

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**



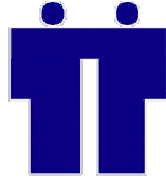
10 July 2006

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

Case Document No. 3

**OBSERVATIONS FROM COMPLAINANT PARTIES
(CITUB/Podkrepa/ETUC)
IN REPLY TO THE OBSERVATIONS
OF THE BULGARIAN GOVERNMENT
ON THE MERITS**

registered at the Secretariat on 9 June 2006



**Collective Complaint of the
Confederation of the Independent Trade Unions/
Confederation of Labour "Podkrepa"/ European
Trade Union Confederation**

against the Republic of Bulgaria

Collective Complaint N° 32/2005

**Observations of the complainant parties
(CITUB/Podreka/ETUC)**

**in reply to the observations of
the Bulgarian Government**

As to the written observations of the Bulgarian government submitted by letter of 26 April 2006 regarding this collective complaint and to which the President of the ECSR required the complainant parties to submit their eventual counter observations before 10 June 2006, the complainant parties would like to highlight the following:

As to the amendments to the Collective Labour Disputes Settlement Act (CLDSA) :

Firstly, the complainants would like to highlight that they consider the amendments in the Collective Labour Disputes Settlement Act (CLDSA) adopted by the Parliament at first reading to have been prepared in a hastily and fragmentarily manner and consider them also still not in compliance with the real socio-economic and political reality in the Republic of Bulgaria (RB), as well as with the meaning and the spirit of the Revised European Social Charter, and in particular its Article 6§4 .

Despite the suggested amendments to Articles 14 and 16 of the Act, there will still continue to remain a number of ambiguities, limitations and prohibitions which will continue to have an impact on the effectiveness of strike actions.

Firstly, and from a more general point of view, the complainants still question why the right to strike should be regulated in more than one act, when the Constitution of the Republic of Bulgaria provides for the above mentioned right to be settled in only one independent act. To the present date decrees concerning the right to strike can be found besides in the CLDSA, also in the Railway Transport Act (RTA) and in the Civil Service Act (CSA). It should thereby be noted that indeed the suggested amendments only relate to the CLDSA and not the two other acts.

Secondly, as mentioned, there are no changes proposed regarding the limitations on the right to strike in the Railway Transport Act, requiring securing 50% of the transportation during the period of strike, so that these will still remain to exist and this without any explicit specification of which type of transport is exactly meant by it (i.e. passengers, loads, and/or all possible variants). The complainants would like to highlight this lack of proposed changes as the Bulgarian government did not touch upon this issue in its written observations despite the fact that it formed one of the three parts of our complaint.

Thirdly, also the proposed amendments regarding the procurement of a minimum amount of services and activities in the field of supply of the population with electricity and in the healthcare system still create a number of problems. For example, one could highlight the foreseen amendment to article 14, para. 1 (1) which introduces an obligation to provide “minimal amount of services and activities” in the concerned sectors during a strike. The terms “minimal amount of services and activities” are not legally defined/clarified and this could lead to the real possibility that each strike in one of these sectors could be easily and quickly announced by court order as being contradictory to law, with as a consequence that disciplinary punishments for the workers participating in the strike might follow. In practice, it will turn out that with these changes the real right to strike in these sectors is not only

prevented from regulation, but that even new legal obstacles are introduced in order to be able to carry out a strike action.

Fourthly, the problem regarding the right to strike of the civil servants still remains an essential and unsolved one. On the one hand, the government of the Republic of Bulgaria acknowledges this constitutionally guaranteed right of civil servants, but on the other hand, the Civil Service Act allows them only to engage in a symbolic strike by means of wearing and placing of appropriate signs and symbols without ceasing work. The complainants are bewildered by the figure and the meaning of the expression “symbolic strike” as to them this construction is a consecutive attempt to evade the essence of the constitutional orders and to limit in practice the right to effective strike actions.

This seriously puts into question the possibility to defend the interests and rights of the working people by means of the right to strike in particular. The Bulgarian government uses in order not to remedy the situation again the argument –thereby relying on Article G of the Revised European Social Charter- that the civil servants assist state authority bodies to implement their powers and that their effective strike actions could block important state processes. The complainants consider that this consecutive use of the argument can only be interpreted as a continuing and even categorical lack of political willingness on the part of the Bulgarian government to remedy for once and for all this infringement of a fundamental (trade union) right, and this despite the negative conclusions of the ECSR on this particular point. The complainants would thereby also like to remind the ECSR to what they highlighted in their complaint on page 10-11 where it is indicated how already before the Bulgarian Council of Ministers surprisingly rejected a consensus proposal, elaborated within a tripartite composed working group, that foresaw the abolishment of the different contested limitations and prohibitions to the right of strike in the concerned sectors and by civil servants.

By way of additional information, it is furthermore to note that the submitted Law Project, and the suggestions made on it by separate deputies, can also hardly be considered as a genuine attempt to regulate strike actions on a sectoral (branch) level and on a national level. This makes the carrying out of such actions exceptionally difficult (not to say impossible in practice) and, in addition, there is and will be also the possibility to declare such a strike illegal at any moment. The **currently applicable CLDSA regulates solely the right to strike on an enterprise level and only if a labour dispute with the employer exists.** At the same time, the Constitution of the Republic of Bulgaria however gives the right to the workers/employees to strike in **defense of their social and economic interests.** The current non-regulation of this constitutional possibility demonstrates again the categorical unwillingness of all Bulgarian governments over the last 15 years to solve this problem.

As it stands, the currently applicable CLDSA, as well as the last amendments proposed to it, will remain to serve mainly the interests of the government and those of the employers in Bulgaria, who are directly interested in non-effective strike actions. It should thereby thus be regretted that in this way the subsequent Bulgarian governments did up till now not show real interest in the legal-labour and socio-

economic problems of the workers and employees in their country in particular and in its citizens' interests in general.

In sum, the complainants can not agree and align with the observations submitted by the Bulgarian government because:

- The amendments regarding the right of strike in the health, energy and telecommunication sectors, as proposed by the Government and the Members of Parliament of the ruling coalition, will not only ensure that the ban to strike remains, but even introduce additional legal obstacles for the effective exercise of this fundamental right;
- No amendments are submitted, let alone considered, to ensure the effective right of strike for civil servants and for workers in the railway transport sector;
- The proposed amendments will also not at all ensure that the currently applicable CLDSA of 1990 (which is in essence limited to ensuring the settlements of collective labour disputes) is put in line with the provisions of the right to strike as recognized in the Bulgarian Constitution of 1991 which protects the more general and wider right to strike in order to protect their collective economic and social interests. Important to note thereby is that the Constitution, providing for this much wider scope of the right to strike, was adopted by the legislator in 1991 with a clear intention and full knowledge of the legislation then in force in Bulgaria, in particular the CLDSA, with its far more restricted scope and which was adopted one year earlier.

They therefore consider that the current situation, including the currently proposed and examined amendments to the CLDSA, continues to be a non-satisfactory fulfillment on the part of the Republic of Bulgaria of its obligations under article 6§4 RESC and its related case law of the ECSR.

Finally, the complainant parties note from its observations that the Bulgarian Government intends to inform as soon as possible the ECSR of the possible adoption of the revised CLDSA.

In case so happens and in case the ECSR would decide to take this additional information into consideration in its decision on the merits of this collective complaint, the complainant parties would like to receive this additional information also in order to be able to submit their observations to it as well.

Sofia/Brussels, 9 June 2006