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Directorate General Human Rights and Rule of Law Council of Europe  
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**European Roma Rights Centre's**  
**Collective Complaint**  
**against**  
**Bulgaria**  
**concerning the segregation and other discriminatory treatment of**  
**Romani women in Bulgarian maternity wards**

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## **I. ADMISSIBILITY**

### **I.1. State Party**

1. Bulgaria has been a State party to the Revised European Social Charter (“RESC”) since 1 August 2000.<sup>1</sup> Bulgaria has accepted supervision under the collective complaints procedure provided for in Part IV, Article D, paragraph 2 of the Charter in accordance with the Additional Protocol to the European Social Charter (“ESC”) providing for a system of collective complaints from 9 November 1995.

### **I.2. Standing of the European Roma Rights Centre**

2. The European Roma Rights Centre (hereinafter “the ERRC”) is a Roma-led Budapest-based international public interest law organisation which monitors the human rights situation of Roma in Europe and provides legal representation in selected cases of human rights abuse. The ERRC has consultative status with the Council of Europe and is among the organisations entitled to lodge collective complaints under the ESC/RESC mechanism. The ERRC has had standing with the ESC/RESC collective complaints mechanism since June 2002 and is currently registered on the list of international NGOs entitled to submit collective complaints for the period from 1 July 2014 until 30 June 2018. The Committee has considered several collective complaints from the ERRC in the past.
3. The complaint is based on a research undertaken in 2016 by the Bulgarian Helsinki Committee (“BHC”), an independent non-governmental organisation working for the protection of human rights, with support from the ERRC. The ERRC wishes to make clear from the outset of this complaint that the BHC’s participation was crucial, and the ERRC respectfully requests the Committee to hold the BHC’s research methods and professional integrity in the highest esteem.

### **I.3. Subject matter of the complaint**

4. The ERRC claims that the Bulgarian State is in violation of its obligations under Article 11 §§ 1 and 2, and Article 13 §§ 1 and 2 of the RESC, taken on their own and with Article E, because Bulgaria has failed to eliminate systemic discriminatory practices targeting Romani women in access to sexual and reproductive healthcare services. In particular, Bulgaria has not taken sufficient action to end racially segregated maternity wards, inferior and abusive treatment of Romani women in maternity care, and the disparate impact of lack of health insurance on Romani women. These discriminatory policies and practices undermine the protection of the reproductive health of Romani women in Bulgaria.
5. As mentioned above, the resulting violations of Articles 11 and 13 should be read in conjunction with Article E of the Charter, which guarantees that the rights under the Charter are to be secured without discrimination on the ground of, inter alia, sex and association with a national minority/ethnic background. Article E of the Charter set out an open-ended list of the prohibited grounds of discrimination. This collective complaint alleges that Bulgaria is breaching the non-discrimination principle in respect of Romani women based on

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<sup>1</sup> Published in the Official Gazette on 11 April 2000.

their sex and ethnicity and also based on “other status”: pregnancy and their lack of health insurance. The ERRC urges your Committee to consider the complaints under Article E as a matter of intersectional discrimination based on sex, minority/ethnicity, pregnancy, and insurance status.

## **II. THE SITUATION OF ROMA, IN PARTICULAR ROMANI WOMEN, IN BULGARIA**

6. Your Committee has already recognised that Roma in Bulgaria are socially and economically excluded. In your decisions in response to collective complaints lodged by the ERRC against Bulgaria (nos.31/2005, 46/2007, and 48/2008), your Committee noted the vulnerable situation of Roma in Bulgaria suffering from discrimination on many fields, including housing, social assistance, and healthcare. The situation does not seem to have improved, as set out below.

### **II. 1. Poverty and discrimination**

7. The official number of Roma living in Bulgaria is 325,343<sup>2</sup>, although Council of Europe (CoE) estimates are much higher: between 700,000 and 800,000.<sup>3</sup> Roma make up 4.9% of the national population using the official estimate, or double that figure using the CoE estimate.<sup>4</sup> Based on official figures, the Romani population is biggest in the regions of Montana (12.7% of the population) and Sliven (11.8%), followed by the regions of Dobrich (8.8%) and Yambol (8.5%).<sup>5</sup>
8. Roma in Bulgaria often live in dire conditions, and are affected by long-term unemployment, with little or no access to training or jobs. They are also frequently affected by forced evictions. Indeed, the situation was so deplorable in 2015 that on 26 January 2016, Nils Mužnieks, the CoE Commissioner for Human Rights wrote to the Prime Minister of Bulgaria, expressing deep concern and citing the European Social Charter.<sup>6</sup> Roma in Bulgaria face widespread discrimination, including harassment in access to healthcare.<sup>7</sup> Following his 2015 visit to Bulgaria, Commissioner Mužnieks expressed his concerns about the “continuing discrimination and social exclusion affecting many members of Bulgaria’s Roma population”.<sup>8</sup> According to 2014 research by the Fundamental Rights Agency of the

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<sup>2</sup> Bulgarian National Statistical Institute, ‘2011 Population Census - main results’, available at [http://www.nsi.bg/census2011/PDOCS2/Census2011final\\_en.pdf](http://www.nsi.bg/census2011/PDOCS2/Census2011final_en.pdf).

<sup>3</sup> Council of Europe, “Estimates on Roma population in European countries”, Support Team of the Special Representative of the Secretary General of the Council of Europe for Roma Issues, available at <http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680088ea9>.

<sup>4</sup> See above, note 2.

<sup>5</sup> Bulgarian National Statistical Institute, “2011 Population Census - main results”, available at [http://www.nsi.bg/census2011/PDOCS2/Census2011final\\_en.pdf](http://www.nsi.bg/census2011/PDOCS2/Census2011final_en.pdf).

<sup>6</sup> CommDH(2016)9.

<sup>7</sup> See European Commission, “Country report for Bulgaria”, 2015, available at <http://www.equalitylaw.eu/downloads/3711-2015-bg-country-report-ln-final>.

<sup>8</sup> CommDH(2015)12, page 6.

European Union (FRA), the average situation of Romani women in core areas of social life such as education, employment, and health is worse than that of Romani men.<sup>9</sup>

## II. 2. Housing and Health

9. According to FRA's 2014 research, the health and housing situations of Roma are worrisome and mutually related, particularly in the case of Romani women who bear most of the burden of household work. With regard to housing, the FRA survey results show that 42% of Roma surveyed live in conditions of severe deprivation, which is defined as lack of access to running water, no connection to the sewage system or a sewage tank, and/or lack of access to electricity, as compared with 12% of non-Roma living nearby. Larger Romani households — those with four or more children — are even more likely to live in conditions of severe deprivation. As the primary caretakers and responsible for the majority of domestic work, Romani women are disproportionately affected by these conditions.<sup>10</sup>
10. On average, Roma are estimated to live approximately 10 fewer years than the majority population. The highest peak in mortality occurs between the ages of 40-49. Living conditions contribute to the prevalence of communicable diseases, such as tuberculosis and hepatitis, among Romani populations. According to an Open Society Institute – Sofia study from 2012, healthcare is the sphere of life in which Roma in Bulgaria experience the most blatant discrimination.<sup>11</sup>
11. According to the State's National Roma Integration Strategy, 12.6% of the Romani population in Bulgaria, including children, have at least one form of disability or suffer from a serious chronic disease. Roma, as compared with the majority population, suffer disproportionately from early onset disabilities and chronic diseases, reaching greater and greater proportions of the population by middle age. A significant proportion of Romani people aged 45-60 years — one-third of men and two-fifths of women — suffer from poor health that has affected their capacity to work, either fully or partially. Due to a lack of infrastructure — physical and health-related — in Roma communities, many Romani women suffer from otherwise easily preventable diseases such as hepatitis, gastrointestinal diseases, and other diseases caused by parasites. In Bulgaria, such diseases are frequently only found among the Romani population.<sup>12</sup>
12. According to the FRA survey, 51% of Roma in paid work reported they are not covered by any health insurance. This is significantly larger than for a similarly-situated non-Roma sample, where only 21% of people in paid work claimed not to be covered by health insurance. Low overall incomes and informal employment arrangements are often reasons

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<sup>9</sup> FRA, "Discrimination against and living conditions of Roma women in 11 EU Member States", 2014, available at [http://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2014-roma-survey-dif-women-2\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-roma-survey-dif-women-2_en.pdf).

<sup>10</sup> Ibid.

<sup>11</sup> Open Society Institute, Final Report, 26 January 2012, available (in Bulgarian) at [http://osi.bg/downloads/File/2012/Final%20Report\\_FNS\\_26\\_Jan\\_2012.pdf](http://osi.bg/downloads/File/2012/Final%20Report_FNS_26_Jan_2012.pdf).

<sup>12</sup> National Roma integration Strategy (2012-2020), available at [http://ec.europa.eu/justice/discrimination/files/roma\\_bulgaria\\_strategy\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_bulgaria_strategy_en.pdf).

for limited health cover.<sup>13</sup> Your Committee concluded in December 2015 that Bulgaria was still not in compliance with the Charter in relation to health insurance.<sup>14</sup>

### II. 3. Racial harassment

13. According to a poll conducted by Gallup, in the last 21 years there has been a very serious regression in relations between ethnic Bulgarians and Roma. The year 2015 was marked by racially-biased rhetoric by politicians during elections, by media targeting Roma, by anti-Roma protests in Gurmen, Vidin, Stara Zagora, Varna, and other locations, and by violent attacks against Roma by neo-Nazi groups. On 7 September 2015, after anti-Roma riots the previous July, the Bulgarian authorities evicted, without prior notice, Roma living in the municipality of Gurmen. According to some reports, no alternative accommodation was offered and 41 people, including children and people with disabilities, were made homeless.<sup>15</sup> A case arising out of the eviction is still pending before the European Court of Human Rights,<sup>16</sup> in which the ERRC has submitted a third-party intervention.<sup>17</sup>
14. There are major challenges in protecting Roma from discrimination and improving race relations in the country. These include lack of provision of effective protection from racist attacks by national and local authorities; politically-manipulated protests against Roma in various locations; use of racist language for political gain; use of racist language by mainstream media in the country; and the lack of affirmative or preventative measures taken by the national regulatory bodies. According to the United States Department of State's 2014 report on human rights in Bulgaria, Bulgarian media often describe Roma and other minorities using discriminatory and abusive language.<sup>18</sup> Extreme nationalist parties such as Ataka and the Patriotic Front base their political campaigns on strong anti-Roma, anti-Turkish, and anti-Semitic slogans and rhetoric. In June 2016, for example, after a flood hit Varna killing 13 people and destroying many homes, a municipal council member blamed the Romani inhabitants for the disaster, calling them "parasites" and "inhuman scum" who do not deserve "to inhabit our civilisation".<sup>19</sup> Human rights activists filed hate speech complaints against prominent figures who had used similar language on the subject in a Radio Darik Varna programme.<sup>20</sup>

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<sup>13</sup> FRA, "Poverty and Employment: The Situation of Roma in 11 EU member states", 2014, [http://fra.europa.eu/sites/default/files/fra-2014-roma-survey-employment\\_en.pdf](http://fra.europa.eu/sites/default/files/fra-2014-roma-survey-employment_en.pdf).

<sup>14</sup> Assessment of the follow-up: European Roma Rights Centre (ERRC) v. Bulgaria, Collective Complaint No. 46/2007.

<sup>15</sup> Deutsche Welle, Tatyana Wachsberg, Проблемът с ромските къщи (*The Problem with The Roma Houses*), 15 October 2015, available at <http://dw.com/p/1Goco>.

<sup>16</sup> *Aydarov and others v Bulgaria*, application no.33586/15 (pending).

<sup>17</sup> The ERRC's third-party intervention can be found at <http://www.errc.org/cms/upload/file/third-party-intervention-aydarov-and-others-v-bulgaria-4-october-2016.pdf>.

<sup>18</sup> United States Department of State, Bureau of Democracy, Human Rights, and Labor, "Bulgaria 2014 Human Rights Report", available at <https://www.state.gov/documents/organization/236720.pdf>.

<sup>19</sup> OFFNews, "Варненски общинар изригна: Циганите са нечовешка сган и паразити", 25 June 2014, available at [http://offnews.bg/news/Obshtestvo\\_4/Varnenski-obshtinar-izrigna-Tciganite-sa-nechoveshka-sgan-i-paraziti\\_355058.html](http://offnews.bg/news/Obshtestvo_4/Varnenski-obshtinar-izrigna-Tciganite-sa-nechoveshka-sgan-i-paraziti_355058.html).

<sup>20</sup> An ERRC assessment of progress on Roma inclusion, submitted to the European Commission on 19 February 2016 and including Bulgaria, can be found at <http://www.errc.org/cms/upload/file/2015-eu-roma-framework-written-comments-19-february-2016.pdf>.

15. There was a marked increase in hate speech, discrimination, and violence towards both Roma and migrants in 2016.<sup>21</sup> An expansive survey conducted by the Open Society Institute – Sofia, showed that 58% of those surveyed indicated they had, at some point during the year 2016, heard speech expressing disapproval, hatred, or aggression towards a minority in Bulgaria; of those, 92% indicated they had specifically heard hate speech targeting Roma.
  
16. The situation of Romani women in Bulgaria is even more worrisome. Romani women are subjected to intersectional forms of discrimination, and they are more vulnerable to violence, discrimination and exclusion. Based on the Roma Inclusion Index, only 46 % of Bulgarian Romani women have a primary school education, only 7 % of them finish secondary education, and only 1 % of Romani women finish tertiary education.<sup>22</sup> Though the situation of Roma in the area of employment has slightly improved in the recent years, Romani women have a 42% lower employment rate than the total population (17% compared to 60%). Discrimination against Roma in the provision of healthcare is alarming in Bulgaria, irrespective of gender, yet Romani women are disproportionately left out of the system. The Bulgarian National Roma Strategy does not set specific targets to achieve, and still only 47% of Roma women in Bulgaria have health insurance. In practice, this means the remainder — 53% of all Bulgarian Roma women — do not have access to healthcare services unless they are able to pay for it out-of-pocket. Due to a number of factors, Romani women are at a higher risk of complications during pregnancy than the majority population. Reports from several sources, prior to the research described below, found that pregnant Romani women were segregated from others and placed in separate wards in certain maternity hospitals.<sup>23</sup> The sanitary and material conditions of these maternity wards are inferior and the medical staff less frequently visited the Roma patients there than in the others.

### **III. THE FACTS GIVING RISE TO THE COMPLAINT**

17. In the spring of 2016, the Bulgarian Helsinki Committee, with support from the ERRC, conducted fact-finding research into the illegal practice of racially segregating maternity wards and the inferior treatment of Romani women in such wards in public hospitals in Bulgaria. The findings from this research form the basis of this collective complaint.
  
18. The research is based on 63 qualitative in-depth interviews with Romani women from five different locations throughout Bulgaria, including three small towns (Septemvri, Vetren, and

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<sup>21</sup> See the 2016 report of the Open Society Foundations available (in Bulgarian) at <http://osi.bg/downloads/File/2016/Hate%20speech%20BG%202016%20interact.pdf>.

<sup>22</sup> Decade of Roma Inclusion Secretariat Foundation, “Roma Inclusion Index 2015”, September 2015, available at <http://www.rcc.int/romaintegration2020/files/user/docs/Roma%20Inclusion%20Index%202015.pdf>, page 37.

<sup>23</sup> See, e.g., ERRC, “Ambulance Not on the Way”, 2006, available at <http://www.errc.org/cms/upload/media/01/E6/m000001E6.pdf>; Open Society Foundations, “On the Margins”, 2001, available at [https://www.opensocietyfoundations.org/sites/default/files/romania\\_bulgaria\\_macedonia.pdf](https://www.opensocietyfoundations.org/sites/default/files/romania_bulgaria_macedonia.pdf).

Rakitovo) in the region of Pazardjik and two large cities: Sofia and Sliven. The locations for the interviews were chosen at random among areas where there are significant Romani populations and cover three administrative regions.

### **III.1. Background of the Romani women interviewed**

19. The interviewees were Romani women who had last given birth in a public hospital no more than three years before the interviews were conducted (April 2016). The women agreed to take part in the research voluntarily and were between 14 and 46 years old. They were chosen randomly during field visits, based on these criteria.<sup>24</sup>
20. The respondents last gave birth in six public hospitals in five cities: 20 women in Pazardzhik; 10 women in Velingrad; 14 women in Sliven; 18 women in Varna; and one woman in Sofia.<sup>25</sup>
21. As to their reproductive care history, 89% (56 of the 63 women) reported that they had attended at least one obstetric consultation during their pregnancy. Some of the respondents reported that they did not attend regular visits with their obstetrician, due to various obstacles, such as lack of public health insurance, poverty, very low social status, and lack of general health literacy and, as a consequence, a lack of involvement in the progress of their pregnancy. Most of the women who had regular or at least one obstetric consultation were provided some medical documents concerning their pregnancy upon admission to the maternity ward to give birth. Those with regular visits and especially those who had visited a private obstetrician reported to have had at their disposal copies of blood tests and ultrasound images. Only a few of the women were admitted to hospital during their last pregnancy without any medical documents.
22. The vast majority of the women interviewed (95%) were living in a house. Most of their homes were small, with few rooms, and in most cases were built without proper documentation or authorisation in a Romani neighbourhood. In general, several families shared one house where each one occupied one room. Some of these houses lacked sanitary facilities and running water. Two mothers lived in unstable, improvised shelters, and one family had been temporarily placed in a municipal social service facility for homeless people. The latter three women were victims of recent evictions in which they had lost their only homes.

### **III.2 Segregated maternity wards**

23. The practice of segregating Romani women in separate maternity wards has existed for the past 30 years in Bulgaria. In its previous collective complaint no.46/2007,<sup>26</sup> the ERRC provided evidence that segregated maternity wards and inferior treatment in those wards were practised in Bulgaria, in particular in the cities of Sofia and Sliven and in the region of Pazardzhik.

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<sup>24</sup> See page 3 of the attached report for the breakdown on the age of the interviewed women.

<sup>25</sup> See page 4 of the attached report for the list of hospitals.

<sup>26</sup> The complaint is available at <http://www.errc.org/cms/upload/media/02/82/m00000282.pdf>



24. This situation has not improved since 2007. The fact-finding research conducted for this complaint confirmed the current position: 84 % of the respondents (54 out of 63 women) stated that when they were admitted to hospital to give birth, they were accommodated separately from ethnic Bulgarian patients in rooms exclusively occupied by Romani women or other ethnic groups such as Turks or Pomaks. Respondents described the separated rooms as “isolators”, since they were separated and at a distance from the other rooms.<sup>27</sup> In addition, Romani women were physically prevented from walking freely in the ward and any attempt to do so was sanctioned by shouting and harsh comments by the hospital staff.<sup>28</sup>
25. Nearly all of the Romani women (96%) who were placed in segregated rooms were not given a justification for the separate placement. Those few who were given an answer were told that the segregation was based on the lack of health insurance or for explicitly racist reasons based on stereotypes against Roma, such as “[they] were separated because [they] are Roma and have lice and [they] steal”.<sup>29</sup> The ERRC recalls that lack of health insurance is not an obstacle to giving birth in a hospital, under Bulgarian law (see below, section VI.2).

### **III.3. Difference in treatment of Romani women placed in ethnically-segregated wards**

26. Romani women who were placed in the segregated wards were not only physically segregated from ethnic Bulgarian women, which in itself is stigmatising, but were also treated less favourably than ethnic Bulgarian women.
27. The less favourable treatment was manifested in:
- the physical and sanitary conditions in the segregated wards;
  - difference in treatment administered by staff;
  - racial harassment; and
  - physical abuse.

#### **III.3.1. Physical and sanitary conditions**

28. Poorer physical and sanitary conditions were at issue already in 2007, in the previous collective complaint (No. 46/2007) the ERRC submitted to your Committee. According to the report BHC prepared with the ERRC’s support, the segregated wards where Romani women were placed are not only at a far distance from the rooms of ethnic Bulgarian women, but the conditions are also substandard: the furniture and the equipment of the room are of lower quality.<sup>30</sup> Since Romani women placed in segregated wards were not allowed to leave the segregated area, most did not have the chance to observe the rooms of ethnic Bulgarian women. Yet those who had the opportunity to observe the rooms of ethnic Bulgarian

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<sup>27</sup> See page 6 of the attached report for the details.

<sup>28</sup> Ibid.

<sup>29</sup> See page 7 of the attached report.

<sup>30</sup> Bulgarian public hospitals usually provide women with access to running water, toilets and heating – utilities which are not always available to respondents in their own homes, due to poverty. As a result, some respondents did not recognise poor material conditions as falling below the minimum necessary for a medical facility. See page 10 of the report.

women reported that Bulgarian women were accommodated in wider and longer rooms than the ones for Romani women.<sup>31</sup>

29. Respondents from five of the six hospitals who had the chance to observe rooms for ethnic Bulgarians noted differences in the furnishings of the hospital rooms. They claimed that the furniture in rooms for Roma was older and worn-out, and that the rooms were dirtier and lacked some furniture (such as, for example, a television set) in comparison with the rooms for non-Roma women.<sup>32</sup> In one hospital Romani women were accommodated on beds without mattresses and sheets.<sup>33</sup>
30. About one third of the Romani women interviewed explicitly recognised the difference between the hygiene in the rooms they were placed and the rooms for non-Roma women. Respondents mostly complained that their room was dirtier than non-Roma rooms: some even had cockroaches and the bed sheets were not regularly changed, if at all.<sup>34</sup> Romani women often had to clean their rooms themselves, despite the fact that they were about to or had just given birth, while the rooms of the ethnic Bulgarian women were cleaned by hospital staff.<sup>35</sup>
31. Romani women also complained about inadequate access to sanitary facilities, such as hot water, bathrooms, and toilets. In particular, in the hospitals in Sliven and Varna, Romani women were placed in rooms without bathrooms and toilets, while the rooms of ethnic Bulgarian women were equipped with sanitary facilities.<sup>36</sup> Some women also complained of the cold temperature in the rooms.<sup>37</sup>

### **III.3.2. Racial harassment and humiliation**

32. Racial harassment of the Romani women interviewed involved both verbal aggression, including racial slurs, and physical violence inflicted by hospital staff.
33. About half of the respondents stated that they had been subjected to verbal aggression, including racial slurs, covering four of the six hospitals. The testimonies revealed that the hospital staff's racial slurs included vicious comments repeating stereotypes about Roma, such as accusations that Romani women are extremely dirty with bad odours and lice; that they are promiscuous and have many different partners; and that their only aim in having children is to receive social benefits, because they are poor and lazy.
34. Derogatory language was also used to emphasise the poverty of Romani women and to show that they belong to a lower social class. Comments included for example that Romani women are so poor that even if they claimed they had bought medical supplies for

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<sup>31</sup> See page 11 of the attached report.

<sup>32</sup> See page 15 of the attached report.

<sup>33</sup> See page 16 of the attached report.

<sup>34</sup> See page 16 of the attached report.

<sup>35</sup> See pages 16-17 of the attached report.

<sup>36</sup> See pages 18-19 of the attached report.

<sup>37</sup> See page 19 of the attached report.

themselves, no one would believe them because they were by definition thieves and liars.<sup>38</sup> Racial slurs such as “dirty gypsy women” were used very often.

35. Some of the Romani women were verbally abused not only because they were Romani women but also because of their young age.<sup>39</sup>
36. Some of the respondents were subjected to humiliating treatment deriving from the racist attitudes of the hospital personnel. In Varna for example Romani women were forced, even in public, to undergo a check before admission to the hospital to see whether they had lice and if they had shaved themselves in the genital area. In Pazardzhik and in Velingrad Romani women were humiliated and berated whilst giving birth by medical staff who used aggressive language and in the form of racial slurs used by the hospital staff.<sup>40</sup>

### **III.3.3. Difference in treatment**

37. A majority of the Romani women interviewed (59%) felt discriminated against in the public hospitals because of their Roma origin. About 29% of the women explained that they were treated differently because of their young age; 24% were treated differently because of their low economic status. About one fourth of the respondents explained that they also felt a difference in treatment by the hospital personnel in comparison to non-Roma women because they had difficulties writing or reading in Bulgarian, or because they spoke Bulgarian with an accent.<sup>41</sup>
38. Apart from the racist perception that all Romani women are dirty, promiscuous, poor, and lazy, the hospital staff also accused the women interviewed of being incompetent, including in relation to their own bodies and health.<sup>42</sup> Hospital staff told some of those interviewed that Romani women are all illiterate and cannot understand anything; that is why the personnel did not even bother to explain what was happening to them in the maternity ward. These perceptions and stereotypes resulted in a refusal to seek Romani women’s informed consent, as well as a lack of provision of information about care and services.
39. Nearly half of the respondents felt neglected as patients in the maternity wards. They perceived that the ethnic Bulgarian women received more attention in terms of provision of medicines and general care and support, including physical support while moving within the ward, and that ethnic Bulgarians were provided longer and more detailed explanations during morning rounds by the doctors and others, whereas such explanations to Romani women were either delayed or refused altogether.<sup>43</sup>

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<sup>38</sup> See page 32 of the attached report.

<sup>39</sup> See page 36 of the attached report.

<sup>40</sup> See page 39 of the attached report.

<sup>41</sup> See pages 22 and 37 of the attached report.

<sup>42</sup> See page 32 of the attached report.

<sup>43</sup> See page 27 of the attached report.

40. Forcing Roma to make informal, illegal payments was also a complaint. Although it is not clear whether this was due to the respondents' ethnicity or is a widespread practice for ethnic Bulgarian women as well, the general discriminatory attitude of the hospital staff suggests that Romani women were asked to pay in order to receive the same level of care provided to non-Roma without payment. Respondents reported that they were made by hospital staff to pay in order to secure quality care and attention for them and their babies, to ensure that their relatives could enter the ward and have contact with the them and their babies, to be administered certain kinds of medicines and medical supplies, and to "remunerate" the staff for the work they had performed.<sup>44</sup>

### **III.3.4. Physical abuse**

41. About one fourth of all respondents (15 women), from different hospitals, stated that during their stay in the maternity ward they were subjected to some kind of physical abuse. Some women reported that they also became witnesses to such violence.

42. One of the most serious forms of such abuse that Romani women reported was stitching without the administration of anaesthesia, which was also accompanied by verbal aggression. For example, one of the Romani women interviewed mentioned that while she was subjected to this painful procedure, another non-Roma woman, who was in the same operating theatre, was provided with anaesthesia.<sup>45</sup>

43. Other forms of physical abuse revealed during the research vary from staff members forcibly applying pressure on the abdomen of the women by using heavy objects or hands, pinching, slapping Romani women on the face and legs, hitting them with elbows, and aggressive pulling. One woman described of how she was hit and pulled so hard that she fell on the floor, breaking her leg and causing injuries to her baby.<sup>46</sup>

44. About one fourth of the women interviewed said that they were forcibly restrained during the delivery with different belts. The immobilisation varied from tethering one hand to tying both the legs and the hands of the woman. None of the women were given an explanation why this practice was used, nor was their consent sought or given.<sup>47</sup>

45. The ERRC urges your Committee to read the BHC report in full.

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<sup>44</sup> See page 45 of the attached report.

<sup>45</sup> See page 40 of the attached report.

<sup>46</sup> See page 41 of the attached report.

<sup>47</sup> See page 43 of the attached report.

## **IV. BULGARIAN LEGISLATION AND POLICY ON DISCRIMINATION AND HEALTHCARE**

### **IV.1. Anti-discrimination law**

46. The Bulgarian Constitution guarantees equal treatment for all, including on the basis of ethnicity, sex, and personal or social status.<sup>48</sup> The Constitution also guarantees the right to medical insurance guaranteeing affordable medical care and to free medical care in accordance with conditions and procedures established by law.<sup>49</sup>
47. As a Member State of the European Union, Bulgaria has transposed the Race Equality Directive (2000/43/EC) through the adoption of the Protection against Discrimination Act. It guarantees to every person the right to equality before the law, equality of treatment, and opportunities to participate in the life of society, as well as effective protection against discrimination. The Protection against Discrimination Act prohibits direct discrimination, indirect discrimination, and harassment, as well as racial segregation.<sup>50</sup> Multiple discrimination is also recognised in Bulgarian law.<sup>51</sup>
48. In terms of material scope, the law guarantees equal treatment, inter alia, in the area of social protection, including social security and healthcare as defined in the Race Equality Directive.

### **IV.2. Healthcare legislation**

49. The Constitution protects motherhood<sup>52</sup> and guarantees special protection to mothers, including free obstetric care.<sup>53</sup>
50. The Bulgarian Health Act (Law 70/10 August 2004) stipulates that the State shall ensure the protection of the reproductive health of its citizens through measures including promotion of health and consultations for preservation of the reproductive health of children and persons of reproductive age and by ensuring access to specialised consultative assistance on issues of reproductive health and family planning.
51. The Health Act guarantees that each woman shall have the right to access health services directed at ensuring the optimal health status of the woman and the foetus from occurrence of the pregnancy until the child is 42 days-old. Such health services include: promotion of health, directed to preservation of the health of the woman and the foetus; prophylactic care to avoid miscarriage and premature birth; training in the feeding and care of new-

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<sup>48</sup> See Article 6 of the Constitution of Bulgaria.

<sup>49</sup> Article 52(1).

<sup>50</sup> See Articles 2, 4, 5, and 7 of the Anti-Discrimination Act.

<sup>51</sup> See Article 11 of the Anti-Discrimination Act.

<sup>52</sup> See Article 14 of the Constitution: "The family, motherhood and children shall enjoy the protection of the State and society".

<sup>53</sup> See Article 47 § 2 of the Constitution: "Mothers shall be the object of special protection on the part of the State and shall be guaranteed prenatal and postnatal leave, free obstetric care, alleviated working conditions and other social assistance".

borns; active medical observation of the pregnancy, implemented by medical establishments for primary and specialised non-hospital care; antenatal diagnostics and prevention of genetic and other diseases under conditions and by order of the Minister of Health; ensuring an optimal living environment for women in maternity wards and their new-borns; medical supervision and healthcare for women and their children on maternity wards; free access for pregnant women or women on maternity wards to medical establishments for specialised non-hospital care; free access for pregnant women to medical establishments for specialist non-hospital and hospital care when their pregnancy is in danger; and the right of pregnant women to choose the facility in which they will give birth.

52. The above-mentioned services are guaranteed to those who have public health insurance. For those who do not have such insurance, a bylaw was adopted that sets out the services that are available free of charge: Clinical Pathway № 141 "Birth, regardless of the duration of pregnancy, foetal presentation, and manner of delivery".<sup>54</sup> The bylaw sets out a list of free-of-charge services accessible to uninsured women and services they can receive if they pay.
53. According to Order № 26 of 14 June 2007 on the provision of obstetric healthcare for uninsured women,<sup>55</sup> every uninsured pregnant woman has the right to one free-of-charge examination before the delivery; the delivery and associated procedures are also free of charge. The Order describes what the examination and the check-up include. Uninsured women also have the right freely to choose the hospital where they will undergo this examination. The doctor who performs the preventive examination must present a plan for follow-up monitoring of the pregnancy and inform the woman that the plan is not included in that examination and therefore does not fall within the scope of treatment to which she is entitled for free as an uninsured person. In cases where an uninsured woman is seeking medical services related to obstetric care at a hospital (or a facility providing hospital-level care), and that facility for objective reasons cannot provide the necessary diagnosis and treatment, the facility is obliged to transfer her to the nearest hospital that can perform such activities on a timely basis.

### **IV.3. Bulgarian policies on Roma and healthcare**

54. Like other EU Member States, Bulgaria has adopted a National Roma Integration Strategy ("the Strategy") for the period 2012-2020. In describing the Guiding Principles of the Strategy, the government explicitly states that any efforts will "take into account the needs and status of Roma women".<sup>56</sup> In relation to healthcare, the Strategy's overall objective is "[e]nsuring equal access to quality healthcare services and preventive programmes". The Strategy notes both the need to provide "preventive care for mothers and children" and the need to ensure "equal access to healthcare services for disadvantaged persons belonging to ethnic minorities". In relation to the disproportionate lack of health insurance cover among Roma, and among Romani women in particular, the Strategy states, as a clear goal, "[i]ncreasing the number of health insured persons of the ethnic minorities in disadvantaged

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<sup>54</sup> The document is available in Bulgarian at <http://www.doctorbg.com/page.php?id=2365>.

<sup>55</sup> The document is available in Bulgarian at <http://lex.bg/laws/ldoc/2135556407>.

<sup>56</sup> The document is available at [http://ec.europa.eu/justice/discrimination/files/roma\\_bulgaria\\_strategy\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_bulgaria_strategy_en.pdf).

position, by launching legislative initiatives relating to health insurance of low income people, including the ones durably unemployed”. The Strategy also highlighted the need for tackling discrimination and hate speech in all spheres, healthcare included, in particular when such discrimination affects the rights of women and children of disadvantaged and ethnic minority groups.

55. After adopting the Strategy, the Bulgarian government outlined a more detailed “National Action Plan” (“the Plan”) for the period of 2015-2020.<sup>57</sup> In the Plan, general actions and projects were outlined and designated to various public bodies regarding each of the Strategy’s priorities, including healthcare. Regarding the priority for preventative care for mothers and children, the Plan outlines a proposed programme for “early registration of pregnant women, monitoring during pregnancy, and timely hospitalisation of birthing mothers” through a system based almost entirely on health mediators and mobile health units, neither of which have expansive enough coverage to constitute a national system. Likewise, the two measures outlined to address unequal access to healthcare services rely on supporting emergency healthcare services and enhancing cooperation between health mediators and personal physicians. None of the measures outlined in the Plan to tackle the pervasive and persistent lack of health insurance cover among Roma address the issue head-on; instead they focus on raising awareness, conducting research related to risk factors, and processing, analysing, and disseminating the results.
56. The European Commission assessments<sup>58</sup> of the Strategy have directly addressed health disparities, describing the severe lack of health insurance coverage which Roma in Bulgaria face as the “main challenge” or “key problem” of health-related inequality in the country. While some steps have been taken — for example, increased use of health mediators and mobile health units — the systematic problem of lack of health insurance coverage continues to go unaddressed.
57. Since the adoption of the Strategy, the Bulgarian authorities have conducted reviews and assessments of their own. On an annual basis, the Secretariat of the National Council for Cooperation on Ethnic and Integration Issues (NCCEII) — an inter-ministerial body tasked with overseeing and managing the implementation of the Strategy — has prepared an Administrative Monitoring Report (“the Report”), which describes the progress made regarding Roma integration on a national level based on information received from the relevant ministries.<sup>59</sup> The Report highlights, almost exclusively, the work of the mobile health units and health mediators. Perhaps the most important topic, Goal No. 5 — “increasing the number of health insured persons of the ethnic minorities in disadvantaged position” — is passed over entirely without mention.

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<sup>57</sup> The document is available (in Bulgarian) at

[http://ec.europa.eu/justice/discrimination/files/roma\\_bulgaria\\_strategy2\\_bg.pdf](http://ec.europa.eu/justice/discrimination/files/roma_bulgaria_strategy2_bg.pdf).

<sup>58</sup> The European Commission’s assessments are available at [http://ec.europa.eu/justice/discrimination/roma-integration/bulgaria/national-strategy/national\\_en.htm](http://ec.europa.eu/justice/discrimination/roma-integration/bulgaria/national-strategy/national_en.htm).

<sup>59</sup> The 2015 report can be accessed (in Bulgarian) at <http://www.strategy.bg/FileHandler.ashx?fileId=7208>.

58. On the issue of non-discrimination, the 2015 Report perfunctorily declares that the relevant regulations promulgated by the Ministry of Health are in accordance with the requirements of non-discrimination law: “When developing regulations concerning medical services to the population, as well as monitoring their implementation, the Ministry of Health adheres to the equality of all groups of society, such as not allowing direct or indirect discrimination as set out in the Law for Protection against Discrimination, including by race and ethnicity. In this respect, the Bulgarian citizens of ethnic minorities are guaranteed the right of access to health services, at an equal level for all Bulgarian citizens.”<sup>60</sup> No active measures are mentioned or seem to have been taken to ensure these norms are observed in practice.

#### **IV.4. Bulgarian healthcare system and uninsured Roma**

59. Bulgaria is in the midst of a prolonged and on-going national crisis regarding uninsured citizens. In 2013, the official statistics from the National Revenue Agency estimated that 2,034,000 Bulgarian citizens lack health insurance. Out of a population of 7,282,000, the percentage of those uninsured is 27.93%—so nearly one in every three Bulgarians lacks health insurance, although this number includes many Bulgarians who work abroad, seasonally or full-time;<sup>61</sup> as mentioned above, the Roma Inclusion Index places the overall uninsured rate at 15%.

60. The situation for Bulgarian Roma is much graver. Previous estimates of the uninsured rate amongst the Roma population, for those aged 16 and older, range from 55%<sup>62</sup> to 80%.<sup>63</sup> As mentioned above, the Roma Inclusion Index, released in 2015 gives an uninsured rate of 52% for the general Roma population, and 53% for Romani women nationwide.<sup>64</sup> In nearly every available compilation of data and statistics related to access to healthcare and insurance coverage, over half of the Roma population in Bulgaria lacks basic health insurance, effectively putting routine, prophylactic, chronic, and all similar forms of non-emergency care entirely out of their reach due to the prohibitive costs of treatment as uninsured individuals.

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<sup>60</sup> Translation by the ERRC.

<sup>61</sup> The statistic comes from a new articles available (in Bulgarian) at [http://www.standartnews.com/balgariya-zdraveopazvane/nad\\_2\\_miliona\\_sa\\_zdravno\\_neosigureni-225304.html](http://www.standartnews.com/balgariya-zdraveopazvane/nad_2_miliona_sa_zdravno_neosigureni-225304.html).

<sup>62</sup> FRA, “Second European Union Minorities and Discrimination Survey: Roma – Selected Findings”, 2016, available at [http://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-eu-minorities-survey-roma-selected-findings\\_en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-eu-minorities-survey-roma-selected-findings_en.pdf).

<sup>63</sup> Open Society Institute – Sofia, “Health-Uninsured Individuals and Health Insurance in Bulgaria”, 2009, [http://osi.bg/cyeds/downloads/Report\\_Health\\_Uninsured\\_2009\\_ENG.pdf](http://osi.bg/cyeds/downloads/Report_Health_Uninsured_2009_ENG.pdf).

<sup>64</sup> Decade of Roma Inclusion Secretariat Foundation, “Roma Inclusion Index 2015”, September 2015, available at [http://www.romadecade.org/cms/upload/file/9810\\_file1\\_roma-inclusion-index-2015-s.pdf](http://www.romadecade.org/cms/upload/file/9810_file1_roma-inclusion-index-2015-s.pdf).



## **V. INTERNATIONAL LEGAL STANDARDS CONCERNING TO RIGHT TO HEALTH, IN PARTICULAR REPRODUCTIVE HEALTH AND NON-DISCRIMINATION**

61. Every woman has the right to the highest attainable standard of health, which includes the right to dignified, respectful healthcare throughout pregnancy and childbirth, as well as the right to be free from violence and discrimination.<sup>65</sup>
62. The right to health, including the right to reproductive health is a fundamental human right and indispensable for the exercise of other human rights. Several international legal instruments set out the right to health and the prohibition of discrimination when exercising this right.
63. The International Covenant on Economic, Social and Cultural Rights (the ICESCR)<sup>66</sup> provides the most comprehensive article on the right to health in international human rights law. Article 12 requires States parties to recognise “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. General Comment No.14 of the Committee on Economic, Social and Cultural Rights (the CESCR) specifies that the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services, and conditions necessary for the realisation of the highest attainable standard of health and these are available, accessible, acceptable and of good quality.<sup>67</sup> Under the ICESCR, States also have the obligation to guarantee that the right to health is exercised without discrimination of any kind and to take steps towards the full realisation of Article 12.<sup>68</sup>
64. The principle that the exercise of the right to health must be enjoyed without discrimination is further protected in the International Convention on the Elimination of All Forms of Discrimination (ICERD)<sup>69</sup>. ICERD obliges States Parties to pursue, by all appropriate means and without delay, a policy of eliminating racial discrimination in all its forms. Specifically, States Parties must guarantee the right of everyone, without distinction as to race or ethnicity, to equality before the law in the enjoyment of economic, social, and cultural rights. This obligation applies expressly to the right to public health, medical care, social security, and social services.<sup>70</sup>
65. General Comment no. 22 on the right to sexual and reproductive health of the CESCR in particular calls upon States to ensure that sexual and reproductive services, goods, and

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<sup>65</sup> World Health Organisation, “Statement: The prevention and elimination of disrespect and abuse during facility-based childbirth”, 2014, available at [http://apps.who.int/iris/bitstream/10665/134588/1/WHO\\_RHR\\_14.23\\_eng.pdf?ua=1&ua=1](http://apps.who.int/iris/bitstream/10665/134588/1/WHO_RHR_14.23_eng.pdf?ua=1&ua=1).

<sup>66</sup> Bulgaria ratified ICESCR on 3 January 1976.

<sup>67</sup> See, ESCR Committee, General Comment No. 14., available at: <http://www.ohchr.org/Documents/Issues/Women/WRGS/Health/GC14.pdf>.

<sup>68</sup> See, ICESCR, Articles 2 § 2 and 3.

<sup>69</sup> Bulgaria ratified the ICERD on 4 January 1969.

<sup>70</sup> See, ICERD, Articles 2 and 5 § e(iv).

facilities are available to all women throughout the country, and that they are physically and economically accessible, culturally appropriate, and of good quality. The CESCR also recognises that the right to sexual and reproductive health is not only an integral part of the general right to health but it is fundamentally linked to the enjoyment of many other human rights, including the rights to education, work, and equality, as well as the rights to life, privacy, freedom from torture, and individual autonomy. Therefore, the realisation of the right to sexual and reproductive health requires that States also meet their obligations to fulfil other protected rights, such as the right to be free from discrimination.

66. In its General Recommendation no. 24, the Committee on the Elimination of Discrimination against Women (the CEDAW Committee) elaborated these principles in relation to women's health, in particular their sexual and reproductive health, when interpreting Article 12 of the Convention on the Elimination of Discrimination Against Women (CEDAW). General Recommendation no. 24 recognises the importance of ensuring appropriate services to all women in connection with pregnancy, confinement, and the post-natal period. The CEDAW Committee notes, in particular, that it is the duty of States Parties to ensure women's right to safe motherhood.<sup>71</sup> Under CEDAW, reproductive health services must be available, accessible, acceptable, and of good quality. In brief, States Parties must ensure that there are available healthcare services in the State that are physically and economically accessible for women and provide acceptable and sufficiently high-quality services respecting fully informed consent, confidentiality, dignity, sensitivity, and equal treatment.<sup>72</sup> When it comes to the specifically vulnerable situation of certain communities, including Romani women, the CEDAW Committee has already highlighted the need for "giving special attention to the health needs and rights of women belonging to vulnerable and disadvantaged groups".<sup>73</sup> In the case of *Alyne da Silva Pimentel Teixeira v Brazil*, the CEDAW Committee considered intersectional discrimination on the intersecting grounds of sex, ethnic origin, and the low economic status of the victim.<sup>74</sup>

67. Under the Council of Europe framework, the European Court of Human Rights ("the Court") has also made clear that sexual and reproductive health falls under the scope of the European Convention on Human Rights ("the Convention"), and so States are obliged to protect these rights by ensuring access to services and preventing any interference with these rights.<sup>75</sup> The principle of non-discrimination has also been enshrined and developed in various judgments of the Court.<sup>76</sup>

68. The Court considers issues related to sexual and reproductive rights as falling within the scope of Article 3 of the Convention (inhuman and degrading treatment) and/or Article 8 (the right to respect for private and family life). The Court has also delivered judgments

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<sup>71</sup> See, CEDAW Committee, General Recommendation No 24, para 26.

<sup>72</sup> See, CEDAW Committee, General Recommendation No. 24.

<sup>73</sup> See, CEDAW Committee, General Recommendation No. 24, para 6.

<sup>74</sup> See, CEDAW Committee, *Alyne da Silva Pimentel v. Brazil*: Communication No. 17/2008.

<sup>75</sup> See, e.g., *Tysiack v Poland* (2007), *A., B., C. v Ireland* (2010), *V.C. v Slovakia* (2011).

<sup>76</sup> See, amongst others, in relation to Roma: *Yordanova and others v Bulgaria* (2012), *Nachova and others v Bulgaria* (2005); and, in relation to women: *Opuz v Turkey* (2009).

finding violations of the Convention with regards to Romani victims of coercive sterilisation.<sup>77</sup>

69. In a recent statement, the CoE Commissioner for Human Rights has stressed that efforts had to be redoubled to protect the sexual and reproductive health and rights of women in Europe.<sup>78</sup> The Commissioner has also recognised that segregation of Romani women in maternity wards is an issue of concern in several European countries.<sup>79</sup>

## **VI. ECSR JURISPRUDENCE ON RIGHT TO HEALTH, SOCIAL AND MEDICAL ASSISTANCE AND RACIAL SEGREGATION WITH REGARDS TO ROMA IN BULGARIA**

70. Your Committee has also recognised that sexual and reproductive health is covered under Article 11 (right to health) of the Charter. As noted elsewhere in this complaint, your Committee has considered the discriminatory practice of segregated maternity wards as well as abusive language against Romani women in Bulgarian hospitals.<sup>80</sup> In addition, for example, in 2015, your Committee found Italy in violation of the right to health read in conjunction with Article E of the Charter for failure to take all necessary measures to ensure that abortions are accessible and performed in accordance with the law, even when there is a high number of objecting medical personnel.<sup>81</sup> Your Committee also found Croatia in violation of the Charter for failing to provide comprehensive or adequate sexual and reproductive health education for children and young people.<sup>82</sup>

71. As noted, your Committee has already found Bulgaria in violation of the Revised Charter in the field of healthcare and medical assistance. Your Committee has found that the right to health without discrimination is a basic human right.<sup>83</sup> You have also observed that the right to the protection of health (Article 11) and the right to social and medical assistance (Article 13) are closely related. In particular, in 2008 your Committee found Bulgaria in violation of the Charter for “the failure of the Bulgarian 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 healthcare services”, which constituted a breach of Article 11 §§ 1, 2 and 3 of the Revised Charter, taken in conjunction with Article E.<sup>84</sup>

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<sup>77</sup> See, *K.H. and Others v Slovakia* (2009); *V.C. v Slovakia* (2011), *N.B. v Slovakia* (2012).

<sup>78</sup> See, Nils Muznieks, “Protect women’s sexual and reproductive health and rights”, available at: <https://www.coe.int/ga/web/commissioner/-/protect-women-s-sexual-and-reproductive-health-and-rights>

<sup>79</sup> Ibid.

<sup>80</sup> See, *European Roma Rights Centre v Bulgaria*, complaint no.46/2007, decision of 3 December 2008, § 49.

<sup>81</sup> See, *Confederazione Generale Italiana del Lavoro (CGIL) v Italy*, complaint no.91/2013.

<sup>82</sup> *Interights v Croatia*, complaint no. 45/2007.

<sup>83</sup> This refers to the document available at [http://hudoc.esc.coe.int/eng/?i=2005\\_Ob\\_1-1/Ob/EN](http://hudoc.esc.coe.int/eng/?i=2005_Ob_1-1/Ob/EN).

<sup>84</sup> *ERRC v Bulgaria*, complaint no.46/2007.

72. Although your Committee has not yet dealt specifically with access to reproductive health services in Bulgaria, you noted that the discriminatory cases of segregation of Romani women in maternity wards and abusive language used by medical personnel in Bulgarian hospitals, taken with the general situation of lack of access to health insurance and medical assistance for Roma in Bulgaria, constituted a violation of the Revised Social Charter under Articles 11 and 12, taken with Article E.<sup>85</sup>
73. Your Committee has also recalled that Article 11 of the Social Charter imposes a positive obligation on Member States to ensure the effective exercise of the right to health. Your Committee emphasised that you pay particular attention to the situation of disadvantaged and vulnerable groups when assessing compliance with Article 11. In particular, you consider that any restrictions on the right to access to health must not be interpreted in such a way as to impede the effective exercise by vulnerable groups of the right to protection of health. You also emphasised that “Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights – as interpreted by the European Court of Human Rights – by imposing a range of positive obligations designed to secure its effective exercise. This normative partnership between the two instruments is underscored by the Committee’s emphasis on human dignity”. In response to collective complaint no.14/2003 (*FIDH v France*) your Committee stated that “human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights and healthcare is a prerequisite for the preservation of human dignity”.<sup>86</sup>
74. As to the concept of segregation, your Committee has already found Bulgaria in violation of the Charter for racial segregation of Roma in the area of housing.<sup>87</sup> You recalled that Article E enshrines the prohibition of discrimination and establishes an obligation to ensure that, in the absence of objective and reasonable justification, any individual or group with particular characteristics benefits in practice from the rights in the Charter. Moreover, in *Autism-Europe v France* (complaint no.13/2002), your Committee stated that “Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all”.

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<sup>85</sup> *Ibid.*, § 50.

<sup>86</sup> *FIDH v France*, complaint no.14/2003, § 31.

<sup>87</sup> *ERRC v Bulgaria*, complaint no.31/2005.

## **VII. VIOLATIONS OF THE REVISED CHARTER CONCERNING SEXUAL AND REPRODUCTIVE HEALTHCARE AND MEDICAL ASSISTANCE AND NON-DISCRIMINATION**

### **VII.1. Violation of the right to sexual and reproductive health (Article 11 §§ 1 and 2) and medical assistance (Article 13 §§ 1 and 2) in conjunction with the right to non-discrimination (Article E)**

75. In the decision of 8 December 2008, your Committee noted in response to allegations of segregation of Romani women into maternity wards and the use of racially abusive language by doctors against them that “the Committee considers that these significant cases cannot be relied on to conclude that there are systematic discrimination practices against Roma in the healthcare 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 healthcare needs”.<sup>88</sup> The ERRC, on the basis of the evidence set out above, is now asking your Committee to find systematic discriminatory practices against Romani women in maternity wards in Bulgaria.

76. Such discriminatory practices are difficult to prove, because of their very nature. That is why one of the defining features of non-discrimination law is the shift in the burden of proof: once a complainant has put forward evidence from which discriminatory conduct can be presumed, the burden is on the defendant to show an absence of discriminatory conduct.<sup>89</sup> On the basis of the research that was undertaken in 2016 in close collaboration with the BHC, taken with the data set out above concerning Romani women in Bulgaria, the ERRC alleges that there is systematic discrimination against Romani women in the healthcare system related to maternal healthcare. We also contend that Bulgaria does not meet its obligation under the Charter to protect sexual and reproductive health of Romani women without discrimination on the basis of sex, ethnicity, and their status as pregnant women. In other words, Bulgaria’s treatment of Romani women in relation to maternal care breaches Articles 11 and 13 RESC, taken on their own and in conjunction with Article E.

77. The ERRC claims that this discrimination against Romani women concerning maternal healthcare service is a systematic problem in Bulgaria, evidenced by the research during which 63 qualitative in-depth interviews with Romani women from five different locations throughout Bulgaria were conducted.

78. The research raises a presumption that Romani women experience widespread discrimination within the healthcare system, in particular concerning their sexual and reproductive health: Romani women are treated less favourably than non-Roma when they access maternal healthcare services. They are segregated into separate maternity wards, where the physical and sanitary conditions are lower than in non-Roma rooms; they

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<sup>88</sup> *ERRC v Bulgaria*, complaint no.46/2007 § 50.

<sup>89</sup> See, e.g., Directive 2000/43/EC, Article 8 § 1; *E.B. v France* (judgment of the Grand Chamber of the Court, 2008), § 74.

experience difference in treatment; and they are victims of racial harassment and physical abuse.

79. This differential treatment of Romani women in healthcare facilities in relation to their sexual and reproductive health is a persistent systematic problem in Bulgaria: already in 2007, the ERRC reported the practice of segregating Romani women into separate wards and their unfavourable treatment in hospitals in Bulgaria. In our collective complaint no.46/2007, the ERRC called the attention of your Committee to this persistent problem and noted that in several hospitals in the country, Romani women were reportedly placed in separate “Gypsy rooms”, as they are known to patients and hospital staff. These “Gypsy rooms” were reported to be in worse sanitary conditions and the Romani women were attended to less by medical professionals. As the 2016 research set out above indicates, this remains a persistent practice, in particular in hospitals in three small towns (Septemvri, Vetren, and Rakitovo) in the region of Pazardjik and in two cities: Sofia and Sliven. According to our recent research, 84 % of the Romani women interviewed reported that they were placed in segregated wards. The stigmatisation of being placed in a maternity ward based on ethnicity, in and of itself, amounts to a violation of the RESC.
80. In addition to segregation, inferior sanitary and physical conditions and less attention by medical staff, Romani women complain about racial harassment and in some instances about physical abuse. Romani women are victims by verbal aggression, including racial slurs and physical violence by hospital staff. About one third of the respondents stated that they were exposed to such abuse. Their testimonies revealed that racial slurs included racist comments based on the most vicious stereotypes.
81. Physical abuse was also reported and included stitching without anaesthesia, applying pressure on the abdomen of the women giving birth, using heavy objects or hands, pinching, slapping on the face and legs, hitting with elbows, and pulling. One woman shared how she was hit and pulled so hard, that she fell on the floor, breaking her leg and causing injuries to her baby.
82. This difference in treatment amounts both to direct discrimination on the basis of ethnicity and harassment. “[D]irect discrimination may arise when individuals and/or groups are hampered or prevented from enjoying the rights set forth in the Charter on the grounds of their status”.<sup>90</sup> In this case, Romani women are physically segregated from ethnic Bulgarians and then subjected to worse treatment that falls below any minimum standards that could be considered compatible with human rights. That meets your Committee’s definition of discrimination. Furthermore, the treatment Romani women regularly receive in Bulgarian maternity wards amounts to harassment. The term “harassment”, as a form of discrimination, occurs “when an unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an

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<sup>90</sup> *International Planned Parenthood Federation - European Network (IPPF EN) v Italy*, complaint no. 87/2012, § 189.

intimidating, hostile, degrading, humiliating or offensive environment”.<sup>91</sup> The evidence set out above points to a pattern of racial harassment: ethnic slurs and degrading stereotypes are used to make the Romani sections of maternity wards into scenes of racial humiliation and intimidation.

83. The ERRC urges your Committee to consider this issue as more than simply a matter of discrimination on the basis of ethnicity. Romani women in segregated maternity wards are victims of intersectional discrimination. As pregnant women, they are especially vulnerable to abuse and humiliation by hospital staff, as they require medical treatment at the time of giving birth. They cannot avoid these maternity wards and are powerless to improve their situation. As it was noted by the World Health Organisation (WHO), women are particularly vulnerable during childbirth; still many women across the globe experience disrespectful, abusive or neglectful treatment during childbirth in facilities.<sup>92</sup> In the ERRC’s view, analysing a situation as one of intersectional discrimination means eschewing a simple comparator analysis (i.e. how are Romani women treated compared to non-Roma women), in favour of an analysis that considers how individuals are treated in light of their multiple, intersecting identities (i.e. how the treatment described above impacts someone as a woman confined in a maternity ward who is a member of a reviled ethnic minority group – which may be indicated, inter alia, by her skin colour or her language – and, as is so common for Roma in Bulgaria, who is a person without health insurance). We are not asking your Committee to compare the situation of pregnant Romani women in segregated maternity wards, without insurance, to any other group. Rather, we are asking your Committee to consider the complexity of the factors that contribute to this situation and the resulting impacts.
84. The question of health cover is particularly important. Because of a regulatory situation your Committee has already condemned, Roma in Bulgaria are much less likely than ethnic Bulgarians to be covered by public health insurance. As your Committee can see from the BHC report, one of the excuses given for mistreating Romani women is that they are uninsured; yet Bulgarian law ensures all women the possibility of giving birth in hospital regardless of their insurance status (see above, section IV.2). Lack of insurance is an illegitimate (and therefore discriminatory) basis for mistreating Romani women in maternity wards; it is also a proxy for ethnicity and social class, other discriminatory bases for the ill treatment Romani women suffer in maternity wards.
85. The ERRC is asking your Committee to rely on the evidence set out above and in the attached report. The ERRC has developed expertise for over 20 years in uncovering segregation and other forms of discrimination in a wide variety of situations governed by public law, including school segregation, police misconduct, and housing. Uncovering segregation and discrimination in reproductive healthcare presents unique challenges. It is impossible to access maternity wards as researchers. Talking to Romani women about

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<sup>91</sup> See, e.g., Directive 2000/43/EC, article 2(3). The ERRC urges your Committee to apply this definition when interpreting Article E RESC.

<sup>92</sup> World Health Organisation, “Statement: The prevention and elimination of disrespect and abuse during facility-based childbirth”, 2014, available at: [http://apps.who.int/iris/bitstream/10665/134588/1/WHO\\_RHR\\_14.23\\_eng.pdf?ua=1&ua=1](http://apps.who.int/iris/bitstream/10665/134588/1/WHO_RHR_14.23_eng.pdf?ua=1&ua=1).

traumatic experiences in maternity wards requires time and researchers with specific, unusual skills. A more extensive survey than the one carried out by the BHC would not be possible and, naturally, the majority of the evidence of the situation is in the hands of public authorities. The ERRC recalls that “the burden of proof should not rest entirely on the complainant, but should be the subject of an appropriate adjustment”.<sup>93</sup> The ERRC naturally expects that the Government be given the opportunity to rebut the evidence presented above which, in line with internationally recognised principles, they must do once evidence has been presented raising a presumption of discrimination.

## **VII.2. Lack of health insurance and medical assistance as a basis for discrimination in violation of Articles 11 (1) and (2) and 13 (1) in conjunction with Article E**

86. The Bulgarian National Roma Integration Strategy admits that “a serious problem is also the lack of health insurance among the Roma population”.<sup>94</sup> This grave deficiency is found in both the 2012 and 2014 European Commission assessments of progress related to the Strategy. Each of the three NCEII monitoring reports — from 2013,<sup>95</sup> 2014,<sup>96</sup> and the most recent report from 2015<sup>97</sup> — are all silent on any significant legislative or regulatory measures taken to address what was stated as a primary objective in the original Strategy.
  
87. According to the attached report, one of the main reasons for Romani women refraining from visiting their obstetrician during pregnancy was their lack of health insurance. According to Bulgarian law, those who do not have mandatory health insurance still have access to some services related to obstetric care free-of-charge (see above, section VI.2). Uninsured women also have the right freely to choose the hospital for the antenatal consultation they are entitled to receive. Romani women who are uninsured often do not have the means to take advantage of this consultation due to the great distances and lack of adequate public transportation between Romani communities and the relevant health centres. Others are unaware that a free consultation is even available to them, having never been provided with appropriate information regarding their rights as uninsured expecting mothers. Those who do take advantage of the single free consultation with an obstetrician often lack the financial resources to pursue further prenatal care due to the prohibitive costs of the services for the uninsured.
  
88. At the same time, lack of health insurance also contributes to (and/or provides a pretext for) the differential treatment of Romani women in maternity wards, despite the fact that the law ensures uninsured women free-of-charge services in relation to childbirth.
  
89. As your Committee found, and as all of the available data show, Roma, and Romani women in particular, are disproportionately excluded from the national health insurance scheme in

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<sup>93</sup> Mental Disability Advocacy Centre v Bulgaria, complaint no.41/2007, § 52.

<sup>94</sup> National Roma integration Strategy (2012-2020), available at:

[http://ec.europa.eu/justice/discrimination/files/roma\\_bulgaria\\_strategy\\_en.pdf](http://ec.europa.eu/justice/discrimination/files/roma_bulgaria_strategy_en.pdf), page 9.

<sup>95</sup> Available (in Bulgarian) at <http://www.strategy.bg/FileHandler.ashx?fileId=4510>.

<sup>96</sup> Available (in Bulgarian) at <http://www.strategy.bg/FileHandler.ashx?fileId=5682>.

<sup>97</sup> Available (in Bulgarian) at <http://www.strategy.bg/FileHandler.ashx?fileId=7208>.



Bulgaria, essentially barring them from receiving needed healthcare due to the overly high costs compared to the low average Bulgarian income.<sup>98</sup> There is no evidence of improvement since the last time your Committee addressed the issue.

90. Separate findings on this point are crucial because, as set out above, lack of insurance is used as an excuse or pretext for inferior treatment of Romani women despite the lack of a distinction in national law between insured and uninsured women who are giving birth.
91. The ERRC therefore asks your Committee to make a finding of indirect discrimination resulting from unjustifiably high rate of lack of insurance among Roma, and to connect this issue to the direct discrimination alleged above, concerning segregation and other forms of directly discriminatory ill-treatment Romani women suffer in the field of maternity care.

## VIII. CONCLUSIONS

92. The situation of Romani women and reproductive healthcare in Bulgaria can only be described as a crisis: the discrimination Romani women face through segregation and ill treatment throughout pregnancy and when giving birth is exacerbated by their exclusion from the healthcare system more broadly. Since the inception of the Strategy, the Bulgarian authorities have recognised the need to address the disproportionate levels of uninsured Roma, and Romani women in particular, as well as the potential barriers to the provision of equal care to Romani people, including discriminatory practices. To this date, no meaningful or effective measures have been implemented, or even attempted, that address either the systematic exclusion of Romani women from the healthcare system or the specific discrimination they face when seeking reproductive healthcare.
93. Taking into account the previous collective complaint to your Committee concerning the treatment of Roma, in particular Romani women, in the Bulgarian healthcare system, and your Committee's decision on the merits and the related follow-up assessments, the ERRC respectfully requests your Committee to review and consider the facts and statements presented in this complaint, and, based on the evidence presented herein and recognising the gravity and on-going nature of the discriminatory practices and procedures described, find Bulgaria in violation of Article 11 and Article 13 of the Revised European Social Charter taken on their own and together with the non-discrimination provisions in Article E of the Charter, and demand the government of the Republic of Bulgaria to, inter alia:
  - take immediate steps to end the practice of segregation and differential treatment of Romani women in maternity wards throughout Bulgaria;
  - ensure that sexual and reproductive health services are equally available, accessible, acceptable and of good quality for all, including Romani women, in accordance with domestic law;

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<sup>98</sup> Decade of Roma Inclusion Secretariat Foundation, "Roma Inclusion Index 2015", September 2015, available at [http://www.romadecade.org/cms/upload/file/9810\\_file1\\_roma-inclusion-index-2015-s.pdf](http://www.romadecade.org/cms/upload/file/9810_file1_roma-inclusion-index-2015-s.pdf).

- establish an appropriate and effective monitoring mechanism to address and eliminate the discriminatory behaviours and practices of medical staff towards Roma, and in particular, Romani women, who attempt to access healthcare;
- conduct anti-discrimination training for public and private healthcare providers on a regular basis and ensure anti-discrimination training is included in the curricula of medical universities and colleges;
- expand the scope of health insurance to include those currently excluded from coverage, with a particular focus on Roma in general and Romani women in particular, including, inter alia, ensuring cover for those who are durably unemployed, underemployed, or employed in the non-traditional market.

In accordance with its statute, the ERRC can be represented by its President, Đorđe Jovanović and its Managing Director, Adam Weiss.

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Đorđe Jovanović  
President

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Adam Weiss  
Managing Director

The European Roma Rights Centre

22 May 2017