

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



14 September 2007

Case document No. 1

**International Helsinki Federation for Human Rights (IHF)
v. Bulgaria**
Complaint No. 44/2007

COMPLAINT

Registered at the Secretariat on 8 August 2007

Vienna, 3 August 2007

Secretariat of the European Social Charter
Directorate General of Human Rights – DG II
Council of Europe
F-67075 CEDEX
France

Collective Complaint
International Helsinki Federation for Human Rights v. Bulgaria

Table of Contents

- I. *The Parties*
 - 1. *State Party*
 - 2. *The International Helsinki Federation for Human Rights*

- II. *Summary of the Complaint*

- III. *The Facts*
 - 1. *Background to the System of Social Assistance in Bulgaria*
 - 2. *February 2006 Amendments to the Social Assistance Act and their General Consequences*
 - 3. *The Disparate Impact of the Amendments*
 - a. *The Disparate Impact on Roma*
 - b. *The Possible Disparate Impact on Women*

- IV. *The Law*
 - 1. *Violation of Article 13.1 of the Revised European Social Charter*
 - 2. *Violation of Article E Taken Together with Article 13.1 of the Revised European Social Charter*

V. *Conclusions and Recommendations*

I. The Parties

1. State Party – Republic of Bulgaria

Bulgaria signed the Revised European Social Charter (RESC) on 21 September 1998. The National Assembly of Bulgaria adopted the Law on the Ratification of the ESC on 29 March 2000 (published in the Official Gazette on 11 April 2000). With the same law it accepted the collective complaint procedure envisaged in the Additional Protocol from 9 November 1995. The ratification is effective since 7 June 2000. Upon ratification Bulgaria accepted to be bound by Article 13, Paragraph 1. It is also bound by Article E of the RESC.

2. The International Helsinki Federation for Human Rights (IHF)

The International Helsinki Federation for Human Rights (IHF) is international, nongovernmental organization constituted by national Helsinki Committees and Cooperating Organizations in the participating States of the Organization for Security and Cooperation in Europe (OSCE). The IHF seeks to promote compliance with the human rights provisions of the Helsinki Final Act and its follow-up documents, with international legal obligations undertaken in the Council of Europe (CoE) and the United Nations (UN), and with human rights norms promoted by the European Union (EU). It has a participative status with the Council of Europe and is registered by the Governmental Committee of the ESC as an INGO entitled to submit collective complaints for a period of 4 years: 1 January 2007 - 30 December 2010. According to Article 5.3a of the IHF Statutes the organization is represented by its President. The current President of the IHF is Mr. Ulrich Fisher, elected on 19 November 2006 at the IHF General Assembly in Sofia, Bulgaria.

II. Summary of the Complaint

In February 2006 the National Assembly of Bulgaria amended the Social Assistance Act (SAA), with which it introduced a limited period of time, 18 months, for granting monthly social assistance to unemployed persons in working age without adequate resources. The amendments entered into force on 1 June 2006. The 18-month period will expire on 1 January 2008. On that date,

according to the estimates of the Bulgarian Ministry of Labor and Social Policy, the monthly social assistance of around 41 000 persons is to be discontinued. Together with the social assistance the beneficiaries will lose a number of other rights provided for by laws that link these rights to monthly social assistance entitlement. This measure will have a disparate impact on Roma who are substantially overrepresented among the beneficiaries of monthly social assistance. It will also have a disparate impact on some female family members as they will be forced to take care of the children before they reach three years of age and refrain from working and advancing in their careers, as the amendments to the SAA do not affect negatively mothers (but affect negatively fathers) who take care of children before they reach three years of age. No compensation through other social welfare measures is envisaged to alleviate the effect of the social assistance cuts on affected individuals and groups.

The above measures violate Article 13, Paragraph 1 of the Revised European Social Charter, under which the contracting parties undertake to ensure the right to adequate social assistance to any person who is without adequate resources and who is unable to secure such resources either through his/her own efforts or from other sources. They also violate Article E in conjunction with the above article. They discriminate on the basis of an association with a national minority, as well as on the basis of gender, as they have a clear disparate impact on Roma and a likely discriminatory effect on women.

III. The Facts

1. Background to the System of Social Assistance in Bulgaria

The right to social assistance is provided for by Article 51, para 1 of the Constitution of Bulgaria, which reads:

“Citizens shall have the right to social security and social assistance.”

Article 6, para 2 of the Constitution of Bulgaria guarantees equality before the law and prohibits discrimination in the exercise of rights:

“All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, nationality, ethnic self-identity, sex, origin, religion, education, opinion, political affiliation, personal or social status or property status.”

International treaty law has a higher status in the Bulgarian legal system than domestic legislation. Article 5, para 4 of the Constitution of Bulgaria provides:

“International treaties, ratified by the constitutionally established procedure, promulgated and came into force with respect to the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. They shall supersede any norm of domestic legislation that contradicts them.”

The system of social assistance in Bulgaria is regulated by the Social Assistance Act (SAA)¹, the Rules and Regulations for the Implementation of the Social Assistance Act (RRISAA)² and some other regulations. According to the SAA the aims of social assistance is to support persons who are not able to meet their basic needs in life by their own efforts and without external support; to encourage their employment and social reintegration and to advance social solidarity.³ The law envisages three types of social assistance: monthly, targeted and one-off.⁴ All types of social assistance are granted in cash or in kind to individuals or families after an individual assessment by a social worker of the family income, personal property, marital and health status employment situation, age and other circumstances.⁵ The right to social assistance applies to Bulgarian nationals, permanently residing foreigners, refugees and persons with humanitarian status, as well as to other foreigners entitled to it by an international treaty to which Bulgaria is a party.⁶

The Ministry of Labor and Social Policy (MLSP) is the governmental body responsible for the implementation of state policy and legislation on social assistance in Bulgaria. It does this through its Agency of Social Assistance, which has two types of regional divisions: Regional Directorates of Social Assistance in each one of Bulgaria’s 28 regional centers and “Social Assistance” Directorates at lower levels, which are established by a regulation of the Minister of Labor and Social Policy.⁷ Directors of the “Social Assistance” Directorates are the key persons at the basic level who decide on all social assistance. At present there are 148 “Social Assistance” Directorates throughout Bulgaria.⁸

¹ Social Assistance Act, *Official Gazette*, No. 56 from 19 May 1998, with many amendments, the latest one from 22 December 2006.

² Rules and Regulations for the Implementation of the Social Assistance Act, *Official Gazette*, No.133 from 11 November 1998, with many amendments, the latest one from 17 November 2006.

³ SAA, Article 1, para 2.

⁴ SAA, Article 12, para 1.

⁵ SAA, Article 12, para 2.

⁶ SAA, Article 2, para 3 and 4.

⁷ SAA, Article 5.

⁸ Information from the official web site of the Agency of Social Assistance: <http://www.asp.government.bg/>, accessed on 27 July 2007.

Targeted social assistance is offered for specific purposes, such as paying rents or heating to persons in need on an irregular basis. The possible purpose, the eligibility and the procedure for application is regulated by the RRISAA and by other regulations of the Minister of Labor and Social Policy.⁹ One-off social assistance may be granted once a year to cover accidental health, educational, domestic or other vital needs.¹⁰

The bulk of social assistance in Bulgaria is the monthly social assistance. The RRISAA regulates in detail the amount, the eligibility and the procedure for granting this type of assistance, which is usually in cash and only in certain specific circumstances – in kind.¹¹ All persons or families whose monthly income is below the so-called “differentiated minimal income” are entitled to monthly social assistance.¹² The amount of the assistance is determined as the difference between differentiated minimal income and the actual income of the individuals/families. The basis for determining differentiated minimal income is the monthly “guaranteed minimal income”, which is set periodically by a decree of the Council of Ministers. At the time of the adoption of the February 2006 amendments to the SAA the guaranteed minimal income per person per month was 55 BGN (28 Euro).¹³ On the basis of the guaranteed minimal income the RRISAA determines differentiated minimal income on the basis of age, family status, disability and the number of children in the family. For example, the differentiated minimal income for a family of two persons is 66% of the guaranteed minimal income for each one of the spouses whereas for a single person 65 years of age or older it is 140% of the guaranteed minimal income.¹⁴

While the SAA and the RRISAA set individual need as the basic condition for social assistance, the RRISAA provides for some additional eligibility criteria. These include the amount of rooms in the family home; participation of the person as an owner or shareholder in commercial companies; involvement in transactions of real property, which might ensure some income; possibility to rent some parts of the real property the person owns and, for some categories, registration with the local labor bureau as a proof that the person actively seeks

⁹ One such regulation is Ordinance No.5 from 30 May 2003 on the Conditions and the Procedure for Granting Targeted Social Assistance for Heating, *Official Gazette*, No.53 from 10 June 2003, with many amendments, the latest one from 27 October 2006.

¹⁰ RRISAA, Article 16, para.1.

¹¹ Article 25 of the RRISAA specifies these circumstances: if the parents do not care about their children or do not use the money to support their families in other ways. In such cases the assistance may be granted in the form of food, clothing, educational materials or in other ways suggested by the social worker in his/her report.

¹² RRISAA, Article 9, para 1.

¹³ Council of Ministers, Decree No.51 from 29 March 2005, *Official Gazette*, No.31 from 8 April 2005.

¹⁴ RRISAA, Article 9, para 3.

employment.¹⁵ All persons eligible for monthly social assistance are required to participate in employment preparation programs that include training and work. Those who refuse are denied social assistance for a period of one year.¹⁶ Article 126, para 4 of the SAA however excludes several categories from this requirement. These include:¹⁷

- Mothers or adoptive parents who care about children younger than three years;
- Single parents who take care of their children where they are younger than three years;
- Guardians of children younger than three years;
- Pregnant women after the third month of their pregnancy;
- Persons who are disabled permanently or temporarily;
- Persons caring for sick family members or for close relatives;
- Persons caring for family members or for close relatives who have disabilities that need permanent care;
- Persons with mental disabilities, certified in due order.

Where there are no employment preparation programs persons eligible for monthly social assistance are asked to participate for at least five days in programs that include public works. Failing this, they might be excluded from social assistance but only for the month, in which they refused.¹⁸ In this case too there are several categories, similar albeit not identical to those under Article 126, para 4 of the SAA, that are exempted from this requirement.

A person who requests monthly social assistance applies to the local “Social Assistance” Directorate by filing a form once a year. Within 20 days after the form was filed a social worker visits the person, conducts a survey and draws up a report where he/she gives an opinion on the eligibility, the amount and the form of social assistance.¹⁹ Within seven days the Director of the local “Social Assistance” Directorate decides on granting or refusing monthly social assistance.²⁰ His/her decision may be appealed through the generally established administrative procedure.²¹

The SAA prohibits direct or indirect discrimination in social assistance on the basis of sex, race, color, ethnic belonging, citizenship, political or other opinion, religion or belief, disability, age, sexual orientation, family status or origin,

¹⁵ RRISAA, Article 10, para 1.

¹⁶ SAA, Article 126, para 1 and 2.

¹⁷ SAA, Article 126, para 4.

¹⁸ RRISA, Article 12, para 1 and 2.

¹⁹ RRISA, Article 27.

²⁰ RRISA, Article 28, para 1.

²¹ SAA, Article 13, para 5.

membership in trade unions or other non-governmental organizations and movements.²²

The European Committee of Social Rights reviewed Bulgaria's compliance with the Revised Charter in 2004 and in 2006. In both reviews the ECSR concluded that the situation in Bulgaria is not in conformity with Article 13, Paragraph 1 of the Revised Charter. In the 2004 review it concluded that the level of social assistance in Bulgaria is manifestly inadequate.²³ In the 2006 review it concluded that the level of social assistance paid to a person under 65 living alone is manifestly inadequate and that the granting of social assistance to nationals of other states party to the Charter is conditioned on a continuous presence in Bulgarian territory that is excessively long.²⁴

2. February 2006 Amendments to the Social Assistance Act and their General Consequences

On 16 February 2006 the Bulgarian Council of Ministers introduced a draft Law on Amendments and Supplements of the Social Assistance Act.²⁵ The official reasons that accompanied the draft law cited the commitments in the framework of the process of Bulgaria's accession to the EU. Indeed, many amendments and supplements aimed at adapting the SAA with some provisions of the Treaty Establishing the European Community, such as the right to establishment (Articles 43-48) and the prohibition on the restrictions on the freedom to provide services to nationals of Member States (Article 49). At the same time the draft law introduced a new Article 12в, which reads as adopted:

“(1) The unemployed persons in working age can receive monthly social assistance without interruption for a period not exceeding 18 months.

(2) The right to monthly social assistance can be restored after the expiration of 12 months from its termination under the conditions and through the procedure established with the Rules and Regulations for the implementation of this act.

(3) The provision of Article 1 does not apply to cases under art. 12б, para. 4.”

²² SAA, Article 3.

²³ Conclusions 2004 (Bulgaria), at Article 13.

²⁴ Conclusions 2006 (Bulgaria), at Article 13.

²⁵ See Exhibit No.1, containing the adopted draft with the official reasons as introduced by the Council of Ministers.

The draft law was adopted by the National Assembly as proposed the same month and was published in the Official Gazette on 28 February 2006.²⁶

The new provision introduced a temporal limitation on monthly social assistance payments, which, before its adoption, used to be unlimited in time and conditioned only on the needs of the beneficiaries. Paragraph 1 of Article 12в excludes from unlimited monthly social assistance payments all but the categories mentioned in Article 12б, para 4 of the SAA.²⁷ These are going to continue to receive social assistance after the expiration of the 18-month period.

The official reasons to the draft justified these cuts with the aim to²⁸

“stimulate and activate personal initiative and responsibility of persons in working age for their realization on the labor market, respectively, ensuring income for themselves through work and not allowing lasting loss of work habits and isolation from society”

These reasons were repeated on several occasions subsequently by officials of the Ministry of Labor and Social Policy.²⁹ On other occasions however the same officials were more cynical and blunt. Thus, on 16 April 2007 the Deputy Executive Director of the Agency of Social Assistance, Ms Sylvia Tsanova, stated in an interview to the Sofia-based *Darik Radio*:³⁰

“All those who do not work because of laziness, i.e. have the capacity but do not do it, ought to be deprived in order to be able to take their lives in their own hands.”

On 30 June 2007 Ms Emilia Maslarova, Minister of Labor and Social Policy, in a long interview before *Darik Radio*, when asked the question whether the Ministry will have the determination to implement the policy, stated the following:³¹

²⁶ *Official Gazette*, No.18, 28 February 2006.

²⁷ See supra Section III.1.

²⁸ See the reasons in Exhibit No.1.

²⁹ One such occasion when the official reasons were repeated in part was the reply in the Bulgarian Parliament of the Minister of Labor and Social Policy, Ms Emilia Maslarova, to the question of the MP Donka Mihailova on 13 July 2007 (See Exhibit No.2, which is a print out from the official web site of the Ministry of Labor and Social Policy). Web site accessed on 25 July 2007.

³⁰ See the transcript of the interview on the official web site of the MLSP: <http://www.asp.government.bg/intervuzanova-darik1.doc>, accessed on 29 July 2007, as well as the print out in Exhibit No.3.

³¹ “Масларова: Спираме кранчето за социални помощи”, interview on *Darik Radio* with Kiril Vulchev on 30 June 2007, see transcript of the entire interview at: http://www.darik.net/view_article.php?article_id=158529. The relevant text is printed out from the

“Just remember today’s date and never imagine that Maslarova and her team are people who shed tears and freak out from such things. Social means just. I will not allow, and I say this absolutely responsibly, so that all these Roma leaders who stir up people to revolt nowadays can hear, I will not allow people who lay on their left or right thigh all day long and wait for the state to bring them something while spitting on the state, to just live on the toil of the other Bulgarian citizens.”

According to the 2006 report of the Agency of Social Assistance between 1 January 2006 and 31 December 2006 the monthly average number of persons and families who have been supported with monthly social assistance was 100 374, down from 124 635 for 2005.³² In 2003 the respective figure was 136 342.³³ The tendency for decrease of the number of persons receiving monthly social assistance is likely to continue also in 2007. Officials from the Ministry of Labor and Social Policy tried on numerous occasions to make an estimate of the number of persons who on 1 January 2008 are to be excluded from social assistance on the basis of Article 12B of the SAA. On 15 July 2007 Ms Maslarova mentioned the figure 40 000 in her response to the question of the MP Donka Mihailova before the Bulgarian Parliament.³⁴ The same figure was mentioned by Ms Gergana Dryanska, Exesutive Director of the Agency of Social Assistance, in an interview on 16 June 2007 to the Sofia-based daily *24 Chasa*.³⁵

In June 2007 the Bulgarian Helsinki Committee (BHC), IHF’s partner organization based in Sofia, filed a request to the Ministry of Labor and Social Policy for information on the estimated number of persons whose social assistance is to be discontinued after 1 January 2008. With a letter to the BHC from 26 June 2007 Ms Gergana Dryanska, Executive Director of the Agency of Social Assistance, supplied such information on the basis of the estimates of the directors of the Regional Directorates of Social Assistance.³⁶ According to this information the total estimated number of unemployed persons in working age whose monthly

same web site in Exhibit No.4, web site accessed on 25 July 2007.

³² Agency of Social Assistance, Report for the Period January-December 2006, available at the official web site of the Agency: <http://www.asp.government.bg/site-otchet.html>, accessed on 30 July 2007.

³³ *Joint Memorandum on Social Inclusion of the Republic of Bulgaria*, signed by Ms Christina Christova, Minister of Labor and Social Policy and Mr Vladimir Spidla, Member of the European Commission Responsible for Employment, Social Affairs and Equal Opportunity, 3 February 2005, available at: http://ec.europa.eu/employment_social/social_inclusion/docs/jim_bg_en.pdf, p.16. Web site accessed on 27 July 2007.

³⁴ See Exhibit No.2. In the same response Ms Maslarova discussed, a year and a half after the adoption of the amendment, plans for the identification of those who are to lose their right to social assistance after 1 January 2008, as well as possibilities for future job training and preparation for employment programs.

³⁵ “Нова помощ ще замени пенсии и добавки за възрастни над 65 години”, interview of Lilyana Filipova with Gergana Dryanska, Executive Director of the Agency of Social Assistance, *24 Chasa* from 15 June 2007.

³⁶ See Exhibit No.5.

social assistance will be discontinued after 1 January 2008 because of the expiration of the 18-month period of uninterrupted assistance was to be 40 906. The highest numbers of such persons were reported in the regions of Plovdiv (5495 persons), Montana (3075 persons), Pazardzhik (2679 persons), Varna (2510 persons) and Shumen (2336 persons).

In addition to being deprived of essential contributions to their own or their families' budgets, persons in need, whose social assistance benefits will be discontinued after 1 January 2008 will lose some other rights guaranteed by a number of Bulgarian laws that link the right to monthly social assistance with other rights. The latter include but are not limited to:

- *The right to medical insurance through the state budget.* Article 40, para 3, pt. 5 of the Medical Insurance Act provides that persons who receive monthly social assistance are paid medical insurance through the state budget. According to Article 37, para 3 of the same act they are also exempted from paying the initial check tax.³⁷
- *The right to legal aid.* Article 22, para 1 of the Legal Aid Act provides that only persons who are entitled to monthly social assistance can get free legal consultation and preparation of their civil cases for free.³⁸
- *The right to get agricultural land for cultivation with priority.* This right is provided for to persons entitled to monthly social assistance by Article 21, para 1 of the Ownership and Use of Agricultural Land Act.³⁹
- *The right to be exempted from paying taxes for kindergartens.* These taxes are regulated in Bulgaria at the municipal level. Almost all municipalities either exempt altogether or substantially reduce taxes for kindergartens for families receiving monthly social assistance.⁴⁰

3. The Disparate Impact of the Amendments

a. The Disparate Impact on Roma

Roma in Bulgaria, constituting, according to different estimates, from 5 to 10% of

³⁷ Medical Insurance Act, *Official Gazette*, No. 70 from 19 June 1998, with many amendments, the latest one from 28 September 2004, Article 37, para 3 and Article 40, para 3, pt. 5.

³⁸ Legal Aid Act, *Official Gazette*, No. 79 from 4 October 2005, with many amendments, the latest one from 11 April 2006, Article 22, para 2.

³⁹ Ownership and Use of Agricultural Land Act, *Official Gazette*, No.17 from 1 March 1991, with many amendments, the latest one from 30 April 2004.

⁴⁰ See for example the respective regulation of the Pleven Municipality at: http://www.pleven.bg/index.php?option=com_content&task=view&id=89&Itemid=44. The respective regulation of the Pernik Municipality can be found at: <http://www.pernik.bg/document.php?id=203>.

the population,⁴¹ are disproportionately represented among the persons without adequate resources. This is confirmed by all official data and recent surveys of private research institutions in Bulgaria dealing with comparative socio-economic status. A number of official documents that the Bulgarian government signed or produced itself endorse this observation too. Thus the 2005 Joint Memorandum on Social Inclusion of Bulgaria endorses the 2001 World Bank Poverty Assessment Survey, which provides comparable data on poverty in Bulgaria by ethnic group. According to this survey:⁴²

“The Turkish and especially the Roma are most severely affected by poverty and unemployment. According to this study and the methodology applied, the poverty level for ethnic Bulgarians is 5.6%, while for ethnic Turks it is 20.9% and for the Roma it is 61.8%.”

In another governmental document from 2006, approved by the European Commission, “The National Strategic Reference Framework 2007-2013”, the government of Bulgaria cites and endorses data from another recent survey of comparative socio-economic status:⁴³

“A survey of the Agency of Social Analysis on “Roma on the Labor Market and the System of Social Assistance: the New Challenges in 2003” shows that at present 42.8% of the Bulgarians have a permanent paid job whereas for the Roma this share is 19.5%. From all unemployed 17.3% are Bulgarians and 59.9% are Roma.”

The lower socio-economic status of Roma, compared to that of the rest of Bulgaria’s population, leads to a greater reliance on social assistance. There is no exact and systematic official data on the share of Roma among the beneficiaries of social assistance. However a number of surveys, as well as some estimates made by Bulgarian officials suggest that Roma are heavily overrepresented among both the beneficiaries of the social assistance in general and among the persons who are likely to be affected by the February 2006 amendments to the SAA. Thus, according to the data from the 2002 UNDP survey “Avoiding the Dependency Trap – a Human Development Report on the Roma Minority in Central and Eastern Europe” 44.4% of the Roma in Bulgaria indicated social assistance as the usual source from which the household

⁴¹ Cf.: E. Marushiakova and V. Popov, *Gypsies (Roma) in Bulgaria*, Frankfurt aM, Peter Lang, 1997, pp. 43–44; Jean-Pierre Liegeois, *Roma, Gypsies, Travellers*, Strasbourg, Council of Europe Press, 1994, p. 34; I. Tomova, *Gypsies in the Period of Transition*, Sofia, ICMSIR, 1995, p. 13. (in Bulgarian); UNDP, *Avoiding the Dependency Trap – a Human Development Report on the Roma Minority in Central and Eastern Europe*, Bratislava, UNDP, 2002, p. 24-25; Dena Ringold, Mitchell A. Orenstein, and Erika Wilkens, *Roma in an Expanding Europe: Breaking the Poverty Cycle*, Washington, D.C, the World Bank, 2005, p. 3-4.

⁴² *Joint Memorandum on Social Inclusion of the Republic of Bulgaria*, p.13-14.

⁴³ Republic of Bulgaria, *National Strategic Reference Framework*, Program period 2007-2013, p. 37 (in Bulgarian), available also at: <http://eufunds.bg/docs/BGNSRF-%20LAST.pdf>.

received money during the past six months and 20.2% indicated social assistance as the source that provides most money for the household.⁴⁴ In a May 2006 survey on Roma integration and economic reform, researchers from the Open Society Institute – Bulgaria made the following estimates of the amount and the share from the total amount of money paid through different social assistance and related programs that go to Roma.⁴⁵

<i>Millions of BGN</i>	<i>Total by program</i>	<i>On the basis of the low* estimate of the number of Roma</i>	<i>On the basis of the high* estimate of the number of Roma</i>		
Maternity and child care payments	140	12%	17	19%	26
Social assistance and active measures on the labor market	294	62%	184	98%	287
Targeted payments for heating	115	25%	29	39%	45
Social assistance for child care	278	17%	47	27%	74
Total	827	33%	276	52%	432

*The authors base their calculations on two estimates of the number of Roma in Bulgaria – low (370 000) and high (580 000).

Government officials of Bulgaria were conscious of the fact that Roma were heavily overrepresented among the beneficiaries of social assistance at the time of the adoption of the February 2006 amendments to the SAA. When on 30 June 2007 Ms Maslarova reaffirmed her and her staff's determination to implement the new provision in the interview for *Darik Radio*⁴⁶ she explicitly addressed Roma leaders "who stir up people to revolt", apparently understanding that Roma will be heavily affected by the new measures. In fact, already in May 2006 she stated before the Sofia-based daily *Duma* that from around 200 000 persons receiving all types of social assistance monthly around 55-60% are "from the Roma community".⁴⁷

⁴⁴ *Avoiding the Dependency Trap – a Human Development Report on the Roma Minority in Central and Eastern Europe*, p.94.

⁴⁵ Лъчезар Богданов, Георги Ангелов, Интеграцията на ромите в България: необходими реформи и икономически ефекти, Май 2006, available at: <http://www.osf.bg/?cy=10&lang=1&program=5&action=5>, accessed on 30 July 2007.

⁴⁶ See supra Section III.2.

⁴⁷ „Възможно е някои заплати да скочат с 6 на сто”, *Duma* from 15 May 2006, see Exhibit No.6.

The Agency of Social Assistance could not supply data on the share of Roma from the total number of persons who are to be negatively affected by the cuts of monthly social assistance after 1 January 2008 in response to the June 2007 inquiry of the BHC on the effects of the February 2006 amendment to the SAA. Yet, two Regional Directorates of Social Assistance, in Vratsa and in Veliko Turnovo, had and were able to supply such information. From the information they sent it appears that in both regions Roma will be heavily overrepresented among those whose monthly social assistance will be discontinued after 1 January 2008. Thus in the region of Vratsa from a total of 5488 persons receiving monthly social assistance in May 2007, 1437 or 26.2% would lose this right after 1 January 2008. Of the latter, between 28% (in the Mizia municipality) and 95% (in the Krivodol municipality) would be Roma. Moreover, in the three municipalities with the highest number of persons who will lose the right to monthly social assistance (Vratsa, Oriahovo and Kozlodui) the share of Roma was estimated to be between 55% and 70%.⁴⁸ According to information supplied by the Regional Directorate for Social Assistance – Veliko Turnovo, of the total of estimated 1145 persons in the region who are to lose the right to monthly social assistance as of 1 January 2008, 828 or 72.3% would be Roma.⁴⁹

b. The Possible Disparate Impact on Women

As adopted with the February 2006 amendments to the SAA, Article 12B, Paragraph 1, which provides for an 18-month time limit for social assistance, specifically excludes from its scope the categories under Article 12G, Paragraph 4.⁵⁰ The latter will continue to receive social assistance after 1 January 2008. These categories include mothers, but not fathers, who care about children younger than three years. The Bulgarian Labor Code allows a leave for childcare to either the mother or the father.⁵¹ The leave is paid by the state for up to two years and, if the family has more than three children, one of the parents can take two or more years of unpaid leave with the right to return to his/her work and have the years spent in caring for the child counted for pension scheme purposes.

By including mothers caring for children younger than three years, but not fathers, in the categories of persons to whom the 18-month time limit does not apply, the law would apparently have a compelling effect on mothers in the poor families to take the child care leave. They would thus be deprived of possibilities to advance in working careers outside of their home.

⁴⁸ See Exhibit No.7.

⁴⁹ See Exhibit No.8.

⁵⁰ See these categories as enumerated in Section III.1 supra.

⁵¹ Labor Code, *Official Gazette*, No.26 from 1 April 1986, with many amendments, the latest one from 20 July 2007, Article 164.

IV. The Law

1. Violation of Article 13.1 of the Revised European Social Charter

With the February 2006 amendments to the SAA, which provide for an 18-month time limit for uninterrupted monthly social assistance to unemployed persons in working age without adequate resources, as well as with their effects, the government of Bulgaria violates Article 13, Paragraph 1 of the Revised European Social Charter. Article 13, Paragraph 1 of the RESC reads:

“With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

- 1 to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;”

Article 13, Paragraph 1 establishes social and medical assistance as a right, which ought to be ensured for “any person who is without adequate resources”. The latter situation is the sole determining factor for the provision of social assistance. According to the well-established case-law of the European Committee of Social Rights the individual need ought to be the only permissible condition for entitlement to social assistance. Respectively, the only ground for refusing, suspending or reducing such assistance is to be the availability of such resources.⁵² Introduction of an 18-month time limit for uninterrupted social assistance is in breach of this principle as it establishes a condition that applies without regard to individual needs of the persons whose social assistance is to be discontinued after the expiration of this period.

The official aim that the government cited when introducing the draft law in the Parliament i.e. stimulating and activating personal initiative in order to ensure that those who receive social assistance find jobs on the labor market is in principle legitimate. It however cannot be pursued through leaving persons and their

⁵² Cf. Conclusions XVIII-1, Spain, Volume 2, p.745 for the most recent summary of the Committee’s jurisprudence on the matter. There the Committee refers to its General Introduction to Conclusions XIII-4, p. 55 and to Conclusions XVII-1, Spain, Article 13, Paragraph 1. Conclusions XIII-1, Greece, p.188 and Conclusions XIII-5, Finland, p.98 should also be mentioned in this regard.

families on the street, so that this can serve as a pressure for urging them to find jobs. This is a totally unacceptable means in a contemporary democratic and humane society. Moreover, the government failed to demonstrate at the time of the adoption of the draft law, that the present or the future economic conditions that prevail in every region of Bulgaria where beneficiaries of monthly social assistance are present, can absorb those whose social assistance is to be cut after 1 January 2008. When, after the adoption of the amendment, government officials started talking of job training and preparation for employment programs, they failed to demonstrate why these programs cannot be successfully implemented without cutting social assistance, given the fact that in Bulgaria, as the ECSR found on two occasions, it is manifestly inadequate.

2. Violation of Article E Taken Together with Article 13.1 of the Revised European Social Charter

The February 2006 amendments to the SAA, which provide for an 18-month time limit for uninterrupted monthly social assistance to unemployed persons in working age, are going to have a disparate impact on Roma and a possible disparate impact on women. As such they violate Article E taken together with Article 13.1 of the Revised European Social Charter. Article E of the Revised European Social Charter reads:

“The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.”

According to the ECSR jurisprudence the principle on non-discrimination in Article E includes also indirect discrimination.⁵³ As defined with regard to racial and ethnic origin by the European Council Directive 2000/43:⁵⁴

“Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”

The European Parliament and the European Council Directive 2002/73 define in a similar way indirect discrimination with regard to sex.⁵⁵ Council Directive

⁵³ See for example: *European Roma Rights Center v. Italy*, Complaint No.27/2004, para 46.

⁵⁴ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, L180/22, OJEC, 19.07.2000, Article 2.2b.

⁵⁵ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment

97/80/EC from 15 December 1997 establishes that sex discrimination occurs when “an apparently neutral provision, criterion or practice disadvantages a substantially higher proportion of the members of one sex” compared to the other.⁵⁶ Several other international bodies recognized and incorporated the concept of indirect discrimination into their jurisprudence.⁵⁷ The European Court of Human Rights too recognized that discrimination can occur when a general policy or measure has a disproportional, prejudicial effect on a particular group, even if such an effect was not intended.⁵⁸ And, last but not least, the concept of indirect discrimination as formulated in the EU directive was incorporated in the Bulgarian Protection against Discrimination Act, adopted in 2003.⁵⁹

Although the new Article 12b of the SAA is formulated in a neutral way, the facts above revile that it will have a disproportional, prejudicial effect on Roma. It is clear from the official and from the private survey data that the law, when implemented, will affect a substantially higher proportion of Roma compared to members of the other ethnic groups in Bulgaria. This is because Roma constitute a substantially higher proportion among persons without adequate resources and among those who rely on social assistance. In their public statements several Bulgarian officials recognize that.

The new Article 12b of the SAA is likely to have a discriminatory effect on mothers in the poor families as it will force them to take the childcare leaves, so that the families do not lose the social assistance. As demonstrated above, this is an arguable claim in a sex discrimination case and thus the government has the duty to prove that there has been no breach of the principle of equal treatment.⁶⁰ The IHF respectfully requests the European Committee of Social Rights to reverse the burden of prove in this case as required by the relevant anti-discrimination law.

for men and women as regards access to employment, vocational training and promotion, and working conditions, L 269/15, OJEC, 5.10.2002, Article 2.2.

⁵⁶ Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex, L 14/6, OJEC, 20.01.98, Article 2.2.

⁵⁷ Cf. for example Human Rights Committee, General Comment 18, §6 and the cases of *Althammer v. Austria* (998/01) and *Simunek et al v. The Czech Republic* (516/92); The Committee on the Elimination of Racial Discrimination, General Comment 14, §2; The Committee on the Elimination of Discrimination against Women in its concluding observation on state party reports: Guyana, U.N. Doc. A/56/38, §145-184 (2001), Georgia, U.N. Doc. A/54/38, §70-116 (1999) and others; Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of 13 September 2003, §103.

⁵⁸ Cf. for example the ECHR judgments in *Hugh Jordan v. the United Kingdom*, 4 May 2001, Appl. No.24746/95; *Nachova and Others v. Bulgaria*, 6 July 2005, Appl. No.43577/98 and 43579/98; *D.H. and Others v. The Czech Republic*, 7 February 2006, Appl. No.57325/00.

⁵⁹ Protection against Discrimination Act, *Official Gazette*, No.89 from 30 September 2003, the latest amendment from 22 August 2006, Article 4, para 3.

⁶⁰ Cf. Council Directive 97/80/EC, Article 4.1.

V. Conclusions and Recommendations

By making social assistance benefits limited in time the February 2006 amendments to the Bulgarian Social Assistance Act violate Article 13, Paragraph 1 of the Revised European Social Charter. They undermine the only permissible ground for granting social assistance – the presence of an individual need. They also violate Article E of the Charter because this measure is to have a disparate impact on Roma. Members of this ethnic group will be affected in a substantially higher proportion compared to members of the other ethnic groups in Bulgaria. The amendments are also likely to have a disparate effect on the basis of sex with mothers in the poor families more likely to be adversely affected when implemented.

The International Helsinki Federation for Human Rights respectfully requests the European Committee of Social Rights to establish these violations of the Revised European Social Charter and to urge the Bulgarian government to:

- Repeal Article 12B of the Social Assistance Act as soon as possible;
- Depending on when Article 12B will be repealed and how many persons will be affected, to retroactively remedy the situation of all those affected;
- In order to offer better protection against discrimination at both domestic and international level, ratify Protocol 12 of the European Convention on Human Rights.

A special request: In view of the urgency of the situation and the huge number of persons who are to be affected by the February 2006 amendments to the Bulgarian Social Assistance Act immediately after 1 January 2008, the IHF requests the Committee to apply Rule 26 of the Rules of Procedure of the ECSR and give a precedence to the present complaint.



Ulrich Fischer

President, International Helsinki Federation for Human Rights (IHF)

Address for correspondence:

International Helsinki Federation for Human Rights (IHF) Wickenburggasse 14/7,
1080 Vienna, Austria

Tel: +43-1-408 88 22, Fax: +43-1-408 88 22-50

Email: kolb@ihf-hr.org