

DECISION ON THE MERITS

3 December 2008

European Roma Rights Centre (ERRC) v. Bulgaria

Complaint No. 46/2007

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 233rd session attended by:

Mrs Polonca KONČAR, President
Mssrs Andrzej SWIATKOWSKI, First Vice-President
Tekin AKILLIOĞLU, Second Vice-President
Jean-Michel BELORGEY, General Rapporteur
Alfredo BRUTO DA COSTA
Nikitas ALIPRANTIS
Mrs Csilla KOLLONAY LEHOCZKY
Mssrs Lucien FRANCOIS
Lauri LEPPIK
Colm O'CINNEIDE
Mrs Monika SCHLACHTER
Birgitta NYSTRÖM
Lyudmila HARUTYUNYAN
Annalisa CIAMPI

Assisted by Mr Régis BRILLAT, Executive Secretary,

Having deliberated on 2 and 3 December 2008

On the basis of the report presented by Ms Birgitta NYSTRÖM,

Delivers the following decision adopted on this last date:

PROCEDURE

1. The complaint lodged by the European Roma Rights Centre (hereafter referred to as "ERRC") was registered on 23 October 2007. The European Committee of Social Rights ("the Committee") declared the complaint admissible on 5 February 2008.

2. Pursuant to Article 7§§1 and 2 of the Protocol providing for a system of collective complaints ("the Protocol") and the Committee's decision on the admissibility of the complaint, the Executive Secretary communicated the text of the admissibility decision on 11 February 2008 to the Bulgarian Government ("the Government"), the complainant organisation, the states party to the Protocol, the states that have ratified the Revised Charter and made a declaration under Article D§2 and to the international organisations of employers and trade unions referred to in paragraph 2 of Article 27 of the 1961 Charter, i.e. the European Trade Union Confederation (ETUC), Business Europe (formerly UNICE) and the International Organisation of Employers (IOE).

3. In accordance with Article 31§1 of the Committee's Rules, the Committee fixed a deadline of 30 April 2008 for the presentation of the Government's written submissions on the merits. Its submission was registered on 2 May 2008.

4. Pursuant to Rule 31§2, the President set 15 July 2008 as the deadline for the complainant to present its response to the Government's submissions. The response was registered on 15 July 2008 and forwarded to the Government on 24 July 2008.

THE PARTIES' SUBMISSIONS

A – The complainant organisation

5. The ERRC alleges that Bulgarian health insurance legislation discriminates some groups in society, such as the Roma community. It also maintains that government policies do not adequately address the specific health risks of the Romani communities, and that the government has not taken any measures to put an end to the discriminatory practices on the part of health care practitioners against Roma. The ERRC considers that this situation constitutes a violation of Articles 11 and 13 of the Revised Charter, taken alone or in conjunction with Article E.

B- The respondent Government

6. The Government considers that the relevant legislation guarantees equal access to health insurance for all citizens, and that it has taken sufficient positive measures for the improvement of the health status of the Roma. It therefore asks the Committee to find the complaint unfounded in all aspects.

RELEVANT DOMESTIC LAW

7. On the basis of the submissions by the parties, the relevant domestic law on the public health insurance system may be summarised as follows:

The right to health care is primarily enshrined in two Acts:

- the Bulgarian Health Insurance Act of 1998,
- and the Health Act of 2004

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

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

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

Article 5. Compulsory health insurance shall be implemented in accordance with the principles of:

1. (supplemented, SG No. 107/2002) compulsory participation in the raising of contributions;
2. (amended, SG No. 107/2002) participation of the State, the insureds and the employers in the management of the National Health Insurance Fund;
3. solidarity of the insureds in benefiting from the resources raised;
4. responsibility of the insureds for their own health;
5. non-discrimination in use of medical care;
6. (new, SG No. 107/2002) non-discrimination of medical care providers upon conclusion of contracts with the Regional Health Insurance Funds;
7. (renumbered from Item 6, SG No. 107/2002) self-management of the National Health Insurance Fund;
8. (renumbered from Item 7, SG No. 107/2002) contractual relationships between the National Health Insurance Fund and medical care providers;
9. (new, SG No. 107/2002) a basic package of health-care activities, guaranteed by the budget of the National Health Insurance Fund.

9. Insured persons who pay their contributions have the following rights under the Health Insurance Act:

Article 35. Any person covered by compulsory (health) insurance shall be entitled:

1. (amended, SG No. 107/2002) to receive medical care within the scope of the basic package of health-care activities guaranteed by the budget of the National Health Insurance;
2. to choose a medical care provider who or which has concluded a contract with the regional health insurance fund;
3. to receive emergency care wherever he or she may be;
4. to obtain information from the Regional Health Insurance Fund about the contracts concluded by the said fund with the medical care providers;
5. to participate in the management of the National Health Insurance Fund through own representatives thereof;
6. to lodge complaints with the Director of the competent Regional Health Insurance Fund about any violation of the law or breach of contract.
7. (new, SG No. 95/2006, effective as from the day of entry into force of the Treaty concerning the Accession of the Republic of Bulgaria to the European Union) to obtain a document required for exercise of the health insurance entitlement thereof in accordance with the rules for coordination of social security schemes.

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

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

1. (supplemented, SG No. 119/2002) any person who has not attained the age of 18 years, if attending school as a full-time pupil: until completion of secondary education;
2. any full-time student enrolled in a higher school until attainment of the age of 26 years, and any full-time doctoral candidate enrolled within the state quota;
3. (new, SG No. 18/2006) foreign students - below the age of 26 and the PhD fellows in universities and research institutes pursuant to Decree of the Council of Ministers No. 103 of 1993 concerning the organization of education among Bulgarians abroad and Decree of the Council of Ministers No 228/1997 for admitting citizens of the Republic of Macedonia to state universities in the Republic of Bulgaria;
4. (renumbered from Item 3, SG No. 18/2006, repealed, SG No. 46/2007);
5. (supplemented, SG No. 119/2002, amended, SG No. 111/2004, renumbered from Item 4, SG No. 18/2006) any citizens who are responsive to the eligibility requirements for receipt of monthly social assistance benefits and of target benefits for heating according to the procedure established by the Social Assistance Act, unless insured on another ground, as well as those placed in specialized institutions for social services;
6. (renumbered from Item 5, SG No. 18/2006) any person remanded in custody or any person deprived of his or her liberty;

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

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

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

10. (new, SG No. 111/2004, renumbered from Item 9, SG No. 18/2006) the spouses of career service persons participating in international operations and missions: for the period of the mission and, applicable to persons receiving compensations under Article 233 of the Republic of Bulgaria Defence and Armed Forces Act, for the period of receipt of any such compensation.

11. Health care contributions for unemployed persons are borne by the state, as foreseen in the Health Insurance Act:

Article 40 (1) 8. In respect of any recipient of unemployment benefit: the amount of the benefit as paid; any such (health insurance) contributions shall be for the account of the Unemployment Fund and shall be remitted on or before the 10th day of the month next succeeding the month wherefor the said contributions are due.

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

Article 37. (1) (Amended, SG No. 37/2008, effective 1.07.2008) Any person covered under Article 33 herein shall pay the physician, dentist or medical-treatment facility the following fees:

1. (supplemented, SG No. 37/2008, effective 1.07.2008) for each visit to a dentist's or physician's office: 1 per cent of the national minimum monthly wage; any persons who have attained the age of 60 years, applicable to women, and 63 years, applicable to men, shall pay the amount of BGN 1;

2. (amended, SG No. 107/2002) for each day of hospital treatment: 2 per cent of the national minimum (monthly) wage, but not more than ten days annually.

(2) (New, SG No. 107/2002) The fees referred to in Paragraph (1) shall be for the medical care as delivered.

(3) (Renumbered from Paragraph 2, supplemented, SG No. 107/2002, amended, SG No. 120/2002, supplemented, SG No. 17/2006, amended, SG No. 46/2007, SG No. 37/2008, effective 1.07.2008). Exemption from payment of the fees under Paragraph (1) shall be granted to any person suffering from a disease as designated in a list appended to the National Framework Agreement, as well as to any family member who has not attained the age of 14, or who has attained the age of 14 but has not attained the age of 18, or who is a dependant; to any person who has sustained an injury in the course of or in connection with national defence, to any war veteran and war-disabled; to any person remanded in custody or any person arrested under Article 63 of the Ministry of Interior Act or persons deprived of his or her liberty; to any indigent receiving income support under the Regulations for Application of the Social Assistance Act, to any person who has been placed in homes under Item 1 of Article 36 (3) of the same Regulations; and to any medical specialist.

(4) (Renumbered from Paragraph (3), SG No. 107/2002, amended, SG No. 37/2008, effective 1.07.2008). Any physician, dentist or medical-treatment facility shall issue any person covered under Paragraph (1) a receipt for any fees paid.

(5) (New, SG No. 37/2008, effective 1.07.2008) The difference between the amount referred to in sentence one of Item 1 of Paragraph (1) and the amount referred to in sentence two of Item 1 of Paragraph (1) shall be paid to the physician or to the dentist from the executive budget according to a procedure established in an ordinance of the Minister of Finance and the Minister of Health.

13. Under the Social Assistance Act of 1998 (as amended in 2008) it is prescribed that social assistance benefits can be received for 12 months:

Article 12c. (New, SG No. 18/2006, effective 1.07.2006) (1) (Amended, SG No. 58/2008) Unemployed working-age individuals, except for the persons under Article 12b, Paragraph (2), shall be entitled to receiving monthly social benefits a continuous term of 12 months.

(2) Rights to monthly social benefits shall be re-established upon expiry of 12 month of its termination under terms and procedure, prescribed by the Regulation on the Implementation of this Act.

(3) The provision of Paragraph (1) shall not apply in the cases under Article 12b, Paragraph (4).

14. Certain categories of persons are not affected by the 12 month limitation period foreseen in the Social Assistance Act, and receive social assistance and health care for an unlimited duration:

Article 12b. Paragraph (4) 1. persons taking care of children aged under 3 years:

(a) mothers (female or male adopters);

(b) single parents;

(c) guardians;

2. pregnant women after the first trimester;

3. persons with permanent disabilities or with certified temporary incapacity to work;

4. persons taking care of a sick member of the family or antecessors or descendants up to the second degree of consanguinity;

5. persons taking care of a family member or antecessors or descendants up to second degree of consanguinity who are disabled and need constant attendance;

6. persons suffering from mental diseases diagnosed by the competent authorities.

15. Article 82 of the Health Act regulates the types of medical services provided to Bulgarian citizens outside the scope of mandatory health insurance, namely:

1. medical care in case of emergency;
2. obstetrical care for all women who are not insured regardless of the type of delivery, in accordance with the provisions of a regulation issued by the Minister of Health;
3. stationary psychiatric care;
4. provision of blood and blood products;
5. transplantation of organs, tissues and cells;
6. mandatory treatment and/or mandatory isolation;
7. examinations for degree of damage and permanent incapacity;
8. payment of treatment of diseases in accordance with a procedure determined by the Minister of Health (Regulation No 34 of 25 November 2005 on the method of payment from the republican budget of the treatment of Bulgarian citizens of diseases not covered by mandatory health insurance);
9. medical transportation in accordance with a procedure determined by the Minister of Health.

16. Regulation No 25 of 4 November 1999 on emergency care provision, provides that all medical institutions must provide the necessary scope of emergency medical care to all persons in need thereof, regardless of their citizenship, place of abode and health insurance status. The following are entitled to emergency medical care:

1. all individuals who are sick or injured and their condition is life-threatening;
2. all individuals who are sick or injured who have sought assistance on their own from emergency rooms or sectors of the emergency medical care centres (EMCC);
3. individuals for whom there are data certifying their psychological disorder who are dangerous to themselves or to the others;
4. women who have started delivery or abortion;
5. children up to one year of age for whom medical help has been sought;
6. all individuals who are sick or injured for whom the nature and gravity of the disease cannot be determined.

17. Decree № 17 of 31 January 2007 establishes the conditions and procedures for the payment of hospital treatment for Bulgarian citizens who do not have any income and/or personal property (limited to costs for the period 2007-2008). The eligible persons have to make a declaration upon entering the hospital, and the Director of Social Welfare should pay the hospital costs within 7 days from the receipt of the declaration if the eligibility conditions are met:

Art. 1. (3) The funds under para. 1 of this Decree are available for Bulgarian citizens who:

1. are not insured under the terms and conditions of the Health Insurance Act;
2. have no income;
3. have no claims, deposits, shares and securities whose total value exceeding BGN 500;
4. have no movable and immovable property which may be a source of income, with the exception of property used for routine use of the person;
5. have no contract to provide property against liability for maintenance and / or viewing;
6. have no transferable or residential property and / or parts of them ideal for a fee during the last 5 years;
7. have not transferred by agreement ownership of residential property and / or parts of them in the last 5 years;
8. have not traveled abroad at their own expense in the last 12 months except to treat illness.

18. To summarise, the right to health care in Bulgaria is based on a system of compulsory health insurance through the collection of health care contributions. Persons who perform their obligations related to payment of health contributions have access to medical care and a whole range of medical services. There is however a patient participation fee for each visit to a physician or each day of hospital treatment. Coverage under the contributory health care scheme is possible on a “non-contributory” basis for certain categories of socially vulnerable persons, namely persons entitled to social assistance, targetted assistance for heating or unemployment benefits, who are exempted from paying health care contributions, and can also obtain an exemption or reduction of the patient participation fee. Finally, there is a health scheme funded by taxes which provides benefits in-kind, other than those provided by the contributions funded scheme, to all residents irrespective of their health insurance status. This ensures medical aid in emergency cases and another range of minimum medical services.

AS TO THE LAW

19. Articles 11, 13§§ 1, 2 and 3, and E of the Revised Charter read as follows:

Article 11 – The right to protection of health

Part I: "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable."

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

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

Article 13 – The right to social and medical assistance

Part I: "Anyone without adequate resources has the right to social and medical assistance."

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

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want; (...) "

Article E – Non-discrimination

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

I. ARGUMENTS OF THE PARTIES

A. The alleged legal restrictions on access to health insurance and medical assistance for socially vulnerable individuals

20. The ERRC maintains that the failure of the Government to ensure universal access to health insurance coverage deprives a large number of Roma from access to health care. Although existing legislation provides for state-subsidised health insurance for socially vulnerable individuals, this is made conditional on being eligible for the right to social assistance or being registered as unemployed. Given that many Roma do not receive social assistance or are not registered as unemployed, they cannot benefit from this type of public health insurance coverage. According to surveys, around 46% of Roma are not covered by health insurance (in some towns the percentage of uninsured Roma ranges between 40-90%).

21. According to the ERRC, access of socially vulnerable individuals to health insurance has been further restricted by the amendments made to the Social Assistance Act in 2006, since assistance is interrupted –for one year– after having received benefits for 18 months. Therefore, if a person remains unemployed during the year that social assistance is interrupted, that person will also lose health insurance coverage.

22. In sum, the ERRC states that many Roma cannot exercise the right to state-subsidised health insurance because they are long-term unemployed who are frequently not registered or have dropped out of the registers of unemployed persons. Others who are entitled to social assistance, and therefore also to health insurance, have failed to submit applications requesting health insurance and have therefore also been excluded from health insurance. And many other Roma have lost their right to social assistance or receive it irregularly, thus also being excluded from the right to health insurance coverage.

23. The Government in its reply provides an overview of the legal framework on the right to protection of health, describing in particular the contributory health insurance scheme. Reference is made to Article 40§3 of the Health Insurance Act, which entitles citizens who are eligible for social assistance or targeted assistance for heating -under the Social Assistance Act- to health insurance coverage at the account of the State budget.

24. In addition to the contributory health care scheme, there is another health care scheme funded by taxes which provides benefits in-kind (other than those provided by the contributions funded scheme) to all residents, for example, medical aid in emergency cases or obstetric aid for all women without health insurance (Article 82 of the Health Act). The right to emergency medical care is further developed in Regulation No. 25 of 4 November 1999 (see § 16), which provides that all medical institutions must provide the necessary emergency medical care to all individuals in need thereof, regardless of their citizenship, place of residence or health insurance status.

25. The Government moreover maintains that the State covers the cost of hospital treatment for persons with no income and who are not insured under the contributory health insurance scheme, pursuant to Decree No. 17 of the Council of Ministers of 31 January 2007 which determines the terms and conditions for the spending of targeted funds for diagnostic and treatment at hospitals for Bulgarian citizens without any income for the period 2007-2008.

26. With regard to the ERRC's allegation on the interruption of social assistance after 18 months¹, and the ensuing loss of health insurance, the Government underlines that the interruption of aid does not apply to persons in the most disadvantaged positions (Article 12b, paragraph 4 of the Social Assistance Act), and that such persons will therefore continue to be covered under the health insurance system.

B. The alleged systemic barriers for the effective exercise of the right to health protection

27. The ERRC states that poverty and high levels of social exclusion result in a difficult access of Roma to health care services as well as in a steady deterioration of their health status. Usually, poor people cannot take proper care of their health and except in case of emergency cannot afford the services of a doctor, let alone hospital treatment. According to official estimates, 65-70% of the Roma population lives under the poverty line.

28. The ERRC also states that the poor living conditions of the prevailing part of Roma in Bulgaria, including substandard housing, unhygienic environment, and segregated communities excluded from public services are key factors negatively affecting the health status of Roma. As a result of poor sanitary conditions in Roma neighbourhoods, these often experience outbreaks of viral infections such as hepatitis, poliomyelitis and diphtheria.

¹ The relevant legislation was amended in 2008 and social assistance is now interrupted after 12 months (see § 13).

29. According to the ERRC, another problem which deters many Roma from using health care services is the difficult physical access to health care facilities. The restructuring of health care facilities in Bulgaria has resulted in disproportionate obstacles for the physical access of Roma to health care services. In a number of places throughout the country, polyclinics in the Roma neighborhoods have been closed, and the nearest health facilities are only accessible by public transportation, which is unaffordable for many of the people in the Roma neighbourhoods.

30. The Government indicates in its reply that it is implementing a number of European Union funded projects which aim at improving the access to health services by vulnerable groups of the Bulgarian population. Five mobile teams have been introduced in five pilot regions, and more are expected to start working by the end of the year. Prophylactic examinations for persons who are not covered by the contributory health insurance scheme are available, including through the mobile teams. For the period February-October 2007, a total of 21,841 members of vulnerable minority groups were examined in the five pilot regions, with a special focus on Roma citizens.

31. The Government's Health Strategy for Disadvantaged People from Ethnic Minorities, and its corresponding Action Plan 2005-2007, aims at overcoming the bad health condition of this category of persons and to ensure their equal access to health services. A major element in implementing the Strategy consists in carrying out examinations and screenings in areas predominantly populated by Roma. In 2007, the number of general prophylactic examinations for persons that were not insured under the public health system was 6,048. On-site examinations for uninsured persons living in neighborhoods largely populated by Roma amounted to 14,501. In addition, over 1,000 women had gynaecological examinations.

32. The Government indicates that other programmes are being developed to limit the spreading of HIV/AIDS and to improve the control of tuberculosis. In both cases, the main tool for reaching the people from the Roma community is working in the field.

C. The alleged discrimination against Roma in the provision of medical services

33. The ERRC states that racial discrimination against Roma in the provision of health care occurs at many levels within the health care system and ranges from overt denial of medical services to more complex forms of discrimination resulting in the provision of inferior medical services to Romani patients. One of the alleged overt forms of discrimination is the failure of emergency services to respond in an efficient manner to calls for assistance received from Roma. There are numerous reports which reveal a practice of not sending ambulances to Romani neighbourhoods –or sending them with a big delay- in several parts of Bulgaria. In a number of instances such practice has caused death or serious health injury to Romani patients. The ERRC supports its allegations with a number of individual cases.

34. The ERRC claims that exclusion from the health care system has a disproportionate impact on Romani women, who are unable to avail themselves of pre- and post-natal medical services. This is illustrated by several cases of inadequate medical treatment to Romani women at the time of pregnancy and childbirth. Moreover, the ERRC complains of the segregation of Romani women in hospital facilities. It claims that such facilities are inferior in material and sanitary conditions and attended to less by medical professionals. The practice of segregating Romani women in maternity wards has allegedly existed for the past twenty years.

35. According to the ERRC there are also reports of Roma being verbally abused by doctors on the basis of their ethnicity. It therefore has reasons to believe that Roma have been victims of inferior treatment precisely because of their ethnicity.

36. The Government considers that the statements of the ERRC on the denial of emergency health care are not confirmed. These are accidental cases, resulting from a non-professional attitude by individual medical officials in certain medical units and facilities.

37. The Government indicates that measures for the protection against discrimination exist at national level. It underlines that only two appeals have been filed by Roma with the Commission for the Protection of Discrimination in the area of health care. In both of these cases, as well as in a third case in which the Commission took action on its own initiative, there were findings of discrimination for lack of timely emergency medical care or harassment of Roma patients.

II. ASSESSMENT OF THE COMMITTEE

(i) Preliminary remarks

38. The ERRC argues that Bulgaria fails to meet its obligations under Articles 11 and 13, in conjunction with Article E, of the Revised Charter, because legislation does not guarantee health insurance for the most vulnerable individuals, and for tolerating practices which undermine the health protection of Romani communities. The ERRC does not raise separate allegations under each provision, it states that the situation in Bulgaria is in breach of both of these Articles.

39. The rights protected under Article 11 (the right to protection of health) and Article 13 (the right to social and medical assistance) are closely related. The Committee considers that the more relevant provisions for the purposes of this complaint are Article 11, in its entirety, as well as Article 13§1. The main questions which the complaint raises relate to the operation of the health insurance and medical assistance systems and whom the latter benefit, as well as how the Roma community access health care in practice.

(ii) As to the availability of health insurance and medical assistance

40. In respect of ERRC's complaint that health care legislation excludes Roma from access to health care, the Committee considers that none of the relevant statutory provisions examined can be deemed to be discriminatory on the grounds of ethnicity. The main piece of legislation in this field, the Law on Health Insurance of 1998, does not make any difference between Bulgarian citizens with regard to their rights or obligations related to health care. The conditions it imposes to benefit from medical treatment, as well as those for being exempt from paying health insurance contributions, are neutral and cannot be impugned on the ground of being discriminatory towards Roma.

41. The Committee considers that a health insurance system based on the collection of health care contributions, as is the case in Bulgaria, meets the requirements of the Revised Charter, given that there also exists a subsidiary "non-contributory" system, open to persons who do not benefit from the contributory system and which ensures them sufficient coverage, not only in situations of emergency or a threat to life.

42. The Committee observes that exemption from paying health care contributions for persons receiving social assistance, targetted assistance for heating or unemployment benefits –who are entitled to state-subsidised health insurance- ensures that some of the most disadvantaged sections of the community have access to health care.

43. However, as regards the situation of persons who do not qualify for social assistance or who have temporarily lost the right to social assistance, the Committee notes that such persons are left without health coverage during the period that social assistance is interrupted, given that the Health Insurance Act links eligibility for “non-contributory” state health coverage to being a recipient of social assistance benefits. The main question is to assess what medical services are available to persons who have lost social insurance and who require medical care. The Committee notes that the Health Act ensures that certain types of medical services are available to all citizens outside the scope of mandatory health insurance, but these are mainly confined to emergency medical care and obstretical care for women (see § 15). Therefore, a person without resources requiring treatment for a sickness - not necessarily emergency care- would not be able to avail himself from this piece of legislation for obtaining the necessary care.

44. The Committee also takes note of Decree No. 17 of 31 January 2007, which establishes a mechanism for the payment of the costs of hospital treatment for persons without resources (see § 17). It finds that such a decree is a step towards improving the health of poor or socially vulnerable persons, but that it also has a number of shortcomings: firstly, as the decree only covers a 1-year period, it does not provide a long-term solution to the problem. Moreover, the scope of the decree is limited to covering expenses for hospital treatment, but does not include primary or specialised outpatient medical care, which a person without resources might require. Therefore, bearing in mind that Article 13§1 of the Revised Charter provides that persons without adequate resources, in the event of sickness, should be granted financial assistance for the purpose of obtaining medical care or provided with such care free of charge, the Committee considers that the measures adopted by the Government do not sufficiently ensure health care for poor or socially vulnerable persons who become sick, thus amounting to a breach of this provision.

(iii) As to the access of Roma to health care services

45. The Committee recalls that Article 11 of the Charter imposes a range of positive obligations to ensure an effective exercise of the right to health, and the Committee assesses compliance with this provision paying particular attention to the situation of disadvantaged and vulnerable groups (Conclusions XVII-2 – General Introduction).

46. The ERRC statement that Roma communities are faced with disproportionate health risks is confirmed by a number of other sources of information:

- The European Commission against Racism and Intolerance, in its third report on Bulgaria (2003), stated, *inter alia*, that people living in Roma districts had no access to basic public services, including health care or sanitation. The inhabitants of these areas were often in a deplorable state of health and could not afford medical treatment, as there were no facilities on the spot and, in any case, medical care was too expensive for them.
- The Opinion on Bulgaria prepared by the Advisory Committee on the Framework Convention for the Protection of National Minorities in 2004, expressed concern on the alarming health situation of Roma, who mostly lived in ghettos on the outskirts of localities, often without suitable access to basic amenities, such as water and electricity supply.
- Likewise, the Commissioner of Human Rights, in its follow up report on Bulgaria (2001-2005), stated, *inter alia*, that the main problem of the Roma community was the “ghettoisation” of some Roma districts, where the inhabitants frequently lacked even basic essentials, such as drinking water or electricity. The report also stated that Roma continued to suffer discrimination in certain areas, including health.

47. The Committee considers there is sufficient evidence which shows that Roma communities do not live in healthy environments. This situation can in part be attributed to the failure of prevention policies by the State, for instance the lack of protective measures to guarantee clean water in Romani neighbourhoods, as well as the inadequacy of measures to ensure public health standards in housing in such neighbourhoods (see *European Roma Rights Centre v. Bulgaria*, Complaint No. 31/2005, decision on the merits of 18 October 2006).

48. In connection with the measures taken by the authorities as regards health education, health counselling and screening for the Roma population, the Committee notes that some programmes recently put in place –such as the establishment of health mediators- may have a positive impact on improving Roma access to health care. However, it considers that there has been a lack of systematic, long-term government measures to promote health awareness.

49. The Committee also notes from various studies referred to by the ERRC in the complaint that the health status of Roma is inferior to that of the general population. The Government acknowledges in its submissions that the health condition of Roma is poor, and refers to the adoption of a “Health Strategy Concerning People in Disadvantaged Position Belonging to Ethnic Minorities” with a view to improving their health condition. The Committee nevertheless considers that the State has failed to meet its positive obligations to ensure that Roma enjoy an adequate access to health care, in particular by failing to take reasonable steps to address the specific problems faced by Roma communities stemming from their often unhealthy living conditions and difficult access to health services.

50. As regards the examples provided by the complainant of discriminatory practices against Roma in the provision of medical services, namely the refusal to send emergency aid ambulances to Romani districts, the segregation of Romani women in maternity wards or the use of racially offensive language by doctors, the Committee considers that these significant cases cannot be relied on to conclude that there are systematic discrimination practices against Roma in the health care system. However, it finds that these specific cases taken together with all other evidence submitted by the complainant serve to reinforce the Committee’s overall conclusion that Roma in Bulgaria do not benefit from appropriate responses to their general and specific health care needs.

51. The Committee therefore holds that the failure of the authorities to take appropriate measures to address the exclusion, marginalisation and environmental hazards which Romani communities are exposed to in Bulgaria, as well as the problems encountered by many Roma in accessing health care services, constitute a breach of Article 11§§ 1, 2 and 3 of the Revised Charter in conjunction with Article E.

CONCLUSION

For these reasons, the Committee concludes by 13 votes to 1 that the situation in Bulgaria constitutes a violation of Article 11§§ 1, 2 and 3 in conjunction with Article E and of Article 13§1 of the Revised Charter.

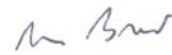
In accordance with Rule 30 of the Committee's Rules of Procedure, a dissenting opinion of Ms Annalisa Ciampi is appended to this decision.



Birgitta NYSTRÖM
Rapporteur



Polonca KONČAR
Président



Régis BRILLAT
Secrétaire exécutif

Dissenting Opinion of Ms Annalisa Ciampi

1. I am unable to join the majority's finding that the situation in Bulgaria constitutes a violation of Article 13§1 of the Revised Charter. The majority considered that "the measures adopted by the Government do not sufficiently ensure health care for poor or socially vulnerable persons who become sick, thus amounting to a breach of this provision" (para. 44, *in fine*). This conclusion does not seem to me to be supported by the reasoning of the decision nor consistent with the requirements of Art. 13§1 of the Revised Charter.

2. Para. 41 of the decision states that "a health insurance system based on the collection of health care contributions, as is the case in Bulgaria, meets the requirements of the Revised Charter, given that there also exists a subsidiary 'non-contributory' system, open to persons who do not benefit from the contributory system and which ensures them sufficient coverage, not only in situations of emergency or a threat to life." Contrary to the majority's finding, I submit that the situation in Bulgaria meets these requirements.

3. First of all, the Committee gives no weight whatsoever to the circumstance – which is acknowledged by the complainant organization itself – that many Roma cannot exercise the right to state-subsidised health insurance because they are long-term unemployed who are frequently not registered or have dropped out of the registers of unemployed persons, while others who are entitled to social assistance, and therefore also to health insurance, have failed to submit applications requesting health insurance and have therefore also been excluded from health insurance (see para. 22; the emphasis is mine). Art. 13§1 requires a State Party to secure adequate assistance to those who, being without adequate resources, are "unable to secure such resources [...] in particular by benefits under a social security scheme". It does not cover persons who are "unwilling" to receive social assistance and for this reason alone are also being excluded from the right to health insurance coverage.

4. As to medical services available to persons who do not qualify for "non-contributory" State health coverage, the majority found that the measures adopted by the Government of Bulgaria have improved, but are not sufficient to effectively guarantee, health care for poor or socially vulnerable persons. The first ground on which this conclusion is based is the temporal scope of application of Decree No. 17 of 31 January 2007. The decision considers that, as the Decree only covers costs incurred in the period 2007-2008, it does not provide a long-term solution to the problem. The majority has thus found a violation of Art. 13§1 of the Revised Charter in relation to a situation which has not yet materialized. With Decree No. 17 still in force at the time of the decision, the Committee cannot exclude that the regime provided thereunder will be extended beyond its original 1-year period. Moreover – and irrespective of future legal developments – it is not within the competence of the Committee to ascertain a State Party's perspective situations of non-conformity. The majority identified another "shortcoming" of Bulgarian legislation in the allegedly limited material scope of the Decree, which only

covers “expenses for hospital treatment, but does not include primary or specialised outpatient medical care, which a person without resources might require.” All that Art. 13§1 requires for persons falling outside a social assistance protection scheme, however, is adequate assistance, and, in case of sickness, the care necessitated by their condition. In relation thereto, the Committee had previously made it clear that “it is not within its competence to define the nature of the care required, or the place where it is given” (Conclusions XIII-4; Statement of interpretation on Article 13, pp. 54-57).

5. In sum, the majority has ended up in subjecting the Bulgarian subsidiary “non-contributory” system to a test of equivalence with the system based on health care contributions, rather than to one of sufficient coverage. In so doing, it has not only overextended the scope of Art. 13§1 of the Revised Charter but also manifestly contradicted the premise of its own reasoning, as referred to in para. 2 above

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