



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

21 April 2017

**Case Document No. 5**

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

**FURTHER RESPONSE FROM THE GOVERNMENT**

**Registered at the Secretariat on 16 March 2017**



**MR. GIUSEPPE PALMISANO  
PRESIDENT OF  
THE EUROPEAN COMMITTEE  
OF SOCIAL RIGHTS  
OF THE COUNCIL OF EUROPE**

**RE: Complaint № 121/2016, submitted by Equal Rights Trust against Bulgaria**

**DEAR MR. PRESIDENT,  
DEAR MEMBERS OF THE EUROPEAN COMMITTEE  
OF SOCIAL RIGHTS,**

The Republic of Bulgaria maintains its opinion expressed and sent to the ECSR in October 2016 regarding Collective Complaint № 121 of 22.04.2016 submitted to the ECSR by the international non-governmental organisation "Equal Rights Trust" (ERT) against Bulgaria concerning enacted amendments to the Family Allowances for Children Act (FACA).

We would like to emphasize that family allowances for children do not qualify as insurance benefits as referred to in the Social Security Code and do not depend on parents' contributions or employment. These allowances are not included in the insurance payments and are not due to insured persons only but to all Bulgarian citizens fulfilling the conditions laid down in the Family Allowances for Children Act. Therefore, the arguments for violation of Art. 12 of the European Social Charter (revised) / ESCh (rev.) / developed in the complaint of the ERT, constitute in fact solely assertions of the claimant that do not lead to the conclusion that there is a relatedness of the provisions of the FACA to the scope of the specified ESCh (rev.) provision concerning the social security right. It is important to keep in mind that family allowances for children are not a child or family maintenance, they are not social benefits as well, and they are not intended to supplement or replace income to satisfy the basic needs of individuals. These allowances are targeted and they are meant to be used for the child.

We would kindly ask ECSR to take into account the following information concerning ERT's comments on the Bulgarian reply to its complaint:

**1. Concerning the provision of Article 2, para. 6, p. 4 of FACA:**

Receipt of family allowances for children as a state support both in cash and in kind (art. 2 of FACA), in no way affects the dignity of beneficiaries, but only assists them in raising children in a family environment, using support measures to ensure children's right to education and access to health care. The amendment to FACA aimed at receiving monthly benefits in kind by minor parents cannot be regarded as discriminatory and does not place those parents in a less favourable treatment position compared to others supported under FACA. Based on the definition of "indirect discrimination" set forth in Art. 4 para. 3 of the Protection against Discrimination Act, it occurs when a person or persons carriers of protected characteristics suffer less favourable

treatment or particularly unfavourable treatment arising from an apparently neutral provision, criterion or practice, unless the said provision, criterion or practice have objective justification in view of achieving a lawful objective and the means for achieving this objective are appropriate and necessary. Consequently, for such a hypothesis to exist, damages should be caused to the person entitled, hindering him to benefit from the aid. That right is not infringed in this case and it is used in the same amount as that of other entitled persons. This is because the provision of benefits in kind, although referring to a certain age target group, pursues a specific lawful objective, namely that aid to be used as intended, to support the mother in providing the needs of her child.

In-kind assistance is provided in the form of goods and / or services for the child in accordance with his individual needs in case that:

- Parents or persons receiving family allowance do not take care of their child / children
- Family assistance is not used as intended for the child / children
- Parents or persons receiving the family allowance do not fulfil the obligation under Art. 8, para. 6 of the Child Protection Act
- The Mother, to whom monthly allowances are granted for raising a child until completion of secondary education and for raising a child until the age of 1 year, has not reached the age of 18.

The legislator has defined four risk groups for which the allocation of monthly allowances for raising a child until completion of secondary education, but up to the age of 20 years under Art. 7 of FACA and monthly allowances for raising a child until the age of one year under Art. 8 of FACA is performed in kind.

The provision of Article 2 para. 6 of FACA is binding on each of the target groups, underage mother including. Provision of benefits in kind prevents also the risk of misuse of aid that can be made by the parents of the minor parent and ensures that the needs of the born child are met. The implementation of this provision could not be left at the discretion of the administrative authority as the legislator has considered that in order to prevent risks and to encourage responsible parenthood it would be appropriate the provision of these two types of family allowances for children (monthly allowances for raising a child until completion of secondary education, but not after the age of 20 years under Art. 7 of FACA and monthly allowances for raising a child until the age of one year under Art. 8 of FACA) for underage mothers to take place only in kind. Underage mothers are a risk group because they themselves are children at risk within the meaning of §1, item. 11 of the Additional Provisions of the Child Protection Act, and a real prerequisite exists for wrongful use of funds allocated to their children. With regard to children born by underage mothers, they are at greater risk of neglect and often caring for them turns out to be institutional, which is the worst form of child care putting at serious risk the future development of the child and its integration into the society. In these cases all resources of the various systems have to be involved so that through individualized and complex support the minor parent to be assisted in the upbringing of the child. Therefore, obligatory undertaking of measures for protection in family environment is regulated under the Child Protection Act in cases of support to pregnant women and mothers under the age of 18. These measures are mainly related to the use of social services, guidance, counselling, assistance, including access to health, educational and other services, etc. In this aspect, the amendments to FACA of 2015 achieved much greater interdependence of family support system and child protection. With this in mind **we do not consider that a violation of the right to social security and protection under art. 16 ESCh (rev.) exists**, but to the contrary, by the amendments the family support system is observed in the context of the overall system of measures and

mechanisms for child protection and support provided under the FACA; it is linked to the measures for protection under the Child Protection Act and to the common system of providing social benefits under the Social Assistance Act. The individual work in each specific case reduces the likelihood of abandoning of the child by the young mother. Thus, **art. 17** of the Charter on the right of young people to social, legal and economic protection, **is not infringed**, but on the contrary - its effective provision is sought.

The value of the assistance provided in kind in the form of vouchers is of the same amount as that of all mothers whom it is provided in cash. Again, we emphasize that the form of providing of family support in kind guarantees spending of the funds in accordance with their intended purpose - to meet the needs of the child and of the underage mother. The purpose of providing these benefits in kind is to ensure that the newborn child will be provided with at least the minimum consumables, clothing and food according to the age, needs and demands of the child - diapers, milk powder, purees, juices, clothes, medicines, payments of nurseries and kindergartens fees, etc. The provisions of the FACA take account of the established practice that the lack of skills and experience of the child-mothers increases the risk that they will not spend the funds for their children's needs. The provision of assistance in kind prevents also the risk of misuse of aid, performed by the parents of the minor parent and ensures that the needs of the newborn child will be met.

In 2016, 2424 families with 2626 children on monthly average basis have received their monthly allowances for raising a child until completion of secondary education, but not after the age of 20 under Art. 7 of FACA in kind out of a total number of 439,633 families on monthly average basis with 680,121 children on monthly average basis.

In 2016, 16,291 mothers on monthly average basis have been supported with monthly allowances for raising a child under the age of 1 year in accordance with Art. 8 of FACA, 1586 of which on monthly average basis having received allowances in kind.

## **2. Concerning the provision of Art. 7, para. 1, points 2 and 3, para. 11, p. 2 and para. 12 of FACA:**

First we should note that even before the amendments to FACA of July 2015, one of the conditions for granting a monthly assistance under Art. 7 is that the child should attend regularly preparatory groups in kindergartens or preparatory classes in schools for compulsory pre-school training of children or a school, unless this is impossible because of his/hers health condition.

The right to education is a right enshrined in the Bulgarian Constitution / Art. 53 (1) Everyone has the right to education (2) Schooling up to the age of 16 shall be compulsory /.

Under the Pre-school and School Education Act (PSSEA) education is a national priority and is implemented as a unified state educational policy to ensure the right of pre-school and school education, oriented towards the interests of the child and the student, towards the age- and social changes in his life by providing equal access to quality education and inclusion of every child and every student on the basis of equal treatment and non-discrimination.

Pursuant to Art. 8, para. 1 and par. 2 of the PSSEA pre-school and school education in Bulgaria is mandatory. Parents, who do not ensure regular school attendance, violate the right of children to receive education. It is not a coincidence that this Act provides an administrative-criminal liability for failure to comply with this obligation. Pursuant to Art. 347 of the PSSEA parents failing to enroll their children subject to compulsory pre-school or school education at a kindergarten or a school shall be liable to a fine in the amount from BGN 50 to BGN 150, and parents failing to ensure the attendance of their children subject to compulsory pre-school

education and enrolled in a full-day, half-day or class-based form of organization at a kindergarten or subject to compulsory school education and enrolled in a day, evening, remote or combined form of education at a school shall be liable to a fine in the amount from BGN 50 to BGN 150. In case of repeated violation the fine shall be from BGN 100 to BGN 500.

Termination of monthly assistance in cases where the child has not attended school, and the parent has not complied with his obligations as regards ensuring the child's right to education is a completely natural measure which inherently combines to a greater degree the proper use of state funds for family support and the promotion of pre-school and school education until completion of secondary education among children benefiting from these funds, as long as they are also a specific vulnerable group. This measure applies only to families with children who receive family allowances as an additional incentive for regular school attendance by the children and not dropping out of the education system. The assistance shall not be suspended or terminated if regular school attendance is impossible due to the health condition of the child. Obviously, the restriction is objectively justified by a lawful objective and the means of achieving it do not go beyond what is necessary.

A child that is at risk of dropping out of school or that has dropped out of school is a child at risk under the Child Protection Act. The provisions of the FACA are aimed at preventing parents from not fulfilling their obligations to ensure their children's attendance to school, thereby violating children's right to education and in the same time receiving monthly allowances without meeting all legal requirements. The purpose of the Act is to ensure that the child is attending school regularly, and if he fails to attend, than that should be for duly justified reasons only. At the same time the measure is fair in respect of the responsible parents, who make efforts and ensure the right of their children to education and promote regular school attendance. It aims to prevent receiving monthly allowances for children for a certain period of time and spending them for other purposes by parents, who do not ensure in full the right of their own children to get educated and develop intellectually.

The claim of ERT that suspension of aid will lead to more poverty in the family is unfounded. Family allowances do not constitute maintenance for the child or for the family, but they support the child's upbringing in a family environment. They are not intended to supplement or replace income to satisfy the basic needs of the individuals. However, failure to comply with legally binding requirements cannot be tolerated and should be restricted, especially when it leads to failure to provide children's basic rights. It should be borne in mind that child benefits are financed entirely with funds from the state budget that should be used appropriately for their exact purpose.

### **3. Concerning the provision of Art. 7, para. 11, p. 3 of FACA:**

We maintain the opinion we have already expressed in our reply to the complaint submitted by ERT that termination of the allowance under art. 7 of FACA where the child becomes a parent does not prejudice the provisions of the ESCh (rev.) because the measure is aimed at protecting children - namely, restricting parents from allowing their minor children to give birth to children. Family support in Bulgaria is based on the principle that upbringing and educating children is a direct responsibility of the parents. In this regard the provisions of FACA are in full compliance with the principle enshrined in the Constitution of the Republic of Bulgaria that the upbringing of children to adulthood is a right and obligation of their parents and shall be assisted by the State (Art. 47, para. 1). With this in mind, the main purpose of child allowances is directing the support for raising children to their parents or to the persons taking care of them in a family environment. In this way the intention is to prevent misuse of aid granted and

irresponsible actions by parents and thus also the risk for the normal physical, moral and social development of the child at the respective age.

Like all other instruments of policies concerning children and families, family support is not based on discriminatory and sanctioning measures that undermine the rights of children and parents. At the same time it is provided under certain conditions, that if the minor parent continues to attend school regularly, he or she shall be entitled to receive a lump assistance in an amount, corresponding to the amount of the terminated assistance for the period from the termination to the expiry of the period for which the assistance had been granted (Art. 7 para. 13 of FACA).

Last but not least, it should be borne in mind that when a child, for which a family receives family benefits, becomes a parent, the assistance for this child-parent shall be terminated. But the child itself that is already a parent may on a self-standing legal ground receive family benefits for raising its child in accordance with the terms and conditions of the FACA.

**4. Concerning p. 12 of ERT's reply, which mentions Section 38 of the Supplementary Provisions to the Pre-school and School Education Act (PSSEA):**

Funds received pursuant to the aforementioned paragraph shall be provided to the respective schools and can be spent only for providing educational support and differentiated care, taking into account the needs of students who require one. The measure aims at improving the overall educational environment, including with respect to the provision of resources and capacity building for work with children with gaps in learning the teaching content, resulting from irregular school attendance, lack of interest by parents and lack of motivation caused by low social status and reproduction of the social model inherited from the parents. By amending Art. 7 of FACA and creating para. 17 and para. 18 under this measure, resources are shifted to the school, where the child or student is being educated. As already noted above – a risk exists that parents who neglect the education of their child would not spend the funds received under FACA to satisfy the child's needs; educational institutions, in turn, **are obliged to invest the resources in providing educational support** that has a long-term effect in terms of personal development and future socialization of the student.

**5.** With respect to the request contained in the response of ERT for comment on the complaint lodged against France - European Committee for Home-Based Priority Action for the Child and the Family v France - Complaint No. 82/2012 (19 March 2013) – we would like to note that there is no legal basis for requesting the Republic of Bulgaria to comment and give an opinion on the above-mentioned complaint. Distancing ourselves from it, we would like to note that Bulgaria is not an interested party in that complaint, nor its authorities should state an opinion on it and its decision.

**6.** In connection with the statement contained in the complaint of ERT that Bulgaria has not provided information on the race and gender of the persons who receive family allowances for children, it should be borne in mind that the conditions for granting family allowances for children are the same for all persons and do not depend on their ethnicity, origin, sex, race, age, religion, level of education, marital status, political beliefs, etc. For this reason the country does not collect statistical data regarding the race of the persons supported.

7. With respect to the request of ERT for oral hearings of the parties to the complaint, we consider that no such need is present. The two parties had and made use of the possibility to present their detailed opinions, motives and arguments in writing to the Committee. Conducting oral hearings would only unnecessarily delay the issuing of a decision by ECSR on the complaint and will lead to unnecessary financial and administrative burden on the parties.

**In conclusion:**

**In view of the aforementioned reasons, the Government of the Republic of Bulgaria stresses that it finds Complaint No 121 of 22 April 2016 unfounded and kindly asks the ECSR to dismiss it in its entirety. We also ask the claimant's requests for oral hearings of the parties to the appeal to be rejected.**