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**OPEN SOCIETY EUROPEAN POLICY INSTITUTE v. BULGARIA –  
Collective complaint nr. 204/2002**

**RESPONSE BY THE OPEN SOCIETY EUROPEAN POLICY INSTITUTE  
TO THE GOVERNMENT’S SUBMISSION ON THE MERITS**

14 March 2023

**Complainant:**

**Open Society European Policy Institute**

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## TABLE OF CONTENTS

<b>I. INTRODUCTION</b> .....	3
<b>II. BACKGROUND INFORMATION</b> .....	3
<b>III. UPDATES ABOUT THE SITUATION IN BULGARIA</b> .....	5
<b>IV. CONCERNS EXPRESSED BY THE UNITED NATIONS EXPERTS ABOUT BULGARIA’S COVID-19 VACCINATION POLICIES</b> .....	6
<b>V. THE RIGHT TO PROTECTION OF HEALTH (ARTICLE 11)</b> .....	9
A. The duty to remove as far as possible the causes of ill-health (article 11 § 1) .....	9
1. Absence and inaccuracy of the Government’s response to the collective complaint	9
2. Effectiveness of Covid-19 vaccines and impact of low vaccination rates on the health and life of vulnerable groups in Bulgaria	11
3. Conclusion	13
B. The duty to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health (article 11 § 2) .....	13
1. Measures adopted by the Government	14
2. Insufficiency of the measures adopted	15
3. Conclusion	18
C. The duty to prevent as far as possible epidemic, endemic and other diseases (article 11 § 3) .....	18
<b>VI. THE PROHIBITION OF DISCRIMINATION (ARTICLE E)</b> .....	19
<b>VII. CONCLUSION</b> .....	20

## **I. INTRODUCTION**

1. Further to the letter from Mr. Kristensen, dated 16 January 2023 and pursuant to the President's invitation under Rule 31 § 2 of the Rules of the European Committee of Social Rights, the Open Society European Policy Institute (hereafter "OSEPI") hereby submits its comments to the observations of the Bulgarian government on the merits of the collective complaint 204/2022 registered by the Committee on 25 January 2022.
2. As a preliminary remark, OSEPI notes that the observations submitted by the Bulgarian government provide virtually no explanation or information on the findings and arguments submitted by OSEPI under article 11 §§ 1 and 3 and under the article E of the European Social Charter. The Government offers observations only under article 11 § 2 on the actions they claim were adopted to increase public awareness and combat misinformation about the Covid-19 vaccines. Yet, article 7 § 1 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints states that the Contracting Party and the complainant organization are invited to submit "all relevant written explanations or information".
3. Should the Government provide more detailed observations in response to the present submission, OSEPI would respectfully ask the Committee not to close the written procedure and to give it the opportunity to respond.
4. This submission responds to the Government's observations and provides additional information gathered since the filing of the complaint. After recalling the previous stages of this procedure (II), the submission provides an update of the latest developments in Bulgaria regarding the Covid-19 vaccination of older persons and those with underlying conditions (III), a detailed response to the Government's observations and complementary information regarding the right to protection of health (IV) and the prohibition of discrimination (V).

## **II. BACKGROUND INFORMATION**

5. OSEPI recalls that in its collective complaint, it asked the European Committee of Social Rights (hereafter "the Committee") to find that Bulgaria has violated the right to health of older persons and those with underlying health conditions such as cardiovascular diseases, diabetes, chronic respiratory diseases, or cancer (article 11 of the European Social Charter) and the prohibition of discrimination (article E in conjunction with article 11), in the context of the distribution of Covid-19 vaccines. OSEPI argues that Bulgaria:
  - failed to protect the health and life of older persons and those with underlying health conditions by not securing them priority access to the Covid-19 vaccine when those vaccines were available in limited quantities between December 2020 and May 2021 (violation of article 11 § 1);

- failed to properly and adequately inform and educate people, and in particular the most vulnerable, about the importance of Covid-19 vaccines as a means of protection against the risks posed by the pandemic (violation of article 11 § 2);
  - failed to take the necessary measures to “prevent as far as possible epidemic, endemic and other diseases” in the context of the Covid-19 pandemic, by not prioritizing these two vulnerable groups (older persons and those with underlying health conditions), not providing information and educating them about the vaccines and not making the vaccines effectively accessible (violation of article 11 § 3);
  - violated the prohibition of discrimination on the basis of age and health against the two aforementioned groups in the distribution of Covid-19 vaccines between December 2020 and May 2021.
6. OSEPI also asked the Committee to indicate immediate measures to the Bulgarian government in order to avoid the irreparable harm or injury of having a significant additional number of older adults and people with underlying health conditions in Bulgaria dying or contracting serious illness because they were not vaccinated against Covid-19.
  7. In its decision of 18 October 2022, the Committee declared the complaint admissible.<sup>1</sup> It also decided that it was not necessary to indicate immediate measures. After underlining the low level of vaccination and the high accumulated death rate in Bulgaria,<sup>2</sup> the Committee took note of the measures adopted by the Government in 2022, adding 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”.<sup>3</sup> The Committee further highlighted that, while “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”,<sup>4</sup> “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)”.<sup>5</sup>
  8. The Committee invited the Bulgarian government to submit its observations on the merits of the collective complaint by 15 December 2022. On 15 December 2022, the Government submitted three pages of observations that did not respond to the vast majority of factual elements and legal arguments presented by OSEPI. Instead, the Government summarily concluded that “the vaccination coverage in the country in the period addressed in the complaint (December 2020 - May 2021) directly corresponds to the quantities of vaccines available in the country, as well as that there was an increased public interest in vaccination for the specified period”.

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<sup>1</sup> EUROPEAN COMMITTEE OF SOCIAL RIGHTS, *Decision on admissibility and immediate measures relating to the Complaint No. 204/2022*, 18 October 2022, <https://hudoc.esc.coe.int/fre/?i=cc-204-2022-dadmissandimmed-en>.

<sup>2</sup> *Ibid.*, paras. 13 – 14.

<sup>3</sup> *Ibid.*, para. 16.

<sup>4</sup> *Ibid.*, para. 17.

<sup>5</sup> *Ibid.*, para. 18.

### III. UPDATES ON THE SITUATION IN BULGARIA

9. Since the filing of the collective complaint in January 2022, little progress has been made in Bulgaria with regards to Covid-19 vaccination, including for older persons and those with underlying health conditions. As will be detailed in this submission, the effective access to vaccines for these vulnerable groups has not significantly improved, and the authorities have still not sufficiently and adequately informed and educated these groups about the safety and effectiveness of the Covid-19 vaccines.
10. As a result, levels of vaccination remain extremely low in Bulgaria.<sup>6</sup> As of 14 March 2023, only 35.8% of adults over 18 years, and 30.1% of the total population are fully vaccinated.<sup>7</sup> The percentages of vaccinated people are also extremely low among the older population: as of 14 March 2023, only 38.5% of adults 60 years and older in Bulgaria are fully vaccinated against Covid-19.<sup>8</sup>
11. These figures are disproportionately lower than in European Union (hereafter “EU”)/European Economic Area (hereafter “EEA”) countries: as of 14 March 2023, in EU/EEA countries, on average 82.4% of adults and 73% of the total population have been fully vaccinated. The contrast is even more striking regarding older people: as of 14 March 2023, on average, 91.2% of people aged 60 and above in the EU/EEA have been fully vaccinated.<sup>9</sup>
12. In addition, when compared to the European Union and to other countries in Eastern Europe, Bulgaria still has the highest number of confirmed Covid-19 deaths per million people and the highest case fatality rate.<sup>10</sup> Compared to the world and to continents, Bulgaria has a higher number of confirmed Covid-19 deaths per million people and the highest case fatality

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<sup>6</sup> EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, *COVID-19 Vaccine Tracker*, <https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#uptake-tab> (accessed on 14 March 2023). Older persons include adults 60 years old and above, according to the definition provided by the United Nations (see the Collective complaint, footnote 7). However, the Bulgarian vaccination plan and recommendations from the Parliamentary Assembly of the Council of Europe refer to adults 65 years and above, which will be reflected in this submission when mentioning these specific instruments.

<sup>7</sup> *Ibid.* At the same date, only 14.5% of the adults and 12% of the total population received the first booster, only 2% of adults and 1.6% of the total population received a second booster.

<sup>8</sup> *Ibid.* Only 23.3% of people aged 60 years and older in Bulgaria received a first booster, and a mere 4.4% received a second booster.

<sup>9</sup> *Ibid.* 84.9% of people aged 60 years and older in the EU/EEA received a first booster and 35.5% received a second booster.

<sup>10</sup> RANIT MISHORI AND BRIANNA DA SILVA BHATIA, *Expert Opinion of Drs. Ranit Mishori and Brianna Da Silva Bhatia, Public Health, and Medical Experts, Concerning the Effectiveness of and Equitable Allocation of Covid-19 Vaccines, and the Importance of Public Health Campaigns*, 5 February 2023 (hereafter “the Expert Opinion”), paras. 19 and 88, see Annex I.

rate.<sup>11</sup> It is impossible to ignore the correlation between high death rates in the country and continuing low vaccination figures.<sup>12</sup>

13. Despite these worrying figures, on 1 April 2022, Bulgaria lifted all Covid-19 restrictions, including the wearing of protective face masks in closed public spaces, observance of physical distance, the restriction on the number of persons who can visit indoor sites at the same time, the restriction on attending face-to-face training, and the ban on visits to hospitals and social service establishments.<sup>13</sup>

#### **IV. CONCERNS EXPRESSED BY THE UNITED NATIONS EXPERTS ABOUT BULGARIA'S COVID-19 VACCINATION POLICIES**

14. On 26 May 2022, three United Nations (hereafter “UN”) experts<sup>14</sup> sent a communication to the Bulgarian government expressing their concerns about the non-prioritization of older persons and people with underlying health conditions in Bulgaria’s domestic Covid-19 vaccination rollout.<sup>15</sup> The experts worried that Bulgaria’s national vaccination placed those vulnerable groups in the penultimate priority group of vaccination in breach of international standards and recommendations. According to these experts, “the de-prioritization of those groups of the population seems to have had considerable impacts on their living conditions and to have undermined their right to be free from discrimination, their right to health, and their right to life and human dignity.”<sup>16</sup> They added that this non-prioritization “may have reinforced ageist stereotypes and attitudes against older persons”.<sup>17</sup>
15. The UN experts recalled that “[d]ata gathered since the availability of Covid-19 vaccines demonstrates that there have been significantly lower death rates due to Covid-19 among fully vaccinated individuals globally”.<sup>18</sup> They further drew attention of the authorities to the low rate of vaccination among the Bulgarian population, including among older persons, and

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<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

<sup>13</sup> KRASSEN NIKOLOV, *Bulgaria to remove COVID-19 restrictions*, EURACTIV.bg, 28 March 2022, [https://www.euractiv.com/section/politics/short\\_news/bulgaria-to-remove-covid-19-restrictions/](https://www.euractiv.com/section/politics/short_news/bulgaria-to-remove-covid-19-restrictions/).

<sup>14</sup> The Independent Expert on the enjoyment of all human rights by older persons, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

<sup>15</sup> UN EXPERTS, *Communication sent to the Bulgarian government* (by UN Mandates of the Independent Expert on the enjoyment of all human rights by older persons; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health), Ref.: AL BGR 1/2022, 26 May 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27266>.

This communication was made public in July 2022, as the Bulgarian government failed to provide a response within 60 days as requested by the UN experts.

<sup>16</sup> *Ibid.*, p. 6.

<sup>17</sup> *Ibid.*, pp. 2-4 and 6.

<sup>18</sup> *Ibid.*, p. 6.

shared the view that “[a] number of deaths of vulnerable people, such as older adults and people with health conditions, could most probably have been prevented had these vulnerable groups been given priority, along with effective and informed access to vaccination, by the Bulgarian authorities.”<sup>19</sup>

16. The experts invited the Bulgarian government to provide detailed information on:

- (i) “steps being taken to ensure that older persons and people with underlying health conditions be effectively and efficiently protected against the coronavirus”,
- (ii) “measures taken/being taken to advertise the website *Plus Me* and to share evidence and scientific based information about available health goods including vaccines against the Covid-19”,
- (iii) “available and disaggregated data (by sex, disability and ethnicity) on persons aged 60 and above who got vaccinated in Bulgaria” since the beginning of the vaccination campaign” ... and “specify if available, the proportion of persons aged 60 and above vaccinated, whether they lived in urban or rural areas”, and
- (iv) “available numbers of deaths among vaccinated and unvaccinated older persons since March 2020”.<sup>20</sup>

17. In its response to the UN Experts provided on 23 August 2022,<sup>21</sup> the Government argued that the vaccination of people included in phase 4 started on 19 February 2021 “when sufficient quantities of vaccine were finally available”, that green corridors were opened that same day and that “green corridors were designated specifically for people over 65 years so as to preserve their health and life”.<sup>22</sup> Actually, as detailed in the collective complaint,<sup>23</sup> on 19 February 2021, every person was permitted to get vaccinated, regardless of whether they belonged to a priority group – which was referred to as “the green corridors”. At that time, the vaccination of phase 4 had not started yet. It should also be noted that no reference has ever been made to specific green corridors for older people: as explained in the complaint, the “green corridors” in fact made the situation even worse for older persons, since these corridors were opened only in the main cities and people had to stay in line without anywhere to sit for long hours, often outside in low winter temperatures.<sup>24</sup> It was not before 17 May

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<sup>19</sup> *Ibid.*, p. 6.

<sup>20</sup> *Ibid.*, pp. 6-7.

<sup>21</sup> THE REPUBLIC OF BULGARIA, Information by the Republic of Bulgaria Regarding Joint Communication from Independent Expert on the enjoyment of all human rights by older persons; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 23 August 2022, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37122>.

<sup>22</sup> *Ibid.*, para. 5.

<sup>23</sup> See Collective complaint, *Open Society European Policy Institute (OSEPI) v. Bulgaria*, Complaint No. 204/2022, 25 January 2022 (hereafter “collective complaint”), paras. 22 and 23.

<sup>24</sup> *Ibid.*, para. 23.

2021 that the Minister of Health instructed general practitioners and vaccination centers to vaccinate people aged 60 years and older, between Mondays and Thursdays.<sup>25</sup>

18. In its response to the UN Experts, the Government also claimed that “according to data from the vaccination register, as of April 30, 2020<sup>26</sup> about 46% of the doses of the vaccine against Covid-19 administered in the country had been given to people over 60 years old”.<sup>27</sup> These figures seem to contradict those previously shared by the Ministry of Health,<sup>28</sup> which confirmed that by the end of May 2021, Bulgaria had received 3,377,260 doses, and barely 302,141 of people aged 65 years and older (among a total of 1,500,000) had been vaccinated.<sup>29</sup>
19. The Government further argued that the measures adopted to promote Covid-19 vaccination in the country led to an increase in the vaccination rates of the older population and that by August 2022, “61.7% of the population over 60 years of age has completed the vaccination course. In comparison, by the end of 2021, the scope of completed vaccination course in this age group was 35.2%.”<sup>30</sup> This percentage of 61.7 is difficult to understand since it is in contradiction with the publicly available official data showing that even in March 2023, only 38.5% of the Bulgarian population 60 years and older are fully vaccinated against Covid-19.<sup>31</sup>
20. Finally, the Government informed the UN experts about a campaign launched on 21 March 2022 (the “Plus me” campaign) aimed at informing the public about the benefits of vaccination. The Government explained that information was made accessible on an official website dedicated to the pandemic and social networks, that audio-visual materials were provided to the Metropolitan Railway and the municipalities, and that information sessions were organized for health care staff. The Government also announced the preparation of digital brochures and texts by the Ministry of Health, and that “regarding the work with

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<sup>25</sup> *Ibid.*, para. 27.

<sup>26</sup> The Government most probably meant to refer to 30 April “2021”.

<sup>27</sup> The Government refers to a document named “Data\_sheet\_ECDC\_2020-2021 in the Annex”, that has no clear reference and is hardly possible to read, see: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37125>.

<sup>28</sup> MINISTRY OF HEALTH OF THE REPUBLIC OF BULGARIA, *Decision made on a Freedom of Information request submitted by the Bulgarian Helsinki Committee*, 3 December 2021. See Annex X of the collective complaint for English translation.

<sup>29</sup> See collective complaint, para. 26.

<sup>30</sup> THE REPUBLIC OF BULGARIA, Information by the Republic of Bulgaria Regarding Joint Communication from Independent Expert on the enjoyment of all human rights by older persons; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 23 August 2022, para. 9, <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=37122>.

<sup>31</sup> EUROPEAN CENTRE FOR DISEASE PREVENTION AND CONTROL, *COVID-19 Vaccine Tracker*, <https://vaccinetracker.ecdc.europa.eu/public/extensions/COVID-19/vaccine-tracker.html#uptake-tab> (accessed on 14 March 2023). The Committee had also underlined in its 18 October 2022 decision on admissibility and immediate measures that “as of 6 October 2022 only 38.4% of adults over 60 years of age were vaccinated”, see para. 13.



vulnerable groups, discussions with health mediators are being organized to dispel fears and myths about vaccination in the community”. OSEPI will discuss in Section V(B) of this submission the information and education strategy of the Bulgarian government and its shortcomings.

## **V. THE RIGHT TO PROTECTION OF HEALTH (ARTICLE 11)**

### **A. The duty to remove as far as possible the causes of ill-health (article 11 § 1)**

#### **1. Absence and inaccuracy of the Government’s response to the collective complaint**

21. In its observations dated 15 December 2022, the Bulgarian government fails to respond to the detailed information and arguments submitted by OSEPI in its collective complaint concerning the violation of article 11 § 1 of the European Social Charter. It merely states that “in mid-February 2021, Bulgarian citizens’ access to vaccines was limited due to circumstances beyond the country’s control, including manufacturers reduced and delayed vaccine supplies, essentially impeding the planned pace of NVP implementation” (page 3). The Government also makes reference to a “Vaccination Registration electronic system” launched on 4 March 2021 that allegedly allowed every citizen to make an appointment to get vaccinated.
22. The fact that limited quantities of vaccines were available in Bulgaria, of course, in no way justifies the Government’s failure to protect the health and lives of members of vulnerable groups by providing them with priority and effective access to Covid-19 vaccines. On the contrary: it is precisely because vaccine supplies were limited that a prioritization plan was needed to secure their fair distribution. The vast majority of countries, including Bulgaria, received only limited available quantities of Covid-19 vaccines between the end of 2020 and the first months of 2021, which is precisely why governments had the responsibility to implement prioritization plans with special attention to vulnerable groups who were the most at risk of dying or contracting severe diseases. And this is precisely what the Bulgarian government did not do: they failed to give priority access to older persons and those with underlying medical conditions. As extensively detailed in the collective complaint,<sup>32</sup> these vulnerable groups were included in only the one but last priority phase of the vaccination plan, and on 19 February 2021, the Government allowed every person to get vaccinated through the “green corridors” regardless of any prioritization.
23. The Bulgarian government actually acknowledges in its 15 December 2022 observations that it did not secure such priority access for vulnerable groups. It affirms indeed that it launched

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<sup>32</sup> See collective complaint, paras 48-57.

on 4 March 2021 a “Vaccination Registration electronic system” that “made it possible for every citizen, regardless of where in the country he resides, to choose the vaccination point where he will be immunized”. According to the Government, every citizen could then claim to be vaccinated despite the fact that vaccine doses were at that precise moment available in limited quantities.<sup>33</sup> This, in fact, totally contradicts the very principle of prioritization. The Government acknowledges, in other words, that there was in practice no prioritization at all for the distribution of the vaccines.

24. OSEPI cannot but note that these last observations from the Government do not seem to fully align with the comments made in its 15 March 2022 submission when commenting on the request for immediate measures. In March 2022, the Government informed the Committee that “in January 2021, the quantities of delivered vaccines increased gradually and thus managed to cover the prioritised groups under Phase 1 and 2 according to the Plan” and that “at the beginning of February 2021, simultaneous vaccination of persons from Phase 2 and Phase 3 (...) was initiated”. The Government added that the “vaccination of persons from Phase 4 of the Plan began on February 19, 2021 when sufficient quantities of vaccine were finally available and when the situation allowed for the vaccination of persons aged 65 and over and those with accompanying chronic diseases”. The Government eventually added that “with the increased supplies, Decision of the Council of Ministers No. 144/19.02.2021 provided for the opening of other type of green corridors”, giving the possibility to all interested persons to “preregister for the vaccines”.
25. The Government thus affirms today to the Committee that it could *not* implement its Vaccination plan because of circumstances beyond its control, while it affirmed in March 2022 that there were enough vaccines available to implement Phases 1 to 4 of the plan by 19 February 2022 and even to open the vaccination to all interested persons through the green corridors. OSEPI can only point out the contradictions underlying these two statements. In such circumstances, OSEPI is of the view that very little credence can be given to the Government’s assertions.
26. OSEPI refers to the detailed factual information it has shared in its collective complaint about failures of the design and the implementation of the Vaccination National Plan, and how it prevented vulnerable groups from obtaining priority and effective access to the Covid-19 vaccines during the period December 2020 – May 2021.<sup>34</sup>

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<sup>33</sup> See collective complaint, para. 19: “Bulgaria, which has a total population of nearly 7 million, received 10,725 doses in December 2020, 66,645 doses in January 2021, 253,920 doses in February 2021, 503,190 doses in March 2021 and 745,290 doses in April 2021.”

<sup>34</sup> See collective complaint, paras. 20-27.

2. Effectiveness of Covid-19 vaccines and impact of low vaccination rates on the health and lives of vulnerable groups in Bulgaria

27. In its complaint registered on 25 January 2022, OSEPI recalled that, as stressed by the European Medicines Agency, “as of the end of 2020, the administration of vaccines against Covid-19 has become the most effective tool to protect people against getting seriously ill or dying from the disease” and especially for “vulnerable populations such as older people and people with long-term diseases”.<sup>35</sup> Indeed, the Bulgarian government acknowledges the effectiveness and importance of vaccination in its observations.
28. Yet, because of the failure of the Bulgarian authorities to secure priority and effective access to the Covid-19 vaccines to older persons and those with underlying health conditions, the pandemic has disproportionately impacted them at a time when vaccines could have protected them against the risk of death and serious diseases. In addition to the arguments and factual information already formulated in its complaint filed in January 2022, OSEPI hereby submits an opinion<sup>36</sup> drafted by two prominent medical experts who have analyzed the effectiveness of Covid-19 vaccines distributed in Bulgaria and the epidemiological situation in the country.
29. The opinion is authored first by Ranit Mishori, senior medical advisor at Physicians for Human Rights,<sup>37</sup> Professor of Family Medicine at the Georgetown University School of Medicine, and Vice President and Chief Public Health Officer at Georgetown University. The second expert is Brianna da Silva Bhatia, COVID-19 Health Strategist at Physicians for Human Rights, certified from the American Board of Internal Medicine, and a practicing physician.
30. The opinion has been submitted at the request of the Open Society Justice Initiative (OSJI), an operational legal program of the Open Society Foundations that supports OSEPI’s work. As underlined in the opinion, the experts have prepared their opinion “wholly independent of OSJI” and “have received no remuneration and/or compensation of any kind for producing this expert opinion”.<sup>38</sup>
31. The experts first confirm that “older patients and patients with chronic underlying conditions are at a particularly high risk of severe disease and complications” if they contract the Covid-19 disease.<sup>39</sup> They also confirm that “it has been scientifically shown that most

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<sup>35</sup> *Ibid.*, para. 7.

<sup>36</sup> *Ibid.*, Expert Opinion.

<sup>37</sup> Physicians for Human Rights (PHR) is an NGO based in New York (United States of America) that works at the intersection of medicine, science, and law to secure human rights and justice for all. PHR shared in the 1997 Nobel Peace Prize. See <https://phr.org/about/>.

<sup>38</sup> *Ibid.*, Expert Opinion, page 1.

<sup>39</sup> *Ibid.*, para. 28 and paras. 31-36.

approved COVID-19 vaccines are highly effective in preventing death and serious disease”,<sup>40</sup> including the vaccines delivered to Bulgaria.<sup>41</sup> Regarding older persons, the experts underline that “COVID-19 vaccines are effective for people 65 years of age and older, reduce the incidence of disease, symptomatic disease, hospitalization, and death”<sup>42</sup> and reduce the burden of long Covid.<sup>43</sup> The experts also confirm that “most countries and international organizations recommended vaccines be initially prioritized to vulnerable people and population at high risk for severe disease”,<sup>44</sup> which is why “internationally societies released guidance on how to deploy vaccines ethically and equitably”.<sup>45</sup>

32. The experts then thoroughly analyze the epidemiological situation in Bulgaria, with a specific attention to persons aged 60 years and older.<sup>46</sup> The experts first document the very low vaccination rate in Bulgaria – information already underlined by the Committee in its decision on admissibility and immediate measures.<sup>47</sup> The experts note indeed that “between December 2020 and the end of June 2021, the cumulative uptake of a complete (2 dose) COVID-19 vaccine in Bulgaria was (...) 20.3% of people aged 60 years and older” (para. 83) while it was 59.7% within the WHO European region during the same timeframe.<sup>48</sup> This low level of vaccination has also been observed by the experts through the end of 2022: “completion of a primary series among adults aged 60 years and older is above 90% for more than half EU countries; Bulgaria has the lowest primary series completion at 38.4% of adults 60 years and older”.<sup>49</sup> The experts eventually note that “as of December 14, 2022 a total of 14,434,990 vaccine doses have been distributed to Bulgaria, yet only 4,600,565 vaccine doses have been administered.”<sup>50</sup>
33. The experts then analyze the impact of the pandemic on the population, especially for older persons and during the period when vaccines were available. They recall that “deaths and case fatality rates were reduced in most parts of the world as vaccination uptake increase” and that, by contrast, “it is impossible to ignore the correlation between negative outcomes and vaccination rates in Bulgaria”.<sup>51</sup> They indeed underline that “between January 2021 and June 2021, 10,485 people died from Covid-19, of which over 86% were people over the age of 60”.<sup>52</sup> Comparing Bulgaria to the European Union, the experts note that it has:

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<sup>40</sup> *Ibid.*, para. 37.

<sup>41</sup> *Ibid.*, para. 41.

<sup>42</sup> *Ibid.*, paras. 38 and 44.

<sup>43</sup> *Ibid.*, paras. 45-47.

<sup>44</sup> *Ibid.*, para. 52.

<sup>45</sup> *Ibid.*, para. 53.

<sup>46</sup> The experts underline that there are no comprehensive data related to the pandemic available in Bulgaria: there are for example no data available about the number of Covid-19 cases, hospitalizations and deaths that affected people with underlying medical conditions. See para. 61 of the expert opinion.

<sup>47</sup> *Ibid.*, para. 13.

<sup>48</sup> *Ibid.*, para. 66.

<sup>49</sup> *Ibid.*, para. 72.

<sup>50</sup> *Ibid.*, para. 87.

<sup>51</sup> *Ibid.*, para. 81.

<sup>52</sup> *Ibid.*, para. 75.

- “the highest confirmed Covid-19 deaths per million people
- the highest case fatality rate
- a lower amount of Covid-19 vaccine doses administered per 100 people
- a lower share of people fully vaccinated”.<sup>53</sup>

34. The experts also compare Bulgaria to Eastern Europe,<sup>54</sup> with the conclusion that Bulgaria has:

- “the highest confirmed Covid-19 deaths per million people
- the highest case fatality rate
- the highest excess mortality rate (data partially available)
- the lowest amount of Covid-19 vaccine doses administered per 100 people
- the lowest amount of people fully vaccinated”.<sup>55</sup>

35. The low vaccination rate has therefore clearly been identified by the experts as one of the causes of the severe impact of the pandemic in Bulgaria, combined with demographics, uncontrolled viral transmission and a poorly-prepared hospital system.<sup>56</sup> According to their findings, “poor vaccine uptake manifested early in the pandemic and persists to current times and has contributed to SARS-CoV-2 infections and deaths in Bulgaria”.<sup>57</sup> They eventually conclude that the “burden of disease in Bulgaria was most likely avoidable if vaccination uptake had steadily increased”.<sup>58</sup>

### 3. Conclusion

36. OSEPI reiterates its arguments developed in the collective complaint, registered on 25 January 2022. It asks the Committee to find that Bulgaria has violated article 11 § 1 of the European Social charter by failing to give a priority and effective access to the Covid-19 vaccines to older persons and those with underlying health conditions, who were the most at risk of dying or contracting serious diseases because of Covid-19.

#### **B. The duty to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health (article 11 § 2)**

37. In its collective complaint, OSEPI argued that the Bulgarian government has failed to properly inform and educate people, and in particular vulnerable groups, about the

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<sup>53</sup> *Ibid.*, para. 88.

<sup>54</sup> The experts were able to gather data for Albania, Belarus, Croatia, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Slovenia, Slovakia and Ukraine.

<sup>55</sup> *Ibid.*, para. 88.

<sup>56</sup> *Ibid.*, para. 75.

<sup>57</sup> *Ibid.*, para. 81.

<sup>58</sup> *Ibid.*, para. 82.

importance of receiving the Covid-19 vaccine during the pandemic, and has therefore violated article 11 § 2 of the European Social Charter.

38. In its response to the Committee dated 15 December 2022, on the merits of the complaint, the Government provides a brief overview of the measures it has adopted to promote the Covid-19 vaccination, including through the so called *Plus Me* campaign launched in March 2022. However, the Government provides little detail about those measures, which can anyway still not be considered as a proper “public education policy which is directed towards the population at large as well as particular population groups which are affected by specific health problems” in the light of article 11 § 2.<sup>59</sup>

#### 1. Measures adopted by the Government

39. In its 15 December 2022 observations, the Government explains that in early 2020, the Ministry of Health launched an official website dedicated to the pandemic called “Unified Information Portal”,<sup>60</sup> and that in January 2021, on this website, an online module for vaccines was created, purportedly containing “all the information available in the world about the vaccines against Covid-19 authorized for use within the EU”, as well as statistics, video materials, frequently asked questions, etc.<sup>61</sup> “It adds that in 2022, after the launch of the “Plus Me campaign”, the campaign’s website “became the main communication channel” when it comes to the information about the Covid-19 vaccines, “providing access to science-based information”.

40. The Government further indicates that social networks, and in particular the Viber CHAT-bot, were also used “to acquaint the public with verified data”, as well as a YouTube channel and the Facebook page of the Ministry of Health. A telephone hotline of the Ministry of Health was also at disposal of the people. Eventually, to combat misinformation, the Government indicates that weekly briefing sessions have been held by representatives of the National Vaccination Headquarters.

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<sup>59</sup> EUROPEAN COMMITTEE ON SOCIAL RIGHTS, *International Centre for the Legal Protection of Human Rights (INTERIGHTS) v. Croatia*, Complaint n° 45/2007, Decision on the merits, 30 March 2009, para. 43, <http://hudoc.esc.coe.int/fre?i=cc-45-2007-dmerits-en>.

<sup>60</sup> The website link provided by the Government is as follow: [www.coronavirus.bg](http://www.coronavirus.bg)

<sup>61</sup> To support this claim, the Government in its submission provides a link to a news item on the Ministry of Health’s website, dated 11 January 2021: <https://www.mh.government.bg/bg/novini/aktualno/nov-informacionen-modul-za-vaksinite-sreshu-covid-/>. The news item contains the following link which is supposed to direct the user to the online module dedicated to Covid-19 vaccination available at the United Information Portal: <https://coronavirus.bg/bg/vaccinations>. However, this link provided by the Government currently redirects the user to the webpage of the Plus Me campaign: <https://plusmen.bg/>. Nevertheless, the content of this online module dedicated to Covid-19 vaccination is still accessible through the (<<https://archive.org>>) website, which provides Internet archival service and allows members of the general public to access old/previous versions of websites. Therefore, the previous version of the online module (before March 2022 when the Plus Me campaign was launched) can be found at the following link: <http://web.archive.org/web/20210130025109/https://coronavirus.bg/bg/vaccinations>.

## 2. Insufficiency of the measures adopted

41. The assessment of the measures adopted by the Government to inform and educate people about the Covid-19 vaccines reveals several severe shortcomings. The Bulgarian authorities themselves had recognized, when launching the *Plus Me* campaign in March 2022, the previous mistakes committed in terms of Covid-19 vaccines distribution and the absence of an effective communication campaign until then, especially for vulnerable groups, including older persons and those with underlying conditions.<sup>62</sup> OSEPI acknowledges that the website of the *Plus Me* campaign has succeeded in gathering comprehensive and reliable information about the benefits of vaccines, particularly for vulnerable groups such as older persons and people with underlying health conditions. However, the measures adopted by the Government, including through the *Plus Me* campaign, are still insufficient to effectively promote Covid-19 vaccination uptake and successfully tackle vaccine hesitancy, especially among the most vulnerable groups.
42. First, the vast majority of these measures have not been “proactive” in their nature: the strategy developed by the Government has predominantly relied on tools that require action from the people, such as websites, social media pages, a chatbot, a telephone hotline. They have not proactively reached out to the people. Yet, as underlined by the WHO, “[o]ne of the most important and effective interventions in public health response to any event is to proactively communicate...”<sup>63</sup> This is confirmed by the independent experts from Physicians for Human Rights: “It is vital that public health and vaccination campaigns ... pre-emptively address the harms of information overload, while working to build and maintain trust with the public.”<sup>64</sup> While broad and generic vaccine information campaigns can slightly influence the public’s attitudes, tailored and proactive communication is often required to reach most of the target groups, especially vulnerable populations.
43. This type of proactive outreach, though vital, has been missing from Bulgaria’s communication strategy. Publishing on the internet information on the safety and effectiveness of the Covid-19 vaccines, as the Bulgarian authorities have done, can hardly be deemed an “effective information campaign”, especially when the country suffers from entrenched vaccine hesitancy and widespread misinformation regarding the Covid-19 vaccines.
44. In addition, Bulgarian authorities have relied almost exclusively on online tools and Internet-based resources to inform and educate people regarding the Covid-19 vaccines. Yet, those tools are not accessible to a large segment of the population, and especially vulnerable

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<sup>62</sup> See the website of the *Plus Me* campaign, the section called “About the campaign”, <https://plusmen.bg/about/campaign>.

<sup>63</sup> WORLD HEALTH ORGANIZATION, *Risk communication and community engagement readiness and initial response for novel coronaviruses*, 10 January 2020, [https://www.who.int/publications/i/item/risk-communication-and-community-engagement-readiness-and-initial-response-for-novel-coronaviruses-\(ncov\)](https://www.who.int/publications/i/item/risk-communication-and-community-engagement-readiness-and-initial-response-for-novel-coronaviruses-(ncov)).

<sup>64</sup> RANIT MISHORI AND BRIANNA DA SILVA BHATIA, *Expert Opinion*, Above, para. 102.

groups such as older persons or those living in remote areas. Many of the individuals from these groups do not have access to the Internet and/or lack the skills required to use digital devices and social networks.<sup>65</sup> For example, official statistics published by Eurostat show that in 2021, in Bulgaria, 50.57% of people between aged 65 and 74 had never used the Internet, and 37.33% had not used it in the last 12 months.<sup>66</sup> Therefore, authorities were obligated to develop alternative communication tools adapted to different target groups, even more so in the context of a public health emergency like the Covid-19 pandemic. Yet, they did very little.

45. Furthermore, the Government observations of 15 December 2022 do not provide any detailed information about *how* the listed measures were promoted. The Government merely presents the *Plus Me* website as the “main communication channel providing access to science-based information”, but does not explain, for example, how the *Plus Me* campaign was launched, or which specific measures were adopted to promote its website, especially towards older persons and those with underlying health conditions.<sup>67</sup> The Government also states that they have educated people with the help of “relevant pages in social networks”, but offers no details about which specific social networks were used, in which way, or how frequently messages were posted through those networks, etc. The Government also does not indicate either the content shared through the online tools (e.g. what kind of information was shared through the online module available at the Unified Information Portal, Viber CHAT-bot, etc.)<sup>68</sup>. Nor does it explain how online tools and the telephone hotline were promoted among the population, or whether any specific actions were taken to promote vaccination among vulnerable groups.
46. The Government also remains conspicuously silent about the effectiveness of the measures adopted, and whether they have been evaluated based on ongoing needs. No information has been communicated about the weekly briefings which, according to the Government, were organized with representatives of the National Vaccination Headquarters: nothing is said

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<sup>65</sup> For example, in order to get information regarding the Covid-19 vaccines through the Viber chatbot that the Government promotes in its response to the Committee, one first needs to have a smart phone, then download the Viber app to their smart phones, then find the right button from the [www.coronavirus.bg](http://www.coronavirus.bg) website which would direct the user to the “COVID-19 Bulgaria” channel, then create a personal account for the Viber app, and subscribe to the “COVID-19 Bulgaria” channel to have access to the chatbot – only then they can access to the information provided by the authorities. Obviously, most of the population and particularly older population cannot be expected to complete all those steps alone.

<sup>66</sup> EUROSTAT, *Individuals. Use of internet. Bulgaria*. Last update 12 January 2023, [https://ec.europa.eu/eurostat/databrowser/view/ISOC\\_CI\\_IFP\\_IU\\_custom\\_4828312/bookmark/table?lang=en&bookmarkId=69457fb1-206d-458d-bdd1-7dd743b6b040](https://ec.europa.eu/eurostat/databrowser/view/ISOC_CI_IFP_IU_custom_4828312/bookmark/table?lang=en&bookmarkId=69457fb1-206d-458d-bdd1-7dd743b6b040). See also Annex II.

<sup>67</sup> THE REPUBLIC OF BULGARIA, Observations by the Government on the merits, 15 December 2022, p. 2, <https://rm.coe.int/cc204casedoc3-en-docx/1680a9c95d>.

<sup>68</sup> Note that at the moment, the Viber chatbot channel redirects users seeking information regarding the vaccines, to the webpage of the *Plus Me* campaign. Therefore, it is also unclear what kind of information and guidance was provided through this channel to its subscribers before the launch of the *Plus Me* campaign in March 2022. Similarly, the link shared by the Government regarding the “online module” which was available at the Unified Information Portal does also redirects the user to the webpage of the *Plus Me* campaign.



about their content, targeted audience, or overall impact, etc. No data about the success of those measures, including e.g., visitor statistics, analysis of users' motivations or potentially changing behaviors, has been provided either. For example, the Government does not provide information about the number of subscribers of the Viber CHAT-bot, visitors of the Unified Information Portal, or users of the telephone hotline, etc. Yet, the publicly available information shows that the Viber CHAT-bot has very few subscribers: as of February 2023, there were only about 67,000 of them,<sup>69</sup> which is less than 1% of the Bulgarian population.

47. Finally, a number of measures announced by the Government in its 15 March 2022 observations to the request for immediate measures are not reflected in its observations of 15 December 2022. The Government does not explain whether those measures were adopted or effectively implemented. In particular, the Government fails to address: the conduct and outcomes of two national representative sociological surveys; the establishment of an information center, which the Government previously considered as important when acknowledging that “the practice of the last 2 years (Hotline for questions related to COVID-19 and vaccines) shows that citizens prefer direct contact with an expert to answer all the questions asked”; the printing of brochures aimed at different groups in Bulgarian society, including the elderly and people with chronic diseases; the publication of digital banners on the websites of partners, medical establishments, media, RHI;<sup>70</sup> the publication of specific information and guidance for vulnerable groups; the creation of a separate section on the official website dedicated to combatting misinformation; the use of “all communication channels” to reach the Bulgarian public; the organization of trainings for general practitioners and medics from the emergency medical centers where the vaccination rates are low; and the development of a targeted information campaign for teaching staff in the country. In the absence of information provided by the Government, OSEPI cannot but conclude that these measures, although announced, have not been implemented.
48. OSEPI acknowledges that “vaccine hesitancy” is a major problem in Bulgaria, which makes it more difficult for the Government to develop and implement an effective information campaign. However, precisely for that reason, an effective information campaign about the Covid-19 vaccines is crucial in Bulgaria – a must to protect the right to life and health of the population. There is evidence that despite the complexity of vaccine hesitancy and the broad range of its determinants, a carefully devised, effective communication strategy can tackle vaccine hesitancy and influence the behaviors of populations. The Bulgarian government has simply failed to take these critically important steps.

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<sup>69</sup> Once subscribed to the Viber chatbot through a smart phone, once can see the number of subscribers on the top of the main screen, which is as of 13 February 2023 is 66,320.

<sup>70</sup> Regional Health Inspectorates, which are structures of the Ministry of Health.

### 3. Conclusion

49. OSEPI asks the Committee to find that Bulgaria has violated article 11 § 2 of the European Social charter by failing to properly and adequately inform and educate people, particularly the most vulnerable, about the importance of receiving the Covid-19 vaccine as a means of protection against the risks posed by the pandemic.

#### **C. The duty to prevent as far as possible epidemic, endemic and other diseases (article 11 § 3)**

50. In addition to the failure to prioritize access to Covid-19 vaccines for vulnerable groups and to properly inform and educate them about the efficiency and safety of the vaccines, the Bulgarian government has also failed to take appropriate measures to make the vaccines effectively and physically accessible to older persons and those with underlying health conditions who were and remain unable to travel to vaccinations centers.<sup>71</sup>
51. Here again, the Government's observations dated 15 December 2022 do not provide any information or explanation about the measures taken to make the vaccines effectively accessible. The only information provided by the Government refers to a "Vaccination Registration electronic system" launched on March 4, 2021, that allegedly "made it possible for every citizen, regardless of where in the country he resides to choose the vaccination point where he will be immunized" (page 3). The Government adds that "in just one day, 41 thousand people booked an appointment for vaccination through the platform".
52. Actually, this assertion does not demonstrate that the Government made the necessary efforts to make the Covid-19 vaccines effectively and physically accessible to older persons and those with underlying medical conditions. Once again indeed, the Government exclusively relies on online tools to promote the accessibility of the vaccines. No other efforts have been made. Yet, online tools are obviously not sufficient for older persons since many of them lack access to the Internet or do not have the ability to use it easily (reference can be made to the statistics already indicated above). Furthermore, media have reported that the electronic system for registration did not work effectively in practice: filling out the web form did not guarantee either a time slot for vaccination or the type of vaccine indicated as preferred, and possible registry selection dates were just three weeks away making it very difficult for many people to book an appointment as slots were quickly filled.<sup>72</sup> As a result, it has been reported that many people never managed to book an appointment and that even those who did were sometimes notified that it was cancelled.

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<sup>71</sup> See collective complaint, paras. 77-83.

<sup>72</sup> SVOBODNA EVROPA, "Just out of courtesy". *How the electronic vaccine registry works*, 9 March 2021, <https://www.svobodnaevropa.bg/a/31139790.html>.

53. The Government had also announced the creation of a Google interactive map to allow people to obtain information about available centers,<sup>73</sup> while acknowledging that there were issues with the accessibility of vaccines in practice. To OSEPI's knowledge, however, this tool has never been created.
54. Moreover, in its observations of 15 March 2022 on the admissibility of the complaint and the request for immediate measures, the Government had announced the organization of a "mobile vaccination team" that would "visit the smallest, most remote and inaccessible settlements in the country".<sup>74</sup> This was a very welcome commitment since it would have helped to make vaccines effectively accessible to vulnerable groups of the society. Yet, in its observations of 15 December 2022, the Government noticeably fails to provide any information about the implementation of this project, and OSEPI is not aware of the creation of such mobile team in practice.
55. OSEPI refers to the arguments developed in its collective complaint<sup>75</sup> and reiterates that Bulgaria has violated article 11 § 3 of the European Social Charter.

## **VI. THE PROHIBITION OF DISCRIMINATION (ARTICLE E)**

56. OSEPI has invited the European Committee of Social Rights to find a violation by the Bulgarian Government of the prohibition of discrimination on the basis of age and health against older persons and those with underlying medical conditions in the distribution of Covid-19 vaccines between December 2020 and May 2021 (article E in conjunction of article 11 of the European Social Charter). First, these two groups were discriminated against in comparison with the general Bulgarian population: while they were at a much higher risk of dying or contracting severe illness, they did not effectively get priority access to vaccination, without sufficient consideration corresponding to their differences. Secondly, they were discriminated against in relation to other priority groups: although similarly situated, they were not treated equally, since they were not effectively prioritized.
57. In its observations on the merits of the complaint, the Government remains silent about this alleged discrimination. This absence of explanation or information from a Contracting Party does not align with the requirements of article 7 § 1 of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. Furthermore, this silence does not respect the specific rules that govern the burden of proof in discrimination

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<sup>73</sup> *Reply of the Minister of Health, Prof. Kostadin Angelov to a question of MP Georgi Mihailov*, 5 February 2021, <https://www.mh.government.bg/bg/novini/parlamentaren-kontrol/otgovor-na-ministra-na-zdraveopazvaneto-05-02-21/>. English translation is available: see Annex III.

<sup>74</sup> THE REPUBLIC OF BULGARIA, Observations by the Government on admissibility and the request for immediate measures, 15 March 2022, <https://rm.coe.int/cc204casedoc2-en-rev/1680a80e20>, p. 5.

<sup>75</sup> See collective complaint, paras. 77-83.

related matters: as recalled in the collective complaint, once the claimant demonstrates a difference in treatment, it is for the Government to show that this difference was justified.<sup>76</sup>

58. The necessity to avoid any kind of discrimination in the distribution of vaccines has recently been recalled by the Parliamentary Assembly of the Council of Europe. In a recommendation adopted on 14 October 2022, the Assembly has indeed called on all member States to “ensure that the design and implementation of national vaccination plans and rollouts secure an ethical and equitable distribution of vaccines and avoid any discrimination on the basis of age, health, gender, race, religion, legal or socio-economic status, ability to pay, location and any other factor. Priority access should be given to groups in vulnerable situations, including persons over 65 years old and those under 65 with underlying health conditions” (recommendation 12.11).<sup>77</sup>
59. In the absence of an explanation provided by the Government, OSEPI asks the Committee to rule that it has indeed demonstrated a difference in treatment against older persons and those with underlying medical conditions, and that the Bulgarian authorities have not provided an objective and reasonable justification. There has therefore been a violation of article E in conjunction with article 11 of the European Social Charter.

## **VII. CONCLUSION**

60. OSEPI has provided detailed information supported by numerous authoritative sources that confirm that Bulgaria has violated articles 11 and E of the European Social Charter. The Government has failed to provide any relevant information or data to refute OSEPI’s arguments. The observations of the Government on the merits of the collective complaint are indeed non-existent, or highly generic and limited. The explanations provided by the Government to the Committee also contradict the information shared with other international institutions, as well as the Government’s previous submission to this Court.
61. For those reasons, OSEPI asks the European Committee of Social Rights to find violations of article 11 of the European Social Charter, and article E in conjunction with article 11.

Brussels, 14 March 2023

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<sup>76</sup> See collective complaint, para. 100.

<sup>77</sup> PARLIAMENTARY ASSEMBLY OF THE COUNCIL OF EUROPE, *Preventing vaccine discrimination*, Resolution 2468 (2022), adopted on 14 October 2022, <https://pace.coe.int/en/files/31407/html>.

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