European Social Charter | Charte Sociale Européenne

COUNCIL OF EUROPE | CONSEIL DE L'EUROPE

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

Confidential[1]

International Federation for Human Rights (FIDH) v. Greece

Complaint No. 72/2011

REPORT TO THE COMMITTEE OF MINISTERS

Strasbourg, 23 January 2013

[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 resolution, or no later than four months after it has been transmitted to the Committee of Ministers, namely 5 June 2013.

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 report[1] on Complaint No. 72/2011. The report contains the Committee's decision on the merits of the complaint (adopted on 23 January 2013). The decision on admissibility (adopted on 7 December 2011) is appended.

2. The Protocol came into force on 1 July 1998. It has been ratified by Belgium, Croatia, Cyprus, Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal and Sweden. Furthermore, Bulgaria and Slovenia 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 revised on 12 May 2005 at its 207th session, on 20 February 2009 at its 234th session and on 10 May 2011 at its 250th session.

4. 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 resolution, or no later than four months after it has been transmitted to the Committee of Ministers, namely 5 June 2013.

[1] This report may be subject to editorial revision.

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

DECISION ON THE MERITS

23 January 2013

International Federation for Human Rights (FIDH)

v. Greece

Complaint No. 72/2011

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 262nd session attended by:

Luis JIMENA QUESADA, President
Monika SCHLACHTER, Vice-President
Petros STANGOS, Vice-President
Colm O'CINNEIDE, General Rapporteur
Lauri LEPPIK
Rüçhan IŞIK
Jarna PETMAN
Elena MACHULSKAYA
Giuseppe PALMISANO
Karin LUKAS
Eliane CHEMLA
Jozsef HAJDU
Marcin WUJCZYK

Assisted by Régis BRILLAT, Executive Secretary

Having deliberated on 23 January 2013,

On the basis of the report presented by Karin LUKAS,

Delivers, in English only, the following decision adopted on this date:

PROCEDURE

1. The complaint lodged by FIDH was registered at the Secretariat on 8 July 2011.

2. The International Federation of Human Rights Leagues ("FIDH") alleges that the dumping of waste in the River Asopos and the subsequent harmful effects of large-scale environmental pollution on the health of the people concerned gives rise to a violation of Article 11 of the 1961 Charter ("The Charter"). According to the complainant organisation, the Greek State has not taken enough steps to eliminate or reduce the harmful impact of the above-mentioned pollution on the health of the persons concerned, and to ensure that said persons can fully enjoy their right to protection of health.

3. The complaint was declared admissible on 7 December 2011. In accordance with Article 7, paragraphs 1 and 2, of the Protocol providing for a system of collective complaints ("the Protocol") and with the Committee's decision on the admissibility of the complaint, on 16 December 2011 the Executive Secretary communicated the text of the admissibility decision to the Greek Government ("the Government") and FIDH. On 19 December 2011, he also sent the decision to the States Parties to the Protocol and the States that have made a declaration in accordance with Article D§2 of the Revised Charter, and to the organisations referred to in Article 27§2 of the 1961 Charter.

4. In accordance with Article 31§1 of the Committee's Rules, the Committee set a deadline of 3 February 2012 for presentation of the submissions on the merits of the complaint. At the Government's request, the President of the Committee granted an extension of the deadline up to 16 March 2012. This deadline was not met. The Government's documents were received by the Secretariat on 26 March 2012.

5. Following the Rules of the Committee, the latter decided that given their late communication, the above-mentioned documents shall be not taken into account. During its 259th Session, the Committee invited both parties to provide updated information. On this basis, on 17 September 2012 the Executive Secretary sent a letter, including a list of questions, to the Government and FIDH asking for a reply by 15 October 2012.

6. The reply of FIDH to the Committee's request of updated information was registered at the Secretariat on 15 October 2012. At the Government's request, the President of the Committee granted an extension of the deadline up to 9 November 2012. The Government's reply to the Committee's request was registered at the Secretariat on 8 November 2012.

SUBMISSIONS OF THE PARTIES

1 – The complainant organisation

7. FIDH alleges that large-scale environmental pollution of the water of the River Asopos – including both surface and groundwater - in the catchment area of the River Asopos and near the industrial area of Oinofyta ("the region of Oinofyta") due to the discharge of industrial liquid waste has harmful effects on the health of the people concerned and therefore gives rise to a violation of Article 11 of the Charter. According to FIDH, Greek authorities have not taken enough steps to eliminate or reduce the harmful impact of the above-mentioned pollution on the health of the people living in the region of Oinofyta and to ensure that these persons can fully enjoy their right to protection of health.

8. As regards the issue of the competence *ratione temporis* of the Committee, the complainant organisation maintains that the environmental pollution of the region of Oinofyta has continued without interruption after the start of the industrial area in the region. As a result, the population concerned has been exposed to polluted water for several decades. For some people the effects of the long term exposure to pollution was immediately detectable, whereas for others it arose several years after exposure. With this in mind, after recalling the dates of accession of Greece to both the Charter and the Protocol, as well as some Committee's past decisions, FIDH is of the opinion that the latter is competent to consider facts prior to the entry into force of the Protocol in Greece.

2 – The Government

9. Having regard to the information provided with respect to the initiatives taken by the Greek authorities, at central, regional and local level to remedy the pollution of the Asopos River and the related health problems, the Government asks the Committee to rule that there is no violation of Article 11 of the Charter by Greece.

RELEVANT LAW AND CASE-LAW

INTERNATIONAL LEVEL

Aarhus Convention of 25 June 1998 on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters

10. The Aarhus Convention establishes a number of rights of the public (individuals and their associations) with regard to the environment. The Parties are required to make the necessary provisions so that public authorities (at national, regional or local level) will contribute to these rights to become effective.

11. More particularly, the Aarhus Convention provides for:

- the right of everyone to receive environmental information that is held by public authorities ("access to environmental information"). This can include information on the state of the environment, but also on policies or measures taken, or on the state of human health and safety where this can be affected by the state of the environment. Applicants are entitled

to obtain this information within one month of the request and without having to say why they require it. In addition, public authorities are obliged, under the Convention, to actively disseminate environmental information in their possession;

- the right to participate in environmental decision-making. Arrangements are to be made by public authorities to enable the public affected and environmental non-governmental organisations to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment, these comments to be taken into due account in decision-making, and information to be provided on the final decisions and the reasons for it ("public participation in environmental decision-making");

- the right to review procedures to challenge public decisions that have been made without respecting the two aforementioned rights or environmental law in general ("access to justice").

12. Greece ratified the Aarhus Convention by Act No. 3422/2005.

International Covenant on Economic, Social and Cultural Rights

13. In the framework of its monitoring responsibilities, the United Nations Committee on Economic, Social and Cultural Rights stated that:

- "The water required for each personal or domestic use must be safe, therefore free from … chemical substances… that constitute a threat to a person's health" (General Comment No. 15: the Right to Water - Articles 11 and 12 of the Covenant, paragraph 12 – as adopted at the Twenty-ninth Session of the Committee, 20 January 2003. Document E/C.12/2002/11);

- "The improvement of all aspects of environmental and industrial hygiene" (art. 12.2 (b)) comprises, *inter alia*, preventive measures in respect of occupational accidents and diseases; the requirement to ensure an adequate supply of safe and potable water and basic sanitation; the prevention and reduction of the population's exposure to harmful substances such as (…) harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health" (cf. General Comment No. 14: the right to the highest attainable standard of health - Article 12 of the Covenant, paragraph 15 as adopted at the Twenty-second session of the Committee on 25 April-12 May 2000. Document E/C.12/2000/4).

14. Greece acceded to the Covenant by Act No. 1532/1983.

The Treaty on European Union ("The EU")

15. Article 21§2

"The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
…".

Relevant directives of the EU

<u>Environmental management</u>

16. Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

The Directive establishes a framework for environmental liability based on the "polluter pays" principle, with a view to preventing and remedying environmental damage. Under the terms of the Directive, environmental damage is inter alia defined as direct or indirect damage to the aquatic environment covered by Community water management legislation. The principle of liability applies to environmental damage and imminent threat of damage resulting from, inter alia, dangerous or potentially dangerous occupational activities - including industrial activities requiring a licence under the Directive on integrated pollution prevention and control, activities which discharge heavy metals into water or the air, installations producing dangerous chemical substances, waste management activities - where it is possible to establish a causal link between the damage and the activity in question. Where there is an imminent threat of environmental damage, the competent authority designated by each Member State may: require the operator (the potential polluter) to take the necessary preventive measures; or take the necessary preventive measures and then recover the costs incurred. Where environmental damage has occurred, the competent authority may: require the operator concerned to take the necessary restorative measures; or take the necessary restorative measures and then recover the costs incurred. Environmental damage may be remedied in different ways depending on the type of damage: for damage affecting water, the Directive is aimed at restoring the environment to how it was before it was damaged.

17. Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (EIA Directive)

This Directive confirms a Europe-wide procedure to ensure that environmental consequences of projects are identified and assessed before authorisation is given. The public can give its opinion and all results are taken into account in the authorisation procedure of the project. The public is informed of the decision afterwards. It has become an integral and vital part of the planning of development projects, and requires the submission of an EIA with the application for development consent. The planning authority is required to review the application. The review and all necessary comments must published and must identify any likely challenges of the application are further accommodated through judicial reviews. All these must be taken on board before development consent can be granted and which must also be published.

Application and control of environmental law

18. Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

Further to its acceptance, EU legislation must be compatible with the Aarhus Convention. Accordingly, the purpose of this Directive aims is to ensure that environmental information is systematically available and distributed to the public. Member States must ensure that public authorities make environmental information held by or for them available to any applicant, whether a natural or a legal person, on request and without the applicant having to state an interest. They must also ensure that: officials assist the public in seeking access to information; lists of public authorities are publicly accessible; the right of access to environmental information can be effectively exercised; that all information held by the public authorities relating to imminent threats to human health or the environment is immediately distributed to the public likely to be affected; that any applicant who considers that his request for information has not been handled in accordance with the provisions of the Directive has access to a procedure of administrative reconsideration or review. Any such procedure must be expeditious and inexpensive, and must be carried out by an independent body.

19. Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law

This Directive aims at obliging Member States to impose criminal penalties on certain behaviour which is seriously detrimental to the environment. This minimum threshold for harmonisation will allow environmental legislation to be better applied, in line with the objective for the protection of the environment laid down in Article 174 of the Treaty establishing the European Community (EC Treaty).

Waste management

20. Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives

This Directive establishes a legal framework for the treatment of waste (any substance or object which the holder discards or intends or is required to discard) within the Community. It aims at protecting the environment and human health through the prevention of the harmful effects of waste generation and waste management. In order to better protect the environment, the Member States should take measures for the treatment of their waste in line with the following hierarchy which is listed in order of priority: prevention; preparing for reuse; recycling; other recovery, notably energy recovery; disposal. Member States should ensure that waste management does not endanger human health and is not harmful to the environment. Dangerous waste must be stored and treated in conditions that ensure the protection of health and the environment. The competent authorities must establish one or more management plans to cover the whole territory of the Member State concerned. These plans contain, notably, the type, quantity and source of waste, existing collection systems and location criteria. Prevention programmes must also be drawn up, with a view to breaking the link between economic growth and the environmental impacts associated with the generation of waste.

21. Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control

This Directive ("the IPPC Directive") requires industrial and agricultural activities with a high pollution potential to have a permit. In order to receive a permit an industrial or agricultural installation must comply with certain basic obligations. In particular, it must: use all appropriate pollution-prevention measures, namely the best available techniques (which produce the least waste, use less hazardous substances, enable the substances generated to be recovered and recycled, etc.); prevent all large-scale pollution; prevent, recycle or dispose of waste in the least polluting way possible; use energy efficiently; ensure accident prevention and damage limitation; return sites to their original state when the activity is over. All permit applications must be sent to the competent authority of the Member State concerned. Its decision to license or reject a project, the arguments on which this decision is based and possible measures to reduce the negative impact of the project must be made public. The Member States must, in accordance with their relevant national legislation, make provision for interested parties to challenge this decision in the courts. The Member States are responsible for inspecting industrial installations and ensuring they comply with the Directive.

Water management

22. Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy

The European Union (EC) has established a framework directive for the protection of inland surface waters; groundwater; transitional waters; and coastal waters. Its ultimate objective is to achieve "good ecological and chemical status" for all Community waters by 2015. Member States have to identify all the river basins lying within their national territory and to assign them

to individual river basin districts. River basins covering the territory of more than one Member State will be assigned to an international river basin district. Member States are to designate a competent authority for the application of the rules provided for in this Framework-Directive within each river basin district. In 2009, management plans must be published for each river basin district, taking account of the results of the analyses and studies carried out. These plans cover the period 2009-2015. They shall be revised in 2015 and then every six years thereafter. The management plans must be implemented in 2012. They aim to: prevent deterioration, enhance and restore bodies of surface water, achieve good chemical and ecological status of such water by 2015 at the latest and to reduce pollution from discharges and emissions of hazardous substances; protect, enhance and restore the status of all bodies of groundwater, prevent the pollution and deterioration of groundwater, and ensure a balance between groundwater abstraction and replenishment; preserve protected areas.

23. Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration

This Directive is designed to prevent and combat groundwater pollution. Its provisions include: criteria for assessing the chemical status of groundwater; criteria for identifying significant and sustained upward trends in groundwater pollution levels, and for defining starting points for reversing these trends; preventing and limiting indirect discharges (after percolation through soil or subsoil) of pollutants into groundwater. Groundwater is considered to have a good chemical status when the concentration of pollutants conforms to the definition of good chemical status as set out in Annex V to the Water Framework Directive; if a value set as a quality standard or a threshold value is exceeded, an investigation confirms, among other things, that this does not pose a significant environmental risk. Member States must set a threshold value for each pollutant identified in any of the bodies of groundwater within their territory considered to be at risk. For each pollutant on the list, information (as defined in Annex III to this Directive) must be provided on the groundwater bodies characterised as being at risk, as well as on how the threshold values were set. These threshold values must be included in the River Basin District Management Plans provided for under the Water Framework Directive. Member States must identify any significant and sustained upward trend in levels of pollutants found in bodies of groundwater. In order to do so, they must establish a monitoring programme in conformity with Annex IV to this Directive.

24. Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption

Member States shall ensure that such drinking water: does not contain any concentration of any substance which constitutes a potential human health risk; meets the minimum requirements (microbiological and chemical parameters and those relating to radioactivity) laid down by the Directive. They will take any other action needed in order to guarantee the healthiness and purity of water intended for human consumption. Member States shall lay down the parametric values corresponding at least to the values set out in the Directive. The directive obliges EU member States to set values for additional parameters where the protection of human health so requires and to regularly monitor the quality of water intended for human consumption. Where the parametric values are not attained the Member States concerned shall ensure that the corrective action needed is taken as quickly as possible in order to restore water quality. Member States shall prohibit the distribution of drinking water or shall restrict its use and shall take any action needed where that water constitutes a potential human health hazard. Consumers shall be informed of any such action. Exemptions from the parametric values up to a maximum value are only possible when: they do not constitute a human health hazard; there is no other reasonable means of maintaining the distribution of drinking water in the area concerned; exemptions must be as restricted in time and must be accompanied by a detailed justification except if the Member State concerned feels that failure to meet the limit value is not serious and may be quickly remedied. Water sold in bottles or containers may not be exempted. Any Member State granting an exemption must inform the following thereof the population affected. The directive sets a parametric value for total chromium (50 µg/l = 0,05 mg/l), but not for Cr-6.

Judgments of the Court of Justice of the EU

25. In the judgment of 19 April 2012 - European Commission v Hellenic Republic (Case C-297/11 / OJ C 238, 13.8.2011), the Court declared that:

> "By having failed to draw up, by 22 December 2009, the river basin management plans for both river basins located entirely within its own territory and international river basins, and by having failed to send copies of those plans, by 22 March 2010, to the European Commission, the Hellenic Republic has failed to fulfil its obligations under Articles 13(1) to (3) and (6) and 15(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy and, in addition, by having failed to institute, by 22 December 2008, the public information and consultation procedure regarding the draft river basin management plans, the Hellenic Republic has failed to fulfil its obligations under Article 14(1)(c) of that directive".

26. The report from the European Commission to the European Parliament and the Council on the Implementation of the Water Framework Directive (2000/60/EC) River Basin Management Plans (COM(2012) 670 final) of 14 November 2012 confirms that in Greece "no plans have yet been adopted or reported".

27. In the judgment of 2 December 2010 - European Commission v Hellenic Republic (Case C-534/09 / OJ C 37, 13.2.2010), the Court declared that:

> "By failing to take the necessary measures to ensure that the competent national authorities see to it, by means of permits in accordance with Articles 6 and 8 of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) or, as appropriate, by reconsidering and, where necessary, by updating the conditions, that existing installations operate in accordance with the requirements of Articles 3, 7, 9, 10 and 13, Article 14(a) and (b) and Article 15(2) of that directive, not later than 30 October 2007, without prejudice to specific Community legislation, the Hellenic Republic has failed to fulfil its obligations under Article 5(1) of that directive".

28. In the judgment of 10 September 2009 - Commission of the European Communities v Hellenic Republic (Case C-286/08 / OJ C 223, 30.08.2008), the Court declared that:

> "By failing:
>
> - to draw up and adopt within a reasonable period a hazardous-waste management plan that accords with the requirements of the relevant Community legislation, and by failing to establish an integrated and adequate network of disposal installations for hazardous waste characterised by the most appropriate methods in order to ensure a high level of protection for the environment and public health, and,
>
> - to take all the necessary measures to ensure, as regards the management of hazardous waste, compliance with Articles 4 and 8 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste and Articles 3(1), 6 to 9, 13 and 14 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, the Hellenic Republic has failed to fulfil its obligations under, first, Articles 1(2) and 6 of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, read in conjunction with Articles 5(1) and (2) and 7(1) of Directive 2006/12, second, Article 1(2) of Directive 91/689, read in conjunction with the provisions of Articles 4 and 8 of Directive 2006/12, and, third, Articles 3(1), 6 to 9, 13 and 14 of Directive 1999/31".

29. As indicated by the Government, in all three cases mentioned above, a letter of formal notice was recently sent to the Greek authorities from the European Commission.

30. In this context, it should be noted that the European Commission has opened an infringement case relating to the pollution of the Asopos river (No. 2007/2370). This case has been used as an example in the framework of the case C-286/08 (see paragraph 28 above). In the beginning of 2010, the European Commission took the decision to treat case No. 2007/2370 under the horizontal case C-286/08, for which a Court ruling has already been delivered. The European Commission confirmed that it will, therefore, continue to closely monitor the situation and ensure that Greece complies with the ruling as soon as possible.

> (cf. European Parliament document - Notice to Members on Petition 1684/2009, on pollution of the Greek River Asopos – ref. CM\822469EN.doc – PE/445/603)

NATIONAL LEVEL

General obligations

31. The Constitution, as amended in 2001, contains two articles relating to the environment and health protection, i.e.:

Article 21

> (…) 3. The State shall care for the health of citizens and shall adopt special measures for the protection of young, elderly and disabled people and for the relief of the needy.

Article 24

> The protection of the natural and cultural environment is the State's duty and everyone's right. The State is required to adopt special preventive or enforcement measures for the preservation of the environment in accordance with the principle of sustainability (…).

32. Environmental Protection Act No. 1650/1986 (Official Journal A 160 16/10/1986), as amended by Act No. 3010/2002 (Official Journal A 91 (25/04/2002). This act is the first general law governing environmental matters in Greece. The aim of the Act is to establish fundamental rules, criteria and mechanisms for the protection of the environment so that everyone, as an individual and a member of society, can live in a high quality environment, which protects his or her health and fosters his or her personal development.

Specific obligations

33. The following sectorial provisions of the domestic law are mentioned, inter alia, in the submissions of the parties:

34. Provisions relating to water management:

a) Act N. 3199/2003 (OJG 280A/2003) on the "water protection and management as amended by Acts No. 3481/2006, No. 3587/2007, No. 3621/2007 and No.3734/2009 - adopted in fulfillment of Directive 2000/60/EC.

b) Presidential Decree No. 51/2007 (O.G. A΄ 54) ''Specifying measures and procedures with respect to the integrated protection and management of water, in compliance with the provisions of Directive 2000/60/EC, mandated by the provisions of article 15, para. 1 of Act N. 3199/2003".

c) Joint Ministerial Decision No.Y2/2600/2001 (O.G. 892B/11-7-2001) on the "quality of water for human consumption", as amended by Joint Ministerial Decision

No.DYG2/G.P.38295/22.3.07 (O.G. 630/B/26.4.2007). Act implementing Directive 98/83/EC on the quality of water intended for human consumption.

d) Joint Ministerial Decision 1843/B/2010 - supplement to the Joint Ministerial Decision No 19652/1906/1999 on “Determination of waters that are polluted by nitrates from agricultural sources-List of affected zones, according to paras. 1 and 3 respectively of article 4 of Joint Ministerial Decision No. 16190/1335/1997, as amended and in force”.

e) Joint Ministerial Decision No.140384/2011 (O.G. 2017 B 09.09.2011), establishing the “National Monitoring Network for the quality and the quantity of waters”.

35. Provisions relating to waste management

a) Joint Ministerial Decision No. 8668/2007 (Official Gazette 287B) - Approval of the national hazardous waste management plan.

b) Joint Ministerial Decision 13588/2006a (Official Gazette 383B), Measures and conditions for the management of hazardous waste.

c) Joint Ministerial Decision 24944/1159/2006b (Official Gazette 791B) on Approval of general technical specifications of hazardous waste management.

36. Provisions relating to industrial development

a) Special Land Plan for Industry (GG/151/AAP/13.04.2009), providing guidelines for the spatial organisation of industry separately for each region at prefecture level.

b) Joint Ministerial Decision 11508/2009 (O.G. 151/AAP/13.04.2009) on the “Approval of a special framework for spatial planning and sustainable development for industry and of the strategic environmental assessment”.

c) Act No. 4014/2011 (O.G. A209/21.09.2011) on “The environmental licensing of works and activities, regulation of illegal constructions in connection with environmental stability and other provisions falling under the competence of the Ministry of Environment” (Decision 1958/13-1-2012 was issued in order to implement this act).

d) Presidential Decree No. 165/2003 (A’ 137) on “The responsibilities of the Special Environmental Inspectors’ Office”.

e) Act No. 3982/11 on the “simplification of licensing procedure for technical professions, manufacturing activities and business parks and other provisions”.

f) Special Framework for Spatial Planning and Sustainable Development of Industry (O.G. 151/AAP/2009).

37. Provisions relating to spatial planning

a) General Land Plan for the country / 2008 (GG/128/A/03.07.2008).

b) Joint Ministerial Decision 26298/2003 (O.G. 1469/2003) on “The Regional Framework approval of Spatial Planning and Sustainable Development for the Region of Sterea Ellada”.

38. Provisions relating to environmental impact assessment

a) Joint Ministerial Decision No. 107017/28.08.2006 (O.G. B 1225/2006) relating to the strategic environmental assessment of plans and programs and the incorporation of Directive 2001/42/EC.

b) Joint Ministerial Decision H.P. 15393/2332 (B 1022 05/08/2002) defining the categories of work and activities with common features for the purposes of evaluating and appraising their environmental impact, dividing them into ten main groups, one of which is “industrial installations”.

c) Joint Ministerial Decision H.P. 11014/703/F104 (B 332 - 20.03.03), implementing section 4 of Act No. 1650/1986, as amended by section 2 of Act No. 3010/2002.

d) Joint Ministerial Decision H.P. 3711/2021 (B 1391 - 29/09/2003) establishing the arrangements for informing the public about and participation in the procedure to approve the environmental criteria of projects and activities.

39. Provisions relating to environmental liability

a) Presidential Decree No. 148/2009 on environmental liability with regard to the prevention and remedying of environmental damage implemented Directive 2004/35/EC, as amended by Directive 2006/21/EC.

b) Act No. 4042/2012 (OG 24/A/13.02.2012) on the “Protection of the environment through criminal law”, implementing Directive 2008/99/EC.

40. Provisions relating to public participation

a) Joint Ministerial Decision No 11764/653 (O.G. B’ 327/17-3-2006) on public access to environmental information implementing Directive 2003/4/EC on public access to environmental information and repealing Council Directive 90/313/EEC.

b) Joint Ministerial Decision No 9269/470 (O.G. B’ 286/2-8-2007), implementing Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC.

c) Joint Ministerial Decision H.P.37111/2021 (O.G. B’ 1391/29-9-2003) on “Means of informing the public during the approval process of environmental conditions for projects and activities in accordance with article 5§2 of Act No. 1650/1986 as amended by article 3§2,3 of Act No 3010/2002” implementing Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice (Directives 85/337/EEC and 96/61/EC).

41. As regards the pollution / health problems in region of Oinofyta, the parties notably refer to the following provisions:

a) Joint Ministerial Decision 20488/2010 (O.G. 749/B/31.05.2010) on “The establishment of environmental quality standards for Asopos River and threshold values for the emission of liquid industrial waste into the Asopos catchment basin”.

b) Explanatory Circular No. 106072/23-8-2010 of the Ministry of the Environment, Energy and Climate Change ("YPEKA") on "Clarifications on the proper implementation of Joint Ministerial Decision No.20488/19-5-2010".

c) Ministerial Decision No.106116/7-9-2010 of YPEKA establishing a Committee consisting of Ministry officials responsible for monitoring the essential activities and actions relating to the necessary decontamination measures and the compliance of the area's industries with the requirements of Joint Decision No.20488/2010.

d) Ministerial decision No. 728/21.03.2008 setting up a working group "For the establishment of protection zones for the Asopos River".

OTHER SOURCES

World Health Organization's Guidelines for drinking-water quality

42. The fourth edition of the WHO Guidelines on drinking water (2011) relates inter alia to: drinking-water safety, including minimum procedures and specific guideline values and how these are intended to be used; approaches used in deriving the Guidelines, including guideline values; microbial hazards; chemical contaminants in drinking-water; those key chemicals responsible for large-scale health effects through drinking water exposure, including arsenic, fluoride, lead, nitrate, selenium and uranium, providing guidance on identifying local priorities and on management; the important roles of many different stakeholders in ensuring drinking-water safety. As far as hexavalent chromium ("Cr-6") is concerned, it is pointed out that the guideline provided for total chromium (0.05 mg/l = 50 μg/l) is designated as "provisional" because of uncertainties in the toxicological database.

International Agency for Research on Cancer (IARC)

43. The expert opinions expressed in the framework of IARC, which has classified Cr-6 in Group 1 (carcinogenic to humans). In the publication on *Arsenic, metals, fibres, and dusts volume 100 C - A review of human carcinogens* (2012 - Chapter on Chromium compounds, pp. 147-164) IARC confirms that the general population residing in the vicinity of anthropogenic sources of Cr-6 may be exposed through inhalation of ambient air or ingestion of contaminated drinking-water and there has been concern about possible hazards related to the ingestion of Cr-6 in drinking-water. In particular, it is indicated in the above-mentioned publication that there is a slightly elevated risk of stomach cancer in which drinking-water was heavily polluted by a ferrochromium plant.

US Department of Health and Human Services - Public Health Service Agency for Toxic Substances and Disease Register

44. The US Department of Health and Human Services - Public Health Service Agency for Toxic Substances and Disease Registry indicates that "Exposure to chromium occurs from ingesting contaminated food or drinking water or breathing contaminated workplace air. Chromium (VI) at high levels can damage the nose and cause cancer. Ingesting high levels of chromium (VI) may result in anemia or damage to the stomach or intestines".

(Information available on the following web page:
http://www.atsdr.cdc.gov/toxfaqs/tfacts7.pdf).

European Union

45. As regards the situation of the Asopos River, in November 2010, in its answer to a question by Mr Konstantinos Poupakis (PPE), European Parliament's member, the European Commission specifically indicated that:

> "(…) The Commission is aware of such pollution inter alia in the municipality of Oinofyta (Boeotia prefecture, Greece), with chromium pollution having affected waters and the quality of drinking water in the municipality. (…) As regards the water quality of the Asopos river and the groundwater at Oinofyta, elevated concentrations of pollutants including chromium led to the obligation to take the necessary remedial measures within the plans and programmes under the Water Framework Directive. (…) Consequently, the Commission has in 2010 commenced a legal infringement procedure against Greece (see paragraphs 25 and 30 above). (…) As regards the quality standards for drinking water, the Commission is closely following developments in scientific knowledge and evidence on drinking water quality parameters emerging in particular from the work within the World Health Organisation. It is regularly reviewing the parameters set out in the Drinking Water Directive, including those for chromium compounds, and will where appropriate propose amendments to Parliament and the Council.
>
> (Answer given by Mr Potočnik on behalf of the European Commission of 5 November 2010 to written question No. E-7572/2010).

THE LAW

PRELIMINARY OBSERVATIONS

Jurisdiction *ratione temporis*

46. Greece ratified the 1961 Charter on 06/06/1984 and accepted 67 of the 1961 Charter's 72 paragraphs, including Article 11§§1, 2 and 3. It accepted the Additional Protocol providing for a system of collective complaints on 18/06/1998.

47. The Committee notes that the origin of several issues dealt with in the complaint is long-term exposure to water pollution, dating back before 1998, whose effects have either been felt continuously since industrial activities began in the region of Oinofyta or have only be felt several years after exposure. In this respect, the Committee recalls that §3 of Article 14 of the draft articles prepared by the International Law Commission on responsibility of states for internationally wrongful acts deals with the extension in time of the breach of an international obligation and states that "the breach of an international obligation requiring a State to prevent a given event occurs when the event occurs and extends over the entire period during which the event continues and remains not in conformity with what is required by that obligation".

48. In the present complaint, the Committee considers that there may be a breach of the obligation to prevent damage arising from water pollution for as long as the pollution continues and the breach may even be progressively compounded if no measures are taken to put an end to it. Consequently, the Committee holds that it is

competent *ratione temporis* to consider all the facts of the present complaint (see, mutatis mutandis, Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No.30/2005, Decision on the merits of 6 December 2006, §193).

Scope of the complaint in relation to the right to protection of health

49. As regards the right to a healthy environment, the Committee recalls that, as pointed out in the above-mentioned decision, it takes into account:

> - "(…) the growing link that States party to the Charter and other international bodies (…) make between the protection of health and a healthy environment, and has interpreted Article 11 of the Charter (right to protection of health) as including the right to a healthy environment";
>
> - "(…) the principles established in the case-law of other human rights supervisory bodies (…)";
>
> - and "In view of the scale and level of detail of the European Union's body of law governing matters covered by the complaint (…), of judgments of the Court of Justice of the European Union".
>
> (Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No.30/2005 / decision on the merits of 6 December 2006, §§195-196).

50. With this in mind, as far as the right to health is concerned, the Committee recalls that:

> "(…) The right to protection of health guaranteed in Article 11 of the Charter complements Articles 2 and 3 of the European Convention on Human Rights - as interpreted by the European Court of Human Rights - by imposing a range of positive obligations designed to secure its effective exercise. This normative partnership between the two instruments is underscored by the Committee's emphasis on human dignity. In Collective Complaint FIDH v. France (No. 14/2003) it stated that "human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention of Human Rights and [that] health care is a prerequisite for the preservation of human dignity" (Conclusions 2005, Statement of Interpretation on Article 11, §5).

51. The Committee considers that the right to protection of health guaranteed in Article 11 of the Charter also complements Article 8 (Right to respect for private and family life) of the European Convention on Human Rights as interpreted by the European Court of Human Rights. The latter recalled that severe environmental pollution may adversely affect individuals' well-being and can therefore constitute a violation of Art 8. The Court held that the state must take appropriate regulatory measures as well as monitoring activities to ensure compliance of regulation by the companies concerned. Where there are risks to health from environmental pollution, persons who are affected have a right to obtain information about these risks from the relevant authorities (see for example Lopéz Ostra v. Spain of 9. 12. 1994, Guerra and Others v. Italy of 19.02.1998, and Ledyayeva v. Russia of 26. 10. 2006).

Responsibility for implementing the Charter

52. The Committee notes that a number of other considerations formulated in the framework of its supervisory responsibilities with respect to the responsibilities for

implementing the Charter are applicable, *mutatis mutandis*, to the present complaint. In this respect, the Committee considers that the allegations concerning the violation of the Charter due to actions / omissions by regional and/or local authorities must necessarily come within the scope of responsibility of the State. Consequently, the Committee holds that, as a State Party to the Charter, the Greek State must ensure that the obligations arising from the Charter are complied with by the above-mentioned authorities (International Federation of Human Rights v. Belgium, Complaint No. 62/2010, decision on the merits of 21 March 2012, § 51; European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, § 29).

ALLEGED VIOLATION OF ARTICLE 11 OF THE CHARTER

53. Article 11 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 co-operation 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."

A – Submissions of the parties

1 – The complainant organisation

Origins, extent and impact of the pollution

54. The complainant organisation maintains that the pollution is due to the discharge of industrial liquid waste into the River Asopos and the groundwater in the region of Oinofyta. This pollution started when industries began to be established in the region from 1968 onwards, without the Greek authorities conducting any prior planning or introducing any regional development measures. Nowadays, more than a thousand heavy and light industry units operate in the greater area of Asopos River.

55. FIDH reports that the Asopos River could be used as a free natural receptacle for waste which was one of the reasons that prompted the industries to settle there. In this context, the industrial area has grown in a haphazard manner and until now this has been an informal, unplanned industrial area of 39 000 sq. m. FIDH claims that several villages are directly affected by the pollution of the River Asopos, namely those of Oinofyta, Tanagra, Schimatari, Avlida, Sykamino, Oropos and Avlona. They have a total population of 200 000 – and somewhat more in the summer when the holiday-makers and tourists arrive.

56. The complainant organisation refers to scientific surveys indicating that in several places of the area concerned the concentrations of certain hydrochemical parameters are so great that the water is unfit for human consumption. FIDH emphasizes that the polluted water is unsuitable for any purpose, whether it be drinking, cooking or personal and domestic hygiene. It is argued that the polluted water is also unsuitable for irrigating agricultural land.

57. The complainant organisation points out that the villages of Oinofyta and Schimatari are now supplied with clean water from the River Mornos. This is not the case of the villages of Tanagra, Avlida, Kallithea, Neochoraki and Oropos. FIDH maintains that these villages continue to be supplied with water containing Cr-6 from their usual network. The complainant organisation claims that the project related to the water supply of the whole region is still a draft and that discussions concerning its creation and the funding opportunities are ongoing.

58. Furthermore, FIDH provides detailed information on the following aspects: chemical substances causing the pollution; effects of the pollution on human health; effects of pollution on food production and industry; acts / omissions by the responsible authorities with respect to the pollution and the related health risks over the time; judicial procedures concerning the pollution of the Asopos River.

Chemical substances leading to the pollution

59. Several surveys carried out in various municipalities have shown that the water in the River Asopos (surface water and groundwater) contains heavy metals such as Cr-6, cobalt, nickel, barium, manganese and arsenic.

60. As regards Cr-6, the following specific information is provided by FIDH:

> "(…) Hexavalent chromium (Cr(VI)) is a highly toxic molecule for living organisms. It is thought to be carcinogenic (…). Skin reactions are observed following dermal exposure, consisting of eczematous dermatitis or ulceration. Through inhalation, it can cause lung cancer (…).The substance is also dangerous if it is ingested. There should not be any in drinking water, not even at trace levels. Depending on the amount ingested, its effects range from disorders of the stomach and digestive system to cancer. Chromium and its derivatives can have a sensitising effect which is manifested by asthma or dermatitis. Studies have also shown an increase in the frequency of complications during pregnancy and childbirth".

61. As far the presence of Cr-6 in the water, the complainant organisation presents the results of a number of scientific studies carried out by various public institutions with respect to different areas of the region of Oinofyta, (State Chemistry Laboratory -2004/2007, Union of Greek Chemists - 2007, Institute of Geological Studies - 2008, Department of Economic Geology and Geochemistry of the University of Athens - 2008, Institute of Geological Studies - 2008, Technical Chamber of Greece -2009, University of Athens Chemistry Department - 2009, University of Athens - 2010). These studies indicate that, in some areas, the amount of Cr-6 found in the surface / groundwater and/or in agricultural products is particularly high and that the amount of total chromium found in drinking water is sometimes above the maximum allowed by the law.

62. FIDH points out that so far, regarding the presence of Cr-6 in drinking water, no limit has been set by the Greek authorities. According to international standards,

Greek legislation does not set a separate limit for Cr-6, but applies the limit of 50 µg/l for total chromium in drinking water.

63. Taken into account the health risks linked to the ingestion of inhalation of Cr-6, the complainant organisation indicates that several scientific studies conclude that "the limit of 50 µg/l for total chromium is excessively high and must be radically reduced". Moreover, FIDH claims that the level of Cr-6 in drinking water in the region of Oinofyta is not systematically controlled, or at least, no data is made available and that the people concerned do not receive any information on this point. FIDH also argues that a circular of the Ministry of Health (No. 64340/7-6-2011) provides that it is necessary to measure, in addition to the rate of total chromium, Cr-6 levels present in drinking water, in a systematic way over a period of one year and throughout Greece.

64. The complainant organisation reports that the Ombudsman of the Hellenic Republic stated that these measurements cannot replace the obligation to set a threshold for Cr-6 in drinking water. The conclusion is that any further delay strengthens the existing risk to public health.

65. FIDH indicates that major concentrations of iron, nickel, arsenic, lead, chlorides and phosphates, which can be attributed to industrial pollution, were identified in the river Asopos. Water surveys have also revealed nitrate pollution in the river. The complainant organisation notes that, in general, nitrates in water stem mostly from agriculture and to a lesser extent from industry.

Effects of pollution on human health

66. The complainant organisation reports that: "Over the last fifteen years, the proportion of deaths in Oinofyta caused by cancer has risen from 6% to 30%. A study on mortality in Oinofyta carried out in 2010, by the NGO the Oinofyta Health Monitor, and financed by the Disease Control and Prevention Centre, covered six thousand people over the period from 1999 to 2009 and compared them with the inhabitants of Boeotia as a whole. It showed that cancer is the principal cause of death in Oinofyta".

67. In this context, FIDH points out that the latest results show the effect of air pollution on the health of children living in the Asopos region and even more, whose parents work in the industries of the region. More specifically, the dust particles of heavy metals-including-borne clothes and hair industry employees are inhaled by children when their parents come home after work. Thus, the study finds that children living in Oinofyta and aged 11-12 are twice as likely to exhibit respiratory disorders such as asthma compared to children living in the region Makrakomi (150 km north of Oinofyta). Children whose parents work in an industry are ten times more likely to have asthma compared to children whose parent has another job, and twice as likely to have pathological findings in spirometry (measure of lung function).

68. The complainant organisation points out that the studies carried out confirm that over the period from 1999 to 2009 the cancer mortality rate was 14% higher in Oinofyta than in the region of Boeotia. In 2009, there were 90% more deaths as a result of cancer than in the rest of the region, which is statistically significant. There has also been a major, statistically significant increase in the number of liver, lung and kidney cancer as well as bladder cancer among women living in Oinofyta.

Effects of pollution on food production and industry

69. FIDH maintains that besides the fact that it is unfit for human consumption and domestic use, the water is also unsuitable for irrigating agricultural land. This is not just because of the problem that particles may be inhaled during watering but also – and primarily – because of the issue of the safety of the food grown and produced in the region. In the Asopos valley crops are grown over 35 140 hectares of land.

70. The water in the Asopos is unfit for the irrigation of agricultural land as the heavy metals contained in the water are transferred to food products – and in this specific case to root vegetables.

71. Moreover, FIDH indicates that the water is also used by food industries in the region to manufacture drinks and that the risk is not confined to the River Asopos valley, as the products grown and produced by the food industry are sold not only in local shops but also and for the most part in shops throughout Attica – as witnessed by the fact that samples were taken from supermarkets in Athens – and are exported to other parts of Greece and abroad.

Acts and omissions of the Greek State

72. The complainant organisation indicates that:

- a health regulation of 1965 (No. E1β/221/1965 - Official Gazette B´ 138/24.02.1965, as amended), which authorised the surface or underground dumping of industrial waste after minor chemical treatment and with outdated limits on the levels of dangerous substances that such waste could contain,
- a Ministerial Decisions of 1969 (No. Γ1/1806/7-3-1969, Official Gazette ("ΦΕΚ") Β' 200, as amended),
- a Joint Prefectural Decision of 1979 (No. 19640/14/11.1979, Official Gazette B' 1136, as amended) which officially designated the River Asopos as "a site for the discharge of such waste",

formed the legal framework which enabled industrial plants in the region of Oinofyta to operate without supervision during more than 40 years.

73. When the Environmental Protection Act No.1650/1986 was adopted (Official Gazette A´ 160 of 16 October 1986), setting out industries' environmental obligations for the first time, the authorities avoided the issue of the unregulated dumping of liquid industrial waste. It was only in November 2007 that, following protests from Oinofyta's inhabitants, the responsible Ministry started imposing fines on a number of industries based in the vicinity of the River Asopos because of pollution caused by the dumping of liquid waste deriving from their manufacturing processes, and detected during checks by environmental inspectors.

74. In March 2008 the General Inspector of Administration filed an official report stating that there were gaps and overlaps in the legislation on the management of dangerous or toxic industrial waste and, more particularly, that this legislation did not seem to be applied by the relevant authorities and the industries concerned. Furthermore, the report stated that no river basin management plan was adopted for the River Asopos, as provided by Directive 2000/60/EC. According to the report the

competent prefectural authorities have issued operating licences to companies which were intending to dump waste underground without demanding that the Directorate of the Environment issue them with waste discharge authorisations beforehand.

75. In February 2010, the Minister of the Environment, Energy and Climate Change, at a press conference in Oinofyta, made the following statement:

> "We recognise that, unfortunately, the serious and complex problem of pollution in the Asopos valley and the groundwater in this area by hexavalent chromium, other polluting heavy metals and alloys has spread and increased as a result of the unpardonable indifference of the Greek state in recent years and, in particular, since 2007, when hexavalent chromium was detected in drinking water and groundwater".

76. Following the above-mentioned statement, in May 2010 a Joint Ministerial Decision on "the establishment of environmental standards for the River Asopos and threshold values for the emission of liquid industrial waste into the Asopos catchment basin" was finally issued (No. 20488/2010 Official Gazette B΄). This document repeals Joint Ministerial Decision No. Γ1/1806/7-3 of 1969 and forbids underground dumping of liquid industrial waste and establishes that any existing permits authorising such practices must be withdrawn.

77. Moreover, FIDH points out that the Joint Ministerial Decision No. 20488/2010:

> "- set environmental standards and threshold values for the discharge of liquid waste from industries and other activities located within the catchment area of the River Asopos, in accordance with the relevant EU legislation (such as Directive 2008/105/CE) on priority substances and other pollutants;
>
> - provides that existing industrial and other undertakings which discharged their liquid waste into the Asopos River could continue to do so but were required to file an application for the review of the decisions validating their compliance with environmental standards during 2010 so that they could receive new environmental standards from the relevant services in the same year or by the end of June 2011 at the latest, the aim being that they should meet the conditions set by the new decision by the end of 2011;
>
> - set forth that the Oinofyta Environmental Inspectors Office, whose aim is to step up environmental controls and improve the system to supervise the application of the environmental legislation in force in areas facing serious environmental problems, as is the case with the area of the Asopos River and the tributaries and streams located within its hydrogeological basin".

78. FIDH claims that, as stated in the activity report for 2010-2011 of the Special Environmental Inspectors' Office, according to the information provided by the authorities responsible for the delivery of the permits, at the end of 2011, only half of the industries had filed an application on new environmental criteria (30 out of 62), while the Joint Ministerial Decision No. 20488/2010 provides that the procedure for allocation of new environmental criteria must be completed no later than the end of the first half of the year 2011, so that industries make the investments required on antipollution technology before the end of the said year.

79. FIDH considers that this delay contributes to the perpetuation of harmful effects of environmental pollution in the watershed of the river Asopos. The complainant organisation argues that although it was created by law (Article 22§2 of Act No. 4014/2011), the Office of Environmental Inspectors to be set in Oinofyta is

not yet working. It is pointed out that the Special Environmental Inspectors' Office also publicly acknowledged this negative fact.

80. FIDH claims that the shared responsibilities of central regional and local authorities to face the problems of pollution in the region of Oinofyta and the related health issues, as well as between multiple Ministries *(YPEKA, Ministry of Health, Ministry of Rural Development and Food, Ministry of Infrastructure, Transport and Networks)* and decentralised authorities creates severe difficulties in addressing the above-mentioned problems and issues immediately and effectively, causing delays in the implementation of measures that fall under the shared competence of the bodies concerned.

81. The complainant organisation indicates that a "Committee for monitoring and coordinating the implementation of measures for the Asopos", was created in February 2012 by YPEKA upon proposal of the competent "Special Secretary General". In this respect, FIDH indicates that "the above-mentioned Secretary is no longer operational, the Ministry leadership has been replaced and that the said committee is not meeting anymore and that it appears having brutally interrupted its activities".

82. As far as the local institutions are concerned, FIDH argues that the Municipality of Oinofyta (now part of the Municipality of Tanagra), has been particularly reluctant to prevent companies from dumping their liquid waste into the River Asopos and has shown this reluctance on several occasions. Although it runs the water supply network, it did not suspend the water supply when it was found to be non-potable and unfit for consumption. In addition, the Municipality only informed the inhabitants of the situation belatedly, leaving them to drink water that was unfit for consumption. Although it was entitled to grants for works to improve the municipal water supply network, it failed to apply for any of these.

83. One of the measures taken by the former Municipality of Oinofyta following the analyses conducted in November 2004 by the State Chemistry Laboratory showing a high level of total chromium in the water supply network was to mix together all the water from the municipality's groundwater wells. In other words, it decided to mix the highly polluted water from one well with the less polluted water from the others to obtain an average concentration of chromium which no longer exceeded the authorised level. This is confirmed by the following reply by the Deputy Minister of Health, Mr Giannopoulos, to a question in parliament: "On the basis of surveys conducted by the Prefecture's Health Directorate, it was concluded that concentrations in nitrates, chromium and chlorine are higher than the authorised levels when the sample from each collection point is taken separately. However, if the water from all three collection points is mixed together, these limits are no longer exceeded".

84. FIDH also reports that the above-mentioned municipality refused access to information on the environment to citizens who have requested it from the relevant services. For instance, when a member of the public asked to see the analyses of the water in Oinofyta and the Municipality's technical services had forwarded the documents requested to the mayor for him to pass on, Oinofyta Municipality categorically refused to let the person have them.

85. As regards the initiatives taken by the (new) Municipality of Tanagra, in its reply to the Committee's request of information, the complainant organisation states that:

> "The mayor, of Tanagra elected in 2011, is more interested in people preoccupations and he is on their side in the fight for good water quality. However, in practice, no significant step has been taken by the municipality. Some measurements were made, sporadically, in the waters of the river Asopos by the Municipality (and, subsequently, confirmed by measurements made by ministry inspectors). These measurements showed that the industries have not stopped polluting the river. In this framework, a measure … performed on 4 November 2011 at Maillis showed a concentration of hexavalent chromium of 2580 μg/l, more than 50 times the authorized limit".

Judicial procedures concerning the pollution of the Asopos River

86. The complainant organisation provides detailed information on a number of judicial procedures at national level relating to the pollution / health problems in the Oinofyta region. In this framework, FIDH refers inter alia to the conclusions of the following decisions:

a) No. 923/2008 (July 2008) of the Thebes Court of First Instance:

"The Court found that *the water supplied in the region of Dilesi through Oinofyta's municipal supply system, which comes from local wells, is neither healthy nor safe and poses serious threats to the 6000 local users*. The court ordered Oinofyta municipality to deliver safe water to the 6000 inhabitants of Dilesi using tankers until a new supply system was operating in Dilesi. The court also ordered the municipality to provide more information to inhabitants about the risks of using the municipal water supply network, which was in bad repair and full of hexavalent chromium".

b) Nos. 3975/2010, 3976/2010, 3981/2010, 3977/2010, 3979/2010, 3978/2010 and 3974/2010 (December 2010) of the Supreme Administrative Court:

"According to the Supreme Administrative Court, the problems *are mainly connected with the uncontrolled dumping in the Asopos River – owing to the lack of a central waste processing unit – of waste (some of which is dangerous because of its high nickel or chromium content) by some of these companies, especially those in the metal-working sector. One of the main problems is the high level of chromium in the area's drinking water*".

c) No. 845/2010 and No. 846/2010 (August 2010) of the Supreme Administrative Court:

"The Supreme Administrative Court (…) stated as follows: *the immediate resolution of the problem connected with the deterioration of the natural environment in the area of the River Asopos and its catchment basin, which has taken on alarming proportions and has become a threat to the local population's health and lives, is a matter of urgent public concern which must be dealt with without delay*".

d) No. 662/2012 (November 2012) of the Commission on stays of execution of the Hellenic Council of State

"In its decision, the Committee *considered that the problem of environmental degradation in the region of Asopos River and its watershed has assumed alarming proportions and is a threat to the life and health of the population. Immediate resolution of this problem represents an urgent reason of public interest that must be reached without delay and with the contribution of the plaintiff [company] regarding its environmental performance and in which the confidence of the Administration has been deservedly shaken, and that, due to, among other things, the dangerous substances used in the production process, but also because the*

plaintiff did not demonstrate, in the past, exemplary respect of environmental legislation but [is author] of violations of measures relating to the precautionary principle ".

Conclusions of the complainant organisation

87. Bearing in mind the above-mentioned information and considerations, FIDH alleges that:

a) the responsible central administration bodies: did not introduce any measure for the spatial or environmental planning of the Oinofyta's industrial area; did not adopt for the Asopos a river basin management plan as provided for by EU legislation; did not adopt a hazardous-waste management plan that accords with the requirements of the relevant Community legislation; did not co-ordinate their initiatives towards an harmonious implementation of the applicable statutory measures; did not fully implement the relevant administrative acts; failed to inform and educate the public, including school pupils, about local environmental problems; did not organise a systematic epidemiological monitoring of the population concerned to assess health risks; did not set a limit for Cr-6 levels in drinking water;

b) the former Prefecture of Boeotia (currently the Regional Unit of Beotia - Region of Sterea Ellada): did not take effective preventive measures and failed to introduce any regulations to protect the river or the inhabitants of Oinofyta; never organised on-site visits or other types of supervision of the industries in the Asopos valley; never adopted measures to inform the inhabitants or the general public about the environmental issues raised by the Asopos case such as the pollution of the water by heavy metals or the impact of this pollution at all levels; did not take any initiatives to assess health risks through epidemiological monitoring of the populations concerned; delivered to existing and new enterprises permits without making all the necessary checks.

c) the former Municipality of Oinofyta (currently integrated in the Municipality of Tanagra as a municipal unit): has been reluctant to prevent companies from dumping their liquid waste into the River Asopos; did not suspend the water supply when it was found to be non-potable and unfit for consumption; only informed the inhabitants of the situation belatedly, leaving them to drink water that was unfit for consumption; did not make regular water surveys focusing on concentrations of nitrates and chromium and covering the municipality's entire supply network; did not conduct hydrogeological studies on the quality of the groundwater in the municipality to determine what steps could be taken to treat or decontaminate the water; did not carry out any epidemiological survey, keeping the inhabitants informed on results and developments; refused access to information on the environment to citizens who have requested it from the relevant services.

88. In the light of the above, FIDH asks the Committee to declare that the Greek state has failed to fulfil its obligations under Article 11 of the Charter.

2 – The Government

General information

89. The Committee notes that some of the information provided by FIDH in the complaint is confirmed by the Government. More specifically, as regards the allegations put forward by the complainant organisation, the Government acknowledges *expressis verbis* that:

a) "The greater area of Asopos River is not designated – established as 'industrial zone' by law" and that the said area "is among those with the highest industrial activity in Greece and operates as an 'informal' industrial park with several shortages in infrastructure".

b) "The Asopos River (…) has (…) polluted the aquifer of the greater area" and that "[its] catchment basin is one of the most polluted areas in the country due to the unregulated and uncontrolled operation of businesses in the informal industrial area of Oinofyta – Schimatari for years. The aquifer of the area has been contaminated by heavy metals, including hexavalent chromium".

c) "The pollution of groundwater and surface water is caused by the presence of heavy metals (total chromium, hexavalent chromium, nickel, arsenic, lead and others) as well as nitrates, whose concentrations are several times higher than the parametric values provided for by the EU legislation on the quality of water intended for human consumption (…)".

d) "The issue of environmental pollution of Asopos River was publicized in August 2007, when high levels of heavy metals as well as of hexavalent chromium present in the aquifer of the region were detected through measurements conducted by the General Chemical State Laboratory and other accredited laboratories" and that "YPEKA, which was established in the early 2010, publicly acknowledged the environmental damage occurred in the greater area of Asopos River (Oinofyta – Schimatari) and its consequences on Public Health".

e) "The recording of the health status of the population (…) shows the need for measures (…) [to] protect public health and (…) upgrade the environment".

f) "The source of the problem (…) [is] related to the safe management of hazardous waste of the area with a view to eliminating the risk of transferring pollution to the aquifers and protecting drinking water and public health in general".

g) There are serious problems with respect to the safe management of hazardous waste, namely: "Poor inventory of the quantities and types of hazardous waste produced; lack of mapping of suitable sites where hazardous waste management facilities could be established (…); substantial lack of waste management infrastructure and more specifically of landfills for hazardous waste (…)".

h) "The shared competence between multiple services at central and regional level in relation to Asopos River and the greater area, as well as between multiple Ministries (YPEKA, Ministry of Health, Ministry of Rural Development and Food, Ministry of Infrastructure, Transport and Networks) creates difficulties in addressing the problems immediately and effectively and causes delays in the implementation of measures that fall under the shared competence of these bodies".

i) “The staffing of the Oinofyta Environmental Inspectors’ Office (Section of Sterea Ellada)” [is delayed] by “bureaucratic entanglements”.
j) “The establishment of clear rules, guidelines and procedures, upon which pollution sources will be monitored and industries will be bound to operate, is the main precondition”.

90. More specifically, as regards the pollution caused by Cr-6, the Government indicates that the national legislation in force on the quality of water intended for human consumption (Joint Ministerial Decision No.Y2/2600/2001 - O.G. 892B/11-7-2001) ”has been adopted in full compliance with the Community Directive 98/83/EC, which sets the highest parametric values including the one for total chromium at 0,05mg/l or 50 μg/l” and that the above-mentioned value is also “in compliance with the guidelines of the World Health Organization for drinking water quality”. In this respect, the Government considers that according to the said guidelines “hexavalent chromium has been classified as carcinogenic when inhaled, yet there are technical difficulties in making analytical measurements and insufficient toxicological data on its effects when swallowed”. With this in mind, the Government notes that the World Health Organization “does not propose a limit for hexavalent chromium but for (total) chromium”.

91. The Government indicates that according to the national legislation (Joint Ministerial Decision No. 2600/2001) (…) any excess will be announced to the public by the competent water supply authorities (…), water supply will be interrupted and remedial action will be taken to restore the quality of the water.

92. Regarding the health risks related to Cr-6, the Government indicates that the Ministry of Health firstly, issued circulars on the systematic recording of Cr-6 concentrations in drinking water for a period of one year within the country with the aim of assessing the presence and the levels of Cr-6 in drinking water in various regions of Greece; secondly, started to address a) the setting of a limit for Cr-6 in water intended for human consumption and b) the setting of parametric value for Cr-6 for which the supreme health authority (Main Health Council) is expected to give its opinion; thirdly, organized, (along with YPEKA, in January 2011), an international conference on the examination of all aspects of the presence of Cr-6 in drinking water. It is indicated that the main conclusions of this conference have been presented in a press release issued by YPEKA.

93. In addition, the Government reports that during 2012, the Ministry of Health convened a meeting with the participation of the competent bodies in order to set a limit for Cr-6 in water intended for human consumption. The participants concluded that “the country’s legislation is based on existing international standards, follows the requirements of the community legislation in force and is in full compliance with the guidelines of the World Health Organisation”.

94. With this in mind, the Government observes that:

> “The establishment of new quality limits at national level – in addition to the ones provided for by Directive 98/83/EC - implies a series of documented data that correlate the hazard rating of quality parameters with the route of exposure (inhalation, ingestion, occupational exposure, etc), the use (irrigation, water supply, etc.) and the impacts on public health. The evaluation of the said data (reliability, degree of correlation), also by taking into account the lack of

> toxicological data regarding ingestion at international level – as mentioned by the World Health Organization - will show whether there is a need to establish new parameters and/or new parametric values". In this respect, the Government concludes that "[t]he competent authority of the Ministry of Health monitors international developments and if (…) adequate and documented scientific and toxicological evidence is found concerning the setting of hexavalent chromium limit in water intended for human consumption, it will draw up a special legislative regulation".

95. Having regard to the above-mentioned considerations as well as to the information provided as a reply to the Committee's request (see paragraphs 97 – 126 below), the Government concludes that " [s]erious efforts are made so that the issue concerning the Asopos River and the environmental pollution of the area, as well as any impact that this might have both on the environment and the health of the residents, might be addressed effectively".

96. With this in mind, the Government asks the Committee to declare that there is no violation of Article 11 of the Charter by Greece.

Information on specific measures taken with respect to the pollution / health problems in the region of Oinofyta

General and co-ordination measures

97. First of all, the Government indicates that a Joint Ministerial Decision on the "Establishment of environmental quality standards for the River Asopos and threshold values for the emission of liquid industrial waste into the Asopos catchment basin" (No. 20488/19-5-2010 - O.G. 749, B/31-5-2010) has been adopted. It points out that, on this basis, quality limits are established both regarding the Asopos River and the emission of liquid industrial waste in the area.

98. More particularly, the Government indicates that through this regulation:

> "Outdated provisions according to which the industries of that area could discharge their liquid industrial waste into the Asopos River have been repealed; the Joint Prefectural Decision 19649/1979 (O.G. 1136/B) by virtue of which Asopos River was defined as industrial waste disposal duct towards the Gulf of Evia has been repealed; the cost for the sampling and the laboratory analysis of samples in order to determine compliance with statutory obligations was born by the monitored business activity".

99. The Government points out that an Explanatory Circular (No.106072/23-8-2010 of the Minister of YPEKA on "Clarifications on the proper implementation of Joint Ministerial Decision No.20488/19-5-2010" has been issued. As regards the implementation of Joint Ministerial Decision No. 20488/19-5-2010, the Government indicates that:

> " (…) The Directorate of Environment and Spatial Planning of the Decentralized Administration of Thessaly – Sterea Ellada called the enterprises concerned, which are located within the limits of Asopos catchment basin and the activities of which are subject to environmental licensing by the said Directorate, to submit technical reports concerning the modification of their environmental terms, in order for them to comply with the above Joint Decision".

100. In this context, the following information is provided by the Government:

> "Nineteen (19) of the thirty two (32) activities have responded and submitted Technical Report or Environmental Impact Assessment Study for the modification/renewal of their environmental terms. Until today, the abovementioned Service has issued nine (9) Decisions of Environmental Terms Approval (AEPO) and the remaining ten (10) cases are under consideration (supplementary documents, opinion giving, inspections, etc). The remaining thirteen (13) activities that have not responded to the call, have received a reminder of their obligation (…). The documents have been communicated to the Special Environmental Inspectors' Office (EYEP) of the Ministry of Environment, Energy and Climate Change (YPEKA) so that they might take the necessary actions within their competencies".

101. In this framework, the Government also indicates that:

> "The Directorate of Environment and Spatial Planning had already prohibited from 2008 the subsurface and surface disposal of treated industrial wastewater, through modifications of the respective terms of the AEPO, as these wastes before being treated were hazardous substances, irrespective of concentration, and therefore, a large number of business activities had opted full recycling of treated industrial wastewater before the adoption of the Joint Decision".

102. And that:

> "(…) Pursuant to Joint Ministerial Decision No. 20488/2010, fifteen (15) industries located within the limits of the area in question, which discharged their wastewater in the ground or into surface water, submitted to the competent Directorate for Air and Noise Pollution Control (EART) of the YPEKA applications together with dossiers concerning the revision of Environmental Terms Approval Decisions (AEPO)". (…) The procedure of the AEPOs' revision has been completed regarding eleven (11) industries and the issuance of licenses for the remaining four (4) industries is under way".

103. As regards the setting up of the Oinofyta Environmental Inspectors' Office Section of Sterea Ellada, the Government states that the secondment procedures for the staffing of the office have begun. However, it acknowledges that there is a delay in the procedures and that the delay is due to bureaucratic entanglements. Information on the efforts made by the Special Environmental Inspectors' Office made with the aim of staffing the Section of Sterea Ellada are also provided.

104. The Government indicates that in February 2010, the Minister of Environment Energy and Climate Change presented a "Project for the Integrated Management of the Environmental Crisis of Asopos". This project - developed in cooperation with the bodies concerned (YPEKA Secretariats, prefectural / regional services, local authorities, civil society) - it is aimed at reducing / eliminating the pollution, safeguarding public health, planning the informal industrial areas of Oinofyta and Schimatari and ensuring the implementation of measures. No detailed information is provided on the implementation of the above-mentioned project.

105. The Government indicates that the Special Secretariat for the Environment and Energy Inspectorate (EGEPE) at the beginning of 2012 set up a Committee that "would intensify the coordination of actions for the implementation of Joint Ministerial Decision No. 20488/2010 and monitor the implementation of the Integrated Program for the Management of the Environmental Crisis at Asopos at central and regional level". A detailed list of proposals put forward by the above-mentioned Committee with respect to water supply problems, disposal of pre-treated industrial liquid waste, spatial planning, pollution control, etc. is provided.

106. As regards the coordination measures, the Government also indicates that:

> "The Coordination Office for the Implementation of Environmental Liability, the competent authority at central administration level established by Presidential Decree 148/29-9-2009, promotes the establishment of Regional Committees at decentralized administration level, the priority of which will be the prevention and remediation of environmental damage caused in Asopos River area, in close cooperation with the Decentralized Administration of Thessaly – Sterea Ellada and the competent Regional Committee for the Management of Environmental Damage, and has already identified several environmentally liable enterprises".

Pollution control

107. The Government indicates that a "Special Environmental Inspectors Office (EYEP)" has been given the mandate to conduct "supervision and inspection". In this framework, the Government points out that from 2004 to 2011:

> "The EYEP has carried out more than 260 inspections and re-inspections mainly in industries located in the greater area of the Asopos River. More than 150 certifications of violations have been issued while the total amount of proposed fines exceeds 6,5 million euros. Every single case, for which violation has been confirmed, was forwarded to the relevant Prosecutor's Office for investigation of possible criminal offences. Moreover, the necessary recommendations and guidelines are given during inspections, on the one hand, to the bodies responsible for the operation of such industries and, on the other, to all the services involved (licensing and inspection authorities) with the aim of monitoring and promoting the compliance of these industries with the requirements of the legislation in force".

108. A table presenting the inspections conducted in the greater area of the Asopos River from the establishment of the EYEP is provided (it is pointed out that during 2012 a series of inspections and re-inspections have been carried out in the region, mainly in metallurgical industries):

INSPECTIONS CARRIED OUT BY THE SPECIAL ENVIRONMENTAL INSPECTORS' OFFICE IN THE GREATER AREA OF THE ASOPOS RIVER				
	Inspections	Re-inspections	Certificates of violations	Amount of proposed fines
2004	13	-	10	207.500 €
2005	4	-	3	71.100 €
2006	19	1	14	332.480 €
2007	52	10	49	2.374.000 €
2008	43	19	41	1.151.415 €
2009	32	6	12	124.450 €
2010	31	-	17	906.300 €
2011	30	15	27	1.100.000

TOTAL	**224**	**36**	**146**	**6.267.245 €**

Spatial planning / sustainable development

109. The Committee notes that the General Urban Plan of the Municipality of Tanagra, including the municipal unit of Oinofyta, has not yet been adopted. In this respect, the Government acknowledges that:

> "The management of industrial activities in the area of Oinofyta, is regulated, in the short run, in accordance with the framework of Oinofyta Urban Control Zone which is to be established by law, until the Special Spatial Intervention is concluded, which will reorganize the greater area, according to Joint Ministerial Decision No.26298/2003 on "Regional Framework approval of Spatial Planning and Sustainable Development for the Region of Sterea Ellada" (O.G. 1469/2003)".

110. However, the Government points out that:

> "When locating new industries in the Asopos catchment basin, the Directorate of Environment and Spatial Planning of the Decentralized Administration of Thessaly – Sterea Ellada applies the provisions of Joint Ministerial Decision No.11508/2009 on the "Approval of a special framework for spatial planning and sustainable development of the industry and its strategic environmental assessment" as well as the guidelines presented in the Schimatari General Urban Plan (No 105787/12588/2010, O.G. 60/ΑΑΠ/31-12-2010)".

111. Other information relating to spatial planning and development are provided inter alia by the Government with respect to the following issues:

> - creation of a working group "for the establishment of protection zones for the Asopos River» (based on Decision No. 728/21.03.2008 of the Under-Secretary of State for the Ministry of Environment Energy and Climate Change);
>
> - introduction of Remediation Industrial Parks (introduced by Act N.3982/11 as an implementation of the guidelines set by the Special Framework for Spatial Planning and Sustainable Development of Industry, approved in 2009 (O.G. 151/ΑΑΡ/2009).

Water management

112. The River Basin Management Plan of Eastern Sterea Ellada Water District (GR07), which includes the Asopos River basin (GR25), is drawn up by the Special Secretariat for Water (EGY) of the Ministry of Environment, Energy and Climate Change (YPEKA), in accordance with article 7, para. 2, sec. b´ of Act N. 3199/2003. The drawing up and the implementation of the River Basin Management Plan constitute an obligation of the State in compliance with Directive 2000/60/EC, which came into force on 22 December 2000. The Committee notes that this obligation is not yet fulfilled (see paragraphs 25-26 above).

113. In this respect, the Government indicates that:

> "The proposed River Basin Management Plan of Eastern Sterea Ellada Water District has been put to public consultation in order to be finalized and subsequently approved, in accordance with the provisions of as well as the procedure provided for by articles 6 and 7 of

> Act N.3199/2003. The Management plan under consultation includes the actions on the protection of waters related to Joint Ministerial Decision No.20488/2010 (O.G. B´ 749)".

Drinking water

114. The Government states that "[t]he necessary actions have been initiated for a safe supply of clean drinking water to the residents of the area [of the Oinofyta Region] while the required resources have been secured". A full description of the initiatives taken by the responsible authorities at central, regional and local level is provided by the Government in its reply to the Committee's request for updated information. These initiatives include projects for the upgrade of the Oinofyta refinery and the water transfer from Mornos; the construction of new refineries and water supply pipes; the activities carried out by the authorities of Tanagra Municipality as well as by the Region of Sterea Ellada with respect to the supply of clean drinking water, notably through checks, inspections and information provided to the population concerned.

115. In this context, the Government indicates that in order to better address both the issues of drinking water quality at the Municipality of Oinofyta and of setting a limit for Cr-6, the Ministry of Health, since 2007, has been informing and sending Guidelines to the Department of Health of South East Viotia so that health and sample checks might be conducted and all the necessary measures for ensuring drinking water quality and Public Health might be taken.

116. As regards YPEKA, the Government indicates that the Special Secretariat for Waters participates in the research activity of the National Technical University of Athens, which is funded by the European Program LIFE+2010, entitled "Chromium in Asopos groundwater system: remediation technologies and measures" (LIFE10 ENV/GR/000601 - 2011-2015). The Region of Sterea Ellada participates in it. The objective of the project is the determination of maximum allowable values for chromium in the groundwater system of Asopos River basin pursuant to the provisions of the Directive on the protection of groundwater.

Epidemiological monitoring

117. The Government states that:

> "The Ministry of Health, through the Hellenic Center for Disease Control and Prevention, assigned the Medical School of Athens University to conduct an epidemiological study on any health effects from the consumption of water on the residents of the greater area of Oinofyta".

118. Moreover, it indicates that a project aimed at creating a "Health Observatory" in the "greater area of Oinofyta", with a projected duration of 7 years, was launched in 2009. In this respect, it is stated that:

> "The Health Observatory aims at recording, analyzing and monitoring the health of all people living and/or working in the area. With regard to Oinofyta, special emphasis is given to the recording of chronic diseases, such as respiratory problems, skin diseases, cancers and their relationship with the quality of the environment".

119. The Government also states that within the framework of the above-mentioned observatory:

> "An epidemiological study has been elaborated and implemented in the area, in response to the long-standing demand of the residents for a study on the impact of environmental and industrial factors on health".

120. Furthermore, the Government indicates that morbidity studies of the population are underway. In this respect, the following scientific information is provided:

> "Currently, 1811 replies of adults to questionnaires have been collected which are being entered in special databases and gradually analyzed. Moreover, lung function tests have already been conducted on all the children of the 5th and 6th grade of Oinofyta Elementary School, following the written consent of their parents (62 children). The results of the said respiratory morbidity study show high incidence of asthma symptoms, even after comparing the results with data from a similar population of school children (42 children from the Elementary School of Makrakomi in Lamia) not exposed to industrial pollutants".

121. It is pointed out that from the beginning of the epidemiological study:

> "11 informative events/presentations have been made to representatives of the Local Self-Government Agencies and the State, in schools, parents associations, elderly care units as well as to scientific, health and social institutions of the Oinofyta greater area".

122. The Government concludes that the recording of the health status of the population represents "a valuable scientific knowledge which shows the need for measures that will protect public health and will upgrade the environment".

Initiatives taken at local level

123. The Government indicates that since 01/01/2011 the newly established Municipality of Tanagra has taken various initiatives with the aim of decontaminating the Asopos River. In particular, the Government indicates that the above-mentioned municipality has inter alia requested: the approval of the General Urban Plan for the greater area of the Municipality; the demarcation of the river boundaries and the determination of protection zones by means of appropriate flood protection works, as well as of industrial zones and other zones suitable for production activities through urban planning; detailed figures concerning the significant financial resources necessary to satisfy the requests of the Tanagra municipality are provided.

Awareness raising activities

124. In general terms, the Government indicates that YPEKA regularly gives information on the progress made in the implementation of measures related to Asopos River.

125. More specifically, the Government points out that "[t]he Special Secretariat for the Environment and Energy Inspectorate is conducting an open consultation on February 10, 2012, (two years after the first announcement in Oinofyta) on the progress made regarding the implementation of the Project for the Integrated Management of the Environmental Crisis of Asopos".

126. The Government also indicates that:

- within the framework of the consultations for the Water Resources Management Plan of Sterea Ellada (which also includes the Asopos Basin), the public is invited to take part in a transparent dialogue through an interactive website (wfd.ypeka.gr);

- in January 2012, the Special Secretariat for the Environment and Energy Inspectorate organised a two day workshop on the implementation of the Directive on environmental liability and the Asopos area, with the participation of representatives of the Decentralised Administration services, of enterprises established in the region of Sterea Ellada, and of NGOs operating in the area.

B – Assessment of the Committee

General considerations

127. The Committee considers that the present case gives rise to a complex situation. This is due to several factors, such as the seriousness of the pollution and the related health risks and consequences, the number of people and interests concerned, the various levels of public administration involved and the resources needed to remove the causes of ill-health and prevent diseases.

128. As alleged by FIDH and acknowledged by the Government, the problems of pollution and their harmful effects on health have been known for a long time. In this respect, it should be stressed that the Greek authorities have been inactive for more than 40 years. The above-mentioned problems and effects have been addressed by public authorities, as they have admitted, with excessive delay.

129. Having regard to these findings, the Committee recalls that:

- "Admittedly, overcoming pollution is an objective that can only be achieved gradually. Nevertheless, States party must strive to attain this objective within a reasonable time, by showing measurable progress and making best possible use of the resources at their disposal – see, mutatis mutandis, Autism Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 53" (Marangopoulos Foundation for Human Rights (MFHR) c. Greece, complaint No. 30/2005, decision on the merits of 6 December 2006, §204).

- "When the achievement of one of the rights in question is exceptionally complex and particularly expensive to resolve, a State Party must take measures that allows it to achieve the objectives of the Charter within a reasonable time, with measurable progress and to an extent consistent with the maximum use of available resources. States Parties must be particularly mindful of the impact that their choices will have for groups with heightened vulnerabilities as well as for others persons affected" (Autism Europe v. France, Complaint No. 13/2002, aforementioned decision, §53).

- "In the absence of any commitment to or means of measuring the practical impact of measures taken, the rights specified in the Charter are likely to remain ineffective (…). In connection with timetabling (…) it is essential for reasonable deadlines to be set that take account not only of administrative constraints but also of the needs of groups that fall into the urgent category. At all events, achievement of the goals that the authorities have set themselves cannot be deferred indefinitely" (International

Movement ATD Fourth world v. France, complaint No 33/2006, aforementioned decision, § 65-66).

130. With this in mind, the Committee considers that the delay with which the Greek authorities have: acknowledged the seriousness of the pollution of Asopos River and its negative effects on the health of the population, and have started taking initiatives to remedy the problems at stake has exacerbated the causes of ill-health and hampered the prevention of diseases in the region of Oinofyta. These circumstances are taken into account by the Committee in the assessment concerning the alleged violation of paragraphs 1, 2 and 3 of the Charter.

Alleged violation of Article 11 §§ 1 and 3

131. The Committee notes that a specific regulation on "The establishment of environmental quality standards for Asopos River and threshold values for the emission of liquid industrial waste into the Asopos catchment basin" has been adopted in 2010 (Joint Ministerial Decision No. 20488/2010 - see paragraph 42 above).

132. The Committee considers that this document represents a positive contribution to remedy the problems at stake. However, it notes that Joint Ministerial Decision No. 20488/2010 is not fully implemented. In particular, for the time being, not all enterprises concerned have requested a review of their environmental terms, while according to the said decision the procedure for allocating new environmental terms had to be completed during 2011. The Committee also notes that the 'Oinofyta Environmental Inspectors Office' has not yet been established.

133. In view of this information, the Committee recalls that:

- "In connection with means of ensuring steady progress towards achieving the goals laid down by the Charter, (…) the implementation of the Charter requires state parties not merely to take legal action but also to make available the resources and introduce the operational procedures necessary to give full effect to the rights specified therein" (International Movement ATD Fourth world v. France, complaint No 33/2006, decision on the merits of 5 December 2007, § 61).

- "In order to fulfill their obligations, national authorities must (…) ensure that environmental standards and rules are properly applied, through appropriate supervisory machinery" (…) (Marangopoulos Foundation for Human Rights (MFHR) c. Greece, complaint No. 30/2005, decision on the merits of 6 December 2006, §203).

134. The information provided by the Government on the "Project for the Integrated Management of the Environmental Crisis of Asopos" merely refers to the overall objectives of the project, the nature of the measures taken and the fact that, in 2012, a monitoring committee has been set up and a public consultation process has been started. No details are made available on the contents of the project, its concrete objectives over the time, the operational and monitoring procedures, financial resources, possible progress made, etc.

135. The Committee considers that the starting of a project specifically dedicated to the "Crisis of the Asopos River" also indicates the will of the Greek authorities to remedy the problems at stake. However, it is also of the view that the measures adopted with respect to the pollution in the region of Oinofyta cannot be adequately assessed as regards their effectiveness or impact. This is due to the fact that the information provided by the Government is very general in nature and only describes potential impacts in the future.

136. The Committee considers that even though some efforts are being made by the Greek authorities to improve the co-ordination of administrative responsibilities and related activities, it has not been demonstrated that these efforts have improved the situation in the areas concerned. In practice and as conceded by the Greek Government, these shortcomings in the administrative co-ordination are likely to further delay the removal of the causes of ill-health and the prevention of diseases in the region.

137. The Committee further notes that the Oinofyta region is not established as an "industrial zone" by law and that it operates with several shortages in infrastructure. It holds that the lack of spatial planning in the areas concerned (notably within the Municipality of Tanagra) hamper the adoption of suitable measures to eliminate or reduce the pollution as well as its negative effects on health. In this respect, the Committee recalls that "(…) national authorities must (…) develop and regularly update sufficiently comprehensive environmental legislation and regulations (…) (Marangopoulos Foundation for Human Rights (MFHR) c. Greece, complaint No. 30/2005, decision on the merits of 6 December 2006, §203).

138. The Committee also recalls that it "assesses the efforts made by states with reference to their national legislation and regulations and undertakings entered into with regard to the European Union and the United Nations (Conclusions XV-2, Italy, Article 11§3), and in terms of how the relevant law is applied in practice." (Marangopoulos Foundation for Human Rights (MFHR) c. Greece, complaint No. 30/2005, decision on the merits of 6 December 2006, §204).

139. With this in mind, as regards water management, the Committee notes that, in 2012, the Court of Justice of the European Union declared that Greece has failed to fulfill its obligations under a number of provisions of Directive 2000/60/EC on *establishing a framework for Community action in the field of water policy* (see paragraph 25 above).

140. As regards waste management, the Committee notes that, in 2009, the Court of Justice of the European Union declared that Greece has failed to fulfill its obligations under different provisions of Council Directive 91/689/EEC on *hazardous waste* (read in conjunction with the provisions of other EU Directives) and Directive 1999/31/EC on *the landfill of waste* (see paragraph 28 above).

141. As regards industrial emissions and pollution control, the Committee notes the inspections carried out from 2004 to 2012 by the competent authorities in the greater area of the Asopos River. However, it also notes that in 2010 the Court of Justice of the European Union declared that Greece has failed to fulfill its obligations under Directive 2008/1/EC concerning integrated pollution prevention and control,

specifically referring to the requirements for the granting of permits for existing installations (see paragraph 27 above).

142. Bearing in mind these shortcomings and the slowing down of the process aimed at reviewing the environmental terms of the enterprises concerned (see paragraph 100 above), the Committee considers that the Government has not demonstrated that the relevant environmental rules have been fully respected in the areas concerned. These findings are confirmed by a number of judicial decisions taken at national level (see paragraph 86 above).

143. As regards Cr-6, the Committee notes that:

a) according to a number of scientific studies, the complainant organisation considers that given the health risks linked to its ingestion, a threshold for Cr-6 in drinking water should immediately be set by the Greek authorities. Moreover, FIDH argues that the legal limit of 50 µg/l for total chromium is excessive;

b) the Government acknowledges that the pollution of groundwater and surface water in the Oinofyta Region is caused, inter alia, by Cr-6 and is aware of the danger represented by excessive concentrations of Cr-6 in the water. However, it considers that the national legislation in force on drinking water complies with EU legislation and the guidelines of the WHO (i.e. limit of 50 µg/l for total chromium). Nevertheless, the Government requested an advice from the supreme Greek health authority (Main Health Council) on the necessity of setting a specific limit for Cr-6 in water intended for human consumption, as well as on the setting of parametric values for Cr-6. The Government does not intend to proceed to the establishment of new limits at national level without data showing whether there is a need to establish new parameters and/or new parametric values.

144. The Committee recalls that “under Article 11§1 of the Charter, health systems must respond appropriately to avoidable health risks, i.e. ones that can be controlled by human action, and states must guarantee the best possible results in line with the available knowledge.” (Conclusions XV-2, Denmark).

145. The Committee also considers that according to Art 11§3 of the Charter, the Greek Government has to undertake appropriate measures to prevent as far as possible activities which are detrimental to human health (diseases and accidents). The Committee is of the view that where there are threats of serious damage to human health, lack of full scientific certainty should not be used as a reason for postponing appropriate measures.

146. The Committee also recalls that: “Under Article 11 of the Charter, everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable” (Marangopoulos Foundation for Human Rights ((MFHR) v. Greece, Complaint n° 30/2005, Decision on the merits of 6 December 2006, §202) and that: in order to fulfill their obligations, national authorities must take specific steps, such as introducing threshold values for emissions (see, mutatis mutandis, Conclusions 2005, Moldova, Article 11§3).

147. With this in mind, the first issue to be assessed is whether the amount of Cr-6 found in the water distributed in the region of Oinofyta for personal consumption and agricultural use is likely to be detrimental to human health and would therefore require the State to take precautionary measures.

148. The Committee notes:

a) the results of a number of scientific studies carried out by various public institutions with respect to different areas of the region in question, as documented by the complainant organization (see paragraph 61 above). These studies, which have not been challenged by the Government, indicate that, in some areas, the amount of Cr-6 found in the surface / groundwater and/or in agricultural products is particularly high and that the amount of total chromium found in drinking water is sometimes above the maximum allowed by the law;

b) the results of epidemiological studies on the incidence of Cr-6 on the health of the people living in the region of Oinofyta, i.e.:

> - the conclusions of the study on mortality in Oinofyta provided by the complainant organisation and carried out by NGO 'Oinofyta Health Monitor' with the support of the Centre for Disease Control and Prevention, which covered six thousand people over the period from 1999 to 2009;
>
> - the recording of the health status of the population living in the area of Oinofyta, carried out in the framework of the epidemiological studies of the "Health Observatory" as from 2009, which the Government considers to be "valuable scientific knowledge showing the need for measures that will protect public health and upgrade the environment" (see paragraphs 119 - 120 above);

c) the norms and guidelines established by various public bodies at national and international level with respect to the potential danger represented by the presence of Cr-6 in drinking water (see paragraphs 42 - 44 above).

149. The Committee considers that, in view of the threats of damage to human health of the local inhabitants, according to Article 11§§1 and 3, appropriate measures aimed at removing and preventing all causes of ill-health and diseases in the region of Oinofyta should have been implemented by the Greek authorities at the time of the development of the industrial zone or, at the latest, immediately after acknowledging that:

> "the serious and complex problem of pollution in the Asopos valley and the groundwater in this area by hexavalent chromium, other polluting heavy metals and alloys has spread and increased as a result of the unpardonable indifference of the Greek state in recent years and, in particular, since 2007, when hexavalent chromium was detected in drinking water and groundwater" (see declaration by Minister of the Environment, Energy and Climate Change of 2010, paragraph 75 above).

150. As far as the implementation of the right to protection of health is concerned, the Committee considers that, when a preliminary scientific evaluation indicates that there are reasonable grounds for concern regarding potentially dangerous effects on human health, the State must take precautionary measures consistent with the high level of protection established by Article 11. Where required, these measures must be taken in accordance to relevant decisions adopted by national jurisdictions.

151. More specifically, such measures should have included regular analyses of the surface and ground water in the region of Oinofyta, scientific investigation of possible threats to human health linked to heavy metals (including Cr-6) and comprehensive epidemiological studies. In this framework, given the scientific uncertainty related to the health problems caused by the ingestion of Cr-6, the Greek authorities should also have taken urgent measures, including - at least for the areas directly concerned by the pollution - the setting of maximum contaminant levels concerning Cr-6 in drinking water and water for agricultural use.

152. In this connection, the Committee notes the following judgments of the Court of Justice and the Court of First Instance of the European Union regarding precautionary measures in view of health risks:

> - In the Case C-157/96 of 5 May 1998 - The Queen v Ministry of Agriculture, Fisheries and Food, Commissioners of Customs & Excise, ex parte National Farmers' Union, David Burnett and Sons Ltd, R. S. and E. Wright Ltd, Anglo Beef Processors Ltd, United Kingdom Genetics, Wyjac Calves Ltd, International Traders Ferry Ltd, MFP International Ltd, Interstate Truck Rental Ltd and Vian Exports Ltd, the Court of Justice held: "Where there is uncertainty as to the existence or extent of risks to human health, the institutions may take protective measures without having to wait until the reality and seriousness of those risks become fully apparent." (cf. paragraph 63);
>
> - In the Case T-13/99 of 11 September 2002 - Pfizer Animal Health SA v Council of the European Union, the Court of First Instance held: “Unless the precautionary principle is to be rendered nugatory, the fact that it is impossible to carry out a full scientific risk assessment does not prevent the competent public authority from taking preventive measures, at very short notice if necessary, when such measures appear essential given the level of risk to human health which the authority has deemed unacceptable for society.” (cf. Summary of the Judgment).

153. In summary, the Committee considers that the Greek State has failed to take appropriate measures to remove as far as possible the causes of ill-health and to prevent as far as possible diseases on the basis of: the delay mentioned in paragraph 130 above; the deficiencies in the implementation of existing regulations and programmes regarding the pollution of Asopos River and its negative effects on health; the difficulties encountered in the co-ordination of the relevant administrative activities by competent bodies at national, regional and local level; the shortcomings regarding spatial planning; the poor management of water resources and waste; the problems in the control of industrial emissions and the lack of appropriate initiatives with respect to the presence of Cr-6 in the water.

154. The Committee therefore holds that these deficiencies constitute a violation of Article 11§§1 and 3 of the Charter.

Alleged violation of Article 11 § 2

155. The Committee notes the information provided by the Government with respect to the initiatives taken in recent years by the central administration to inform the population about the environmental problems in the region of Oinofyta and, more particularly, the public consultation process started in 2012 in the framework of the “Project for the Integrated Management of the Environmental Crisis of Asopos. The

Committee acknowledges these initiatives represent a step towards the implementation of Article 11§2 of the Charter.

156. However, the Committee notes that no information is provided by the Government in response to the following factual allegations made by the complainant organisation: in some cases, local authorities only informed the inhabitants of the pollution problems belatedly, leaving them to drink water that was unfit for consumption**;** in other cases, those authorities refused to give access to information on the environment to citizens who had requested it from the relevant services; and that the responsible prefectural authorities have never taken any measures (such as holding information meetings or producing leaflets) to inform the inhabitants or the general public about the environmental issues raised by the Asopos situation such as the pollution of the water by heavy metals or the impact of this pollution at all relevant levels. These allegations are confirmed by judicial decisions requesting that more information be given to inhabitants about the risks of using the municipal water supply network, which was in bad repair and full of Cr-6 (see paragraph 86 above).

157. With this in mind, the Committee considers the public information initiatives described by the Government in its reply to the Committee were not only initiated too late, but also, in most cases, sporadic and insufficiently co-ordinated. In this respect, the Committee considers that the scale of the pollution of the Oinofyta region and its effects on human health, as well as the fact that these problems have been known and acknowledged by the competent Greek authorities for a long time, should have required the design and implementation of a systematic information and awareness-raising programme for the population concerned, with the active and regular contribution of all the administrative institutions concerned (at national, regional and local level).

158. In this respect, the Committee recalls its previous decisions to the effect that:

- “Informing the public, particularly through awareness-raising campaigns, must be a public health priority. The precise extent of these activities may vary according to the nature of the public health problems in the countries concerned” (Conclusions XV-2, Belgium, p. 99).

- “States must demonstrate through concrete measures that they implement a public health education policy in favour of (…) population groups affected by specific problems” (Marangopoulos Foundation for Human Rights (MFHR) v. Greece, complaint No.30/2005, aforementioned decision, §§ 216 and 219).

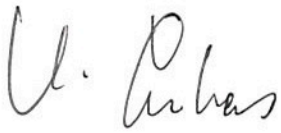
159. As a result, the Committee considers that the Greek authorities did not take appropriate measures to provide advisory and educational facilities for the promotion of health in the present case.

160. The Committee therefore holds that these deficiencies constitute a violation of Article 11§2 of the Charter.

CONCLUSION

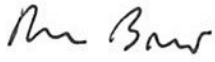
For these reasons, the Committee concludes unanimously:

- that there is a violation of Article 11§§1 and 3 of the 1961 Charter;
- that there is a violation of Article 11§2 of the 1961 Charter.



Karin LUKAS
Rapporteur

Luis JIMENA QUESADA
President



Régis BRILLAT
Executive Secretary

APPENDIX

Decision on admissibility

EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX

DECISION ON ADMISSIBILITY

7 December 2011

International Federation for Human Rights (FIDH)
v. Greece

Complaint No. 72/2011

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 254th session attended by:

Messrs	Luis JIMENA QUESADA, President
	Colm O'CINNEIDE, Vice-President
Mrs	Monika SCHLACHTER, Vice-President
Mr	Jean-Michel BELORGEY, General Rapporteur
Mrs	Csilla KOLLONAY LEHOCZKY
Messrs	Andrzej SWIATKOWSKI
	Lauri LEPPIK
	Rüçhan IŞIK
	Petros STANGOS
Mrs	Jarna PETMAN
Mr	Giuseppe PALMISANO
Mrs	Karin LUKAS

Assisted by Mr Régis BRILLAT, Executive Secretary

Having regard to the complaint dated 8 July 2011, registered on the same date as number 72/2011, lodged by the International Federation for Human Rights ("the FIDH") and signed by its President, Mrs Souhayr Belhassen, requesting the Committee to find that the situation in Greece is not in conformity with Article 11 of the European Social Charter ("the Charter of 1961"),

Having regard to the documents appended to the complaint;

Having regard to the observations of the Government of Greece ("the Government") received on 31 October 2011;

Having regard to the Charter of 1961, and in particular to Article 11 which 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 co-operation 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."

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 of the Committee adopted by the Committee on 29 March 2004 at its 201st session and revised on 12 May 2005 at its 207th session, on 20 February 2009 at its 234th session and on 10 May 2011 at its 250th session ("the Rules");

Having deliberated on 7 December 2011;

Delivers the following decision, adopted on the above-mentioned date:

1. FIDH alleges that the situation in Greece amounts to a violation of Article 11 of the Charter of 1961. FIDH alleges that the Greek State has not taken enough steps to eliminate or reduce the harmful impact of large-scale environmental pollution on the health of persons living in the catchment area of the River Asopos and near the industrial area of Oinofyta, 50 km north of Athens, and to ensure that said persons can fully enjoy their right to protection of health.

2. The Government does not contest that the complaint meets the conditions for admissibility laid down in Article 1 b) and Article 4 of the Protocol. This is without prejudice to its arguments on the merits.

THE LAW

3. The Committee observes that in accordance with Article 4 of the Protocol, which was ratified by Greece on 18 June 1998 and entered into force for this state on 18 August 1998, the complaint has been submitted in writing and concerns Article 11 of the Charter of 1961, provisions accepted by Greece when it ratified this treaty on 6 June 1984 and to which it is bound since the entry into force of this treaty in its respect on 8 July 1984.

4. Moreover, the grounds for the complaint are indicated.

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

6. The Committee has already considered that the FIDH has particular competence for the purposes of the collective complaints procedure within the meaning of Article 3 of the Protocol in respect of several issues covered by registered complaints (FIDH v. Greece, complaint No. 7/2000, decision on admissibility of 28 June 2000, §8 ; FIDH v. France, complaint No. 14/2003, decision on admissibility of 16 May 2003, §5 ; FIDH v. Belgium, complaint No. 62/2010, decision on admissibility of 1 December 2010, §6). In view of the broad scope of activities of the FIDH, it considers that the condition is also fulfilled for the purpose of the instant complaint.

7. The complaint is signed by Mrs Souhair Belhassen President of the Organisation. The Committee has already considered that Mrs Souhair Belhassen is entitled to represent FIDH for the purposes of the collective complaints procedure (FIDH v. Belgium, complaint n° 62/2010, decision on admissibility of 1 December 2010, §7). The Committee, therefore, considers that the condition provided for in Rule 23 of the Rules is fulfilled.

8. For these reasons, the Committee, on the basis of the report presented by Mrs Karin LUKAS 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 Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter, and to make it public.

Requests the Executive Secretary to publish the decision on the Internet site of the Council of Europe.

Invites the Government to make written submissions on the merits of the complaint by 3 February 2012.

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

Invites parties to the Protocol and the states having submitted a declaration pursuant to Article D paragraph 2 of the Revised Charter to make comments by 3 February 2012, should they so wish.

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 3 February 2012.

Karin LUKAS Rapporteur	Luis JIMENA QUESADA President	Régis BRILLAT Executive Secretary