



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

Confidential¹

Amnesty International and *Médecins du Monde – International* v. Sweden

Complaint No. 227/2023

REPORT TO THE COMMITTEE OF MINISTERS

Strasbourg, 15 October 2025

¹ It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a recommendation, or no later than four months after it has been transmitted to the Committee of Ministers, namely 26 June 2026.

Introduction

1. Pursuant to Article 8§2 of the Protocol providing for a system of collective complaints (“the Protocol”), the European Committee of Social Rights, a committee of independent experts of the European Social Charter (“the Committee”) transmits to the Committee of Ministers its report² on Complaint No. 227/2023. The report contains the Committee’s decision on the merits of the complaint (adopted on 15 October 2025); the decision on admissibility (adopted on 6 December 2023) is appended.

2. The Protocol came into force on 1 July 1998. It has been ratified by Belgium, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal and Sweden. Furthermore, Bulgaria, Slovenia and Spain are also bound by this procedure pursuant to Article D of the Revised Social Charter of 1996.

3. The Committee’s procedure was based on the provisions of the Rules of 29 March 2004 which it adopted at its 201st session and last revised on 11 September 2024 at its 343rd session.

4. The report has been transmitted to the Committee of Ministers on 26 February 2026. It is recalled that pursuant to Article 8§2 of the Protocol, this report will not be made public until after the Committee of Ministers has adopted a recommendation, or no later than four months after it has been transmitted to the Committee of Ministers, namely 26 June 2026.

² This report may be subject to editorial revision.

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

DECISION ON THE MERITS

Adoption: 15 October 2025

Notification: 26 February 2026

Publication: 26 June 2026

Amnesty International and *Médecins du Monde – International* v. Sweden

Complaint No. 227/2023

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 351st session in the following composition:

George THEODOSIS, Vice-President
Tatiana PUIU, Vice-President
Kristine DUPATE, General Rapporteur
Karin Møhl LARSEN
Yusuf BALCI
Mario VINKOVIC
Miriam KULLMANN
Carmen SALCEDO BELTRÁN
Franz MARHOLD
Alla FEDOROVA
Olivier DE SCHUTTER
Kristina KOLDINSKA
Carmen-Constantina NENU

Assisted by Henrik KRISTENSEN, Executive Secretary

Having deliberated on 10 September 2025 and on 15 October 2025,

On the basis of the report presented by Kristine DUPATE,

Delivers the following decision adopted on this date:

PROCEDURE

1. The complaint lodged by Amnesty International and *Médecins du Monde-International* was registered on 28 June 2023.

2. Amnesty International and *Médecins du Monde-International* allege that the situation of vulnerable European Union (“EU”) migrants in Sweden (defined as citizens of another EU country, who in their home country live in poverty and social exclusion and have made their way to Sweden to support themselves) is in violation of Articles 11 (the right to the protection of health) and 13 (the right to social and medical assistance), read alone and of Article E (non-discrimination) read in conjunction with the aforementioned provisions of the Revised European Social Charter (“the Charter”) for the following reasons:

- the denial in many cases of necessary healthcare to the persons concerned;
- the billing of the persons concerned for the full cost of necessary healthcare;
- the chilling effect of the above two factors leading the persons concerned to refrain from seeking necessary healthcare.

3. On 6 December 2023, the Committee declared the complaint admissible.

4. Referring to Article 7§1 of the 1995 Additional Protocol providing for a system of collective complaints (“the Protocol”), the Committee invited the Government to make written submissions on the merits of the complaint by 15 February 2024. Upon the Government’s request, the time limit was extended until 15 March 2024.

5. Referring to Article 7§§1 and 2 of the Protocol and pursuant to Rule 32§§1, 2 of its Rules (“the Rules”), the Committee invited the States Parties to the Protocol, the States having made a declaration in accordance with Article D§2 of the Charter as well as the international organisations of employers or workers mentioned in Article 27§2 of the 1961 Charter, to notify any observations they may wish to make on the complaint by 15 February 2024.

6. The Government’s submissions on the merits of the complaint were registered on 5 March 2024.

7. Pursuant to Rule 31§2 of the Rules, the President of the Committee invited Amnesty International and *Médecins du Monde-International* to submit a response to the Government’s submissions on the merits by 31 May 2024. Upon the request of Amnesty International and *Médecins du Monde-International*, the time limit was extended until 15 July 2024. The response of Amnesty International and *Médecins du Monde-International* was registered on 15 July 2024.

8. Pursuant to Rule 31§3 of the Rules, the Government was invited to submit a reply to Amnesty International and *Médecins du Monde-International's* response by 13 September 2024. The Government's reply was registered on 12 September 2024.

SUBMISSIONS OF THE PARTIES

A – The complainant organisations

9. Amnesty International and *Médecins du Monde-International* allege that vulnerable EU migrants in Sweden (defined as citizens of another EU country, who in their home country live in poverty and social exclusion and have made their way to Sweden to support themselves) are in many cases denied necessary healthcare; are billed for the full cost of necessary healthcare; and that this has a chilling effect leading the persons concerned to refrain from seeking necessary healthcare, in breach of Articles 11 and 13 of the Charter read alone, as well as of Article E in conjunction with those provisions of the Charter.

B – The respondent Government

10. The Government asks the Committee to find that there is no violation of the Charter provisions invoked.

RELEVANT DOMESTIC LAW AND PRACTICE

A – Constitutional principles

11. The Instrument of Government – 1974:152

Article 2

“

[...]

The personal, economic and cultural welfare of the individual shall be fundamental aims of public activity. In particular, the public institutions shall secure the right to employment, housing and education, and shall promote social care and social security, as well as favourable conditions for good health.”

B – Domestic law

12. Aliens Act (2005:716) – as amended

Chapter 2. Conditions for a foreigner to enter, stay and work in Sweden

“[...]

5§ A foreigner who stays in Sweden for more than three months must have a residence permit.

[...]”

Chapter 3a. Right of residence for EEA nationals and others

“[...]

Right of residence

3§ An EEA citizen has a right of residence if he or she:

1. is employed or self-employed person in Sweden;
2. has come to Sweden to seek work and has a real possibility of finding employment;
3. is enrolled as a student at a recognised educational institution in Sweden and, according to a declaration to that effect, has sufficient resources to support himself/herself and his/her family members and has comprehensive health insurance for himself/herself and his/her family members which is valid in Sweden, or
4. has sufficient resources to support himself/herself and his/her family members and has comprehensive health insurance for himself/herself and his/her family members which is valid in Sweden.”

13. Act (2013:407) on Healthcare and Medical Services for Certain Foreigners Residing in Sweden Without Necessary Permits – as amended

Personal scope

“5§ This Act applies to foreigners who are staying in Sweden without the support of a decision by the authorities or a statute.

However, the Act does not apply to foreigners whose stay in Sweden is intended to be temporary.”

[...]

Scope of care

“6§ A region shall offer foreigners referred to in 5§ who have not reached the age of 18 the same scope of care as is offered to those residents in the region.”

“7§ A region shall offer foreign nationals referred to in 5§ who have reached the age of 18:

1. care that cannot be postponed;
2. maternity care;
3. abortion care, and
4. contraceptive counselling.”

14. Act (2017:30) on Health and Medical Services – as amended

Chapter 3. General provisions

“1§ The objective of health services is good health and care on equal terms for the entire population.

Healthcare shall be provided with respect for the equal value of all persons and for the dignity of the individual. Those who have the greatest need for healthcare and medical services shall be given priority for care.”

[...]

Chapter 8. Responsibility to provide healthcare

“[...]

2§ The region shall also offer good healthcare to:

1. persons who, without being resident here, are entitled to benefits in kind in Sweden in the event of sickness and maternity pursuant to Regulation (EC) of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, and
2. the persons referred to in Chapter 5, 7§, first paragraph of the Social Insurance Code and who are covered by the Regulation.

The care shall be provided by the region in whose territory the person is gainfully employed or, in the case of a person who is unemployed, the region in whose territory they are registered as a jobseeker. To the extent that family members of such persons are entitled to benefits in kind in Sweden in the event of sickness and maternity pursuant to the Regulation, the family members shall be offered care by the same region. However, if the family members are resident in Sweden, Section 1 applies.

[...]

4§ If someone staying in the region without being resident there needs immediate healthcare, the region shall provide such care.
[...]"

15. Act (1991:481) on the Population Register – as amended

"3§ Anyone who is considered to be resident in Sweden after moving in shall be registered in the population register. A person is considered to be resident in this country if they can be assumed to regularly spend their nightly rest or equivalent rest (daily rest) in the country for at least one year. A person who can be assumed to regularly spend their daily rest both inside and outside the country must also be registered if, taking into account all the circumstances, they can be considered to have their actual residence here.
[...]"

16. Act (2001:453) on Social Services – as amended

Chapter 2. Responsibility of the municipality

"1§ Each municipality is responsible for social services in its area and has the ultimate responsibility for ensuring that individuals receive the support and assistance they need. [...]"

17. The legislative history of Act (2013:407) on Healthcare and Medical Services for Certain Foreigners Residing in Sweden Without Necessary Permits (Act 2013:407) makes clear that nationals of other countries who lack the right of residence in Sweden shall be offered immediate care by the region of residence. The healthcare services are as a general rule unsubsidised. Nobody may be denied immediate care due to lack of ability to pay. The legislative history does not exclude that the Act may also be applicable to EU citizens in individual cases.

18. The legislative history of Act (2017:30) on Health and Medical Services states that no further specification of the limits of what is to be regarded as immediate care can be given. This will be assessed on a case-by-case basis. The medical provider should decide whether a care seeker needs immediate care or whether the care can be delayed until the care seeker arrives in their own country or where they otherwise are to seek care.

C – Domestic case law

19. In its decision No. 2867-21 of 26 May 2023, the Administrative Court of Falun examined an appeal submitted by a Bulgarian woman who received bills for healthcare in connection with pregnancy and childbirth. The total amount of 26 bills was approximately €15,950, which was submitted to a debt collection company and at the time of the submission of the collective complaint amounted to approximately €20,100. The court decided that the region had erred in not assessing whether the woman fell within the scope of the Act (2013:407). The case was referred back to the region. The region, however, appealed the decision of the Administrative Court and on 10 April 2024 the Administrative Court of Appeal declared the woman's appeal inadmissible. It held that she could challenge the bills in a regular court instead of in the administrative court system. She appealed to the Supreme Administrative Court.

RELEVANT INTERNATIONAL MATERIAL

A – Council of Europe

1. Committee of Ministers

20. The Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025) CM(2021)67 adopted by the Committee of Ministers of the Council of Europe on 5 May 2021 emphasises the need of special measures to ensure access to healthcare.

21. The Committee of Ministers of the Council of Europe, in its Recommendation CM/Rec(2011)13 on mobility, migration and access to healthcare, recommended for the States to ensure the provision of adequate entitlement to migrants to use health services meeting their needs and simplifying accessibility procedures. It also stated that programmes for migrants should be aimed at improving knowledge about health and illness, the way the health system works and entitlement to health services.

B – United Nations (UN)

22. International Covenant of Economic, Social and Cultural Rights (1966) (the Covenant)

Article 12

“1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

23. In its General Comment No. 14 (2000) on the right to the highest attainable standard of health, the UN Committee on Economic, Social and Cultural Rights stated that health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State Party. It also stated that the Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation. It stated that States have a special obligation to provide those who do not have sufficient means with the necessary health insurance and healthcare facilities. It has recommended to take all measures necessary to ensure that all persons in the State Party, including refugees and asylum seekers, have equal access to preventive curative and palliative health services, regardless of their legal status and identity documents.

24. In its General Comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, the UN Committee on Economic, Social and Cultural Rights stated that discrimination on the basis of race and colour, gender identity, disability, age, nationality, health status and economic and social situation is prohibited.

25. The UN Human Rights Committee in its Concluding observations on the seventh periodic report of Sweden of 28 April 2016 welcomed the adoption in February 2012 of the long-term strategy for Roma inclusion for 2012-2032, but noted that the vulnerable position of citizens of other European Union countries of Roma origin who, because of their lack of formal residency status in the State Party, have only limited access to social benefits, subsidised healthcare and education, is a matter of concern.

26. The UN Committee on Economic, Social and Cultural Rights in its Concluding observations on the sixth periodic report of Sweden of 14 July 2016, expressed concern that vulnerable foreigners, including citizens of other European Union Countries, and in particular Roma, face major obstacles in accessing basic social services and social assistance benefits in Sweden. It recommended that Sweden takes measures to facilitate access to basic services by vulnerable foreigners, including citizens of other EU countries, notably those of Roma origin.

27. The UN Committee on the Elimination of Racial Discrimination in its Concluding observations on the combined twenty-second and twenty-third periodic reports of Sweden of 6 June 2018 recommended to Sweden to take all the necessary measures to ensure equal access by all Roma communities to education, employment, housing, healthcare and justice.

28. The UN Committee on Economic, Social and Cultural Rights in its Concluding observations on the sixth periodic report of Sweden of 22 March 2024, recommended that Sweden takes measures to ensure that any immigration policy does not impede the equal access of migrants, in particular migrant children and undocumented migrants to services essential for the realisation of economic, social and cultural rights, including healthcare and education. It also recommended to clearly define the term "healthcare that cannot wait".

C – European Union (EU)

29. Regulation (EC) No. 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Regulation 883/2004)

“Article 17. Residence in a Member State other than the competent Member State

An insured person or members of his family who reside in a Member State other than the competent Member State shall receive in the Member State of residence benefits in kind provided, on behalf of the competent institution, by the institution of the place of residence, in accordance with the provisions of the legislation it applies, as though they were insured under the said legislation.”

[...]

Article 19. Stay outside the competent Member State

“1. Unless otherwise provided for by paragraph 2, an insured person and the members of his family staying in a Member State other than the competent Member State shall be entitled to the benefits in kind which become necessary on medical grounds during their stay, taking into account the nature of the benefits and the expected length of the stay. These benefits shall be provided on behalf of the competent institution by the institution of the place of stay, in accordance with the provisions of the legislation it applies, as though the persons concerned were insured under the said legislation.

2. The Administrative Commission shall establish a list of benefits in kind which, in order to be provided during a stay in another Member State, require for practical reasons a prior agreement between the person concerned and the institution providing the care.”

30. Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Directive 2004/38/EC)

“Article 6. Right of residence for up to three months

1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.
2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.

Article 7. Right of residence for more than three months

1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:
 - (a) are workers or self-employed persons in the host Member State; or
 - (b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or
 - (c) — are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and
— have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or
 - (d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).
2. The right of residence provided for in paragraph 1 shall extend to family members who are not nationals of a Member State, accompanying or joining the Union citizen in the host Member State, provided that such Union citizen satisfies the conditions referred to in paragraph 1(a), (b) or (c).
3. For the purposes of paragraph 1(a), a Union citizen who is no longer a worker or self-employed person shall retain the status of worker or self-employed person in the following circumstances:
 - (a) he/she is temporarily unable to work as the result of an illness or accident;
 - (b) he/she is in duly recorded involuntary unemployment after having been employed for more than one year and has registered as a job-seeker with the relevant employment office;
 - (c) he/she is in duly recorded involuntary unemployment after completing a fixed-term employment contract of less than a year or after having become involuntarily unemployed during the first twelve months and has registered as a job-seeker with the relevant employment office. In this case, the status of worker shall be retained for no less than six months;
 - (d) he/she embarks on vocational training. Unless he/she is involuntarily unemployed, the retention of the status of worker shall require the training to be related to the previous employment.
4. By way of derogation from paragraphs 1(d) and 2 above, only the spouse, the registered partner provided for in Article 2(2)(b) and dependent children shall have the right of residence as family members of a Union citizen meeting the conditions under 1(c) above. Article 3(2) shall

apply to his/her dependent direct relatives in the ascending lines and those of his/her spouse or registered partner.”

[...]

“Article 24. Equal treatment

[...]

1. Subject to such specific provisions as are expressly provided for in the Treaty and secondary law, all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence or permanent residence.

2. By way of derogation from paragraph 1, the host Member State shall not be obliged to confer entitlement to social assistance during the first three months of residence or, where appropriate, the longer period provided for in Article 14(4)(b), nor shall it be obliged, prior to acquisition of the right of permanent residence, to grant maintenance aid for studies, including vocational training, consisting in student grants or student loans to persons other than workers, self-employed persons, persons who retain such status and members of their families.”

31. The Court of Justice of the European Union (CJEU) has been repeatedly asked to assess the compatibility of the domestic legislation with the Directive 2004/38/EC and Regulation 883/2004.

In case C-333/13, Elisabeta Dano and Florin Dano v. Jobcenter Leipzig, CJEU Judgment of 11 November 2014, CJEU held that Article 24(1) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, read in conjunction with Article 7(1)(b) thereof, and Article 4 of Regulation No 883/2004, as amended by Regulation No 1244/2010, must be interpreted as not precluding legislation of a Member State under which nationals of other Member States are excluded from entitlement to certain ‘special non-contributory cash benefits’ within the meaning of Article 70(2) of Regulation No 883/2004, although those benefits are granted to nationals of the host Member State who are in the same situation, in so far as those nationals of other Member States do not have a right of residence under Directive 2004/38 in the host Member State. CJEU clarified that EU citizens who do not have the residence rights in the host EU Member States cannot invoke discrimination under Article 24(1) of the Directive 2004/38 with regard to access to social assistance benefits.

In case C-67/14, Alimanovic v. Jobcenter Berlin Neukölln, CJEU judgment of 15 September 2015, CJEU held that Article 24 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC and Article 4 of Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, as amended by Commission Regulation (EU) No 1244/2010 of 9 December 2010, must be interpreted as not precluding legislation of a Member State under which nationals of other Member States who are in a situation such as that referred to in Article 14(4)(b) of that directive are excluded from entitlement to certain ‘special non-contributory cash benefits’ within the meaning of Article 70(2) of Regulation No 883/2004, which also constitute ‘social assistance’ within the meaning of Article 24(2) of Directive 2004/38, although those benefits are granted to nationals of the Member State concerned who are in the same situation.

In case C-709/20, CG v. The Department for Communities in Northern Ireland, CJEU judgment of 15 July 2021, CJEU held that Article 24 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC must be interpreted as not precluding the

legislation of a host Member State which excludes from social assistance economically inactive Union citizens who do not have sufficient resources and to whom that State has granted a temporary right of residence, where those benefits are guaranteed to nationals of the Member State concerned who are in the same situation. However, provided that a Union citizen resides legally, on the basis of national law, in the territory of a Member State other than that of which he or she is a national, the national authorities empowered to grant social assistance are required to check that a refusal to grant such benefits based on that legislation does not expose that citizen, and the children for which he or she is responsible, to an actual and current risk of violation of their fundamental rights, as enshrined in Articles 1, 7 and 24 of the Charter of Fundamental Rights of the European Union. Where that citizen does not have any resources to provide for his or her own needs and those of his or her children and is isolated, those authorities must ensure that, in the event of a refusal to grant social assistance, that citizen may nevertheless live with his or her children in dignified conditions. In the context of that examination, those authorities may take into account all means of assistance provided for by national law, from which the citizen concerned and her children are actually entitled to benefit.

THE LAW

PRELIMINARY CONSIDERATIONS

As to the personal scope of the complaint

32. The Committee recalls that paragraph 1 of the Appendix to the Charter reads:

“1. Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.

This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.”

33. The complainant organisations submit that the present complaint concerns a group, which in Sweden is known as “vulnerable EU citizens”, referring to persons who are nationals of other EU Member States living in Sweden in a state of destitution and marginalisation.

34. The complainant organisations further submit that, according to EU law, incorporated into national legislation, all EU citizens can stay in the country for a maximum period of three months if they have a valid identity card. If they wish to stay for longer than three months, they must either be employed, seek employment with a reasonable prospect of finding it, study or have enough money to support themselves, as well as have comprehensive health insurance.

35. Amnesty International and *Médecins du Monde-International* state that EU citizens are not registered when they enter or leave the country and thus the authorities have no information if someone has been in Sweden for three months or more. The authorities will not automatically know whether these persons have the right of residence. There is no practice of expelling EU citizens who are deemed to lack the right of residence. Moreover, an EU citizen can leave Sweden and then re-enter to restart the three-month period multiple times.

36. Amnesty International and *Médecins du Monde-International* further state that, after three months, the legal status of EU migrants becomes unclear. Some argue that such persons should be considered undocumented migrants, while others believe that, given the open borders and freedom of movement within the EU, nationals of other EU Member States can never be classified as undocumented. This classification, however, is particularly important in relation to the right to healthcare because, according to Swedish law, persons considered to be undocumented migrants have a right to subsidised care, where such care cannot be deferred. Moreover, children who are undocumented have a right to healthcare free of charge.

37. The Committee notes that the present complaint concerns persons who are EU citizens. The Committee further notes that, in accordance with Directive 2004/38/EC, during the first three months, the host State, in this case Sweden, is not obliged to grant social assistance, including subsidised healthcare, to EU citizens. The States can grant subsidised healthcare to EU citizens, but it does not appear that Sweden does so.

38. The Committee notes that, if an EU citizen has health insurance in their country of origin, such person is entitled to necessary medical treatment in the EU Member State where they temporarily reside at the same cost as nationals of that country. However, as it appears from the submissions of the complainant organisations, the majority of the EU migrants who are concerned by the present complaint lack health insurance in their countries of origin and cannot access subsidised healthcare in Sweden.

39. The Committee further notes that it is unclear whether the Act (2013:407), which entitles foreigners residing in Sweden under certain conditions to care that cannot be deferred, care during pregnancy and childbirth and post-natal care, care in connection with abortion and contraceptive advice at a minimum cost, applies to EU migrants. The Act is interpreted differently by the Swedish regions and the decision often falls on the healthcare workers, and there are no clear and uniform rules as to what is healthcare that cannot be deferred. The Committee will therefore consider for the purposes of the present complaint that the Act (2013:407) does not always apply to EU migrants.

40. The Committee therefore considers that the group of persons concerned by the present complaint is EU citizens who do not have relevant health insurance in their country of origin and who have moved from it to Sweden. Moreover, these persons do not satisfy the conditions of the right to residence in Sweden. Finally, because it is impossible to determine whether they have been in Sweden for three months or more, the Committee considers that the group of the persons concerned by the present complaint are persons who are staying in Sweden for more than three months. The Committee notes that, because of the particularity of the group of persons concerned, the personal scope of the complaint should firstly be assessed.

41. Referring to the case law of the Committee on the personal scope of the Charter (*Médecins du Monde-International v. France*, Complaint. No. 67/2011, decision on the merits of 11 September 2012, §33), the complainant organisations submit that all EU migrants like any other EU citizen should enjoy the right to protection of health and the right to medical assistance in Sweden.

42. The Government does not contest the applicability of the rights invoked to the persons concerned by the complaint.

43. The Committee refers to its previous decisions (International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, decision on the merits of 26 January 2021, §75; European Committee for Home-Based Priority Action for the Child and Family (EUROCEF) v. France, Complaint No. 114/2015, decision on the merits of 24 January 2018, §§49-57; Defence for Children International (DCI) v. Belgium, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§28-39; Defence for Children International (DCI) v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, §§34-38, 46-48) and recalls that the restriction of the personal scope included in paragraph 1 of the Appendix should not be read in such a way as to deprive foreigners in an irregular migration situation of the protection of Charter rights which are connected to the right to life and to psychological or physical integrity and health and which thus go to the very dignity of the human being.

44. The Committee recalls that the application of the Charter's provisions to foreign migrants in an irregular situation is entirely exceptional and is not applicable to all the provisions of the Charter (DCI v. Belgium, Complaint No. 69/2011, op.cit., §35). Such application is justified solely in the event that excluding foreigners in an irregular migration situation from the protection afforded by the Charter would have seriously detrimental consequences as to the right to life and to psychological or physical integrity and health and would consequently place the foreigners in question in an unacceptable situation, regarding the enjoyment of these rights, as compared with the situation of nationals and of lawfully resident foreigners.

45. The Committee notes that the situation of the persons concerned by the present complaint is different from that of foreign migrants in an irregular situation from the perspective of the right to reside in a country. Foreign migrants in an irregular situation are not authorised to enter or stay in a country while the persons concerned by the present complaint, being EU citizens, can enter Sweden legally and stay there legally for at least three months. However, they could be considered to become irregular if they do not have health insurance in their home EU country and if they do not qualify for the residence rights in Sweden with respect to other social rights than migration rights. Therefore, with regard to Article 11, Article 13§§1-3, as well as Article E of the Charter, it is important to examine whether the persons concerned by the present complaint are covered by these Articles of the Charter.

46. In that connection, the Committee recalls that, in accordance with paragraph 1 of the Appendix to the Charter, without prejudice to Article 12§4 and Article 13§4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned. The persons concerned by the present complaint are nationals of other States Parties (members of the EU), they therefore satisfy the first condition of paragraph 1 of the Appendix to the Charter. However, these persons are not lawfully resident or working regularly within the territory of the Party concerned, namely Sweden.

47. The Committee considers therefore that, although persons concerned by the present complaint and foreign migrants in an irregular situation are not in the same situation in relation to the right to reside in a country, in the situation where vulnerable EU citizens have neither health insurance in the home country, nor residence rights in Sweden, their situation becomes comparable to that of irregular migrants with respect to Charter rights connected to the right to life and to psychological or physical integrity and health. Thus, EU migrants should not be deprived of the protection of Charter rights which go to the very dignity of the human being.

48. The Committee recalls that the application of the Charter's provisions to EU migrants that stay in Sweden without home country health insurance or without residence rights there is entirely exceptional and it is only justified if excluding them from the protection afforded by the Charter would have seriously detrimental consequences for their right to health and would place them in an unacceptable situation, regarding the enjoyment of these rights, as compared with the situation of nationals and lawfully resident foreigners.

As to the applicability of the provisions of the Charter at stake

49. With respect to the Charter provisions at stake, the complainant organisations allege that the situation described in the present complaint is in breach of the following provisions:

- a. Article 11§§1-3, as by the continued denial of healthcare services for EU migrants in Sweden, the billing of the full cost of healthcare services when they have access to healthcare services, the authorities deprived these persons of their right to protection of health;
- b. Article 13§§1-4, as by denying the persons concerned adequate assistance and care in case of sickness, the authorities failed to ensure that persons without adequate resources have access to social and medical assistance;
- c. Article E taken together with each of the above-mentioned provisions on account of discrimination of the persons concerned by the failure of the authorities to ensure that all persons, including non-citizens, enjoy equal access to healthcare.

50. With regard to Article 11 of the Charter, the Committee notes that its first paragraph requires States Parties to take appropriate measures to remove the causes of ill-health and that, as interpreted by the Committee, this means, inter alia, that States Parties must ensure that all individuals have the right of access to healthcare and that the health system must be accessible to the entire population.

51. In this connection, the Committee has already underlined that healthcare is a prerequisite for the preservation of human dignity and that human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or the European Convention on Human Rights (DCI v. Belgium, Complaint No. 69/2011, op.cit., §101). For this reason, the Committee has already applied its teleological interpretation of the personal scope of the Charter in respect of Article 11§1, noting that the States Parties have guaranteed to foreigners not covered by the Charter rights identical to or inseparable from those of the Charter by ratifying human rights treaties – in particular the European Convention on Human Rights – or by adopting domestic rules whether constitutional,

legislative or otherwise without distinguishing between persons referred to explicitly in the Appendix and other non-nationals. In so doing, the Parties have undertaken these obligations (ibid.).

52. In light of the above, the Committee holds that Article 11 is applicable to the persons concerned by this complaint.

53. With regard to Article 13 of the Charter, in light of the Appendix to the Charter, foreigners who are nationals of States Parties to the Charter and are regularly residing in the territory of another State Party and lack adequate resources, enjoy an individual right to appropriate assistance under Article 13§1 on equal footing with nationals, i.e. beyond emergency assistance (European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, Complaint No. 86/2012, decision on the merits of 2 July 2014, §139).

54. With regard to Article 13§4 of the Charter, the Committee recalls that emergency social assistance should be provided under the said provision to all foreign nationals without exception (FEANTSA v. the Netherlands, Complaint No. 86/2012, op.cit., §141). Also, migrants having exceeded their permitted period of residence within the jurisdiction of the State Party in question have a right to emergency social assistance (ibid.).

55. In this connection, the Committee recalls that issues in respect of adequate social assistance granted to any person, including migrants in an irregular situation, without adequate resources, should be considered under Article 13§1, and not under Article 13§4 (Conclusions 2013, Statement of interpretation on Article 13§1 and 13§4). With regard to EU migrants, the Committee considers that the same considerations apply.

56. Article 13§1 is accordingly applicable in respect of persons concerned by the complaint.

57. However, while Amnesty International and *Médecins du Monde-International* argue that the authorities violated several provisions of the Charter (Articles 11§§1-3, 13§§1-4, read alone and Article E read in conjunction with each of the provisions concerned of the Charter), the Committee notes that the complainant organisations' allegations in respect of a number of the Charter provisions invoked (Articles 11§§2-3, 13§§1-4 read alone and Article E read in conjunction with those provisions of the Charter) are not sufficiently substantiated to allow a distinct assessment under all of these provisions.

58. The Committee recalls that Article 11§2 of the Charter covers two different issues: education and awareness-raising (Conclusions 2007, Albania) and medical consultation and screening for pregnant women and children (Conclusions 2005, Republic of Moldova). In the present complaint, Amnesty International and *Médecins du Monde-International's* allegations are related to the alleged denial of healthcare services to EU migrants or high bills for healthcare services rather than to education and awareness-raising. The Committee therefore rejects the allegation in respect of Article 11§2 as unsubstantiated.

59. With regard to Article 11§3 of the Charter, the Committee notes that States Parties must take appropriate measures to prevent as far as possible activities which are detrimental to human health (diseases and accidents). In terms of preventive measures, States Parties must apply the precautionary principle: when a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects on human health, the State Party must take precautionary measures consistent with the high level of protection provided for in Article 11, to prevent those potentially dangerous effects (see Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020). The Committee notes that the allegations of the complainant organisations are not related to the prevention of epidemic, endemic and other diseases and accidents but to the provision of healthcare to EU migrants in general. Consequently, the Committee rejects the allegation in respect of Article 11§3 as unsubstantiated.

60. With respect to Article 13§2 of the Charter, the Committee notes that persons receiving assistance must not suffer any diminution of their political or social rights as a result. The allegations of Amnesty International and *Médecins du Monde-International* do not address the impact of the assistance on the EU migrants' political or social rights. Consequently, the Committee rejects the allegation in respect of Article 13§2 as unsubstantiated.

61. Finally, with regard to Article 13§3 of the Charter, the Committee notes that it concerns free of charge services offering advice and personal assistance specifically addressed to persons without adequate resources or at risk of becoming so (Conclusions 2013, Bosnia and Herzegovina). The allegations of Amnesty International and *Médecins du Monde-International* do not address this issue, but rather the provision of healthcare to EU migrants and the high costs associated with it. Consequently, the Committee rejects the allegation in respect of Article 13§3 as unsubstantiated.

62. Considering all the information at its disposal and in view of the above considerations, the Committee decides to examine this complaint under Articles 11§1, 13§1 of the Charter read alone and Article E read in conjunction with Articles 11§1 and 13§1 of the Charter.

I. ALLEGED VIOLATION OF ARTICLE 11§1 OF THE CHARTER TAKEN ALONE AND OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 11§1 OF THE CHARTER

63. Article 11§1 of the Charter reads 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;
[...]"

64. Article E of the Charter reads as follows:

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.”

A – Arguments of the parties

1. The complainant organisations

65. Amnesty International and *Médecins du Monde-International* state that most individuals in the group of vulnerable EU migrants, although EU citizens, lack the European Health Insurance Card. This card serves as proof of insurance in an EU Member State and, upon producing this card, an EU national visiting or residing in another EU Member State, should get medical services on the same terms as the citizens of that Member State. However, when individuals do not have healthcare coverage in their own country, they are also not covered by the EU health insurance.

66. Amnesty International and *Médecins du Monde-International* further state that the Government has failed to clarify the status of EU citizens after their first three months in the country and the consequence of this failure is a legal limbo for these persons which impacts on their ability to access affordable healthcare.

67. Amnesty International and *Médecins du Monde-International* submit that the Police Authority in November 2015 estimated that there were around 4,700 individuals in Sweden who were citizens of another EU country, and who in their home country lived in poverty and social exclusion. In 2018, this figure was estimated at 4,800. According to the National Coordinator’s final report of 2020, Romania and Bulgaria are the two most common countries of origin of EU migrants in Sweden, other countries of origin mentioned include Estonia, Hungary, Ireland, Latvia, Lithuania and Poland. Neither that report, nor any other official documents indicate how many of the individuals concerned are of Roma background, but, according to the complainant organisations, it is likely that they comprise the majority.

68. The complainant organisations describe the research conducted by Amnesty International between August 2017 and August 2018 on the situation of vulnerable EU citizens in Sweden. There were four focus areas of the research, one of them was the right to the highest attainable standard of health. Comprehensive desk research was combined with in-depth interviews of 58 EU migrants of Romanian nationality living in six municipalities. 34 interviews were carried out with duty-bearers, including Government representatives, officials in local authorities and police officers. Of the 58 EU migrants interviewed, all but six were homeless and 48 supported themselves through begging. At least nine combined begging with collecting bottles and cans for recycling or other informal, short-term work. Six persons were in formal employment. Some 42 of the interviewees self-identified as Roma, six as Romanian non-Roma, of whom four were or had been married to Roma, two as Turkish and eight as Rudari. Six persons reported having valid health insurance and only one had a European Health Insurance Card. The report, published in 2018, consisted of a number of

recommendations to the Government and local municipalities, including clarifying the status of EU migrants.

69. Amnesty International and *Médecins du Monde-International* further describe interviews conducted between November 2021 and February 2022 by Amnesty International. The latter interviewed representatives of six civil society organisations providing social and medical support to EU migrants, scrutinised medical bills and medical records and contacted the regions to learn about their policies vis-à-vis this group. In total, 129 cases of violations related to the denial of healthcare, billing for the full cost of healthcare and a chilling effect leading to individuals refraining from seeking healthcare out of fear of costs were identified affecting 86 individuals. In 28 cases between 2016 and 2022, individuals were denied access to healthcare because of their status as EU migrants without health insurance. In 64 cases, individuals were billed for the full amount for receiving healthcare despite not being in a position to pay due to their socio-economic status. The amounts that the individuals were asked to pay vary between SEK 3,000 (€270) and SEK 178,251 (€15,950). In comparison, people who fall under the scope of the Act (2013:407), pay no more than SEK 50 (€5) for any doctor's appointment or emergency care, and maximum SEK 50 (€5) for prescribed medication. In 37 cases individuals refrained from seeking healthcare for the fear of the high cost related to it.

70. Amnesty International and *Médecins du Monde-International* state that Sweden has a universal health insurance system, which covers all citizens and residents, with responsibility for delivery of healthcare at the regional level. Healthcare that is provided by the regions can be divided in three different categories: complete care, care that cannot be deferred and immediate care. Domestic legislation distinguishes between those who are Swedish residents and those who are only living in the country temporarily. Those who are not residents still have the right to access immediate healthcare, but the cost of this healthcare is not subsidised. However, no one is to be denied such care due to inability to pay.

71. Amnesty International and *Médecins du Monde-International* state that it is not completely clear what exactly constitutes 'immediate care' in terms of access to healthcare, and it appears that the assessment is made on a case-by-case basis.

72. Amnesty International and *Médecins du Monde-International* therefore state that the denial in many cases of necessary healthcare to the persons concerned; the billing of the persons concerned for the full cost of necessary healthcare; the chilling effect of the above two factors leading the persons concerned to refrain from seeking necessary healthcare is in breach of Article 11§1 of the Charter.

73. Amnesty International and *Médecins du Monde-International* state that addressing intersectional discrimination is necessary to guarantee substantive equality and non-discrimination. Neither nationality, nor the successful completion of registration procedures should be the conditions to base the right of access to healthcare on.

74. The complainant organisations further submit that turning to public bodies to seek remedies cannot be considered a realistic option for the persons affected in the present complaint. Many EU migrants in Sweden are marginalised and live in

destitution, and due to systemic discrimination and social exclusion going back generations both in their home and host countries, they often avoid contact with the authorities.

2. The respondent Government

75. The Government states that the Swedish healthcare system provides affordable healthcare to persons registered as residents in Sweden. While the legislation governing the healthcare sector is national responsibility, it is primarily the 21 Swedish regions that provide healthcare services and apply the legislation in place. The regions have a legal responsibility to provide good healthcare to those who are registered as residents in the region. Residents in the region are those registered in the Swedish population register. In order to be registered as a resident in Sweden, a person must have the intention to stay in Sweden for at least one year. This applies equally for Swedish citizens. A person must also have the right to stay in Sweden to be registered. Accordingly, access to healthcare is not based on nationality but on the fulfilment of the requirements to register as a resident in a Swedish region.

76. The Government further describes the system of the European Health Insurance Card. It also notes that the responsibility of the regions to provide good healthcare to its registered residents is complemented with an obligation to provide immediate healthcare to any person present in the region, who is not a registered resident, and who is in need of such care. What is immediate healthcare, however, has not been defined in domestic legislation. In the legislative history of the Act on Health and Medical Services it is stated that it is the responsible medical staff that must assess and decide on a case-by-case basis whether a certain medical condition implies an immediate need of healthcare (see §18 above). In any case, the obligation to provide immediate healthcare to a patient in need does not include a requirement for such care to be subsidised. Immediate healthcare cannot be denied due to a patient's inability to pay.

77. The Government describes the legislative history of the Act (2013:407) (see §17 above). It states that the question of who can be considered undocumented is for the applying authorities or courts to decide.

78. The Government states that it is hopeful that all EU citizens will be covered by a healthcare scheme of their country of origin and thus will be entitled to healthcare services both there and in other Member States under the provisions of the coordination rules (see §29 above). It is difficult to overlook the consequences that could occur if persons who are not covered by health insurance in their country of origin and are moving freely within the EU would be granted general access to subsidised healthcare as long as they stay in Sweden.

79. The Government also states that, according to the Act on Discrimination, discrimination is prohibited with regard to health and medical care and other medical services. Moreover, the provisions concerning access to healthcare are by nature non-discriminatory since they apply to anyone present in the region, therefore, no breach of Article E of the Charter should be found. A patient who considers themselves treated unjustly in relation to healthcare can complain through different mechanisms, such as the Patient Advisory Committee or the Health and Social Care Inspectorate.

80. The Government therefore states that there is no violation of Article 11§1 of the Charter taken alone and of Article E taken in conjunction with Article 11§1 of the Charter.

B – Assessment of the Committee

Alleged violation of Article 11§1 of the Charter

81. The Committee recalls that the right to protection of health includes the right of access to healthcare, and that access to healthcare must be ensured to everyone without discrimination. This implies that healthcare must be effective and affordable to everyone, and that vulnerable groups at particularly high risk, such as homeless persons, persons living in poverty, older persons, persons with disabilities, persons living in institutions, persons detained in prisons, and persons with an irregular migration status must be adequately protected (see, for instance, International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, op. cit., §218).

82. As part of the obligations arising from Article 11§1, States Parties are required to provide appropriate and timely healthcare on a non-discriminatory basis.

83. Coming to the circumstances of the present case, the Committee notes that vulnerable EU migrants that do not have healthcare insurance in their country of origin are not entitled to subsidised healthcare in Sweden. According to the research provided by the complainant organisations, a significant number of individuals were denied access to healthcare because of their status as EU migrants without healthcare insurance. The conditions of the persons whose access to healthcare was denied varied from access to interruption of pregnancy, deep vein thrombosis, intense bleeding after abortion, issues with pancreas, a broken foot.

84. The Committee notes that the Government does not contest the findings made in the research carried out by Amnesty International. On the contrary, the Government claims that there would be negative consequences for Sweden if persons who are moving freely within the EU and who do not have healthcare insurance in their country of origin, were granted access to subsidised healthcare for the duration of their stay in Sweden. The Government does not address the issue of vulnerable EU migrants being denied access to healthcare in Sweden.

85. The Committee further observes that both the complainant organisations and the Government refer to the provision of the Act (2017:30) on Health and Medical Services which states that persons that are not residents of the Swedish regions still have the right to access immediate healthcare, but such healthcare is not subsidised (see §14 above).

86. The Committee further notes that the denial of access to healthcare to vulnerable EU migrants and return of some of the vulnerable EU migrants back to their countries of origin, where they also lack healthcare insurance, goes against the essence of Article 11§1 of the Charter. Healthcare is a prerequisite for the preservation of human dignity (see International Federation of Human Rights Leagues (FIDH) v.

France, Complaint No. 14/2003, decision on the merits of 3 November 2004, §31). Moreover, Article 11§1 of the Charter requires to ensure access to healthcare particularly to the vulnerable groups at particularly high risk (see International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, op. cit., §218). It is clear to the Committee that the persons concerned by the present complaint fall within the category of a vulnerable group, because persons in this group often live in a state of destitution, are unemployed or not officially employed, and the majority of them are from Roma communities.

87. The Committee notes that other international bodies such as the UN Committee on the Elimination of Racial Discrimination, the UN Committee on Economic, Social and Cultural Rights have recommended that Sweden take measures to ensure equal access by all Roma communities to healthcare, as well as access to basic services for vulnerable foreigners (see §§25-28 above).

88. On this basis, the Committee considers that the denial of access to healthcare to persons concerned by the present complaint on the basis of their status as vulnerable EU migrants is contrary to Article 11§1 of the Charter.

89. The Committee accordingly holds that there is a violation of Article 11§1 of the Charter.

Alleged violation of Article E in conjunction with Article 11§1 of the Charter

90. The Committee recalls that the right of access to healthcare requires that the cost of healthcare should be borne, at least in part, by the community as a whole (*Médecins du Monde-International v. France*, Complaint. No. 67/2011, op. cit., §140). This also implies that the cost of healthcare must not represent an excessively heavy burden for the individual. Steps must therefore be taken to reduce the financial burden on patients, in particular those from the most disadvantaged sections of the community (ibid.).

91. The Committee further recalls that Article E prohibits discrimination and therefore establishes an obligation to ensure that, in the absence of objective and reasonable justifications, any individual or groups with particular characteristics benefit in practice from the rights in the Charter. Moreover, Article E not only prohibits direct discrimination but also all forms of indirect discrimination. Discrimination may also 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 (see, *inter alia*, *Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52 and *ERRC v. Bulgaria*, Complaint No. 31/2005, decision on the merits of 18 October 2006, §40).

a) Differential treatment in different regions and in comparison to undocumented migrants

92. The Committee notes that the complainant organisations primarily allege that vulnerable EU migrants suffer discrimination in access to healthcare because their status is unclear in the national legislation and there are regional differences with regard to the application of the Act (2013:407). Moreover, in relation to the application

of Act (2013:407), persons who fall within its scope, pay no more than €5 for any doctor's appointment or emergency care, and maximum €5 for prescribed medication (see §68 above).

93. The Committee further notes that, according to the research referred to by the complainant organisations, there were a number of cases where individuals were billed for healthcare, and the bills ranged between €270 and €15,950. The bills were issued for surgery after foot injury, emergency gynecological treatment, emergency care after robbery and assault, maternal care, emergency treatment for high levels of cholesterol, emergency care after a stroke, emergency care for coronary thrombosis and myocardial infarction, hospitalisation for kidney surgery, pregnancy and childbirth care, emergency care for a work-related accident, emergency care after having been hit by a car. Also, Amnesty International provided information on situations where individuals refrained from seeking healthcare for fear of the high cost related to it.

94. The Committee notes that the vulnerable EU migrants seeking access to healthcare are treated differently depending on the region in which they live. For example, only one of the 21 regions expressly interprets the Act (2013:407) to mean that EU migrants who lack the European Health Insurance Card should be classified as undocumented foreigners while seeking medical care, irrespective of the length of their stay in Sweden. Six of the regions expressly exclude vulnerable EU migrants from the scope of the Act (2013:407). Two of the regions state that such persons should fall within the scope of that Act and be entitled to subsidised healthcare after residing in Sweden for more than three months, regardless of their circumstances. The remaining regions seem to be unclear and vague in their wording on the interpretation of the Act (2013:407). For example, four regions refer to a manual from the Swedish Association of Local Authorities and Regions (SALAR) on the interpretation of the EU Directive on the application of patients' rights in cross-border healthcare. However, because the SALAR manual is unclear on how to interpret the Act (2013:407), it is equally unclear how these regions apply the law in practice. Another region provides inconsistent information regarding its interpretation of the Act (2013:407). Some other regions do not have publicly available information about their interpretation of the Act (2013:407).

95. The Committee notes that the vulnerable EU migrants are not only treated differently depending on the region where they live; in addition, they are treated differently in comparison with undocumented migrants that fall within the scope of the Act (2013:407).

96. The Committee considers that there is no public health or public policy justification for this difference in treatment. It arises solely due to the diverging interpretation of the Act (2013:407) by the various regional authorities. The Committee notes that regional differences in the interpretation of whether to include vulnerable EU migrants in the scope of the Act (2013:407) are unacceptable as the core issue is the healthcare coverage. The Government's argument that there would be "negative consequences" for Sweden if any person using their right to freedom of movement within the EU was granted access to subsidised healthcare in Sweden in the absence of the healthcare coverage in their country of origin does not constitute an objective justification for the difference in treatment.

97. The Committee further considers that that even if the difference in treatment were to be based on an objective justification, it could not be proportionate to such a potential aim, since, because of the lack of absolutely necessary healthcare of vulnerable EU migrants, the situation amounts in practice to a denial of access to healthcare services. As a consequence, the difference in treatment constitutes discrimination and therefore a violation of Article E in conjunction with Article 11§1 of the Charter.

b) Disproportionate negative effect on Roma

98. The Committee also notes that, although all vulnerable EU migrants seem to not have access to subsidised healthcare, from the information provided by the complainant organisations it appears that the majority of persons affected by this lack of access is from the Roma community (see §67 above). This information is confirmed by the findings of other international bodies, such as the UN Human Rights Committee, the UN Committee on Economic, Social and Cultural Rights, the UN Committee on the Elimination of Racial Discrimination (see §§25-27 above). Therefore, the lack of access to healthcare has a considerable and disproportionate impact on the more disadvantaged categories of the population, and particularly on Roma.

99. Taking into account the fact that the majority of vulnerable EU migrants are from Roma communities, the Committee considers that this constitutes indirect discrimination on the grounds of ethnic origin in violation of Article E in conjunction with Article 11§1 of the Charter.

100. The Committee accordingly holds that there is a violation of Article E read in conjunction with Article 11§1 of the Charter.

II. ALLEGED VIOLATION OF ARTICLE 13§1 OF THE CHARTER TAKEN ALONE AND OF ARTICLE E TAKEN IN CONJUNCTION WITH ARTICLE 13§1 OF THE CHARTER

101. Article 13§1 of the Charter reads as follows:

Article 13 – The right to social and medical assistance

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

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

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
[...].”

102. Article E of the Charter reads as follows:

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.”

A – Arguments of the Parties

1. The complainant organisations

103. Amnesty International and *Médecins du Monde-International* state that most individuals in the group of vulnerable EU migrants, although EU citizens, lack the European Health Insurance Card. As they do not have healthcare coverage in their country of origin, they are not covered by the EU health insurance and therefore are not entitled to medical assistance.

104. Amnesty International and *Médecins du Monde-International* further state that all EU migrants like any other EU citizen are entitled to protection of their right to medical assistance in Sweden.

105. Amnesty International and *Médecins du Monde-International* state that vulnerable EU migrants suffer from discrimination in terms of the effective exercise of the right to medical assistance.

2. The respondent Government

106. The Government states that, according to the national legislation on social services, anyone present in a Swedish municipality shall be provided with a minimum of a necessary social protection. What it consists of needs to be assessed on a case-by-case basis.

107. The Government states that for EU citizens unable to provide for themselves, support with regard to social services can often include temporary accommodation, money for food and a ticket to return to their EU Member State of origin.

108. The Government therefore maintains that there is no violation of Article 13§1 of the Charter taken alone and of Article E taken in conjunction with Article 13§1 of the Charter.

B – Assessment of the Committee

109. The Committee recalls that Article 13§1 of the Charter requires that States Parties must ensure to anyone without adequate resources a subjective right to social and medical assistance. The obligation to provide assistance arises as soon as a person is in need, i.e. unable to obtain “adequate resources”. This means the resources needed to live a decent life and “meet basic needs in an adequate manner” (International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, op. cit., §236). States Parties are under an obligation to provide migrants who are in an irregular situation in their territory with urgent medical assistance and such basic social assistance as is necessary to cope with an immediate state of need (accommodation, food, emergency care and clothing) (FEANTSA v. the Netherlands, Complaint No. 86/2012, op.cit., §§169-188).

110. The Committee notes that the complainant organisations' allegations in relation to access to healthcare have already been addressed under Article 11§1 of the Charter taken alone and Article E taken in conjunction with Article 11§1 of the Charter. The Committee therefore does not consider it necessary to examine these issues separately from the standpoint of Article 13§1 of the Charter taken alone and Article E taken in conjunction with Article 13§1 of the Charter.

CONCLUSION

For these reasons, the Committee concludes:

- unanimously that there is a violation of Article 11§1 of the Charter with respect to the denial of access to healthcare to persons concerned on the basis of their status as vulnerable EU migrants;
- unanimously that there is a violation of Article E taken in conjunction with Article 11§1 of the Charter with respect to the difference in treatment of vulnerable EU migrants in different regions and in comparison to undocumented migrants;
- unanimously that there is a violation of Article E taken in conjunction with Article 11§1 of the Charter with respect to the existence of indirect discrimination on the ground of ethnic origin.



Kristine DUPATE
Rapporteur



George THEODOSIS
Vice-President



Henrik KRISTENSEN
Executive Secretary

APPENDIX

Decision on admissibility

DECISION ON ADMISSIBILITY

6 December 2023

Amnesty International and Médecins du Monde – International v. Sweden

Complaint No. 227/2023

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 338th session, attended by:

Aoife NOLAN, President
Eliane CHEMLA, Vice-President
Tatiana PUIU, Vice-President
Kristine DUPATE, General Rapporteur
József HAJDÚ
Karin Møhl LARSEN
Yusuf BALCI
Paul RIETJENS
George THEODOSIS
Mario VINKOVIC
Miriam KULLMANN
Carmen SALCEDO BELTRÁN
Franz MARHOLD
Alla FEDOROVA
Grega STRBAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary,

Having regard to the complaint registered on 28 June 2023 as number 227/2023, lodged by Amnesty International and *Médecins du Monde-International* against Sweden and signed by Mandi Mudarikwa, Head of Strategic Litigation of Amnesty International and Hannah Laustiola, Executive Director of *Médecins du Monde* Sweden, requesting the Committee to find that the situation in Sweden is in violation of Articles 11 and 13 read alone and of Article E read in conjunction with the aforementioned provisions of the revised European Social Charter (“the Charter”);

Having regard to the documents appended to the complaint;

Having regard to the letter of the Swedish Government (“the Government”) on the admissibility of the complaint, registered on 22 September 2023;

Having regard to the Charter and, in particular, to Articles 11, 13 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 13 – The right to social and medical assistance

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

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

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 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”).

Having deliberated on 5 and 6 December 2023;

Delivers the following decision, adopted on the latter date:

1. Amnesty International and *Médecins du Monde-International* allege that the situation of vulnerable EU migrants in Sweden (defined as citizens of another EU country, who in their home country live in poverty and social exclusion and have made their way to Sweden to support themselves) is in violation of Articles 11 and 13 read alone and of Article E read in conjunction with the aforementioned provisions of the Charter due to:

- the denial in many cases of necessary healthcare to the persons concerned;
- the billing of the persons concerned for the full cost of necessary healthcare;
- the chilling effect of the above two factors leading the persons concerned to refrain from seeking necessary healthcare.

2. The Government did not object to the admissibility of the complaint.

THE LAW

3. The Committee observes that, in accordance with Article 4 of the Protocol, which was ratified by Sweden on 29 May and entered into force for this State on 1 July 1998, the complaint has been submitted in writing and concerns Articles 11 and 13, provisions accepted by Sweden when it ratified the treaty on 29 May 1998, as well as Article E. Sweden has been bound by these provisions since the entry into force of this treaty in its respect on 1 July 1999.

4. The Committee notes that, in accordance with Articles 1 (b) and 3 of the Protocol, Amnesty International and *Médecins du Monde-International* are international non-governmental organisations holding participatory status with the Council of Europe. They are included on the list, established by the Governmental Committee, of international non-governmental organisations that are entitled to lodge complaints before the Committee.

5. With respect to the particular competence of the above-mentioned organisations within the meaning of Article 3 of the Protocol, it further notes that:

- Concerning Amnesty International, the Committee has already considered its particular competence in the framework of the collective complaints procedure (see *Amnesty International v. Greece*, Complaint No. 217/2022, decision on admissibility of 12 September 2023, §6; *Amnesty International v. Italy*, Complaint No. 178/2019, decision on admissibility of 4 July 2019, §7). The Committee considers that the present complaint relates to health and human rights, a matter in which Amnesty International has particular competence.

- Concerning *Médecins du Monde-International*, the Committee has also already found its particular competence in the framework of the collective complaints procedure (see *Médecins du Monde – International v. France*, Complaint No. 67/2011, decision on admissibility of 13 September 2011, §6). The Committee considers that the present complaint relates to health and human rights, a matter in which *Médecins du Monde-International* has particular competence.

6. Moreover, the Committee observes that Amnesty International and *Médecins du Monde-International* indicate for each of the provisions invoked the manner in which it considers that Sweden has not ensured the satisfactory application of the Charter. On this basis, the Committee considers that the complaint fulfils the requirements set out in Article 4 of the Protocol for the purposes of admissibility.

7. Finally, the Committee observes that the complaint is signed by Mandi Mudarikwa, Head of Strategic Litigation of Amnesty International and Hannah Laustiola, Executive Director of *Médecins du Monde* Sweden, who are duly authorised to act on behalf of their respective organisations. The Committee therefore considers that the complaint complies with Rule 23 of its Rules.

8. On these grounds, the Committee, on the basis of the report presented by Kristine DUPATE, 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 organisations 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§2 of the Charter, and to publish it on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 15 February 2024.

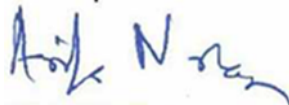
Invites Amnesty International and *Médecins du Monde – International* to submit a response to the Government's submissions by a deadline which the Committee shall determine.

Invites Parties to the Protocol and the States having submitted a declaration pursuant to Article D§2 of the Charter to make comments by 15 February 2024.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the Charter to make observations by 15 February 2024.



Kristine DUPATE
Rapporteur



Aoife NOLAN
President



Henrik KRISTENSEN
Deputy Executive Secretary