COUNCIL OF EUROPE CONSEIL DE L'EUROPE
Committee of Ministers
Comité des Ministres

Resolution CM/ResChS(2012)4
Confederation of Independent Trade Unions in Bulgaria (CITUB), Confederation of Labour "Podkrepa" (CL "Podkrepa") and European Trade Union Confederation (ETUC) against Bulgaria, Complaint No. 32/2005

(Adopted by the Committee of Ministers on 10 October 2012
at the 1152nd meeting of the Ministers' Deputies)

The Committee of Ministers,[1]

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 16 June 2005 by the Confederation of Independent Trade Unions in Bulgaria (CITUB), the Confederation of Labour "Podkrepa" (CL "Podkrepa") and the European Trade Union Confederation (ETUC) against Bulgaria;

Having regard to the report transmitted by the European Committee of Social Rights, in which it concluded unanimously:

a) 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.

The right to strike in Article 6§4 of the Revised Charter is not absolute and may be restricted, but any restriction to certain categories of employees or in certain sectors is only in conformity with Article 6§4 if it respects the conditions laid down in Article G. 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.

(i) The prohibition of strikes in the electricity, communications and healthcare sectors is prescribed by Bulgarian statutory law.

(ii) 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 within the meaning of Article G.

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

b) that the restriction to the right to strike in the railway sector pursuant to Section 51 of the Railway Transport Act goes beyond those permitted by Article G and therefore constitutes a violation of Article 6§4 of the Revised Charter.

[1] In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

(i) The scope of Section 51 of the Railway Transport Act (RTA) requiring the maintenance of satisfactory transport services for the population of not less than 50% of the level of transport service provided prior to strike action 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 minimum services required by the law in order to meet the required 50% threshold. It is further unclear what the criteria are for determining the 50% threshold. 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.

(ii) 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. A statutory requirement to provide minimum transport services during strike action may serve a legitimate purpose within the meaning of Article G.

(iii) 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. The alleged and not further specified consequences for the economy do not qualify as a legitimate aim in this respect. In the absence of a legitimate purpose, the restriction to the right to strike according to Section 51 of the RTA may not be considered as being necessary in a democratic society within the meaning of Article G.

c) 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.

(i) Section 47 of the Civil Service Act limits the exercise of collective action in respect of all civil servants to wearing or displaying signs, armbands, 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. This restriction amounts to a complete withdrawal of the right to strike for all civil servants.

(ii) 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 within the meaning of Article G.

(iii) However, 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 a restriction can therefore not be considered as being necessary in a democratic society within the meaning of Article G.

Having regard to the information successively communicated by the Bulgarian delegation, in particular by a letter dated 24 November 2006 (cf. Appendix to the present resolution),

1. takes note of the statement made by the respondent government and the information it has communicated on the follow-up to the decision of the European Committee of Social Rights and welcomes the measures already taken by the Bulgarian authorities and their commitment to bring the situation into conformity with the Charter;

2. looks forward to Bulgaria reporting, at the time of the submission of the next report concerning the relevant provisions of the European Social Charter, that the situation has been brought into full conformity.

Appendix to Resolution CM/ResChS(2012)4

Letter from the Ministry of Labour and Social Policy

REPUBLIC OF BULGARIA
MINISTRY OF LABOUR AND SOCIAL POLICY

№ 92 /980
24. 11. 2006

TO

MR REGIS BRILLAT
EXECUTIVE SECRETARY OF THE
EUROPEAN SOCIAL CHARTER

ABOUT: Collective complaint № 32/2005 vs Bulgaria pending before the ECSR according to the system of Collective Complaints.

DEAR MR. BRILLAT,

I have the pleasure to send you the latest changes in the Settlement of Collective Labour Disputes Act, promulgated in "State Gazette" № 87/27.10.2006, concerning the right to strike of some categories of workers and employees.

Until the amendments the Settlement of Collective Labour Disputes Act – art.16 (4), denied the right to strike of workers in production, distribution and supply of energy, communications and healthcare. After the latest changes in the law these restrictions were revoked.

According to Constitutional procedure the Parliament repealed the text – art.16, (4) of the SCLDA. The actual wording of the art.16, (4) is the following:

Article 16. Strike shall not be admissible:

1. if the claims put forward by the workers contradict the Constitution;
2. (Amended, SG 25/2001) when the requirements of Article 3, 11, paragraphs 2 and 3 and Article 14 have not been observed, as well as in respect of issues on which there is an agreement or an arbitration decision;
3. during natural calamities and related urgent and emergency rescue and restoration works;
4. (Repealed, SG 87/2006);
5. for the settlement of individual employment disputes;
6. (Amended, SG 57/2000, 87/2006) in the system of the Ministry of Defence, the Ministry of Interior, the judicial, prosecution and investigation bodies;
7. by which political claims are laid.

We would appreciate your co-operation in presenting this information in front of the ECSR, regarding Collective Complaint № 32/2005.

Yours faithfully,

DEPUTY MINISTER:

DIMITAR DIMITROV

08 DEC. 2006

CHARTE SOCIALE EUROPEENNE

Directorate European Integration and International Relations

déjà reçu par fax le 24/11/06.
enregistré le 24/11/06.