



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

15 November 2016

Case Document No. 3

Equal Rights Trust (ERT) v. Bulgaria
Complaint No. 121/2016

**SUBMISSIONS OF THE GOVERNMENT
ON THE MERITS**

Registered at the Secretariat on 18 October 2016

**INFORMATION PROVIDED BY THE COMPETENT BULGARIAN
AUTHORITIES ON THE MERITS OF COLLECTIVE COMPLAINT No 121 of 22 of
April 2016 BY EQUAL RIGHTS TRUST AGAINST BULGARIA**

Regarding the merits of collective complaint No 121 of 22 April 2016, filed by international NGO Equal Rights Trust (ERT) to the European Committee of Social Rights (ECSR) against Bulgaria in respect of amendments to the Family Allowances for Children Act (FACA), that are in force, please find below our reply as follows:

Policies for children and families are among the main priorities of the Ministry of Labour and Social Policy (MLSP). They are aimed at enabling the respect for the rights of all children in Bulgaria in order to improve their welfare and to ensure adequate standard of living and better conditions for upbringing of children in a safe family environment. Family allowances granted under the terms and conditions of the Family Allowances for Children Act are an important component of the overall state policy to support children and families, the main aim of the law is to provide support for raising children in a family environment through the provision of family allowances for children.

Specific for the support under FACA is that **family allowances for children do not represent insurance benefits** as referred to in the Social Security Code (SSC) and do not depend on parents' social security contributions or employment. These allowances are not included in insurance payments in the Sickness and Maternity Fund of the National Social Security Institute under Article 26 of the SSC and are not payable only for the insured persons under Article 4 SSC but for all Bulgarian citizens who fulfil the conditions laid down in the Family Allowances for Children Act. Therefore, there is no evidence for infringement of Article 12 ESC in respect of the right to social security. Family allowances for children are payments within the social assistance system.

Support under the FACA is targeted and is provided solely by the state budget. In terms of monthly allowances for raising a child until finishing high school, the benefit is linked with the child's regular attendance at school or in compulsory preschool classes. It should be noted that **family allowances are not subsistence for the child or the family**, but support the child's upbringing in a family environment. In this sense, **they are not social benefits intended to supplement or replace income** to meet the basic needs of individuals. These allowances are targeted. Their purpose is to be used for the child, which is in line with the principle of protecting the best interests of the child enshrined in the UN Convention on the Rights of the Child.

The need to improve the efficiency and targeting of family support is the main reason behind the amendments to the Family Allowances for Children Act in 2015. **The amendments are mainly related to the promotion of responsible parenthood and greater social justice in granting family allowances.** The focus of these amendments is to improve the interaction between family support as a mechanism for direct financial support to children and families with other systems that are involved in child-related policies - education, health and the child protection system. Only a comprehensive and mutually interrelated approach could reduce the adverse trends arising from child poverty, poor material conditions, early school leaving, poor health status and abandonment of children by their parents.

The scope of FACA covers families which raise their children in Bulgaria. All families with children which meet the conditions set out by the law are entitled to support. **There is no discrimination on any grounds in the allocation of family allowances for children.**

Moreover, the conditions for granting family allowances for children are the same for all individuals and do not depend on their ethnicity, origin, sex, race, age, religion, level of education, marital status, political beliefs, etc.; therefore, the allegations of discrimination on **the above grounds are unfounded and the principle of equal treatment under Article E of the Charter was not violated.**

Still family allowances are available under certain conditions in order to make sure that the funds allocated from the state budget achieve their target purpose. Four of the ten categories of family allowances for children are subject to an income-based criterion. The receipt of family allowances for children as state support both in cash and in kind (Article 2 FACA) in no way encroaches upon the dignity of recipients, but only assists them in raising children in a family environment, using supportive measures to ensure children's right to education and access to healthcare.

Serious concern is caused by the cases of children who themselves become parents as a phenomenon of a lasting nature in the national context, leading to an extremely negative trend of intergenerational transmission of poverty. This group of children are particularly vulnerable and in a much greater risk of social exclusion due to early school leaving and low social status. According to the Agency for Social Assistance (ASA) in 2014 nearly 5000 girls under the age of 18 who had become mothers received family allowances for children. Regardless of the financial support provided by FACA, data over the years show that the alarming trend for the birth of children by underage mothers remains unchanged and financial support in its own right is not a sufficiently effective model to address this phenomenon. On the contrary, teenage parents are a risk group and there is a real prerequisite the allowances they receive for themselves or for their children not to be used as intended, and not to be actually spent by underage mothers and for their children. With regard to children born by underage mothers, they are at greater risk of abandonment and often they are sent to institutions, which is the worst form of child care, putting at serious risk the future development of the child and his/her integration in society. In these cases it is necessary to mobilise all resources of various systems so that through individualised and complex support the underage parent receives assistance in the child's upbringing. Like all other policy instruments for children and families, family allowances are not based on discriminatory or sanctioning measures that undermine the rights of children and parents. No statistics is kept on the ethnicity of mothers, including underage mothers. The philosophy of the law is to support the upbringing of children in a family environment, without limiting or undermining anyone's rights.

To curb these negative phenomena, especially with a view to promoting responsible parenthood, and to ensure the diligent use of family allowances referred to in Article 2(6)(4) FACA, the provision of two of the ten types of family allowances for underage mothers takes place only in kind. These are monthly allowances for raising a child until completion of secondary education, but up to the age of 20 years under Article 7 FACA and monthly allowances for raising a child until the age of one year under Article 8 FACA. However, that possibility is provided for all social benefits in Article 25 of the Implementing Regulations of the Social Assistance Act. The amendments to FACA enacted in 2015 regarding the grounds for payment of allowances in kind are linked to the achievement of a specific objective pursued by the legislator - namely to prevent the risk of failing to use the benefits for the child. The risk of inappropriate spending of the monthly financial allowance for the child is particularly high when the mother is a minor since she is a child at risk herself. In these cases, it is much more important to ensure her protection, to have her informed and consulted about the opportunities to raise the

child in a family environment, to obtain the support based on various legal grounds. In this connection, the amendments to FACA of 2015 achieved a lot better mutual interaction of family support system and the child protection system. A requirement was introduced for cases of family assistance to pregnant minors and underage mothers where measures must be taken for protection in a family environment under the provisions of the Child Protection Act (CPA). These measures are mainly related to the use of social services, guidance, counseling, assistance, including access to health, education and other services, etc. With this in mind, **we do not consider there is an infringement of the right to social security and protection as set out in Article 16 of the European Social Charter (rev.) / (RESC)** - rather, as amended, the system of family support is seen in the context of the overall system of measures and mechanisms for child protection and the support provided by FACA is linked to the protection measures under the Child Protection Act, and the general system of providing social benefits under the Social Assistance Act. The case-by-case work reduces the likelihood for young mothers to abandon their children. There is no infringement of Article 17 of the Charter on the right of young persons to social, legal and economic protection, but on the contrary - it aims to ensure it effectively.

According to the ASA, for the first half of 2016 monthly allowances for raising a child until completion of secondary education, up to age of 20 were granted to 2462 mothers on a monthly average basis, who have not reached the age of 18 and have become parents, representing **0.56% of the total number of those supported with monthly family allowances for children**. On a monthly average basis 2710 children according to their individual needs were granted monthly allowances in kind through vouchers. Information about the ethnicity of the recipients of these allowances is not kept.

Through the provisions of FACA the legislator also protects the interest of the child of the teenage mother. For this purpose, allowances in kind are provided in the form of goods and/or services based on their individual needs assessed by the Social Assistance Directorate. The legal definition shows that this form of support cannot be described as restrictive or less favourable than a purely cash benefit, as it involves a wide range of options for support. It is rather notable that benefits in kind are granted following an individual needs assessment carried out by the Social Assistance Directorate which is a reason to believe that the actual needs of the child are paramount together with the assessment of the social worker on what is the best way at the specific time to support the parent in taking care for the child. Please note also that the Social Assistance Directorates are bodies for child protection under the Child Protection Act, which enables the monitoring, analysis of the specific case and other tools can be sought to support the family and the child, apart from the allowance granted. In this regard, underage mothers not only benefit from family allowance but are also supported in their choice by the officials of the Social Assistance Directorate in providing necessities for the child on a case-by-case basis. Benefits in kind are provided through vouchers. They are the type of securities issued by the Agency for Social Assistance under the Ordinance setting out the conditions and procedures for printing and control of securities, adopted by Council of Ministers Decree No 289 of 1994 (prom. SG. 101 of 1994; amend. and suppl., SG. 38 of 1995, No 73 of 1998, SG. 8 of 2001, SG. 54 of 2008, SG. 22 of 2011 and SG. 60 of 2015) and are provided by the Social Assistance Directorate to entitled recipients. They are used as means of payment within the amount of their face value to obtain family allowances in kind.

Depending on individual needs, monthly in-kind allowances for children until completion of secondary education under Article 7 FACA for children are provided through:

1. the full or partial payment of a nursery or kindergarten fee;

2. the full or partial payment of a fee for children's kitchen or canteen;
3. the purchase of food, clothing, shoes;
4. the purchase of baby and infant accessories, cosmetics and hygiene products and other items for daily use needed for the child, depending on the age;
5. the purchase of textbooks and other school materials necessary for the child to attend school, preschool classes, kindergarten or nursery;
6. the full or partial payment for the child's participation in organised school/kindergarten activities (trips, visits to historical, cultural and other sites, camps, etc.).

The value of the allowance provided in kind in the form of vouchers is equal to the amount granted to all mothers who receive it in cash. Again, please note that the form of the provision of family allowances in kind guarantees their spending as intended - to meet the needs of the child and the teenage mother.

As evident from the above, FACA aims not only to reduce the trend of children who become parents but also to ensure through allowances in kind that the newborns will be provided at least with minimum supplies, clothing and food according to their age, the needs of the child - diapers, milk powder, puree, juice, clothes, medicines, payment of fees for nurseries and kindergartens and other than those already mentioned above categories for monthly allowances in kind. The provisions of FACA take note of the practice that the lack of skills and experience in underage mothers increases the risk of their failing to spend the funds on the needs of their children. Underage mothers have not developed parenting skills and skills to wisely spend money. Allowances in kind prevent also the risk of abuses by the parents of the underage parent and ensure that the needs of the infant are met.

Due to these facts in particular, the amendments to FACA cannot qualify as discriminatory and do not put underage parents in a situation of worse treatment than others assisted under FACA. To prove such a hypothesis, it is necessary to detect damage caused to the entitled person, hindering them from benefiting from the allowance. In this case, there is no encroachment on this right and the person uses the same amount as other entitled persons. This is so because the provision of allowances in kind, while them being linked to a certain age of the target group, pursue a specific legitimate aim, namely the allowances must be used as intended, to support the mother in meeting the needs of her child.

ERT's claims that provision of support only through 'in kind' assistance is detrimental because it risks being unable to take into account the views of the recipient, contrary to Article 3 and Article 12 of the United Nations Convention on the Rights of the Child and inferior to cash payment, because it is less flexible and reducing the family's income, is untenable. Pursuant to Article 37 of the Implementing Regulations of the Family Allowances for Children Act (IRFACA) in case there are grounds for granting monthly allowance under Article 7 FACA in kind, its type under paragraph 5 is proposed by social workers who carry out the verification under paragraphs 3 or 4. The verification is carried out by social workers and covers risk assessment of the child and his/her needs. A social worker from the Child Protection Department must take part into that verification, too. The setting of the type of the in-kind assistance can be coordinated with the child's parents or with those who take care for him/her, representatives of nurseries and providers of social services for children. Relevant provisions regarding the provision of monthly allowances under Article 8 FACA are those set out in Article 36 IRFACA. Furthermore, when the mother comes of age and there is not even one of the grounds under Article 2(6)(1)-(3) FACA, the Director of the Social Assistance Directorate or an authorised officer issues an order for the payment of the benefit in cash. Flexibility is ensured by the

provision of Article 38(5) IRFACA, whereby allowances in kind may be modified, suspended and resumed according to the individual needs of the child for the month, during which there occurred and/or was detected a change in these needs.

In-kind payments in no way place recipients in a disadvantage position compared to those receiving cash payments. Article 42 of Convention No 102 of the International Labour Organisation concerning Social Security (Minimum Standards) expressly provides for both types of payments (in cash and in kind). The European Social Charter does not require the cash payment of the benefit, either.

We cannot agree with ERT's statement that the amendments in relation to the provision of monthly allowances under Article 7 and Article 8 FACA in kind affect a wide range of individuals. According to the Agency for Social Assistance, for the first half of 2016 monthly allowances for children were granted to 443,537 families on average per month for 685,257 children on average; **only** 2454 families out of 443,537 in total with 2564 children (out of total 685,257) received the assistance in kind. Disbursements amounted to BGN 177,876,915. For the same period, monthly allowances for raising a child until the age of one were granted to 16,608 mothers on average per month, of which only 1606 (about 1/16) received assistance in kind. Disbursements amounted to BGN 9,143,983. The total funds disbursed under Article 7 and Article 8 FACA in kind amounted to BGN 1,972,815. Data show that the percentage of in-kind allowance recipient families under Article 7 FACA on a monthly average basis is **0.5% of the total number of assisted families** on the same grounds. The average monthly number of children for which allowance was granted in kind is approximately 0.4% of the total average monthly number of children for which the support was granted under Article 7 FACA. In terms of the total amount of cash paid for the two types of assistance, only about 1% was provided in kind. Data clearly show that the percentage of persons receiving family allowances in kind is too low and actually the allocation of allowances in kind is an exception rather than common practice. **Since the entry into force of the amendments to FACA and IRFACA, no complaint** has been registered so far against the provision of family allowances in kind.

Therefore, the **provision of family allowances in kind to underage parents does not infringe any of the provisions of the ESC (rev.) mentioned in the complaint** - Article 16, Article 17 or Article G.

In connection with the contested provision of Article 7(11)(2) FACA, we believe that it in no way violates Article 17(2) ESC (rev.) regarding the right of children and young persons to social, legal and economic protection, and in particular the promotion of regular school attendance. On the contrary, it is aimed at ensuring the child's right to education and encouraging regular school attendance, by introducing a more stringent measure in terms of providing monthly allowance for the child until completion of secondary education - namely the allowance is to be terminated before the expiry of the term for which it has been granted after suspension of allowance for 3 consecutive months or for 6 months within one year due to non-compliance with the requirement for regular attendance of school or preschool classes. The termination of the assistance in cases where the child fails to attend school, and the parent has not complied with his/her obligations with respect to ensuring the child's right to education, is a completely natural measure which inherently combines the appropriate use of state funds for family support and promotion of preschool and school education, until the completion of secondary education among children benefiting from these funds, as they are a specific vulnerable group. It should be emphasised that this measure only applies to families with children who receive family

allowances as an additional incentive for regular school attendance by children and prevention of dropping out of the education system as an important form of integration in society. It is not equitable or fair, or morally justified in respect of other families to provide family support to families with children which without legitimate reasons have allowed a large number of absences and irregular attendance at school or pre-school groups. Allowances will not be suspended or discontinued if regular school attendance is impossible due to health issues. Obviously, the restriction is objectively justified by a legitimate goal and the means of achieving it do not go beyond the necessary.

The provision of Article 7(11)(2) FACA is not discriminatory within the meaning of Article 4 of the Anti-Discrimination Act (ADA). Article 4(2) ADA sets out that direct discrimination is any less favourable treatment of a person on the basis of sex, race, nationality, ethnicity, human genome, citizenship, origin, religion or faith, education, beliefs, political affiliation, personal or public status, disability, age, sexual orientation, marital status, property status or any other grounds established by a law or an international treaty to which Bulgaria is a party compared with the way another person is treated, has been treated or would be treated in a comparable situation. None of these discriminatory features is in place - the criterion is the attendance of a preschool classes or school. Indirect discrimination is placing a person on the grounds under paragraph 1 at a disadvantage compared with other persons by an apparently neutral provision, criterion or practice, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. In this case the aim is legal - education. According to Article 53(2) of the Constitution of the Republic of Bulgaria, schooling is mandatory until 16 years of age. The means for achieving this goal are appropriate and necessary - if the child does not attend school, i.e. the constitutional obligation is not fulfilled, parents cannot receive undue benefits at the expense of the state budget.

Regarding the provision introduced in Article 7(12) FACA whereby in cases under paragraph 11(2) monthly assistance may be granted again not earlier than one year from the date of termination, it should be noted that this aims among other elements of individual policies to encourage school attendance and pre-school preparation of children. The right to education is a fundamental right of every child, the responsibility for ensuring the exercise of this right is primarily on his/her parents. Similar measures exist in other laws in the social area, for example in the Social Assistance Act - in terms of monthly social benefits and targeted benefits for heating.

With regard to the part of the complaint about the disproportionate nature of this measure to the objective pursued and its interpretation as restrictive only to parents, we believe that it does not take note of the practice established in such cases for interaction between educational institutions and child protection bodies. If regular absences from school are found, the teacher informs the child's parents. At the same time, the school is obliged to inform the Regional Directorates for Social Assistance and the Regional Departments of Education to take action within their competence. This fact is indicative that the obligation to ensure the child's right to education lies not only with parents, but with all competent state authorities. In addition, the newly adopted Pre-school and School Education Act, effective since 1 August 2016, has introduced other measures in this field. It is envisaged that when due to failure to comply with the conditions set out in Article 7(1)(2) FACA, the monthly assistance is suspended or terminated before the expiry of the term for which it has been granted or its amount has been reduced under paragraphs 14 or 15, the relevant school or kindergarten provides funds for

general and/or additional support for the child's personal development under the conditions and procedure of the Pre-school and School Education Act. The funds are provided in an amount corresponding to the amount of funds for the assistance, or the amount of the reduction and are projected from the budget of the Ministry of Education and Science (Article 7(17) and (18) FACA). This aims to strengthen the links between the family support system and the education system.

The general and additional support for personal development provides differentiated care tailored to the needs, abilities and interests of each child. The funds are relocated to precisely such differentiated care for children in kindergarten and school, leading to increased quality of education and improving educational services namely where the need for children and students support is the greatest. The general support for personal development includes: teamwork between teachers and other pedagogical staff involving discussion of issues and exchange of best practices in their work with the same children and students in order to improve pedagogical approaches; additional training in school subjects; additional modules for children who do not speak Bulgarian; further extracurricular consultations on subjects; advice on subjects; career guidance to pupils; activities of interest; library and information services; healthcare; dormitories; promotion with moral and material incentives; activities on prevention of violence and tackling problem behaviour; early assessment of needs and prevention of learning difficulties; speech work. Additional support for personal development includes: work with the child and pupil in on a case-by-case basis; psychosocial rehabilitation, hearing and speech rehabilitation, visual rehabilitation, rehabilitation of communication disorders and physical disabilities; providing accessible architectural, general and specialised supportive environments, devices, specialised equipment, teaching materials, methodologies, and specialists; provision of training on specific subjects for pupils with sensory disabilities; resource support. Additional support for personal development is provided to children with special educational needs, children at risk, gifted children, children with chronic diseases. The amendments to the Family Allowances for Children Act are in line with the national targets of Bulgaria until 2020, linked to reducing the share of early school leavers below 11%. In view of the understanding that early school leaving is a phenomenon that has serious impact on individual fates of those directly affected and the welfare of their families, on the options for development of their communities and the overall socio-economic development of the country in the medium and long term, the Ministry of Education and Science has developed a strategy to reduce the share of early school leaving (2013-2020).

Please note that the provisions of FACA aim to motivate parents to ensure regular school attendance of children in line with the right to education as set out in the Constitution of the Republic of Bulgaria (Article 53(1)) and the UN Convention on the Rights of the Child. Moreover, we reiterate that in accordance with Article 53(2) of the Constitution, schooling is mandatory until the age of 16. The provisions of FACA are aimed at preventing parents from failing to fulfil their obligations to ensure school attendance of their children, thereby violating the child's right to education, while receiving monthly allowances without complying with all the requirements of the legislation. The law aims to ensure that the child attends school regularly, and if absent, it is only for valid reasons, and at the same time to discourage unscrupulous parents who do not fully ensure the child's right to education and to intellectual development while receiving monthly benefits for children for a certain period of time and spending them for other purposes.

For the first half of 2016, on an average monthly basis, allowances were suspended or terminated for 3851 families for 4270 children who had five days of unexcused absences; for the same period of 2015 - 5155 families with 5793 children. The average monthly number of families which fall within the scope of the provision contested by the claimant whose children do not attend preparatory classes in kindergartens or schools for compulsory pre-school preparation and allow for three or more days of absence without valid reasons was 407 with 417 children. For the same period of 2015 there were respectively 533 families with 550 children.

This is an insignificant amount of family allowances provided for school-age children.

As regards the finding that the provision of Article 7(11)(3) FACA concerning the termination of the allowance when the child has become a parent is in breach of Article 12 and Article 16 ESC (rev.), it should be noted that, as mentioned above, it has no relation to Article 12 ESC (rev.) as the family allowance is not a social security payment. It does not violate Article 16 ESC (rev.) because it is just aimed at the protection of children - by preventing parents from allowing their minor children to have children and prevention of this phenomenon. Family support in Bulgaria is based on the principle that direct responsibility for the upbringing of children lies on parents. In this regard the provisions of FACA are fully compliant with the principle enshrined in the Constitution of the Republic of Bulgaria that the upbringing of children until adulthood is a right and obligation of their parents and is assisted by the state (Article 47(1)). With this in mind, the main purpose of family allowances for children is targeting support for raising children to their parents or carers in a family environment. Thus it aims to prevent the misuse of allowances granted and neglect by parents and therefore - the risk to physical, moral and social development which is normal for the child's age. For the first 6 months of 2016, on this basis the support for 99 minors who have become parents was discontinued.

It should also be pointed out that when the child has become a parent and the monthly assistance under Article 7 FACA has been terminated, the child-parent can be encouraged and supported to continue their secondary education so that they do not drop out of the educational system. In these cases, if the child continues to attend school regularly, he/she should receive the balance of the terminated assistance as a one-off amount corresponding to the period of the suspension of the allowance until the expiry of the period for which it was granted. When determining the amount of the allowance, only the months in which the child has attended school regularly are taken into account, and if it is found that he/she did not attend school regularly for three consecutive months or six months in a year, the allowance is not paid.

In the context of the complaint, again we should stress the importance of ensuring the use of family allowances as intended - their spending on children. Before the amendments to the Family Allowances for Children Act of 2015 often there was information about inappropriate spending of funds entirely intended for children by their parents to buy certain goods such as alcohol, tobacco, etc. Since the entry into force of these amendments, the Ministry of Labour and Social Policy or the Agency for Social Assistance **have not received any complaints** from citizens or from the Bulgarian civil society sector **against the provisions on allowances in kind and termination of allowances, when the child has become a parent or due to irregular attendance of children in school or preschool classes.**

In view of the foregoing, we **raise objections and we consider legally unjustified and unfounded the claimant's assertion** that those provisions of the Family Allowances for

Children Act are discriminatory and enable unequal treatment. Moreover, **we do not detect any infringement of the principles related to the support of families with children**, which are underlying for the Family Allowances for Children Act that could allow direct or indirect discrimination within the meaning of any Bulgarian law or the applicable international law.

In conclusion:

In view of the aforementioned reasons, the Government of the Republic of Bulgaria finds Complaint No 121 of 22 April 2016 unfounded and asks the ECSR to dismiss it in its entirety.