

Replies to the Questions of the European Committee of Social Rights in respect of the 4th Report of Bulgaria on the ESCh(r)

On Article 13§1 of the ESCh(r)

1. Types of benefits and eligibility criteria

One of the cases of suspension of the registration in the labour offices is in the event of refusal to accept the appropriate offered job, or the participate in vocational qualification course or employment programmes and measures according to the Employment Promotion Act.

“Appropriate job” according to §1, item 4 of the Employment Promotion Act is a job, which correspond to the education, qualification and health status of the person, which is located in the same settlement or up to 30 km outside this settlement (when appropriate public transportation is available), for a period of 24 months from the registration of the person. After the expiration of this period “appropriate job” is the job that corresponds to the health status of the person.

“Valid reason” according to §1, item 2b of the Additional Provision of the Employment Promotion Act is: arrest by the competent authorities, appearing before the court or another public authority, participation in a muster, illness etc. These circumstances shall be proved by an official document within a period of 7 days from the date when the reason has become irrelevant.

When the registration is restored for a valid reason, the persons may benefit the right to receive monthly benefits according to the Social Assistance Act.

According to data of the Employment Agency for 2005 the number of persons registered in the Labour Office Directorates was 424 381. The number of persons subjects of social assistance in 2005 was 89 075.

The number of persons which refused to participate in the Programme “From Social Assistance to Employment” was 5 383. Amongst them, 2 238 were sanctioned by termination of their registration. The number of persons which refused to participate in the Programme “Assistants of People with Disabilities” was 74. Amongst them, 45 were sanctioned by termination of their registration.

2. Right of appeal and legal assistance

According to data of the Social Assistance Agency towards 30.06.2005 the number of the initiated administrative legal proceedings against refusals to allocate social benefits was 190. These legal proceedings have been founded on the provisions of the Social Assistance Act, Family Benefits for Children Act, Child Protection Act, the Protection against Discrimination Act and Ordinance № 5 on the conditions for granting target social benefit for heating.

Concerning the legal assistance we would like to inform the ECSR on the adoption of the Legal Assistance Act which was promulgated in SG, № 79 of 4.10.2005, in force since 1.01.2006.

According to the Act there are the following types of legal assistance:

1. consultation in order to reach an agreement before the initiation of a legal proceeding
2. preparation of documents for lodging a complaint
3. legal representation

...

According to the Act the legal assistance shall be available in cases when a party in criminal, civil or administrative case does not have means for paying a lawyer’s fee, but he/she wishes a defender and the interests of the justice require so.

In order to benefit from the legal assistance the parties in civil and administrative cases should prove that they do not have means to pay a lawyer’s fee. The judgment belongs to the court who should take into account the revenues of the persons/families, the property status (proved by a

declaration), the family status, the health status, the employment, the age and other established circumstances.

The decision for granting legal assistance should be taken by the body which chair the proceedings, on the basis of a request of the person concerned or by virtue of the law. The act for granting the legal assistance should be sent to the relevant Lawyers' council, which shall determine a lawyer from the National Register for Legal Assistance.

Additional information on the practical aspect of the Act will be submitted after certain period of time, necessary for its enforcement by the tribunals.

3. Personal scope

Regarding the interpretation of art. 2, para 4 of the Social Assistance Act and art. 33, para 3 of the Sickness Insurance Act

Yes, this interpretation should be deemed correct.

Information on the conditions for granting permanent residence permit regarding the social assistance and on the criteria for the right to long-term residence

Health Insurance

According to the Health Insurance Act the foreign citizens become subjects of compulsory health-insurance in the National Health Insurance Fund from the date of issuing of a permanent residence permit (see the conditions below) or from the date of starting a procedure for granting an asylum or a refugee status.

The rights of the foreign citizens who are insured come into being from the date of payment of the health insurance contribution or the start of the procedure for granting an asylum or a refugee status.

Social Assistance

Regarding the Bulgarian citizens who are unemployed, there are some requirements for granting a monthly social benefit. They should have been registered in the Labour Bureau Directorates at least 6 months before making of the application for an assistance and they should not have rejected the offered job, qualification and re-qualification courses, organised by the Labour Bureau Directorates. There are some exceptions for foreigners here, concerning the 6 months' term of registration in the Labour Bureau Directorates. It does not refer to people, who have registered within a month, since they got a permanent residence permit for the Republic of Bulgaria, an asylum, a refugee, or humanitarian status.

The adoption of Family Benefits for Children Act in 2002 marked the beginning of new philosophy about children's care. It is in compliance with the *European acquis* in the social protection sphere and the United Nations Convention on the Rights of the Child. The Act regulates foreign family's benefits for those foreigners who have a permanent residence and bring up their children in the country, in case it is provided in other law, or the Republic of Bulgaria is a party of an international agreement.

Law on the Foreign Nationals in the Republic of Bulgaria

Article 23

(1) The foreign nationals shall be entitled to a short-term and long-term residence in the Republic of Bulgaria.

(2) The short-term residence shall be up to 90 days from the date of entry in the country. The term may be extended by the services for administrative control of foreign nationals due to reasons of humanitarian nature.

(3) The long-term residence shall be:

- 1. long - with permitted term up to one year;*
- 2. permanent - with permitted indefinite term.*

Article 24

(1) Long-term residence permit may be granted to nationals who:

1. (Amended, SG 42/01) have a permit issued by the Ministry of Labour and Social Policy to work in the Republic of Bulgaria under employment relationship;
 2. (Amended, SG 42/01) carry out commercial activity in the country under the procedure established by law, and as a result of this activity at least 10 jobs have been created for Bulgarian nationals;
 3. are admitted to pursue regular studies in licensed education institutions;
 4. are foreign specialists resident in the country by virtue of international agreements whereto the Republic of Bulgaria is a signatory;
 5. have grounds to be permitted permanent residence or have married a Bulgarian national or a permanently resident in the country foreign national;
 6. (Amended, SG 42/01) are representatives of foreign trade companies registered at the Bulgarian Chamber for Commerce and Industry;
 7. (Amended, SG 37/2002) are financially provided for parents of foreign nationals permanently resident in the country;
 8. (Amended, SG 70/2004) have started a long treatment in a health-care establishment and are provided with financial means for healing and subsistence;
 9. are correspondents of foreign mass media and have accreditation in the Republic of Bulgaria;
 10. have pension granted and sufficient financial means of subsistence in the country;
 11. carries out activity under the Law on encouragement of investments;
 12. (Repealed, SG 42/01)
 13. (Amended, SG 42/01) are members of foreign national's family who was granted a long-term residence permit;
 14. (New, SG 42/01) are parents of a foreign national or live together with a foreigner who has obtained a long-term residence permit on the grounds of Article 28, paragraph 5;
 15. (New, SG 42/01) have been granted a permit by the authorities of the Ministry of Labour and Social Policy to perform activities as a self-employed person in the Republic of Bulgaria.
 16. (New, SG 112/2001) wish to exercise a non-profit activity, after the obtaining of a permit from the Ministry of Justice, coordinated with the Minister of the Interior.
- (2) The persons under paragraph 1 should be provided with lodging, financial means of subsistence, mandatory insurance and social security in accordance with the legislation of the Republic of Bulgaria. The standards thereon shall be laid down in act of the Council of Ministers.
- (3) (New, SG 63/2005) The requirement under para 1, item 2 for the creation of 10 jobs at least does not refer to the citizens of the Member-States of the European Union, neither for the citizens of the other Member-States of the European economic area.

Article 25

Permanent residence permit may be granted to foreign nationals:

1. of Bulgarian nationality;
2. two years following the marriage with a Bulgarian national or with a foreign national resident permanently in the country;
3. under age and minor children of a Bulgarian national or of a foreign national permanently resident in the country who have not been married;
4. (Amended, SG 42/01) parents of a Bulgarian national when they provide the support due by law, and in the cases of legitimisation or adoption - upon expiration of 3 years following the legitimisation or adoption;
5. have resided legally without interruption in the territory of the country during the last 5 years whereas the residence period permitted under Article 24, paragraph 1, item 3 shall not be recognised;
6. have invested in the country over 500,000 US\$ in accordance with the procedure laid down by law.
7. (New, SG 42/01) who are not persons of Bulgarian origin, have been born in the territory of the Republic of Bulgaria, have lost their Bulgarian citizenship pursuant to emigration agreements or by their own wish and they wish to establish themselves permanently in the territory of the country.

8. (New, SG 37/2003) who had entered, had stayed or were born on the territory of the Republic of Bulgaria and whose parent had married Bulgarian citizen.

Article 25a

(New, SG 42/01) Permit for residence in the Republic of Bulgaria, in the absence of the requirements of this law may be obtained by foreign nationals who have rendered services to the Republic of Bulgaria in the public and economic sphere, in the field of national security, science, technology, culture or sports.

On Article 7§2 of the ESCh(r)

We would like to notice that the EA "General Labour Inspectorate" shall exercise control over the permits issued for admission to employment of under-aged children.

As regards the activities in which there is an absolute prohibition to employ persons from 15 to 18 years, such hiring shall be deemed crime according to the Criminal Code, so it requires penal prosecution. The competent authorities in such cases are the investigation authorities.

According to preliminary data of the EA "General Labour Inspectorate" for 2005 there were 9 cases of admission to employment of under-aged children, hired without the necessary permit of the Labour Inspectorates.

2 under-aged persons amongst them were hired in the construction sector, 6 – in the wood industry and 1 – in the tinned meat industry.

However, it is not possible to find out for certain whether in the above mentioned cases the under-aged persons performed the activities prohibited under the Ordinance № 4 on the Jobs Banned for Persons aged 15 to 18 years.