

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



8 August 2005

**Case Document No. 1**

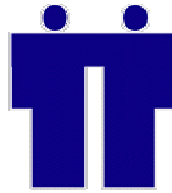
**COLLECTIVE COMPLAINT No. 32/2005**

**Confederation of the Independent Trade Unions in  
Bulgaria (CITUB) /  
Confederation of Labour "Podkrepa" /  
European Trade Union Confederation**

**v. Bulgaria**

**registered at the Secretariat on 16 June 2005**





## **Collective Complaint**

**by the**

**Confederation of the Independent Trade Unions  
in Bulgaria**

**(CITUB),**

**Confederation of Labour "Podkrepa"**

**(CL "Podkrepa")**

**and the**

**European Trade Union Confederation**

**(ETUC)**

**against**

**the Republic of Bulgaria**

COLLECTIVE COMPLAINT

by

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Belgique

- hereinafter 'the complainant trade union organisations' -

against

the Republic of Bulgaria

based on the Additional Protocol of 1995 providing for a system of collective complaints (hereinafter: the 1995 Protocol) alleging the violation of Article 6 paragraph 4 of the Revised European Social Charter (hereinafter: RESC)

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Considering the importance of the right to strike the complainant trade union organisations have decided to submit the following collective complaint.

## **I. Admissibility**

### ***A. The complainant trade union organisations and their representatives***

The two trade unions, the

- Confederation of the Independent Trade Unions in Bulgaria (hereinafter: CITUB)
- Confederation of Labour "Podkrepa" (CL "Podkrepa", hereinafter: Podkrepa)

are the two representative trade unions at the national level. They are affiliated to the European Trade Union Confederation (ETUC).

#### **1. Confederation of the Independent Trade Unions in Bulgaria (CITUB)**

The Confederation of the Independent Trade Unions in Bulgaria

- affiliates 34 federations, sector and branch trade unions and unions, and regional trade unions,
- consists of about 400 000 members<sup>1</sup>,
- has been recognised as representative organisation of workers and employees by decision No. 260 of the Council of Ministers of 5 April 2004<sup>2</sup>.

According to Art. 27 paragraph 1 of the Statute of CITUB its President represents the Confederation in its relations with other bodies and institutions.

#### **2. Confederation of Labour "Podkrepa" (CL "Podkrepa")**

The Confederation of Labour "Podkrepa"

- was created on 8 February 1989 and is a trade union organisation that affiliates 25 federations and 36 regional unions,
- consists of about 150 000 members<sup>3</sup>,
- has been recognised as representative organisation of workers and employees by decision No. 259 of the Council of Ministers of 5 April 2004<sup>4</sup>.

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<sup>1</sup> According to the last census of the trade unions carried out in 2004

<sup>2</sup> State Gazette No. 31 of 2004

<sup>3</sup> According to the last census of the trade unions carried out in 2004

<sup>4</sup> State Gazette No. 31 of 2004

According to the statute of Podkrepa, the President of the Confederation represents it in its relations with other bodies and institutions.

### **3. European Trade Union Confederation (ETUC)**

The ETUC is the international organisation of trade unions provided for in Art. 1 lit. a of the 1995 Protocol as well as Art. 27 para. 2 of the European Social Charter (ESC).

According to Art. 23 para. 2 of its Constitution the General Secretary is authorised to represent the ETUC in all matters<sup>5</sup>.

#### ***B. The legal framework (ratification and acceptance)***

The Republic of Bulgaria has accepted the 1995 Protocol by a declaration made in application of Art. D para. 2 of Part IV RESC.

Furthermore, the Republic of Bulgaria has ratified the RESC on 7 June 2000 (and at the same time accepted Art. 6§4) authorised by a law adopted by the National Assembly on 29 March 2000<sup>6</sup>, in force since 1 August 2000<sup>7</sup>.

#### ***C. Conclusions***

CITUB and Podkrepa are exercising their activities in Bulgaria; they are trade unions within the jurisdiction of this country as required by Art. 1 (c) of the 1995 Protocol. Furthermore, they are considered by Bulgarian law as being nationally representative.

Concerning their ability to submit complaints the mere fact of their affiliation to the ETUC should suffice. According to Art. C RESC in relation with Art. 23§1 ESC the affiliation to the ETUC provides them with a special role. They are thus entitled to receive the Government's reports for the supervision of the RESC. Looking at the paragraph 22 of the Explanatory report to the Protocol it was evident that those organisations should - without further examination of representativity requirements - be entitled to submit complaints.

Moreover, the complaint submitted is signed by the presidents of the two Bulgarian trade unions, entitled according their Statues to represent each of them. Furthermore, the complaint is signed by the General Secretary of the ETUC who - according to its Constitution - is entitled to represent this organisation. Therefore, the complainant organisations are of the view that the conditions provided for in Art. 20 of Rules of Procedure are fulfilled.

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<sup>5</sup> "The General Secretary shall be the spokesperson of the Confederation and the coordinator of all activities,..."

<sup>6</sup> State Gazette No. 30 of 2000

<sup>7</sup> State Gazette No. 43 of 2001



The complainant trade union organisations allege that Bulgarian legislation<sup>8</sup> violates the right to strike and, therefore, do not 'ensure the satisfactory application' of Art. 6§4 RESC.

Since all admissibility requirements are fulfilled the complaint is admissible from the point of view of the complainant trade union organisations.

## **II. On the merits**

The complainant trade union organisations consider that the application of Art. 6§4 RESC is not satisfactory because Bulgarian legislation severely restricts the right to strike in different ways, namely:

- Strikes are unlawful in the health, energy and telecommunications sectors (Section 16 (4)) of the Settlement of Collective Labour Disputes Act [SCLDA]<sup>9</sup>).
- Civil servants have the right to take part only in a symbolic strike actions and are banned from collectively withdrawing their labour (Section 47 of the Civil Servant Act [CSA]<sup>10</sup>).
- The railway workers are unjustifiably deprived partly of this right (Art. 51 of the Railway Transport Act [RTA]).

The complaint deals only with those three issues which are considered to be the most serious restrictions. But it should be noted that this concentration does not at all mean that all the other restrictions of the right to strike (be they included in these acts or any other legislation) would be considered to be in conformity with the requirements of the RESC.

### ***A. The domestic legislation***

#### **1. The Constitution**

The new Constitution of the Republic of Bulgaria was adopted on 13 July 1991. Art. 50 of the Constitution entitles the legislator to set by law the conditions and procedures for performing the right to strike.

##### **"Article 50 [Strike]**

Workers and employees shall have the right to strike in defence of their collective economic and social interests. This right shall be exercised in accordance with conditions and procedures established by law."

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<sup>8</sup> see below on the merits

<sup>9</sup> State Gazette No. 21 of 1990

<sup>10</sup> State Gazette No. 67 of 1999

The idea is that this right should be specified in a law in order to provide the workers and employees with an effective right to strike, whilst taking into account also the society's interests. Currently, the right to strike is regulated by the acts quoted above and described below in more detail.

## **2. The laws regulating the right to strike**

The following acts specifying and restricting the right to strike are to be considered by the ECSR in this complaint.

### *a) Settlement of Collective Labour Disputes Act (SCLDA)*

The SCLDA<sup>11</sup> regulates the settlement of collective labour disputes and the right to strike. To date, four amendments have been made, but they have not changed its effect at all, neither the total and partial limitations of the right to strike, which it provides for.

As of today, through the provision of Art. 16 (4) SCLDA<sup>12</sup> striking is not allowed for the workers in the healthcare, communications and energy production, distribution and supply:

"Art. 16 Strike is not admissible: ...

4. in production, distribution and supplying of electric power, communications and health care;"

### *b) Civil Servant Act (CSA)*

The Republic of Bulgaria has, furthermore, limited the right to strike of the civil servants. According to Art. 47<sup>13</sup> of the Civil Servant Act (PSA)<sup>14</sup> the civil servants in Bulgaria have only the right to a mere symbolic protest action prohibiting the fundamental element for a strike: stoppage of performing their work. Obviously, this expression of protest that has nothing to do with the right to strike understood as temporary stoppage of work:

"Art. 47 (1) The state employees may announce a strike in case presented demands in relation with official and insurance relations are not respected.

(2) Implementation of the strike under paragraph 1 is carried out by wearing or placing appropriate signs and symbols, protest posters, bands and other without cessation of state work.

(3) During strike representatives of state employees and body of appointing make efforts for settling the debatable points."

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<sup>11</sup> State Gazette No. 21 of 1990, amended with State Gazette No. 27 of 1991, State Gazette No. 57 of 2000, amendment and addenda State Gazette No. 25 of 2001

<sup>12</sup> for the whole Article see III.A.1.a)

<sup>13</sup> see more in detail III.A.2

<sup>14</sup> State Gazette No. 67 of 27.07.1999; amendment, No. 1 of 2000; amendment and addenda, No. 25 of 2001, No. 99 of 2001; amendment, No. 110 of 2001, No. 45 of 2002; amendment and addenda, No. 95 of 2003; amendment, No. 70 of 2004 – in force since 01.08.2004

### *c) Railway Transport Act (RTA)*

Finally, further restrictions have been imposed by Art. 51<sup>15</sup> of the Railway Transport Act<sup>16</sup> for the workers in the railway transport:

"Art. 51 In case of undertaking actions included in chapter three of the Law for settlement of collective labour dispute workers, employees and their employers - haulers have to provide satisfactory transport servicing of citizens, but not under 50 % of the rail transport before undertaking of those actions."

## **B. The activities to change the situation**

Due to the central role of the SCLDA in defining the legal framework of the right to strike the trade unions have asked for major changes in order to bring the situation into conformity with the international requirements. These activities as well as the negative conclusions by the ECSR have not led to any substantial improvement concerning the right to strike.

### **1. The chronology of the steps on the amendment and addenda of SCLDA**

25 - 27.03.2002: International Labour Organisation (ILO) mission

A leading expert from the ILO Standards Department (Ms. Ana Pouyat) visits Bulgaria on the right to strike and the collective labour disputes settlement. She meets with social partners' representatives in view of their attitude towards the ILO ideas for improving the SCLDA, in particular on the right to strike. Written recommendations have been given by the ILO experts for improving the SCLDA, including the removal of the total ban on strike in the 3 sectors.

24 - 25.02 2003: Tripartite seminar in view of the implementation of the ILO recommendations and the further work on improving the SCLDA.

27.03.2003: Order № 112/27.03.2003 of the Minister of Labour and Social Policy on forming a workgroup for preparation of amendments and addenda of SCLDA.

April 2003 - September 2003:

Work in the experts group for elaboration of a bill for amendment and addenda of SCLDA.

22.10.2003: The National Council for Tripartite Cooperation approves the bill including the removal of the ban in strikes in the communications and healthcare sectors. The ban on strikes in the energy

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<sup>15</sup> see more in detail III.A.3

<sup>16</sup> State Gazette No. 97 of 2000; amendment and addenda, No. 47 of 2002; amendment, No. 96 of 2002, No. 70 of 2004 – in force since 01.01.2005 –

sector and for civil servants remained. The restrictions for the railway transport remained too<sup>17</sup>.

06.11.2003: The bill is adopted by the Council of Ministers.

21.11.2003: The bill for amendment and addenda of SCLDA is filed into the Parliament by the Council of Ministers<sup>18</sup>. However, disregarding the National Council for Tripartite Cooperation decision, the ban on strikes in the three sectors remains.

07.12.2003: The Parliamentary Commission on labour and social policy generally adopts at the first reading the bill for amendment and addenda of SCLDA.

December 2003 - March 2004:

Public events of CITUB are held aimed at drawing the attention of society to the problems with the bill. A meeting with the Chairman of the National Assembly takes place in view of including the bill in the work plan for the first semester of 2004.

11.03.2004: Letter from ICFTU and ETUC signed by the respective General Secretaries Guy Ryder and John Monks to Simeon Saxe Coburg Gotha, Bulgarian Prime minister, on the bill filed into the Parliament criticising the lack of progress in relation to the ban on strike in healthcare, communications and energy sectors<sup>19</sup>.

August 2004: Press conference of CITUB on the delay of the work for the adoption of the bill by the National Assembly.

November and December 2004: Meetings are held with Members of Parliament and a letter is sent to the Parliament's Chairman in view of adopting the bill within the first semester of 2005.

As of today, the bill is still not included in the agenda for the first semester of the National Assembly, whose mandate expires in July 2005.

## **2. The proposed amendments to the SCLDA**

There were two main stages in which the substantive preparatory work of amending the existing legislation has been carried out. In the first stage, the tripartite working group reached a compromise which was rejected in its main content by the Council of Ministers in the second stage.

### *a) The Working Group's proposals for amendments to the SCLDA*

A representative of the government and of all representative organisations of workers and employees and of employers took part in the working group.

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<sup>17</sup> see below III.B.1

<sup>18</sup> see below III.B.2

<sup>19</sup> see below III.C

After reaching a consensus between the participants in the working group, some proposals were adopted<sup>20</sup>, in particular the abolishment of:

- the restrictions concerning the effective right to strike for civil servants;
- the absolute ban on strike actions for the workers in healthcare and communications sectors. The obligation to conclude preliminary agreements between the parties to the collective labour dispute was provided to guarantee the performance of minimum service during the strike. As a compromise - still contradicting to Art. 6§4 RESC - the ban on strikes was kept only for the workers in the energy sector. For a final settlement of the collective labour disputes in this field a mechanism replacing strikes was introduced –compulsory arbitration.

The elaborated bill for amendment and addenda of the SCLDA, containing also a number of other changes, was accepted in that version by all social partners participating in the National Council of Tripartite Cooperation.

*b) The Council of Ministers' rejection of these proposals*

It was a bad surprise for the trade unions when they learned that Council of Ministers considering the bill and following objections made by the ministers of healthcare and communications had not adopted the proposed amendments of Art. 16 (4) SCLDA. Therefore, the total ban on strikes in the three sectors – energy, healthcare and communications – and also for civil servants remained<sup>21</sup>.

The proposed new Art. 16 of the bill provided the possibility for a dispute to be taken to the National Institute for Reconciliation and Arbitration at one of the parties' request, in view of settling it through compulsory arbitration, when the parties to the dispute in the system of the above-mentioned sectors had not reached an agreement during the negotiations and the mediation procedure. According to the opinion of experts of the social partners that mechanism replacing the strike is reliable basically only when considering collective legal labour disputes because with this hypothesis the compulsory arbitration shall administer justice as a special jurisdiction. According to Art. 119 of the Bulgarian Constitution only the courts shall administer justice. Hence, administration of justice by special jurisdiction is not allowed. Something else, even if it were admitted that such an arbitration was possible (following the procedure of the National Institute for Reconciliation and Arbitration), the decision of the arbitration cannot be a reason for execution, coupled by the possibility for state coercion, according to the Bulgarian law.

In case of refusal to execute the arbitration decision the collective labour dispute remains unsolved in practice.

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<sup>20</sup> see below III.B.1

<sup>21</sup> see below III.B.2

### c) Conclusion

The complainant trade union organisations consider the changes of SCLDA necessary in order to improve the procedures for peaceful settlement of collective labour disputes through the mediation and voluntary arbitration.

### **C. The factual situation: the number of persons concerned**

According to official statistics the persons employed in the sectors concerned are as follows:

Sectors concerned	Workers (Private law)	Civil servants (public law)	Total
Health care	75 000		75 000 <sup>2</sup>
Communications	40 000		40 000 <sup>2</sup>
Energy	21 000		21 000 <sup>2</sup>
Public service		29 000	29 000 <sup>2</sup>
Railway transport	33 600		33 600 <sup>2</sup>
<u>Total</u> (restricted rights)	<u>169 600</u>	<u>29 000</u>	<u>198 600</u> <sup>2</sup>
General			2 109 476 <sup>1</sup>

Source: <sup>1</sup> National Statistical Institute – data for December 2004

<sup>2</sup> Data on personnel of the of the main service providers or companies in the sector from the first months of 2005.

This table demonstrates that nearly 10 % (9,41 %) of the whole workforce of the country are either totally excluded from or severely restricted in the exercise of their fundamental right to strike.

### **D. As to the law**

#### **1. General observations on right to strike as the fundamental social right**

For the trade union movement throughout the world the right to strike is at the very core of its activities to protect and further workers' rights and interests.

This right has become one of the most important elements in the collective rights protection in the human rights perspective. In this context, it should be noted that Art. 6§4 ESC was the first to explicitly recognise the right to

strike in an international convention<sup>22</sup>, followed by several other instruments at the international level (e.g. Art. 8 lit. d International Covenant on Economic, Social and Cultural Rights), the latest of which being Art. II-88 of the Treaty establishing a Constitution for Europe<sup>23</sup>.

These developments clearly demonstrate the importance of this fundamental social right.

## **2. The right to strike in the Revised European Social Charter**

Art. 6§4 RESC binds the Contracting Parties to the Charter to guarantee the effective performance of the right to concluding collective agreements, recognising the workers' and employees' right to undertake collective actions in case of conflict of interests, including the right to strike, subject to obligations resulting out of collective agreements concluded before:

### **Article 6 – The right to bargain collectively**

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake: ...

and recognise:

4 the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

The appendix stresses the relationship between Art. 6§4 and Art. G RESC:

### **Appendix to the Revised European Social Charter**

#### **Article 6, paragraph 4**

It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

Art. G RESC specifies (i.a.) the limits for restrictions of rights:

#### **Article G - Restrictions**

(1) The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

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<sup>22</sup> see Conclusions I, p. 34; but there was already an established case-law in the ILO concerning the right to strike and ILO Convention No. 87 as well as the Declaration of Philadelphia

<sup>23</sup> OJ C 310/2004 (16.12.2004). The respective Article 28 of the EU Charter of Fundamental Rights was based on Article 6 of the European Social Charter.

(2) The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

### **3. The jurisprudence of the European Committee of Social Rights**

#### *a) General interpretation*

Art. 6§4 RESC is one of the most significant provisions of the Charter and has generated important case law, which was summarised by

- the Council of Europe "The right to organise and to bargain collectively"<sup>24</sup> and
- Lenia Samuel "Fundamental social rights – Case law of the European Social Charter"<sup>25</sup>.

Those summaries are based on the case-law deriving from Conclusions I where the European Committee of Social Rights (ECSR) started its interpretation of the right to strike and its possible restrictions according to which:

- Legislation denying the right to strike to persons employed in essential public services may by virtue of Art. 31 ESC or Art. G RESC, be compatible with the Charter whether such restriction be total or partial. Whether or not, in a given case, it is so compatible depends on the extent to which the life of the community depends on the services involved<sup>26</sup>.
- As regards the right of civil servants to strike, the Committee recognises that, by virtue of Art. 31 ESC or Art. G RESC, the right to strike of certain categories of civil servants may be restricted, including members of the police, armed forces, judges and senior civil servants. On the other hand, the Committee takes the view that the denial of the right to strike to civil servants as a whole cannot be regarded as compatible with the Charter<sup>27</sup>.

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<sup>24</sup> Council of Europe, The right to organise and bargain collectively – Study drawn up on the basis of the case law of the European Social Charter, 2<sup>nd</sup> edition, Human rights – Social Charter monographs – No. 5, Strasbourg 2001

<sup>25</sup> 2<sup>nd</sup> edition, Strasbourg 2002

<sup>26</sup> see L. Samuel, footnote 25, p. 151-152 (quoting Conclusions I, p. 38-39, under (f)); she refers also to the case of the requirement of one long-distance operator per shift in the Reykjavic telephone station where the Committee asked "for an explanation as to why workers in apparently non-essential positions were denied the right to strike" see p. 158 (referring to Conclusions XII-1, p. 128 etc.).

<sup>27</sup> see L. Samuel, footnote 25, p. 152 (quoting Conclusions I, p. 38-39, under (g))



### *b) Conclusions 2004 in respect of Bulgaria*

On the basis of these interpretations the ECSR has examined the right to strike in Bulgaria in its Conclusions 2004<sup>28</sup> and summarised its findings as follows:

“The Committee concludes that the situation in Bulgaria is not in conformity with Article 6§4 of the Revised Charter on the grounds that

- strikes are unlawful in the health, energy and telecommunications sectors (Section 16.4 of the Settlement of Employment Disputes Act, No. 21 of 13 March 1990);
- public officials only have a statutory right to take part in symbolic strikes and are banned from collectively withdrawing their labour (Section 47 of the Civil Service Act, No. 67 of 27 July 1999); ....”

It should also be noted that the Governmental Committee was concerned about the violation of such a fundamental right as the right to strike.

### ***E. The conclusions***

Even acknowledging the fact that the right to strike recognised by Art. 6§4 RESC is not unconditional and a particular state may regulate its performance if the restrictions to this right are within the limits set by Art. G RESC, the complainant trade union organisations conclude that Bulgaria goes far beyond the scope of these limitations.

#### **1. Limitations in Article 16 (4) SCLDA**

The total ban for performing the right to strike by the workers in the sectors of communications, healthcare, energy, and in the public service set by law is a restriction of the right to strike guaranteed by the Charter, and this restriction does not meet the requirements of Art. G RESC.

At the same time the state has not provided an efficient compensatory mechanism for protection of the labour rights and interests of those workers and employees.

As the ECSR has pointed out in Conclusions 2004:

“The Committee recalls that the partial or total withdrawal of the right to strike in the case of services that are essential to the community is in conformity with Article 6§4 of the Revised Charter so long as it satisfies the requirements of Article G, which authorises restrictions on the right to strike that are prescribed by law, serve a legitimate purpose and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals (see Conclusions I, p.40).

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<sup>28</sup> see Council of Europe , European Committee of Social Right – European Social Charter (revised) – Conclusions 2004, Volume 1, pp. 42 - 46

In this case the Committee considers that prohibiting strikes in these sectors is prescribed by law. Such a restriction could also be deemed to serve a legitimate purpose since strikes in these sectors, which are essential to the community, could pose a threat to public interest, national security and/or public health. However simply banning strikes, even in essential sectors, cannot be considered proportionate to the specific requirements of each of them and therefore necessary in a democratic society. The most that might be considered in conformity with Article 6§4 of the Revised Charter would be the introduction of a minimum service requirement in these sectors. The Committee therefore considers that in this regard the situation in Bulgaria is not in conformity with Article 6§4 of the Revised Charter."<sup>29</sup>

## **2. Limitations in Article 47 CSA**

The only symbolic strike actions which are allowed for civil servants under Art. 47 CSA already have been criticised by the ECSR in Conclusions 2004:

"Section 47 of the Civil Service Act, No. 67 of 27 July 1999, limits the right to strike to wearing or displaying signs, arm-bands, badges or protest banners, without any interruption to public duties.

The Committee recalls that Article G of the Revised Charter (see above) authorises restrictions on the right to strike of certain categories of public official, for example when their duties are concerned with the public interest or national security. However prohibiting all public servants from exercising the right to strike is not in conformity with the Charter (Conclusion I, pp. 38-39; see also Conclusions III, p. 37).

In this case, the Committee finds that Bulgarian law only allows public officials to declare symbolic strikes and does not grant them the right to collectively withdraw their labour. It considers that this amounts to a complete withdrawal of the right to strike for all public officials, which is incompatible with Article 6§4 of the Revised Charter."<sup>30</sup>

## **3. Limitations in Article 51 of the Railway Transport Act (RTA)**

Art. 51 RTA is about undertaking actions under chapter III of SCLDA, i.e. for declaring a strike. This is a special restriction for the workers in this system during strike requiring imperatively that workers and employees provide satisfactory transport service for the population not less than 50 per cent of the transport service before undertaking the strike.

Practically this provision is unclear and does not contain any criteria according to which 50% of the transport service can be provided in the Bulgarian Railway Company. This uncertainty increases even more the legal risk of calling a strike. De facto, the provision does not allow the workers in the Bulgarian Railway Company system to conduct a strike.

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<sup>29</sup> see footnote 28, pp. 43 - 44

<sup>30</sup> see footnote 28, p. 44

Although there is no direct jurisprudence of the ECSR in respect of this provision, it should be noted that

- the transport sector in general is not regarded as 'essential service'<sup>31</sup> and as such cannot justify further restrictions based on such a qualification;
- but even in the case of an essential service the restrictions to guarantee 'satisfactory transport' means depriving the strike from any effectiveness;
- the further limitation 'not under 50 % of the rail transport before undertaking of those actions' could mean that even more than half the persons employed would have to be strike breakers and in each aspect goes beyond any reasonable justification.

That is why this provision also is not in conformity with the requirements of Art. 6§4 RESC.

#### **4. Limitations taken together**

The non-conformity with Art. 6§4 RESC becomes even more serious if the restrictions are not only taken separately but in conjunction. It means an enormous attack on trade union strength if

- in the whole public service only symbolic strike actions are allowed for civil servants and if
- in the important sectors of health care, communications, energy and railway transport the right to strike is either completely prohibited (health care, communications, energy) or only allowed in such limitations (railway transport) that there is practically no real impact on the employer.

The right to strike results from and is related to the freedom of association and the right to organise. Through the legislative ban on the right to strike in the three sectors as well as the further restrictions, the right to association of the workers in these sectors is being violated. The workers in these sectors are being legislatively - it seems deliberately - de-motivated in view of their association in trade union organisations. It is not of workers' interest to organise in trade unions since those will not be able to protect their rights and interests in case of collective labour dispute.

#### **5. Final observations**

In this sense the complainant trade union organisations consider that Bulgaria does not fulfil the commitment assumed under Art .6§4 RESC to provide to a satisfactory extent the performance of one of the fundamental trade union rights – the right to strike.

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<sup>31</sup> *ILO Digest* (Digest of Decisions and Principles of the Freedom of Association Committee, 1996): "545. The following do not constitute essential services in the strict sense of the term: ...

- transport generally (see the Digest of 1985, para. 407); ..."

The complainant trade union organisations consider that,

- through such a deprivation by law of an important number of workers and employees of the right to strike and the groundless restriction of the right to strike for the other, the state has no sufficient reason for the purpose of protection of public interest, national security, public health, or morals, nor protection of the rights and freedoms of others, but on the opposite – puts a big group of workers in a disadvantaged situation in relation to the law compared with others,
- the present situation and the inaction of the Bulgarian State in the face of its executive and legislative powers, continuing already nearly 5 years after the ratification of the ESC, is a non-satisfactory fulfilment on the part of the Republic of Bulgaria of its obligations under Art. 6§4 RESC,

It is inadmissible that such important matters related to the development and setting of the human right to strike for every worker remain neglected by the Bulgarian State.

#### **Annexes:**

1. Acts quoted in the complaint (extracts)<sup>32</sup>;
2. Bill for amendment and addenda of the SCLDA – first version, filed into the National Council for Tripartite Cooperation; (extract)<sup>33</sup>;
3. Bill for amendment and addenda of the SCLDA – version of the Council of Ministers, considered in the Parliamentary Commission on labour legislation (extract)<sup>34</sup> ;
4. Letter by the ICFTU and ETUC to the Prime Minister of the Republic of Bulgaria<sup>35</sup>

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<sup>32</sup> see below IIII.A

<sup>33</sup> see below III.B.1

<sup>34</sup> see below III.B.2

<sup>35</sup> see below III.C



### **III. APPENDICES**

#### ***A. Legislation***

##### **1. SCLDA (Extract)**

###### *a) Article 16*

"Art. 16 Strike is not admissible:

1. if demands of employees are in contradiction to the Constitution;
2. (am. SG 25/2001) in case the demands under Art. 3, Art. 11, paragraph 2 and 3 and Art. 14 are not fulfilled as well as on issues on which there is an agreement or an arbitration decision;
3. at the time of a natural disaster and urgent rescue and reconstruction activities related to it;
4. in production, distribution and supplying of electric power, communications and health care;
5. to settlement of individual labour disputes;
6. (am. SG 57/2000) in the systems of Ministry of Defence, Ministry of Interior, judicial, prosecution and investigative authorities;
7. where political demands have been raised."

###### *b) Article 14*

"Art. 14 (1) Workers, employees and employer are obliged to enter into a written agreement settling the conditions during the strike for carrying out of activities, the cessation of which may lead to endangering:

1. the satisfactory communal and transport servicing of citizens and stoppage the TV and radio broadcasts;
2. causing irreparable damages to public or personal property or to environment;
3. the public order;

(2) Written agreement under previous paragraph has to be concluded at least 3 days before the beginning of the strike.

(3) In case the parties are unable to reach an agreement under previous paragraph the issue is referred for settlement to an individual arbitrator or arbitration committee composed of arbitrators who are included in the list under Art. 5, paragraph 4, who are elected by the Ministerial council or body determined by the Ministerial council."

## **2. Civil Servant Act (Extract)**

Extract from the Civil Servant Act (Promulgated SG 67/27.07.1999; am.1/2000, 25/2001, 99/2001, 110/2001, 45/2002, 95/2003, 70/10.08.2004, effective from 01.08.2004)

*The right to go on strike*

Art. 47 (1) The state employees may announce a strike in case presented demands in relation with official and insurance relations are not respected.

(2) Implementation of the strike under paragraph 1 is carried out by wearing or placing appropriate signs and symbols, protest posters, bands and other without cessation of state work.

(3) During strike representatives of state employees and body of appointing make efforts for settling the debatable points."

## **3. Railway Transport Act (Extract)**

Extract from the Railway Transport Act (SG 97/28.11.200; am. 47/2002, 96/2002, 70/2004, - effective from 01.01.2005)

"Art. 51 In case of undertaking actions included in chapter tree of the Law for settlement of collective labour dispute workers, employees and theirs employers - haulers have to provide satisfactory transport servicing of citizens, but not under 50 % of the rail transport before undertaking of those actions."

## ***B. Amendments concerning SCLDA***

### **1. (First) Draft proposed by the Working Group (Extract)**

Draft!

LAW

For amendment and supplement of the Law for settlement of collective labour disputes (Promulg. SG 21/1990, am. SG 27/1991, SG 57/2000, SG 25/2001 effective from 31.03.2001)

....

§ **11.** In the Art. 14 are made the following amendments and supplements:

1. In paragraph 1 the word "with written agreement" is replaced by "in accordance with written agreement";
2. In paragraph 1, item 1 is amended as follow:

" the satisfactory communal, transport and health servicing of citizens and stoppage of TV and radio broadcasts and telephone, telegraph and telex messages;"

3. In paragraph 2 the word "previous paragraph" is replaced by "paragraph 1";

4. Paragraph 3 is amended as follow:

"(3) In case parties are unable to reach an agreement under the paragraph 1, the issue is referred to NIMA. In this case in time limit of 3 working days since the receiving of the request the Director of NIMA determines an individual arbitrator or an arbitration committee composed of arbitrators who are included in the list under Art. 4a, paragraph 7, item 5 **who settle the dispute in accordance with Art. 6.**"

§ 12. In Art. 16 are made the following amendments and supplements:

1. item 2 is amended as follow:

"in case the requirements of Art. 3, 4, Art.11, paragraph 2 and 3 have not fulfilled;"

2. item 3 and item 4 are created:

"3. when the workers and employees who are out on strike have not fulfilled their duties according to the concluded agreement or enacted arbitration decision under Art. 14;

4. about issues in which there is an agreement between the parties or arbitration decision, except in cases under Art.11, paragraph 1;"

3. the former item 3 becomes item 5;

4. the former item 4 becomes item 6 and is amended as follow:

"6. in production, distribution and supplying of electric power;"

5. the former item 5 becomes item 7:

6. the former item 6 becomes item 8 and the words "the national defence" are replaced by "the defence"

7. the former item 7 becomes item 9.

§ 13. Art. 16a is created:

"Art.16a (1) In case parties in collective labour dispute of activities under Art. 16, item 6 are unable to reach an agreement in negotiations in time under Art. 3 and 4 the dispute is referred to NIMA. In this case in time limit of 3 working days since the receiving of the request the Director of NIMA determine an individual arbitrator or an arbitration committee composed of arbitrators who are included in the list under Art. 4 paragraph 7, item 5 who settle the dispute in accordance with Art. 6."

....



**2. (Second) Draft on the Basis of the Council of Ministers' decision (Extract)**

**REPUBLIC OF BULGARIA**  
**NATIONAL ASSEMBLY**  
***Draft!***

**LAW**

For amendment and supplement of the Law for the settlement of collective labour disputes

(Promulg. SG 21/1990, am. SG 27/1991, SG 57/2000, SG 25/2001)

...

§ **11.** In the Art. 14 are made the following amendments and supplements:

1. In paragraph 1 after the word "the workers" we add "and employees", and the words " with written agreement" are replaced with "in accordance with written agreement".
2. In paragraph 2 the words "the previous paragraph" are replaced with "paragraph 1".
3. Paragraph 3 is amended as follow:

" (3) In case parties are unable to reach an agreement under the paragraph 1, the issue is referred to NIMA. In time limit of 3 working days the Director of NIMA determines an individual arbitrator or an arbitration committee composed of arbitrators who are included in the list under Art. 4, paragraph 7, item 5 who have to settle the dispute in accordance with Art. 6."

§ **12.** In Art 16 are made the following amendments and supplements:

1. In item 1 after the word "the workers" we add "and the employees"
2. The item 2 is amended as follow:  
"2. When the requirements of Art. 3, 4a and Art.11, paragraph 2 and 3 are not fulfilled."
3. The new item 3 and 4 are created:  
" 3. when the workers and employees who are out on strike have not fulfilled their duties according to the concluded agreement or enacted arbitration decision under Art. 14;  
4. about issues in which there is an agreement between the parties or arbitration decision, except in cases under Art.11, paragraph 1;"
4. The former item 3, 4 and 5 become item 5, 6 and 7 respectively.

1. The former item 6 become item 8 and the words in it "the system of Ministry of Defence" are replaced with "Ministry of Defence, Bulgarian army and the structures in subjection of Minister of Defence".
2. The former item 7 become item 9.

§ **13.** The Art. 16a is created:

"Art. 16a In case parties in collective labour dispute of activities under Art. 16, item 6 are unable to reach an agreement in negotiations under Art. 3 and 4a the dispute is referred to NIMA. In time limit of 3 working days since the receiving of the request the Director of NIMA determines an individual arbitrator or an arbitration committee composed of arbitrators who are included in the list under Art. 4, paragraph 7, item 5 who have to settle the dispute in accordance with Art. 6."

.....

The Law is accepted by the XXXIX National Assembly on ..... and is sealed with the official seal of the National Assembly.

PRESIDENT OF THE  
NATIONAL ASSEMBLY:

(Ognyan Gerdjikov)

## **C. Letter by ICFTU and ETUC to the Prime Minister**



**ETUC (CES) - EUROPEAN TRADE UNION CONFEDERATION**

**ICFTU (CISL) - INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS**

Brussels, 12 March 2004

JM/GR/HC/TJ/pw/dm (CEE)

Mr. Simeon Desaxe-Cobourg Ghota  
Prime Minister of the Republic of Bulgaria  
Sofia  
Bulgaria

*By Fax: 00 359 2 980 16 58*

### **Re: The right to strike**

Dear Prime Minister,

Our attention has been drawn by our affiliates in Bulgaria – KNSB and Podkrepa – to the current state of discussions in the National Council for Tripartite Cooperation on changes to be introduced to the Law for Settlement of Collective Labour Disputes.

Our two affiliates have requested that the revision of this law should bring it into line with ILO Conventions 87 and 98 and the European Social Charter of the Council of Europe. They, and we, are particularly concerned about the restrictions in the current legislation on the Right to Strike – which make strikes almost impossible in the healthcare, communication and energy sectors as well as for civil servants.

We were very surprised to hear that, although the National Council for Tripartite Cooperation had adopted a text which met at least some of these expectations, the draft bill that your Government has decided to submit to Parliament has taken a totally different stance, and has maintained the existing restrictions on the right to strike, whilst claiming to have solved the issue through the creation of a compulsory system of arbitration, which seems to us particularly unreliable.

As you will certainly be aware, freedom of association and the right to strike are fundamental workers' rights. They should be guaranteed to all, both in law and in practice. Should the Bulgarian legislation fail to do so, we would not hesitate to appeal to the International Labour Organisation, using the established procedures and mechanisms.

Furthermore we have received worrying reports on plans to limit the right to peaceful gatherings, meetings and demonstrations.

We cannot understand either why the Council of Ministers has decided to cancel the draft proposal agreed on within the National Tripartite Council and to replace it with another text, adopted without any consultation with the social partners.

We would therefore urge you to use your good offices to ensure that full consideration is given to this important issue, that the draft bill submitted to Parliament is withdrawn and that a fresh dialogue is established with the social partners, with a view to preparing a text that is acceptable to all parties and complies with international standards.

We look forward to hearing from you,

Yours sincerely,

**John Monks**  
General Secretary ETUC

**Guy Ryder**  
General Secretary ICFTU

*cc: - Mr J. Hristov, President, KNSB  
- Mr K. Trenchev, President, Podkrepa*