

**DECISION ON THE MERITS**

**Adoption: 16 October 2006**

**Notification: 29 November 2006**

**Publicity: 30 March 2007**

**Confederation of Independent Trade Unions in Bulgaria, Confederation of Labour "Podkrepa" and European Trade Union Confederation  
v. Bulgaria**

Complaint No. 32/2005

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter ("the Committee"), during its 218<sup>th</sup> session attended by:

Mr	Jean-Michel BELORGEY, President
Mrs	Polonca KONČAR, First Vice-President
Messrs	Andrzej SWIATKOWSKI, Second Vice-President
	Stein EVJU, General Rapporteur
	Rolf BIRK
	Matti MIKKOLA
	Nikitas ALIPRANTIS
	Tekin AKILLIOĞLU
Mrs	Csilla KOLLONAY LEHOCZKY
Mr	Lucien FRANCOIS
Mr	Lauri LEPPIK
Mrs	Beatrix KARL

Assisted by Mr Régis BRILLAT, Executive Secretary of the European Social Charter,

After having deliberated on 19 September and 16 October 2006,

On the basis of the report presented by Mrs Csilla KOLLONAY LEHOCZKY,  
Delivers the following decision adopted on this last date:

## PROCEDURE

1. The complaint lodged by the Confederation of Independent Trade Unions in Bulgaria ("CITUB"), the Confederation of Labour "Podkrepa" ("CL "Podkrepa") and the European Trade Union Confederation ("ETUC") (CITUB, CL "Podkrepa" and ETUC hereinafter together referred to as "the complainant trade union organisations") was registered on 16 June 2005. It is alleged that Bulgarian legislation restricts the right to strike in the health, energy and communications sectors as well as for civil servants and railway workers in a way that is not in conformity with Article 6§4 of the Revised European Social Charter ("the Revised Charter"). The Committee declared the complaint admissible on 7 November 2005.
2. Pursuant to Article 7§§1 and 2 of the Protocol providing for a system of collective complaints ("the Protocol") and the Committee's decision on the admissibility of the complaint, the Executive Secretary communicated the text of the admissibility decision on 14 November 2005 to the Bulgarian Government ("the Government"), the complainant trade union organisations, the States party to the Protocol, the States having ratified the Revised Charter and having made a declaration under its Article D§2, the Union of the Confederations of Industry and Employers of Europe (UNICE) and the International Organisation of Employers (IOE).
3. Pursuant to Rule 31§1 of the Committee's Rules, the Committee fixed a time limit of 10 February 2006 for the presentation of the Government's submissions on the merits of the complaint and subsequently, at the Government's request, the President, pursuant to Rule 28§2, extended this deadline to 10 April 2006. The submissions were registered on 27 April 2006.
4. Pursuant to Rule 31§2, the President set 10 June 2006 as the deadline for the complainant trade union organisations to present their response to the Government's submissions. The response was registered on 9 June 2006.
5. Pursuant to Rule 31§3, the President then set 15 July 2006 as the deadline for the Government to submit a further response, if it so wished. The Government's further response was registered on 19 July 2006.
6. The Committee set 10 February 2006 as the deadline for any observations from the States party to the Protocol as well as from the UNICE and the IOE. No observations were registered.

## **SUBMISSIONS OF THE PARTIES**

### *A – The Complainant Trade Union Organisations*

7. The complainant trade union organisations allege that Bulgarian legislation restricts the right to strike to an extent that amounts to a violation of Article 6§4 of the Revised Charter. They argue in particular that

- strikes are unlawful in the health, energy and communications sectors (Section 16 (4) of the Collective Labour Disputes Settlement Act);
- railway workers are unjustifiably deprived partly of the right to strike (Section 51 of the Railway Transport Act);
- civil servants have the right to take part only in symbolic strike actions and are banned from collectively withdrawing their labour (Section 47 of the Civil Service Act).

### *B – The Defending State*

8. The Government points out that amendments to the Collective Labour Disputes Settlement Act are currently discussed by the Parliament. According to the Government, these amendments are supposed to entail the revocation of the prohibition of strike in the field of production, distribution and supply of electricity, of communications and of healthcare and will introduce instead an obligation for the provision of minimum services in the electricity and healthcare sector during strike action. The Government considers that the arguments of the complainant trade union organisations as expressed in their written submissions on the complaint may be taken into account as constructive criticism in the debate on the amendments to the Collective Labour Disputes Settlement Act within the scope of the ongoing legislative procedure. It invites the Committee not to take a decision on this point before the end of the legislation procedure and assures to notify the Committee as soon as possible of the adoption of any legislative amendments in this respect.

9. As regards the alleged restrictions to the right to strike of civil servants and railway workers, the Government asks the Committee to dismiss the complaint as being unfounded.

## **RELEVANT DOMESTIC LAW**

In their submissions on the complaint the parties refer to the following provisions of the relevant domestic legislation:

### **10. The Constitution of the Republic of Bulgaria**

Articles 50, 57(2) and 116 of the Constitution of the Republic of Bulgaria read as follows:

**Article 50**

"Workers and employees shall have the right to strike in defence of their collective economic and social interests. This right shall be exercised in accordance with conditions and procedures established by law."

**Article 57 (2)**

"...

(2) Rights shall not be abused, nor shall they be exercised to the detriment of the rights or the legitimate interests of others.

..."

**Article 116**

"(1) State employees shall be the executors of the nation's will and interests. In the performance of their duty they shall be guided solely by the law and shall be politically neutral.

(2) The conditions for the appointment and dismissal of state employees and the conditions on which they shall be free to belong to political parties and trade unions, as well as to exercise their right to strike shall be established by law."

**11. The Collective Labour Disputes Settlement Act ("the CLDSA")**

Sections 14 (1) and 16 (4) of the CLDSA read as follows:

**Section 14**

"(1) Workers, employees and employer are obliged to enter into a written agreement settling the conditions during the strike for carrying out of activities, the cessation of which may lead to endangering:

1. the satisfactory communal and transport servicing of citizens and stoppage the TV and radio broadcasts;
2. causing irreparable damages to public or personal property or to environment;
3. the public order.

...."

**Section 16**

"Strike is not admissible:

...

4. in production, distribution and supplying of electric power, communications and health care;

..."

**12. The Railway Transport Act ("the RTA")**

Section 51 of the RTA reads as follows:

"In case of undertaking actions included in chapter three of the Law for settlement of collective labour dispute workers, employees and their employers - haulers have to provide satisfactory transport servicing of citizens, but not under 50 % of the rail transport before undertaking of those actions."

### 13. **The Civil Service Act (“the CSA”)**

Section 47 of the CSA reads as follows:

“(1) The state employees may announce a strike in case presented demands in relation with official and insurance relations are not respected.

(2) Implementation of the strike under paragraph 1 is carried out by wearing or placing appropriate signs and symbols, protest posters, bands and other without cessation of state work.

(3) During strike representatives of state employees and body of appointing make efforts for settling the debatable points.”

### **THE LAW**

14. In their written submissions on the merits of the complaint, the complainant trade union organisations refer to Article 6§4 and G of the Revised Charter as well as the Appendix to the Revised Charter, Part II, Article 6§4, which read as follows:

#### **Article 6 – The right to bargain collectively**

Part I: “All workers and employers have the right to bargain collectively.”

Part II: “With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

...

and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.”

#### **Article G – Restrictions**

“1 The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.

2 The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.”

#### **Appendix to the Revised Charter, Part II, Article 6§4**

“It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.”

## ON THE ALLEGED VIOLATION OF ARTICLE 6§4 OF THE REVISED CHARTER

### i) Preliminary remarks

15. The Committee notes from the submissions of the parties that in the year 2003 the Ministry of Labour and Social Policy initiated the establishment of a working group comprising representatives of the Government and the nationally representative organisations of employers and employees with the task to prepare and suggest amendments and addenda to the CLDSA. The bill for amendment of the CLDSA agreed upon within this working group included, *inter alia*, proposals on a broadening of the right to strike for civil servants as well as a repeal of the absolute ban of strikes for workers in the communications and health sectors and was approved by all social partners represented in the National Council for Tripartite Cooperation.

16. However, following objections by the ministers of healthcare and communications, the aforementioned changes were not included in the bill for amendment of the CLDSA and the total ban on strikes in the energy, healthcare and communications sectors as well as the restrictions to the right to strike for civil servants were retained in the version of the bill approved by the Council of Ministers and submitted to Parliament in November 2003. During the year 2004, CITUB publicly criticised the problems raised by the bill at several occasions and the ETUC together with the International Confederation of Free Trade Unions denounced the lack of progress made in relation to the ban on strikes in the healthcare, communications and energy sectors and with respect to civil servants in a letter to the Prime Minister in March 2004.

17. The National Assembly of the Republic of Bulgaria at a session on 5 April 2006 has passed a first voting on a revised Act for Amendment and Supplement of the Collective Labour Disputes Settlement Act. Under the said Act, Section 16 (4) of the CLDSA regarding the prohibition of strike in the field of production, distribution and supply of electricity, of communications and of healthcare is supposed to be repealed and an obligation to provide minimum services during strike action in the electricity and healthcare sectors is expected to be introduced by an amendment to Section 14 (1.1) of the CLDSA. The complainant trade union organisations allege that even if the currently proposed amendments were adopted, the situation would remain in violation of Article 6§4 of the Revised Charter. Furthermore, the proposed legislative amendments would not imply a modification of Section 51 of the RTA regarding the restrictions of the right to strike of railway workers nor of Section 47 of the CSA regarding the right to strike of civil servants.

18. As of the date of the decision on the merits of the complaint, the Government has not informed the Committee that any of the aforementioned amendments to the CLDSA have passed the necessary second voting by the National Assembly. The Committee therefore considers that the proposed amendments to the CLDSA have hence not yet been adopted and are not supposed to be adopted in a delay which would allow their consideration in the present complaint.

19. The Committee recalls that within the scope of the collective complaints procedure it bases its assessment of conformity with the Charter on the domestic law and practice applicable on the date of the decision on the merits of the complaint<sup>1</sup>. In the present case, it therefore only takes into account the currently applicable version of the relevant provisions of the CLDSA and refrains from assessing the proposed amendments which may be subject to further modifications in the course of the legislative procedure.

ii) As to the restrictions to strikes in the health, energy and communications sectors

A. *Arguments of the parties*

20. The complainant trade union organisations argue that Section 16 (4) of the CLDSA provides for a general ban of the right to strike for workers employed in the sectors of healthcare, communications and energy production, distribution and supply, thereby restricting the right to strike to an extent that is in violation of Article 6§4 of the Revised Charter. They state that according to official statistics, out of the entire workforce in Bulgaria comprising 2,109,476 employees a total of 136,000 workers are employed in these sectors.

21. The complainant trade union organisations concede that the right to strike recognised by Article 6§4 of the Revised Charter is not unconditional and that a state may regulate its exercise by law.

22. However, in the view of the complainant trade union organisations, the total ban on strikes in the aforementioned sectors pursuant to Section 16 (4) of the CLDSA constitutes a restriction of the right to strike that goes beyond those authorised by Article G of the Revised Charter.

23. The Government does not contest the allegations of the complainant trade union organisations and refers to the proposed amendments to the CLDSA as described in more detail above in the preliminary remarks under paragraphs 15 to 18.

B. *Assessment of the Committee*

24. The Committee recalls that the right to strike embodied in Article 6§4 of the Revised Charter is not absolute and may be restricted but that any restriction to the right to strike to certain categories of employees or in certain sectors is only in conformity with Article 6§4 of the Revised Charter if it satisfies the conditions laid down in Article G of the Revised Charter. Thus, any restriction has to be (i) prescribed by law, (ii) pursue a legitimate purpose, i.e. the protection of the rights and freedoms of others, of public interest, national security, public health or morals and (iii) necessary in a democratic society for the pursuance of these purposes, i.e. the restriction has to be proportionate to the legitimate aim pursued (see Conclusions I, Statement of Interpretation of Article 6§4, p. 38).

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<sup>1</sup> European Council of Police Trade Unions v. Portugal (Collective complaint No. 11/2001), decision on the merits of 21 May 2001, §§ 47-48 and 67-68.

25. Firstly, the Committee observes that the prohibition of strikes in the electricity, communications and healthcare sectors is prescribed by Bulgarian statutory law.

26. Secondly, the Committee considers that the provision of electricity, communications and healthcare may be of primary importance for the protection of the rights of others, public interest, national security or public health. A restriction of the right to strike in these sectors may therefore serve a legitimate purpose in the meaning of Article G.

27. However, the Committee considers that there is no reasonable relationship of proportionality between a general ban on the right to strike, even in essential sectors, and the legitimate aims pursued. Simply prohibiting all employees in these sectors from striking constitutes a restriction that can not be regarded as being necessary in a democratic society within the meaning of Article G.

28. Thus, the Committee holds that the general ban of the right to strike in the electricity, communications and healthcare sectors pursuant to Section 16 (4) of the CLDSA goes beyond the restrictions to the right to strike permitted by Article G of the Revised Charter and therefore constitutes a violation of Article 6§4 of the Revised Charter.

iii) As to the alleged restrictions to the right to strike of railway workers

A. *Arguments of the parties*

29. The complainant trade union organisations argue that Section 51 of the RTA constitutes a special restriction to the right to strike of railway workers by obliging them to provide satisfactory transport service for the population of not less than 50% of the level of transport service provided prior to strike action. They state that according to official statistics a total of 33,600 workers are employed in the railway sector.

30. The complainant trade union organisations point out that the legal provision does not establish any criteria for determining the 50% threshold of transport services to be maintained. In their view, due to this lack of criteria railway workers wishing to call a strike may not assess what is the scope of services required by the law to ensure that the 50% threshold is met. The complainant organisations contend that this uncertainty does de facto prevent workers in the Bulgarian Railway Company system to call strikes. They further criticise that the law does not contain any specification of the type of transport addressed by it, like e.g. passenger transport, transport of goods or other.

31. The complainant trade union organisations emphasise that the restriction to the right to strike of railway workers under Section 51 of the RTA does not fall within the limits established by Article G of the Revised Charter. They argue that the transport sector in general may not be regarded as an essential service as such and therefore the mere fact that a strike takes place in this sector can not justify restrictions to the right to strike. Furthermore, the complainant trade union organisations are of the opinion that the requirement to guarantee “satisfactory transport” does in practice render strikes in the railway transport sector ineffective.



Finally, they point out that the requirement to ensure “not under 50 % of the rail transport before undertaking of those actions” could lead to a situation where in the event of a strike more than half the persons concerned by the strike would have to be “strike breakers”.

32. The Government alleges that the restriction to the right to strike pursuant to Section 51 of the RTA only concerns the operation of trains, i.e. locomotives, but not of carriages and wagons. It states that since the same locomotives are used on several trains, disruption of their operation may have an uncontrollable multiplier effect and argues that long-term stoppages and disruptions in the railway transport may adversely affect the continued provision of public transport in total as well as the economy of the country in general.

33. According to the Government, each day, 90 000 persons travel by train, among them groups of the population that benefit from so-called social transport subsidised by the State, such as mothers with children, disabled persons, retired persons, students etc. The Government therefore considers the 50% threshold of railway transport services to be maintained during strike action to be justified in order to guarantee a continued provisions of satisfactory public transport and to enable the rapid reestablishment of full scale transport services after strike action has ceased.

#### *B. Assessment of the Committee*

34. The Committee finds that the transportation of passengers as well as commercial goods may constitute a public service of primary importance in which strikes could pose a threat to the rights and freedoms of others, public interest, national security, public health or morals. It therefore considers that the statutory requirement to provide minimum transport services during strike action may serve a legitimate purpose in the meaning of Article G (see also paragraph 24).

35. Firstly, the Committee observes that the scope of Section 51 of the RTA and the restrictions to the right to strike resulting from this provision are not sufficiently clear to allow workers in the sector concerned wishing to call or to participate in a strike to assess what is the scope of services required by the law in order to meet the required 50% threshold. It is further unclear what are the criteria for determining the 50% threshold. The Committee therefore considers that the law does not satisfy the requirements of precision and foreseeability implied by the concept of “prescribed by law” within the meaning of Article G. Thus, in the case at hand there is no need for the Committee to assess the conformity of the 50% threshold itself with Article 6§4 of the Revised Charter.

36. Secondly, the Committee finds that it has not been established that the restriction of the right to strike imposed by Section 51 of the RTA pursues a legitimate purpose in the meaning of Article G of the Revised Charter. It considers that the alleged and not further specified consequences for the economy do not qualify as a legitimate aim in this respect.

37. Finally, in lack of a legitimate purpose for the restriction to the right to strike according to Section 51 of the RTA, such restriction may consequently not be considered as being necessary in a democratic society within the meaning of Article G.

38. The Committee therefore holds that the restriction to the right to strike pursuant to Section 51 of the RTA goes beyond those permitted by Article G and therefore constitutes a violation of Article 6§4 of the Revised Charter.

iv) As to the restrictions to the right to strike of civil servants

A. *Arguments of the parties*

39. The complainant trade union organisations argue that pursuant to Section 47 of the CSA, civil servants in Bulgaria only have the right to carry out symbolic protest action, thereby depriving them from having recourse to the fundamental element of a strike, i.e. stoppage of work. In their view, the limitation to symbolic strike action does in practice evade the essence of the right to strike guaranteed in the Constitution which consists mainly in the concerted cessation of work.

40. The complainant trade union organisations emphasise that this restriction to the right to strike for all civil servants goes beyond the restrictions authorised by Article G of the Revised Charter and is not necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

41. The Government acknowledges that the right to strike of civil servants is an essential constitutional right guaranteed by Articles 116 (2) and 50 of the Constitution. It argues that, however, the right to strike as any other fundamental right or freedom finds its limits where its exercise would endanger the constitutionally guaranteed rights and freedoms of others. In the view of the Government it is this principle that is reflected in Article 57 (2) of the Constitution as well as in Article G of the Revised Charter.

42. The Government considers that a work stoppage by civil servants given their status and function as “executors of the nation's will and interests” according to Article 116 (1) of the Constitution could impair the orderly functioning of public administration and entail negative consequences for the society.

43. The Government therefore deems the restrictions of the right to strike of civil servants to be in conformity with the requirements of Article G of the Revised Charter since these are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

*B. Assessment of the Committee*

44. Firstly, the Committee observes that Section 47 of the CSA limits the exercise of collective action in respect of all civil servants to wearing or displaying signs, arm-bands, badges or protest banners. Civil servants thus are only entitled to engage in symbolic action which the law qualifies as strike and do not have the right to collectively withdraw their labour. The Committee finds that this restriction amounts to a complete withdrawal of the right to strike for all civil servants.

45. Secondly, the Committee recalls that restrictions to the right to strike of certain categories of civil servants, for example those whose duties and functions, given their nature or level of responsibility are directly affecting the rights of others, national security or public interest may serve a legitimate purpose in the meaning of Article G (see Conclusions I, Statement of Interpretation, pp. 38-39).

46. However, the Committee considers that there is no reasonable relationship of proportionality between prohibiting all civil servants from exercising the right to strike, irrespective of their duties and function, and the legitimate aims pursued. Such restriction can therefore not be considered as being necessary in a democratic society in the meaning of Article G.

47. The Committee therefore holds that the general ban of the right to strike of civil servants constitutes a violation of Article 6§4 of the Revised Charter.

## CONCLUSION

For these reasons, the Committee concludes unanimously

- that the general ban of the right to strike in the electricity, healthcare and communications sectors (Section 16 (4) of the Collective Labour Disputes Settlement Act) constitutes a violation of Article 6§4 of the Revised Charter;
- that the restriction to the right to strike in the railway sector pursuant to Section 51 of the RTA goes beyond those permitted by Article G and therefore constitutes a violation of Article 6§4 of the Revised Charter;
- that allowing civil servants to only engage in symbolic action which the law qualifies as strike and prohibiting them from collectively withdrawing their labour (Section 47 of the Civil Service Act) constitutes a violation of Article 6§4 of the Revised Charter.

Csilla KOLLONAY LEHOCZKY  
Rapporteur

Jean-Michel BELORGEY  
President

Régis BRILLAT  
Executive Secretary