

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



25 April 2008

Case document No. 2

European Roma Rights Centre (ERRC) v. Bulgaria
Complaint No. 46/2007

**OBSERVATIONS BY THE EUROPEAN TRADE
UNION CONFEDERATION (ETUC)**

Registered at the Secretariat on 11 April 2008



European Social Charter

Collective Complaint No. 46/2007
by the
European Roma Rights Centre (ERRC)
Against Bulgaria

Observations
by the
European Trade Union Confederation
(ETUC)

9 April 2008

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Before submitting its observations, the ETUC would like to express its appreciation to the government of Bulgaria, for not only ratifying the Revised European Social Charter (hereinafter: RESC) but also the Additional Protocol providing for a system of collective complaints (hereinafter: Additional Protocol). In this way, the Government contributes to re-enforce the Charter and the fundamental social rights in general as well as their specific effectiveness by taking active part in the system of supervision provided for in the Additional Protocol in particular.

The ETUC would also like to express its appreciation for the manifold actions and activities of the ERRC in trying to raise awareness about and to eradicate the problems the Roma population are facing in several European countries.

Introduction

In this complaint, relating respectively to Article 11 (paragraphs 1, 2 and 3) and Article 13 (paragraphs 1, 2 and 3) of the Revised European Social Charter (“the Revised Charter”), taken alone or in conjunction with Article E, the ERRC alleges that Bulgaria discriminates against Roma in the field of health care because:

- legislation does not guarantee health insurance coverage for the most vulnerable individuals, especially long-term unemployed, of whom a disproportionate number are Romani, resulting in the exclusion of a large number of Roma persons from access to health care services;
- government policies do not adequately address the specific health risks affecting Romani communities arising from their lack of resources, poor housing conditions, and low educational levels;
- the government has not taken any measures to put an end to the widespread discriminatory practices on the part of health care practitioners against Roma in the provision of health services (denial of medical assistance and/or provision of inadequate health services, and segregation of Romani women in maternity wards).

The European Committee of Social Rights (hereinafter: ECSR) declared the complaint admissible on 5 February 2008. The European Trade Union Confederation (hereinafter: ETUC) was asked to submit observations in accordance with article 7 §2 of the Additional Protocol by the 31st of March 2008.

The ETUC forwarded all relevant documents related to this collective complaint to its affiliated member organisations in Bulgaria, i.e. CITUB and PODKREPA, in order to have their view on the allegations made in the collective complaint also because it considers that our national affiliates are more able to evaluate the actual situation in the concerned country. The ETUC received end of March a written contribution by CITUB. Due to practical constraints, and in consultation with and agreement of the President and the Executive Secretary of of the ECSR, the ETUC was allowed to submit eventual additional observations with a limited delay.

It is thus important to note that the observations mentioned below are indeed summarising the observations and remarks which the ETUC received from its member organisation CITUB.

Summary of the observations received by ETUC member organisation CITUB:

Firstly, and although CITUB would agree with the statement of ERRC that Roma communities are faced with disproportionate health risks, it does not agree with the statement that the health insurance legislation “excludes” many Roma from health insurance and access to health services.

In fact, the Health Insurance Act and the Public Health Act in Bulgaria do not make any difference between the Bulgarian citizens, neither with regard to their rights, nor to their obligations. The Bulgarian legislator has determined that all Bulgarian citizens are obligatory insured from the moment of their birth and that their right to health services also arises from that moment on. In addition, all Bulgarian citizens are guaranteed urgent and pressing help, irrespective of their insurance status.

As to the obligation to pay insurance contributions, specific rules do exist. For example, for the socially vulnerable individuals who do or can not comply with the conditions and criteria set in the Social Security Act, it is envisaged that the social contributions are paid by the state. The same rule applies for instance for all children up to 18 years of age. So, in view of that, the children of all Bulgarian citizens (including those of Roma origin) are guaranteed access to medical help.

Furthermore, CITUB highlights in its remarks that all Bulgarian citizens irrespective of their ethnic origin, and if recognized as socially poor under the respective set of rules and conditions (i.e. they do not have any or insufficient income and can not meet their needs), have the rights of the socially insured people without having to pay the social insurance contributions. It is true that the Law does not relieve those citizens who do not comply with the above set of conditions from the obligation to pay their insurance contributions. It is considered that if they are not subject to social services, that means that they dispose of certain resources but try to hide them and do not declare them in order to take advantage of certain benefits. In spite of that the legislator has envisaged for such individuals to pay the minimum amount of social contributions, which is at present about 3.50 Euro per month. It is important to mention that all these legislative stipulations are absolutely neutral with regard to the ethnic origin of the individuals.

In view of this, CITUB considers that the law does not purposefully discriminates the Bulgarians of Roma origin and disputes the fact that there exist legal restrictions for access to social insurance for poor people, since all people recognized by the Bulgarian legislation as such (i.e. socially poor), have explicit rights set by law.

Although one of the main principles of social insurance is that people who have open/evident personal income should pay insurance contributions, perhaps the decision of the Bulgarian legislator could be to a certain extent subject to reproach. However, CITUB considers it logical and necessary to undertake legal measures in order to stop concealment of employment and incomes with the purpose of avoiding responsibility for the person and the society.

Secondly, as to the alleged violation of Article 13 §1 of the Revised European Social Charter, the ERRC cites in the complaint the first part of the sentence of Article 13, paragraph 1 of the RESC, but thereby leaving out that that this provision of the RESC guarantees the right to social benefit for “any person who is without adequate resources and *who is unable to secure such resources either by his own efforts or from other sources.*”

The Social Benefits Act clearly defines the groups of individuals who have the right to monthly social benefits, as well as the criteria and conditions for receiving such benefits. As it was mentioned above, all Bulgarian citizens who have the “status” of socially poor according to legislation have full access to insurance and medical care.

In respect to the allegation that there are systematic discrimination practices in the health care system in Bulgaria as for instance segregation of Romani women in maternity wards, denial of emergency aid services to Roma, and denial of other types of medical care, CITUB is not able to express a categorical position since no complaints of such kind have been submitted or forwarded to their Confederation. Still, records are known of cases where Bulgarian citizens are subjected to non regulated restrictions and financial claims on behalf of medical executors or institutions. But these are cases which do not refer in any way just to the Romani population. CITUB is fully agreeing with and convinced about the extreme importance in relation to the health care system that everybody is equal and gets attention and quality assistance irrespective of his/her (ethnic) origin, culture, financial and social status, etc.

In relation to this, CITUB would also like to highlight that at a careful reading of the complaint raises a number of controversial theses. For instance it is on the one hand stated that the Roma community is denied access to any kind of medical services, but on the other hand data are cited about a prevailing Romani presence in certain health institutions. Another example is that it is claimed that Roma people are entirely deprived of financial means, but on the other hand examples are given of Roma people having to pay money in order to get health services.

Thirdly, and as to Article E of the Revised European Social Charter, which states that *“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.”* :

As it was already clarified, the right to health insurance in Bulgaria is regulated by the Health Insurance Act. The conditions set by the Act are equal for all Bulgarian citizens. The realization of the right to health insurance for the Romani people is probably more difficult because of their inability to meet some of the requirements of the act. But this difficulty is applying to the same extent to every other Bulgarian citizen who does not comply with the legal requirements. In this sense, CITUB does not agree with and considers unfounded the statement that there exists discrimination against only one group of the Bulgarian population, i.e. the Romani people.

According to Art. 4, par.2 of the Law on Protection against Discrimination (published in Official Gazette, No. 86 from 30.09.2003, amendments in No. 70 from 10.08.2004, in No. 105 from 29.12.2005, in No. 30 from 11.04.2006, in No. 68 from 22.08.2006, in No. 59 from 20.07.2007) direct discrimination is every more unfavourable treatment of a person on the basis of the indications listed under paragraph 1 of the same article, than another person is treated, has been treated or would have been treated under similar circumstances. The indications mentioned in art. 4, par. 1 from the Law are: sex, race, nationality, ethnic origin, human genome, citizenship, origin, religion or belief, education, conviction, political affiliation, personal or public status; disability, age, sexual orientation, marital status, property status or any other indications, stipulated by a law or in an international contract, which the Republic of Bulgaria is a party of.

According to the text of article 4, par.3 of the above mentioned Law, indirect discrimination generally occurs when a seemingly neutral rule, practice or condition, puts the person in an unfavourable situation in comparison to other persons. This is not relevant in the case when this practice, rule or condition is objectively justified in order to achieve a target set by the law and the means for achieving it are appropriate and necessary.

In CITUB's opinion, the complainants are not proving in any way that the Health Insurance Act includes neutral rules, whose application could cause indirect discrimination for some category of people. It is true that the Romani people are a huge group, but it is also true that all Bulgarians have absolutely the same legal rights and obligations in the sphere of health insurance and social assistance.

Final remarks

Finally, the ETUC would like to sincerely apologize for the fact that it was for several reasons not able to submit these observations, mainly summarizing the contribution submitted by its member organization CITUB, on time (i.e. by 31/03/2008). The ETUC, nevertheless, hopes that the ECSR would be willing to take the abovementioned information into consideration.

If the ECSR would decide to organize also in relation to this collective complaint a Public Hearing, the ETUC would of course be more than ready to submit further observations on that occasion.