

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



9 May 2006

**Collective Complaint No. 32/2005  
Confederation of the Independent Trade  
Unions in Bulgaria (CITUB) /  
Confederation of Labour "Podkrepa" /  
European Trade Union Confederation  
v. Bulgaria**

**Case Document No. 2**

**WRITTEN SUBMISSIONS FROM THE  
BULGARIAN GOVERNMENT ON THE MERITS**

**registered at the Secretariat on 14 April 2006**



**Position of the Government of the Republic of Bulgaria concerning  
Collective Complaint № 32  
Confederation of the Independent Trade Unions in Bulgaria (CITUB), Confederation of  
Labour “Podkrepa” and the European Trade Union Confederation**

**I. Regarding the Provision of Article 16, Item 4 of the Collective Labour Disputes Settlement Act (CLDSA)**

In connection with the preparation of a coordinated position concerning the Collective Complaint by the CITUB, CL “Podkrepa” and the ETUC, a inter-institutional working party was established under the initiative of the Ministry of Labour and Social Policy, with the participation of experts from all the other ministries referred to in the Complaint (the Ministry of Economy and Energy, the Ministry of Transport, the Ministry of Public Administration and Administrative Reform and the Ministry of Health.)

Each of the ministries concerned expressed its position on the matter during the working party sessions and based on these positions the due steps for legislative changes had to be made.

In the mean time, the National Assembly of the Republic of Bulgaria at a session on 5 April 2006 passed at first voting an Act for Amendment and Supplement of the Collective Labour Disputes Settlement Act. This Act foresees the revocation of the provision of article 16, 4 of the current CLDSA and inserts in article 14, paragraph 1, 1 the following text: “the urgent and imperious health assistance, the gas, electricity and heating supply.” This means that the prohibition of strike in the field of production, distribution and supply of electricity, of communications and of healthcare is being revoked. Meanwhile, through the amendment of article 14, paragraph 1, 1 of the CLDSA, an obligation is being introduced for the provision of a minimum amount of services and activities in the field of supplying the population with electricity and healthcare during strike.

Under article 88, paragraph 1 of the Constitution of the Republic of Bulgaria laws have to be discussed and passed on two votings that must be done during separate sessions. Under the provision of article 70, paragraph 1 of the Regulation of the Organization and Work of the National Assembly, the people’s representatives may submit written proposals for amendments of a draft law that has been passed at the first voting within a 21-day period after its acceptance. After the expiration of the aforementioned period, the submitted proposals are to be reviewed by the respective commission. After that the commission submits a motivated report to the National Assembly, which covers the written amendment proposals submitted to the commission by people’s representatives, the commission’s position on them, as well as commission proposals on the respective draft law, when the commission has adopted such proposals after proposals by some of its members made during commission sessions.

The Government of the Republic of Bulgaria will inform as soon as possible the Committee of Social Rights of the Council of Europe for the possible adoption of the aforementioned Act.

**II. Regarding Civil Servants**

There is a specific provision in article 116, paragraph 2 of the Constitution of the Republic of Bulgaria concerning civil servants, according to which the terms regulating the civil servants’ right to strike shall be established by a law, in this case the Civil Service Act.

When reviewing the issue of the correspondence of Bulgarian legislation, regulating the civil servants’ right to strike, with article 6, paragraph 4 of the Revised European Social Charter, the following has to be kept in mind:

It is beyond doubt that the right to strike is an essential constitutional right and as such it is irrevocable under the provision of article 57, paragraph 1 of the Constitution. At the same time,

the provision of article 50 must not be reviewed separately but in connection with article 57, paragraph 2 of the Constitution.

The efficient exercising of the right to strike may lead to extremely negative consequences in all fields of social life affected by it. As pointed out in the Constitutional Court Decision № 14/1996 on Constitutional File № 15/1996, it represents the ultimate mean for the protection of collective economic and social rights of workers and the efficient exercising of this right is related to ceasing work. The consequences of exercising this right may be so dangerous as to impose certain restrictions and even the revocation of the right to strike of certain categories of workers in certain fields. It must be noted that the right to strike may be abused as well as almost any other right or freedom, proclaimed in and guaranteed by the Constitution. The abuse of rights inevitably leads to the violation of the rights and lawful interests of other persons. This fact has been accounted for by the legislator and even though article 57, paragraph 1 of the Constitution introduces the principle of the irrevocability of basic rights, paragraph 2 represents a corrective for their exercising. No abuse is admitted when exercising basic rights and neither is their exercising when it violates the rights and lawful interests of others.

Therefore, when regulating the terms, under which civil servants may exercise the right to strike, the legislator has taken into consideration the provision of article 57, paragraph 2 of the Constitution. In view of the status of the civil servants, explicitly stated in article 116, paragraph 1 of the Constitution, as executors of the will and interests of the nation, the legislator has foreseen that the right to strike shall be executed by wearing and placing of appropriate signs and symbols, protest posters, ribbons and others without ceasing the implementation of the civil service /article 47, paragraph 2 of the CSA/. Thus, the right to strike is not excluded, but merely restricted.

We consider this legislative decision to be justified, given the status and functions of the civil servants – to assist the state authority bodies in the implementation of their powers. In case of the civil servants exercising the right to strike through ceasing the implementation of the civil service, this could block important processes in the state and could cause serious negative consequences for the society.

It could be stated that the matter of the right to strike has been provided for in a similar manner in the Revised European Social Charter. Article 6, paragraph 4 acknowledges the workers' right to strike in cases of conflicting interests. Nevertheless, article G explicitly foresees the possibility to restrict the right to strike by a law when this is 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."

Furthermore, the Collective Complaint acknowledges the fact that the right to strike according to article 6, paragraph 4 of the Charter is not unconditional and any state may regulate its exercising, provided that the restrictions of this right are within the framework of article G of the Charter.

In conclusion, we consider that the claimed lack of correspondence of article 47 of the Civil Service Act with the provision of article 6, paragraph 4 of the Revised European Social Charter does not exist.