chairs the meeting, and Ministers of Defence and Economy and Finance (as well as Ministers of Interior and Justice in the event that the agreement relates to military police forces). Concerning specifically agreements with regard the personnel of *Guardia di Finanza*, the Chief of Staff of the Defence and of the Armed Forces, or their representatives, must also be part of the public authority delegation (b) for the trade union: a trade union delegation composed of representatives of professional associations of a trade union character between military personnel, representing personnel of the Armed Forces and of Military Police Forces.

Trade unions which are authorised to be part of the agreement are those recognised as nationally representative. Under Article 13 of Law No. 46/2022, professional associations of a trade union character among military personnel are considered to be nationally representative when they reach at least an equal number of members corresponding to 4% of the total strength of the Armed Forces and of the military police force. According to this provision, on a transitional basis, the percentage quotas of members envisaged, are reduced a) by 2% in the first three years from the date of entry into force of Law No. 46/2022, and b) by 1%, after three years from the date of entry into force of Law No. 46/2022 and the following four years.

According to Article 11§4, the matters referred to in Article 4 of the Legislative Decree No. 195/1995 are subject to negotiation concerning the military police forces: basic and supplementary pay; severance pay and types of supplementary pension schemes, the maximum duration of working hours; leave; leave from work for personal or health reasons; short periods of leave for personal reasons; pay for missions, transfers or overtime; the general criteria for professional refresher courses for the purposes of policing; the criteria for the establishment of bodies to monitor the quality and hygiene of canteens and shops, for the development of social protection and

personal well-being activities, including development and cultural retraining, in addition to the management of staff assistance bodies; the establishment of supplementary funds for the national health service.

The Committee further notes that according to Article 5 of Law No. 46/2022, professional associations of a trade union character among military personnel can submit observations and proposals to the competent ministries on the application of laws and regulations, be heard by the parliamentary commissions of the Senate and the Chamber of Deputies, ask to be received by the competent ministries and the managerial bodies of the Armed Forces and Police Forces with military order, in matters including their employment relationship, tax assistance and consultancy relating to social security and welfare services, injuries contracted in service, health protection measures and safety of military personnel in the workplace.

The Committee also notes that disputes arising from the application of Law No. 46/2022 fall within the competence of administrative courts (Article 17 of Law No. 46/2022).

The Committee considers, therefore, that the professional associations in question can, within the context of Law No. 46/2022, albeit subject to the requirements of the proper functioning of the *Guardia di Finanza*, participate in direct negotiations with the Government on most questions of concern to the personnel they represent.

In view of the above, the Committee finds that the situation has been brought into conformity with Article 6§2 of the Charter in this respect.

**C. Violation of Article 6§4**

The Committee notes that the arguments put forth by the Government in order to justify an absolute ban on the right to strike by members of the *Guardia di Finanza* were already submitted to the Committee in the context of the proceedings in the complaint and those arguments were already dismissed by the Committee in its decision on the merits of 22 January 2019 which concluded that an absolute ban of the right to strike on *Guardia di Finanza* is in violation of Article 6§4 of the Charter on the grounds of being disproportionate to the legitimate aim pursued by the prohibition.

The Committee notes that not only is this absolute prohibition on the right to strike maintained in the provisions of the Military Code, but Law No. 46/2022 also provides for such an absolute prohibition.

Therefore, the Committee finds that the situation has not been brought into conformity with Article 6§4 of the Charter in this respect.

*Finding*

The Committee finds that the situation leading to the violation of Article 5 of the Charter on the ground that the establishment of trade unions or professional organisations by the members of *Guardia di Finanza* is subject to the prior consent of the Minister of Defence has been brought into conformity with the Charter.

The Committee finds that the situation leading to the violation of Article 5 of the Charter on the ground that the absolute prohibition on members of *Guardia di Finanza* to join “other trade unions” is disproportionate, has not been brought into conformity with the Charter.

The Committee finds that the situation has been brought into conformity with Article 6§2 of the Charter.

The Committee finds that the situation has not been brought into conformity with Article 6§4 of the Charter.

## 1st Assessment of follow-up: *Confederazione Generale Sindacale* (CGS) v. Italy, Complaint No. 144/2017, decision on the merits of 9 September 2020, Resolution CM/ResChS(2021)17

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee found a violation of Article 1§2 of the Charter in respect of public education staff not registered in the eligibility ranking lists to be drawn upon until exhaustion (ERE lists) and recruited under successive contracts with interruptions for an overall length of more than 36 months. In particular, the Committee held that there had been a disproportionate interference with the rights of public education staff not registered on the ERE lists because of the absence of effective preventive and remedial safeguards against abuses arising from the undue recourse to fixed-term contracts; the legal uncertainty, resulting from the repeated changes to legislation and case-law; and the restricted chances of obtaining indefinite duration contracts regardless of actual competences and working experience.

### 2. Information provided by the Government

The Government states that, with regard to the failure in organising regular ordinary selections aimed at granting a permanent position to teaching staff, Article 59, paragraph 10 of Decree-Law No. 73/2021, converted, with amendments, into Law No. 106/2021, states that ordinary selections for teaching staff in kindergartens, primary and secondary schools for common and support positions are called once a year. Directoral Decrees Nos. 498/2020 and 499/2020, regulating the ordinary selection for kindergartens and primary schools, as well as for lower and upper secondary schools, were amended to further simplify the procedure and allow ordinary selections to be held once a year.

The Government states that there is no discrimination in recognising years of fixed-term service. Specific extraordinary selections have been held in order to take into account and value the professional experience accrued in public schools and to reduce to the use of fixed-term contracts.

In accordance with Decree-Law No. 126/2009, converted into Law No. 159/2019, an extraordinary selection was organised. It expressly aims to deal with the phenomenon of fixed-term contracts in public schools and foster the granting of permanent positions to the relevant temporary staff. The procedure pursuant to Decree-Law No. 73/2021, converted by Law No. 106/2021, goes in the same direction. Both these procedures are exclusively reserved for staff who have worked in public schools for at least three years. The procedures were carried out for the years 2021/2022 and 2022/2023.

The Government also states that, in accordance with Decree-Law No. 36/2022, converted, with amendments, into Law No. 79/2022, participation in competitions for teaching staff in lower and upper secondary schools is open to candidates who, without prejudice to possession of the university qualification necessary depending on the type of selection, have completed within the last five years, by the deadline for submission of applications, at least three years of service in public schools, even if not continuously, of which at least one year of service must have been carried out in the specific type of position for which the selection is held.

### 3. Assessment of the follow-up

The Committee notes that the Government provides information on several legislative amendments aimed at organising selection procedures for teaching staff with fixed-

term contracts. However, the information provided is very general in nature and no concrete evidence has been provided proving that these selection procedures have contributed to reducing the use of fixed-term contracts for public education staff.

Moreover, no information is provided by the Government about the remedies that are available for public education staff not registered in the ERE lists under fixed-term contracts.

The Committee thus considers that there is insufficient evidence that the number of successive fixed-term contracts in the public education sector has been reduced and that recruitment procedures open to workers not on the ERE lists have been launched in order to increase their chances of obtaining permanent contracts.

The Committee therefore considers that the situation has not been brought into conformity with Article 1§2 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 1§2 of the Charter.

## 1st Assessment of follow-up: *Associazione Professionale e Sindacale* (ANIEF) v. Italy, Complaint No. 146/2017, decision on the merits of 7 July 2020, Resolution CM/ResChS(2021)18

In its decision, the Committee found a violation of Article 1§2 of the Charter in respect of public education staff not registered in the eligibility ranking lists to be drawn upon until exhaustion (ERE lists) and recruited under successive contracts with interruptions for an overall length of more than 36 months. In particular, the Committee held that there had been a disproportionate interference with the rights of public education staff not registered on the ERE lists because of the absence of effective preventive and remedial safeguards against abuse arising from the undue recourse to fixed-term contracts; the legal uncertainty, resulting from the repeated changes to legislation and case-law and the restricted chances of obtaining indefinite duration contracts regardless of actual competences and working experience.

### 2. Information provided by the Government

The Government states that, with regard to the failure in organising regular ordinary selections aimed at granting a permanent position to teaching staff, Article 59, paragraph 10 of Decree-Law No. 73/2021, converted, with amendments, into Law No. 106/2021, states that ordinary selections for teaching staff in kindergartens, primary and secondary schools for common and support positions are called once a year. Directoral Decrees Nos. 498/2020 and 499/2020, regulating the ordinary selection for kindergartens and primary schools, as well as for lower and upper secondary schools, were amended to further simplify the procedure and allow ordinary selections to be held once a year.

The Government states that there is no discrimination in recognising years of fixed-term service. Specific extraordinary selections have been held in order to take into account and value the professional experience accrued in public schools and to reduce the use of fixed-term contracts.

In accordance with Decree-Law No. 126/2009, converted into Law No. 159/2019, states that an extraordinary selection was organised. It expressly aims to deal with the phenomenon of fixed-term contracts in public schools and foster the granting of permanent positions to the relevant temporary staff. The procedure pursuant to Decree-Law No. 73/2021, converted by Law No. 106/2021, goes in the same direction. Both these procedures are exclusively reserved for staff who have worked in public schools for at least three years. The procedures were carried out for the years 2021/2022 and 2022/2023.

The Government also states that in accordance with Decree-Law No. 36/2022, converted, with amendments, into Law No. 79/2022, participation in competitions for teaching staff in lower and upper secondary schools is open to candidates who, without prejudice to possession of the university qualification necessary depending on the type of selection, have completed, within the last five years, by the deadline for submission of applications, at least three years of service in public schools, even if not continuously, of which at least one year of service must have been carried out in the specific type of position for which the selection is held, within the last five years.

### 3. Assessment of the follow-up

The Committee notes that the Government provides information on several legislative amendments aimed at organising selection procedures for teaching staff with fixed-term contracts. However, the information provided is very general in nature and no

concrete evidence has been provided proving that these selection procedures contributed to reducing the use of fixed-term contracts for public education staff.

Moreover, no information is provided by the Government about the remedies that are available for public education staff not registered in the ERE lists under fixed-term contracts.

The Committee thus considers that there is insufficient evidence that the number of successive fixed-term contracts in the public education sector has been reduced and that recruitment procedures open to workers not on the ERE lists have been launched in order to increase their chances of obtaining permanent contracts.

The Committee therefore considers that the situation has not been brought into conformity with Article 1§2 of the Charter.

*Finding*

The Committee finds that the situation has not been brought into conformity with Article 1§2 of the Charter.

# PORTUGAL

## 5th Assessment of follow-up: European Roma Rights Centre (ERRC) v. Portugal, Complaint No. 61/2010, decision on the merits of 30 June 2011, Resolution CM/ResChS(2013)7

### 1. Decision of the Committee on the merits of the complaint

**A.** The Committee concluded that there was a violation of Article E, read in conjunction with Articles 31§1 and 16 on the following grounds:

- the continuing precarious housing conditions for a large part of the Roma community, coupled with the fact that the Government has not demonstrated that it had taken sufficient measures to ensure that Roma live in housing conditions that meet minimum standards;
- the implementation of re-housing programmes by municipalities often led to the segregation of Roma, and, on other occasions has been tainted by discrimination, without finding lasting solutions to the deteriorating residential conditions in informal Roma neighbourhoods.

**B.** The Committee also concluded that there was a violation of Article E, read in conjunction with Article 30, on the ground that there was a lack of an "overall and coordinated approach" of housing programmes.

### 2. Information provided by the Government

### A. Violation of Article E, read in conjunction with Articles 31§1 and 16

*As regards the continuing precarious housing conditions for a large part of the Roma community, coupled with the lack of sufficient measures to ensure that Roma live in housing conditions that met minimum standards*

The Government refers to the National Strategy for the Integration of Roma Communities (ENICC) 2013-2020, which was extended until 2022. It comprises 8 strategic objectives the 7th of which refers to "ensuring conditions for effective equal access to adequate housing for Roma persons". The Government describes the measures and actions taken to implement the above-mentioned strategic objective. According to the ENICC Implementation Report 2021, the Institute of Housing and Urban Rehabilitation (IHRU) reported the conclusion of 127 "colLabouration" agreements between this Institute and municipalities in 2021, valid until 2026.

The Government states that, at the end of the first semester of 2022, 192 Local Housing Strategies had been approved and 170 "colLabouration" agreements had been signed with the municipalities under the National Recovery and Resilience Plan (developed under the NextGenerationEU programme). The "colLabouration" agreements have the purpose of creating housing solutions and, through these, municipalities can benefit from IHRU financing , which can be used for purchasing land, constructing dwellings or rehabilitation.

*As regards the implementation of re-housing programmes by municipalities and the lack of lasting solutions to the deteriorating residential conditions in informal Roma neighbourhoods*

The Government provides information on the National Plan for Combating Racism and Discrimination (2021–2025) which is coordinated with other national strategies such as the National Strategy for the Integration of Roma Communities (2013–2022),

the National Strategy for Equality and Non-Discrimination (2018–2030). The Government states that the National Plan to Combat Racism and Discrimination 2021-2025 upholds equality, strongly opposes segregation, and sets a vision of the community that rejects any form of marginalisation of its citizens and fights structural inequalities.

The Government provides detailed information on the National Strategy for the Integration of Roma Communities (ENICC) 2013-2022, examples of various integration programmes, support provided to civil society organisations and education programmes. For example, a goal was set to mobilise Roma persons to join residents' associations. As a result, a total of 45 participation projects were carried out. The goal of these projects was to raise awareness on the importance of Roma integration in neighbourhood associations, which could then translate into an active role of these persons in the community.

**B. Violation of Article E, read in conjunction with Articles 30**

The Government presents a set of measures which are not specifically intended for Roma communities but cover all citizens within the scope of social protection in situations of fragility and vulnerability such as: discretionary cash benefits, the social action system, the solidarity subsystem, and social integration income.

**3. Assessment of the follow-up**

**A. Violation of Article E, read in conjunction with Articles 31§1 and 16**

> *As regards the continuing precarious housing conditions for a large part of the Roma community, coupled with the lack of sufficient measures to ensure that Roma live in housing conditions that met minimum standards*

The Committee notes that although the authorities further developed and adjusted their policies so as to improve the living conditions of Roma communities and adopted some measures to mitigate the Covid-19 pandemic, it is not demonstrated that many persons belonging to Roma communities do not continue to face direct and indirect discrimination and live on the margins of the society, sometimes in very poor housing conditions. No statistical data are provided in this regard.

The Committee further notes the concerns expressed by other international bodies about the housing situation of Roma in Portugal. The UN CESCR, in its Concluding observations on the fifth periodic report of Portugal, of 30 March 2023, noted with concern the persistent housing shortages, including the shortage of social housing, affordable housing and emergency shelters, and the lack of disaggregated data on the actual access to adequate housing for marginalised groups including single mothers, persons with disabilities, people of African descent, Roma, youth, and persons in situations of homelessness.

The Committee therefore considers that a large part of the Roma community continues to live in poor housing conditions that do not meet the minimum standards, and therefore the situation has not been brought into conformity with the Charter.

> *As regards the implementation of re-housing programmes by municipalities and the lack of lasting solutions to the deteriorating residential conditions in informal Roma neighbourhoods*

The Committee takes note of the policies developed to promote equality and non-discrimination of Roma, in particular the National Plan to Combat Racism and

Discrimination 2021-2025 and the National Strategy for the Integration of Roma Communities (ENICC) 2013-2022.

The Committee notes that, according to the Country Memorandum on combating racism and violence against women in Portugal (24 March 2021) of the Commissioner for Human Rights of the Council of Europe, the most problematic area remains discrimination in housing, where concentrations of people of African descent, immigrants and Roma continue to be reported in certain geographical areas and often in substandard housing conditions. It is reportedly difficult for persons belonging to these groups to access adequate, mainstream housing.

The Committee notes that, despite the policy of the authorities to fight segregation and any form of marginalisation enshrined in the National Plan to Combat Racism and Discrimination 2021-2025, it has not been demonstrated that the Roma community is adequately protected against segregation in marginalised neighbourhoods.

The Committee finds that the situation has not been brought into conformity with Article E read in conjunction with Articles 31§1 and 16 of the Charter.

**B. Violation of Article E, read in conjunction with Article 30**

The Committee recalls having held that the inability and unwillingness of central authorities to correctly oversee/coordinate the implementation of housing programmes at the local level taking into consideration the specific situation of Roma, for instance, by taking action against those municipalities where housing projects have led to the isolation or segregation of Roma, demonstrates the lack of an "overall and coordinated approach" in this area, amounting to a violation of Article E, read in conjunction with Article 30 (*European Roma Rights Centre (ERRC) v. Portugal*, Collective Complaint No. 61/2010, decision on the merits of 30 June 2011, §71).

The Committee notes that, according to the Government, the National Plan to Combat Racism and Discrimination 2021-2025 - Portugal Stands Against Racism (PNCRD 2021-2025) is premised on a coordinated approach with other national strategies, plans and programmes targeting specific groups and vulnerabilities, namely the National Strategy to Combat Poverty and Social Exclusion, the 2018-2030 National Strategy for Equality and Non-Discrimination, the National Implementation Plan of the Global Compact for Migration, the 2013-2022 National Roma Communities Integration Strategy and the National Programme for Holocaust Remembrance.

It takes note in particular of the measures and actions taken under the National Strategy for the Integration of Roma Communities (ENICC) which provided for an overall and coordinated approach taking into consideration the specific situation of Roma.

The Committee considers therefore that the situation has been brought into conformity with Article E, read in conjunction with Article 30 of the Charter.

*Finding*

The Committee finds that:

- the situation has not been brought into conformity with Article E, read in conjunction with Articles 31§1 and 16 of the Charter;
- the situation has been brought into conformity with Article E, read in conjunction with Article 30 of the Charter.

## 1st Assessment of follow-up: University Women of Europe (UWE) v. Portugal, Complaint No. 136/2016, decision on the merits of 5 December 2019, Recommendation CM/RecChS(2021)13

### 1. Decision of the Committee on the merits of the complaint

In its decision, the Committee concluded that there was a violation of Article 20.c of the Charter on the ground that there had been insufficient measurable progress in promoting equal opportunities between women and men in respect of equal pay.

### 2. Information provided by the Government

The Government submits information about a wide variety of measures which have been adopted and implemented. The National Strategy for Equality and Non-Discrimination 2018-2030 "Portugal + Equal" (ENIND), approved in 2018, started a new cycle in promoting women's rights and eliminating discrimination from a systemic and comprehensive approach of public policies in three major areas, through three action plans: 1. National plan of action for Equality between women and men (PNAIMH); 2. National plan of action for the prevention and combat of violence against women and domestic violence (PNAVMVD); 3. National plan of action to combat discrimination on grounds of sexual orientation, gender identity and sexual characteristics (PNAOIC).

Moreover, recent legislative changes for tackling inequalities and combating gender stereotypes in the labour market have been adopted, namely Law No. 60/2018, of 21 August 2018 to promote pay equality between women and men for equal work or work of equal value. It regulates the annual availability of statistical information on pay gaps, by company (Balance Sheet) and by activity sector (Barometer). The Barometer of pay differentials between women and men is a support tool to reflect, monitor and promote equal pay for women and men for equal work or work of equal value. With this Law, companies (regardless of their size) are now required to ensure a transparent remuneration policy, based on the evaluation of a job's functional components, and based on objective criteria, common to women and men. It has established the presumption of pay discrimination in cases where the worker claims to be discriminated against and the employer does not present a transparent remuneration policy to demonstrate that the alleged differences are based on objective criteria. In addition, the Working Conditions Authority may now notify large companies, whose respective balance sheets show pay gaps, to submit a plan to evaluate pay gaps by gender.

Law No. 62/2017 also established a system of balanced representation between women and men in the management and supervisory bodies of public sector business sector entities and listed companies.

The Government also presents a very detailed set of data on the number of measures adopted, recommendations, equality plans and training courses conducted in the field.

### 3. Assessment of the follow-up

The Committee notes that the Government has adopted many different measures to tackle the gender pay gap. However, the gender pay gap persists and reducing it is a complex issue. The Committee notes from Eurostat that the unadjusted gender pay gap in Portugal in 2021 stood at 11.9%. It stood at 10.8% in 2017, so it has increased in recent years. The Committee considers, therefore, that the situation has not yet been brought into conformity with the Charter in this regard and reiterates its invitation

to the authorities to continue implementing measures to promote equal opportunities between women and men in respect of equal pay and to reduce further the adjusted and unadjusted gender pay gap.

*Finding*

The Committee finds that the situation has not been brought into conformity with the Charter.