

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

**DECISION ON ADMISSIBILITY AND
IMMEDIATE MEASURES**

18 October 2022

Open Society European Policy Institute (OSEPI) v. Bulgaria

Complaint No. 204/2022

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 330th session attended by:

Karin LUKAS, President
Eliane CHEMLA, Vice-President
Aoife NOLAN, Vice-President
Giuseppe PALMISANO, General Rapporteur
József HAJDU
Barbara KRESAL
Kristine DUPATE
Karin Møhl LARSEN
Yusuf BALCI
Tatiana PUIU
Paul RIETJENS
George THEODOSIS
Mario VINKOVIC
Miriam KULLMANN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint registered on 25 January 2022 as number 204/2022, lodged by Open Society European Policy Institute (OSEPI), and signed by Heather Grabbe, Director, and Carl Dolan, Deputy Director of OSEPI requesting the Committee to find that the situation in Bulgaria is not in conformity with Article 11, as well as Article E in conjunction with Article 11 of the Revised European Social Charter (“the Charter”);

Having regard to the observations of the Government of Bulgaria (“the Government”) on the admissibility of the complaint and the request for immediate measures, registered on 15 March 2022;

Having regard to the Charter and, in particular to Articles 11 and E, which 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 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.”

Having regard to the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”);

Having regard to the Rules adopted by the Committee on 29 March 2004 at its 201st session and last revised on 6 July 2022 at its 328th session (“the Rules”), in particular to Rule 36, which reads as follows:

Rule 36 – Immediate measures

“1. At any stage of proceedings, the Committee may, at the request of a party, or on its own initiative, indicate to the parties any immediate measure, the adoption of which is necessary to avoid irreparable injury or harm to the persons concerned.

2. In case of a request for immediate measures made by a complainant organisation, the request shall specify the reasons therefore, the possible consequences if it is not granted, and the measures requested. A copy of the request shall forthwith be transmitted to the respondent State. The President shall fix a date for the respondent State to make written submissions on the request of immediate measures.

3. The Committee's decision on immediate measures shall be accompanied by reasons and be signed by the President, the Rapporteur and the Executive Secretary. It shall be notified to the parties. In the decision, the Committee shall fix a deadline for the respondent State to provide comprehensive information on the implementation of the immediate measures."

Having deliberated on 14 September and 18 October 2022;

Delivers the following decision, adopted on the latter date:

1. OSEPI alleges that in the context of the COVID-19 pandemic and the distribution of COVID-19 vaccines, Bulgaria has failed to adequately protect health under Article 11 of the Charter (the right to protection of health). It alleges that this has been the case particularly in respect of older persons and persons with underlying health conditions, by not providing them with priority and effective access to COVID-19 vaccines during the period between December 2020 and May 2021. In this regard, OSEPI alleges that the Government disregarded scientific and credible statistical information indicating the higher morbidity of older persons and persons with specific vulnerabilities. Moreover, OSEPI alleges that Bulgaria has failed to develop a communication campaign and strategy in relation to COVID-19 vaccines and to provide guidance and training to health care staff. Finally, OSEPI alleges that the situation as regards distribution of COVID-19 vaccines amounts to discrimination, in particular on the grounds of age and health, in violation of Article E in conjunction with Article 11 of the Charter.

2. OSEPI further requests the Committee to indicate immediate measures to Bulgaria in order to avoid irreparable harm or injury to a significant number of older persons and persons with underlying health conditions who, in the absence of vaccination, risk dying or contracting serious disease because of COVID-19. OSEPI highlights the importance of urgently making vaccines effectively accessible to persons who are the most at risk in case of infection by COVID-19, as well as to combat without delay the spread of misinformation concerning the vaccines.

3. In its observations, the Government does not object to the admissibility of the complaint, as it considers that OSEPI fulfils all the formal requirements established under Article 4 of the Protocol.

4. As regards the request for immediate measures, the Government recognises the need for urgent priority vaccination against COVID-19 for persons over 60 years of age and for those who have underlying health conditions, and it also acknowledges that the proportion of vaccinated persons belonging to the groups in question is not satisfactory, with only 35.2% of persons over 60 having completed the vaccination process as of 22 December 2021. The Government considers however that it has already taken appropriate action and has put in place the necessary measures to increase the number of persons vaccinated and to ensure access to vaccines in full respect of the right to health (see details at para. 15).

THE LAW

As to the admissibility conditions set out in the Protocol and the Committee's Rules

5. The Committee observes that Bulgaria accepted the collective complaints procedure by a declaration made at the time of ratification of the Revised Charter on 7 June 2000 and that this procedure entered into force in respect of Bulgaria on 1 August 2000. In accordance with Article 4 of the Protocol, the complaint has been submitted in writing and concerns Article 11, a provision accepted by Bulgaria when it ratified the Charter on 7 June 2000, as well as Article E. Bulgaria is bound by these provisions since the entry into force of this treaty in its respect on 1 August 2000.

6. The Committee notes that the grounds of the complaint are indicated, detailing in what respect OSEPI consider that Bulgaria has not ensured the satisfactory application of the Charter. The complaint therefore satisfies Article 4 of the Protocol for the purposes of admissibility.

7. The Committee notes that, in accordance with Articles 1 (b) and 3 of the Protocol, OSEPI is an international non-governmental organisation with participatory status with the Council of Europe. It is included on the list established by the Governmental Committee of non-governmental organisations entitled to lodge complaints before the Committee.

8. As regards whether OSEPI has particular competence for the purpose of the collective complaints' procedure within the meaning of Article 3 of the Protocol, the Committee notes that it is a non-governmental organisation which promotes human rights and the rule of law in areas such as anti-discrimination, workers' rights, housing rights, migration and the impact of climate change through research and advocacy. It is based in Brussels, Belgium and works notably to influence and inform decision-making on EU law, policy, funding and external action to maintain open societies in Europe. On this basis, the Committee considers that the complaint relates to a matter in relation to which OSEPI has particular competence under the collective complaints procedure within the meaning of Article 3 of the Protocol.

9. Finally, the complaint is signed on behalf of OSEPI by Heather Grabbe and Carl Dolan, Director and Deputy Director respectively, who are statutorily empowered to represent the organisation under Article 15 of its Statutes and specifically mandated by a resolution of the OSEPI Board of Directors of 26 October 2021 to represent the organisation in this complaint.

10. The Committee considers therefore that the complaint complies with Rule 23 of its Rules.

As to the request for immediate measures

11. The Committee underlines the exceptional character of immediate measures. The adoption of said measures must appear “necessary to avoid irreparable injury or harm to the persons concerned” (Rule 36§1), insofar as “the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact” (International Commission of Jurists v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32).

12. Any request for immediate measures must establish a tangible situation in which the persons concerned by the complaint find themselves at risk of serious irreparable injury or harm (Conference of European Churches (CEC) v. the Netherlands, Complaint No. 90/2013, decision on immediate measures of 25 October 2013, §2; Association for the Protection of all Children (APPROACH) Ltd v. Belgium, Complaint No. 98/2013, decision on immediate measures of 2 December 2013, §2).

13. The Committee notes that Bulgaria has a very low vaccination rate among adults. According to data from the European Centre for Disease Prevention and Control (ECDC), COVID-19 Vaccine Tracker, as of 6 October 2022 only 38.4% of adults over 60 years of age were vaccinated. As pointed out by OSEPI, in the EU/EEA area the average vaccination rate is much higher reaching 91.1% of adults over 60 years of age as of 6 October 2022 (EU/EEA). The Committee further takes note of the fact that as of October 2022, a total of 37,758 persons had died of COVID-19 in Bulgaria since the beginning of the pandemic according to the figures published by the World Health Organisation (WHO). This is a figure similar to other EU countries, such as Belgium or Greece, which have almost twice the population of Bulgaria.

14. Bulgaria has the highest accumulated death rate for COVID-19 in Europe, with 550 deaths per 100,000 population, followed by Hungary with 492 deaths. The rest of the EU countries count between 413 and 110 deaths per 100,000 population (data produced by John Hopkins University, August 2022). However, the Committee notes from the figures published by WHO that the number of deaths due to COVID-19 has steadily decreased in Bulgaria since February 2022 (from an average of 187 deaths per day in February 2022 to 10 deaths per day in September 2022). There has also been a steady decrease in the number of persons infected. Bulgaria’s COVID-19 morbidity rate was 1,389.03 per 100,000 inhabitants on 6 February 2022 and decreased to 141.66 per 100,000 inhabitants as of 10 October 2022 (data published by Sofdiaglobe.com).

15. The Committee also notes that the Government does not dispute the vaccination data referred to by OSEPI but explains that it is already taking specific measures to boost the administration of COVID-19 vaccines. It has adopted an emergency action plan, which entered into force in January 2022, targeting persons over 60 years of age and/or with underlying health conditions. As a general incentivising measure, it further offers a one-off payment of 75 BGN (€38.37) for all those who undergo a complete cycle of vaccination, and it has provided mobile vaccination points for those who cannot move or are in places hard to reach. The Government also highlights that it has implemented an information campaign on the need for vaccination, addressed to medical staff, practitioners and also to the population at large and that there are plans to further develop this campaign.

16. The Committee notes the measures put in place by the Government to increase vaccination against COVID-19. In this context, it considers that the assessment of whether the measures already taken by the Government are sufficient and effective is a matter that is more appropriately addressed within the framework of its decision on the merits.

17. The Committee recognises that the COVID-19 situation remains a serious health risk for the entire population, and more particularly for older persons and persons with underlying health conditions, requiring States to take effective action, including by ensuring equitable and timely access to vaccines.

18. However, the Committee also notes that the number of persons infected by COVID-19 as well as the number of resulting deaths have decreased very significantly in Bulgaria in recent months (from February to October 2022).

19. Therefore, in the light of the evolution of the situation and having regard to the measures being taken by Bulgaria, the Committee in the present circumstances does not consider it necessary to indicate immediate measures.

20. For these reasons, the Committee, on the basis of the report presented by József HAJDU, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE

In application of Article 7§1 of the Protocol, requests the Deputy Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter, and to publish it on the Council of Europe's Internet site.

Invites the Government to make written submissions on the merits of the complaint by 15 December 2022.

Invites OSEPI to submit a response to the Government's submissions by a deadline which the Committee shall determine.

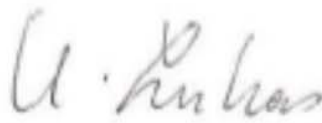
Invites the Parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter to notify by 15 December 2022 any observations they may wish to submit.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the European Social Charter to make observations by 15 December 2022.

UNANIMOUSLY DECIDES THAT IT IS NOT NECESSARY TO INDICATE ANY IMMEDIATE MEASURES TO THE GOVERNMENT



József HAJDU
Rapporteur



Karin LUKAS
President



Henrik KRISTENSEN
Deputy Executive Secretary