

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



30 July 2008

Case document No. 2

European Roma Rights Centre v. Bulgaria
Complaint No. 48/2008

**WRITTEN SUBMISSIONS FROM THE GOVERNMENT
ON THE MERITS**
(English only)

Registered at the Secretariat on 22 July 2008

**Reply of the Government of the Republic of Bulgaria with relation to
Collective Complaint № 48 of the International Roma Rights Centre against
Bulgaria submitted to the Council of Europe in accordance with the collective
complaints procedure pursuant to the European Social Charter**

I. General comments

The development and implementation of a social policy aiming to improve the standard of living of people and protect those who, due to the occurrence of certain risk factors can not independently provide for the satisfaction of their needs, is one of the main instruments of Bulgarian authorities in providing social protection.

The social assistance system makes part of the overall social policy. The social assistance in Bulgaria guarantees the right to social protection of any Bulgarian citizen who, due to health, age, social or any other reasons beyond his control, can not, alone or with the assistance of his relatives, secure his own basic needs.

Pursuant to the acting social legislation in Bulgaria the social welfare is cash and/or in-kind contributions that complement or replace the personal income up to the basic living needs or satisfy any incidental needs of individuals and families. Social welfare is granted following examination of number of objective criteria relating to income, property status, marital status, health condition, employment, age. The social policy has adopted differentiated approach and the priority groups eligible for the highest level of social protection have been identified.

Pursuant to Art. 3 of the Social Assistance Act (promulgated SG 56/19.05.1998) when providing social assistance no direct or indirect discrimination based on gender, race, skin color, ethnic group, citizenship, political or other beliefs, religion or faith, physical disability, age, sexual orientation, marital status or origin, membership in trade unions or other social organizations or structures has to be allowed.

Considering the subject matter of Collective Complaint № 48, hereunder we will make analysis of actual content of the contested provision of the Social Assistance Act and expected consequences thereof, as well as the practical measures undertaken by the Bulgarian government aiming at preventing any potential unfavorable consequences for Bulgarian citizens, while abiding by the non-discrimination principle.

I. As regards the statement about violation of Art. 13.1 of the European Social Charter (revised)

1. As regards the changes to the Social Assistance Act and the general consequences thereof

The collective complaint of the International Roma Rights Centre against Bulgaria states that through the clause of the Social Assistance Act (SAA) providing that upon expiry of the 18 months period the payment of monthly social assistance shall be terminated for a period of one year violates Art. 13, para. 1 of the European Social Charter (revised) providing for the commitment of parties to ensure the right to social assistance to 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 the

complaint however, (page 11 of the English version) the statement that social assistance shall be granted to “any person who is without adequate resources” and that this is “the only determinative factor for granting the social welfare” is ungrounded. This statement is incorrect as in the wording of Art. 13 of the ESC (r.) the conditions for provision of the right to assistance to every individual are listed **cumulatively** and not alternatively. Therefore, each person shall be entitled to such assistance if compliant with any and all of the following requirements:

- to be without adequate resources, and
- to be unable to secure such resources either by his own efforts or from other sources.

Hence the grounds for granting the social assistance is the existence of both conditions and respectively, the grounds for denial or termination of such assistance would be the existence of either of these two conditions.

Pursuant to the Social Assistance Act the satisfaction of “basic living needs” shall be obligation of each citizen, whereas the social assistance shall be granted only in cases when it is impossible by person’s efforts or the property he owns. This provision of the law is in line with the commitment of states as set out in Art. 13, item 1 of the European Social Chart (revised) “ ... *to ensure adequate assistance to any person who is without sufficient 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*”.

Unfortunately, the collective complaint is ignoring the second prerequisite, mentioned apart from the availability of adequate resources, namely the opportunity of any person to secure these resources by his own efforts. The claimants are totally ignoring the fact that in the Bulgarian legislation this second condition, namely the opportunity of persons to secure their resources by their own efforts, is always taken into account when defining the right to social assistance. The provision of Art. 12c of the Social Assistance Act provides for a measure applicable only with regard to unemployed persons whose age, health condition and marital status make them **fit to work**. The measure aims to encourage and motivate unemployed persons to get degrees and improve their qualifications, search and accept job offers, and mainly find permanent solution for their difficulties by being more proactive and taking adequate role in the social life.

Considering the above we believe that the provision introducing 18 months restriction of continuous monthly social assistance is not violating Art. 13, para. 1 of the ESC (r). The clause of the Social Assistance Act is applicable only to unemployed able-to-work persons. In no way it is to believe that these persons are not able to secure resources by their own efforts. On the contrary, the working capacity of these persons is a prerequisite for exercising their right to work. Termination of their monthly social allowances after the expiry of the 18-month period of continuous payment will encourage and stimulate the personal initiative of these persons to get jobs and will foster their reintegration after the long period of absence from working environment.

We absolutely disagree with the claimants’ statement that the time restriction is a “condition applicable with no regard to the individual needs of the person whose social allowances will be terminated upon the expiry of this period”. On one hand, as the claimants admit, the Social Assistance Act and the Rules and regulations for the

implementation of the SAA (RRISAA) place individual needs as the main condition for granting social assistance. On the other hand, hereunder we will give examples for the application of individual approach to each person who is no longer eligible for social assistance and state support so as to allow them to satisfy their own living needs by their own efforts.

As regards the claimants' statement that changes to the SAA will result in "leaving the persons and their families on the street, so as to force them to find a job", we think that this statement is quite exaggerated due to the lack of reference between the envisaged consequence – remaining on the street – and the challenged legal provision.

Leading **motive** for undertaking legislative changes and introducing the contested provision of Art. 12c, para. 1 of the SAA is **to overcome the long-term dependency of unemployed persons on the social allowances**, which is defined as a priority throughout Europe. Proceeding from the statement that the adequate participation in the labor market is the basis of efficient social integration and generation of income, the active labor market policy has changed over the past few years so as to facilitate the achievement of goals with this regard. Therefore, the introduction of a restriction for continuous payment of social benefits to unemployed persons capable of working is an extension of the policy and makes part of the overall strategy for supply of jobs in the dynamic labor market situation.

As already mentioned above, the targeted effect is to encourage the long-term unemployed persons in active age and involve them in the labor market. Thus the changes will affect not only the persons in active age, as the provision of Art. 12c reads, but practically only persons capable of working that have the constitutional right to work. The appealed changes to the SAA encourage the whole population to work, not only the representatives of the Roma ethnic community.

From international point of view the changes made to the Social Assistance Act with the introduction of this new Art. 12c are not an exception and are not contradicting the European practice. The legislation of several European countries such as France, Italy, Portugal, Slovenia etc., contains restrictions introduced in different forms, with regard to the duration of payment of monthly allowances. The MISSOC data and the comparative analysis of the social assistance systems (about the minimum income) categorically show that different states apply analogical measures on the matter through their legislation. According to data of the European Commission each country, in line with its national policy in this area, defines a different payment period (in Spain for example the social assistance is paid up to 12 months with an option for extension in selected cases; in France the assistance is paid up to 3 months with an option for extension of the payment period from three months up to one year, etc.).

Pursuant to the Bulgarian legislation the restriction for granting social assistance **does not relate** to persons in the **most disadvantaged situation** and in big need (Art. 12b, para. 4 SSA). These are the persons who:

- are taking care of kids up to three years old;
- pregnant women after the third month of their pregnancy;
- persons with permanent disability or certified with temporary inability to work;
- persons taking care of a sick family member or ascendant or descendant relative up to second degree,
- persons taking care of a family member or ascendant or descendant relative up to second degree with disability or in need of permanent care;
- persons with certified mental disorders.

Within the meaning of para. 3 of the challenged Art. 12c of SAA, these categories of persons are explicitly excluded from the scope of this provision.

Apart from exceptions provided for in the SAA we can point out also some legal provisions in other pieces of legislation which aim at avoiding the negative influence of Art. 12c of SSA, such as for example the increased amounts allocated for monthly family allowances, encouragement of the education for kids and their regular presence at school for which priority conditions are envisaged.

Pursuant to the State Budget Act for 2008 the amount of monthly family allowances for one kid in 2008 have increased to BGN 25 (in 2007 it was BGN 18.), for twins – to BGN 37,50 for each kid (in 2007 for the second and any next kid it was BGN 20). The income of any family member eligible for family allowances is increased from BGN 200 (in 2007) to BGN 300 (in 2008). The one-time assistance when giving birth has also increased. In 2008 for the first kid it is BGN 250, whereas for the second kid it is BGN 600 (compared to 2007 when for first, second and third kid the assistance was BGN 200 for each kid).

There is also an option for provision of “social investment” assistance with the view of its purposeful use. The “social investment” term was introduced with the changes to the Family Assistance for Kids Act and the rules and regulations for its implementation in force as of 1 September 2006. Pursuant to these changes the family assistance for kids may be provided in the form of social investment, i.e. purposefully, for payment of fees for kindergartens and nursery schools, canteen meals, purchase of clothes and shoes, school aids, etc. in cases when it is verified that the parents are not investing due care for their kids or are not using the funds purposefully.

In 2007 the one-time purposeful assistance was increased from BGN 80 to BGN 120 to be granted to kids enrolled in the first grade in a state or municipal school. The purposeful assistance is in the form of social investment such as clothes, shoes, school aids, etc. thus covering portion of expenses for kids at the beginning of the school year. It is payable to families whose average monthly income is less than the income set for family allowances.

Implementation of the provision of Art. 12c of SAA, i.e. termination of payment of monthly allowances to the respective person shall not affect the other family members who shall not be deprived of social assistance. Thus the kids have guaranteed monthly income.

The persons who are no longer eligible for social assistance can find jobs on the labor market in either subsidized employment programmes and measures, or directly at the real labor market. For several years now the Ministry of Labor and Social Policy have been working to encourage the unemployed persons being granted

social assistance to be more proactive and get effectively integrated in the labor market.

Under the conditions of decreasing unemployment and lack of labor force in certain economic areas the efforts are directed towards maximum involvement and encouragement of all people in active age, increased supply of jobs and better opportunities for finding and starting a job. This is due to the fact that the need for monetary support, in-kind support or services **should not establish dependency or decrease the incentive for finding employment providing there are such opportunities.**

In order to increase the opportunities for social assistance for unemployed persons and their finding a job on the labor market a set of initiatives is being implemented. There is a large number of programmes, measures and motivation initiatives, professional orientation, literacy courses, professional qualification training, starting-up of small businesses, subsidized employment and finding a job on the primary labor market:

- Introducing **individual approach** as main task of the employees in Employment Bureau Directorates working with each person who is actively searching employment. With the changes to the Encouragement of Employment Act of 2003 following registration of EACH unemployed person, individual action plan is to be drawn up (Art. 19, para. 1). This plan includes assessment of opportunities and obstacles in finding a job, the concrete measures undertaken and services provided so as to find this person a job.
- In late 2002 the implementation of a large-scale national programme called **“From Social Welfare to Employment”** for employment and social integration of long-term unemployed persons living on social assistance was launched. Within this programme unemployed persons in active age living on social assistance were provided with opportunities to get a job, have an income and get reintegrated into the labor market. Considering the labor market situation and the large number of unemployed persons living on social allowances, the Programme subsidizes the employment of persons involved for a period of up to 36 months, including their salaries (in 2008 – BGN 220 for the full-time employees and hourly rate of BGN 1.30 for hours actually worked), as well as additional minimal remuneration as set out in the Labor Code and social insurance. This is considerably higher amount of funds compared to the amount received by these persons as social allowances. In 2005 an interim evaluation of the effect of the Programme¹ implementation was carried out. The major positive effects verified as a result of the net evaluation show that the participation in the programme: shortens in half the unemployment period; the situation of participants in the programme have improved in almost all other social aspects compared to this of the controlling group members, and the major positive change for programme participants regards their self esteem, social contacts and working motivation. The program will continue also in 2008 but the number of positions will be

¹ Major results of the interim evaluation of “From social assistance to employment” Programme – Final Report, Prof. Yap de Koning, Associate Prof. Mariana Kotzeva, PhD, Associate Prof. Stoyan Tzvetkov, PhD, Sofia, Rotterdam, 2005.

reduced considering the biggest number of employment options at the primary labor market offered to persons from the target group.

- In 2008 the National Program “Renewal and Protection of the Bulgarian Forest” and the project “Training of farmers and stock-breeders” were started and are executed in support of the unemployed persons, dropping out of the system for social assistance.
- **Professional Training** in courses organized by the Employment Association for over 70 professions, including those for first grade professional qualification. Admittance to trainings for this degree is with very low requirements to the level of education. In addition, motivational training for active search of job opportunities and adaptation in market conditions is also organized. The trainings include lots of hands-on exercises and subsequent traineeship in a real working environment for 30% of those who have completed the courses. Thus many of them can find jobs right after the course completion. Participants in the literacy courses or professional qualification courses have a scholarship, allowance for transport and accommodation for the duration of the course. Participants in the motivational trainings receive allocations for transport and accommodation.
- In 2006 an **incentive measure** under the Employment Encouragement Act (EEA) was introduced whereby each person receiving social assistance who have found a job without the assistance of the employment bureau **receive funds for a period of one year** (BGN 30 to unemployed persons receiving monthly social allowances and BGN 40 to unemployed persons with permanent disabilities receiving monthly social allowances). This is another initiative in support of the personal initiative at the labor market as well as the persons by facilitating their transition from dependency on social assistance and lack of activity towards participation in the productive employment.

In addition to the above-mentioned operational programmes and measures in the second half of 2007 the Social Assistance Agency and the Employment Agency have undertaken a number of organizational and administrative measures for avoidance of the negative impact of the changes to the Social Assistance Act , namely:

- Right after the enforcement of the provision of Art. 12c of the SAA **all persons** receiving monthly social assistance for a long period of time that were to be affected by these changes, were **notified** about the statutory changes and the need for greater activity in the search of jobs. / we hereby attach information from 10.09.2007, reference about the number of persons who are no longer eligible for social assistance as of 16.01.2008, notification letter to all territorial offices dated 13.06.07 , notification letter dated 30.08.2007 and notification letters dated 21.12.2007 and 24.01.2008 /.

- We have prepared **lists of names** of these persons and submitted them to the territorial offices of the Employment Agency so as to guarantee that employment bureau intermediaries will **work individually and with priority** with them and assist them with finding jobs.

- **Profiles** of about 30 000 persons capable of working who were beneficiaries

of the social aid system were set up. The Social Assistance Agency together with the Employment Agency have decided upon the possible actions for providing employment or inclusion of these persons in professional training courses according to their education, qualifications and health conditions. **Individual approach** to each person was applied.

- In the period July – November 2007 alone almost 8 500 of these persons have been included in various programs or measures or have been ensured employment at the primary labor market.

- As of January 2008 the persons who are no longer eligible for social assistance are subject to constant **monitoring** by the territorial offices of the Social Assistance Agency. The first ones to become not eligible on these grounds from 1 of January 2008 are 11 038 persons. During the period 01 January 2008 – 31 May 2008, 12 564 unemployed persons in working age became not eligible for social assistance.

Subsequently a change in Art. 12c of the SAA was proposed, which stated that the period for continuous assistance for unemployed persons in working age shall be decreased from 18 to 12 months. The bill was accepted by the National Assembly of Republic of Bulgaria on 19th of June 2008. In this relation the Social Assistance Agency together with the Employment Agency has sent to the territorial structures of the two agencies a notification letter for undertaking measures with the aim to encouraging labor realization of all persons that are expected to drop out from the monthly social assistance as a result of the expected change.

Enclosed to the present position is a copy of this letter as well as a Reference about the number of unemployed persons in working age who are no longer eligible for monthly social assistance, in accordance with Art. 12c for the period of 01 January 2008 – 31 May 2008.

- The persons who are no longer eligible for social assistance have also an option to start a job at the real labor market (out of the subsidized employment programs and measures). During 2007 apart from the programs and measures, different employers have submitted at the employment bureaus 101 242 job vacancies for low qualified jobs, and for the period January – May 2008 – 47 361 . As of the end of December 2007 the vacancies at the real labor market not requiring special professional qualification have been 2377, and until the end of May 2008 they are 3 522. The data provided by the Employment Agency show that during the month of December 2007 the average of 15 unemployed persons throughout the country have competed for one vacancy², whereas in May 2008 – 9 unemployed.

From July 2007 the Employment Agency undertook actions for working with unemployed persons, who are going to drop out from the monthly social assistance after 1st of January 2008. According to the gathered information 29 954 persons are going to drop out from the monthly social assistance after 1st of January 2008. During the period July- December 2007 as a result of the active work of the labor mediators in the employment bureaus 10 036 persons are included in different forms of employment or training, whereas, 8 099 of them are included in employment under different measures and programs on the labor market. 1 019 persons started work in the real economy through the mediation of the employment bureaus. 311 persons are

² For calculation of this indicator the data for vacancies announced in the local Employment Bureau Directorates have been used

included in literacy programs and 607 in those for vocational training. Despite the efforts of the officials from the employment bureaus to offer persons dropping out of social assistance opportunities for their realization on the labor market, there are unemployed persons who do not want to be involved. A total number of 4 331 persons refused to take part in the proposed opportunities for realization, where 2 521 had no respectful reasons.

The unemployed persons, who are no longer eligible for social assistance, are gradually included in employment and training according to the measures foreseen in their individual plans. 2 523 persons, who have dropped out from social assistance, are included in different forms of employment and training during the period January – May 2008. 699 refused to participate in the proposed opportunities for realization, 294 – without a respectful reason.

The number of persons who dropped out of monthly social assistance until 31st of May 2008 is 7 356. In order to provide employment and training, it is foreseen those people to be included in different activities, whereas for some of them more than one opportunity is available. Employment on the real market and employment under measures and programs of the labor market will be proposed to 4 722 persons. 2 955 persons will be included in training, including literacy courses.

Opportunities for education and employment for people who dropped out of the social assistance system will also be proposed in the Operational program – “Human resources development” – priority direction 1, field of intervention “Integration of people from vulnerable groups into the labor market”.

As regards the statements in the complaint that the termination of the right to social assistance to persons will result in lost of some other rights guaranteed by the Bulgarian legislation, we reckon that these statements are ungrounded due to the following:

- as regards the health insurance: these persons are subject to targeted assistance for heating with no limitation in time (this targeted assistance is also kind of social aid under the Social Assistance Act as it also guarantees a waiver of payment of social insurance contributions). Many of the persons who are no longer eligible for social assistance have received targeted assistance for solid fuel and have health insurance up until the beginning of the next heating season as their status of unemployed persons registered with the Employment Bureau is followed up with. The persons who are no longer eligible for social assistance who have health problems and are to get into a hospital may avail of the rights provided for in the **Decree № 17 of Council of Ministers of 31.01.2007 defining the terms and procedures for expenditure of the targeted funds for diagnostics and medical treatment in hospitals in 2007 of Bulgarian citizens who have no income and/or personal property that can guarantee personal contribution in the health insurance process** (promulgated SG 13/9.02.2007) According to this Decree the funds needed for treatment of these persons are provided from the state budget to the budget of the MLSP and are purposefully transferred to the budget of the Social Assistance Agency and thereafter to the respective health institutions.

- as regards legal assistance: pursuant to Art. 21 of the Legal Aid Act (LAA) the types of legal aid are as follows:

1. consultation aiming to reach agreement before commencement of the court proceedings or before the court case institution;

2. *preparation of documents for case institution;*
3. *representation in the court;*
4. *(changed SG 17/2006.) representation in case of detention under Art. 63, para. 1 of the Ministry of Interior Act.*

Pursuant to Art. 22, para. 1 legal aid under Art. 21, item 1 and 2 shall be provided to persons complying with the requirements for monthly social aid pursuant to the procedure of the RRISAA and persons put into specialized institutions for provision of social services. In the same time, pursuant to Art. 23 of the LAA:

*(2) The legal aid system includes also cases when the suspect, defendant, incriminated, accused person or the party to the penal, civil or administrative proceedings **does not avail of funds** to pay for a lawyer and wishes to have one and the justice interests so require.*

*(3) In the penal proceedings the discretion that the suspect, defendant, incriminated or accused person has no funds to pay for legal fees shall be on the authority in charge of the procedure on the grounds of the **estimated property status** of the party to the concrete case.*

(4) In the civil and administrative proceedings legal aid shall be provided in cases when based on the evidences present by the respective competent authorities the court finds that the party has no funds to pay for legal fees. The discretion about this shall be based on the following:

- 1. **income of the person or the family;***
- 2. **property status verified in a declaration;***
- 3. **marital status;***
- 4. **health condition;***
- 5. **employment;***
- 6. **age and***
- 7. **other circumstances verified.***

With the view of the above provisions we reckon that it is not right to assert that the persons will be deprived of the right to legal aid since ensuring procedural representation, which is type of legal aid, is not bound by the social assistance.

- as regards the right to receive with priority farming land for cultivation, Art. 21, para. 2, item 1 of the Ownership and Use of Farming Land Act (OUFLA) regulates to give land with priority to persons registered with the municipal social aid office **and/or with the employment bureau** and to those who own very little or no land. Therefore, the persons who are no longer eligible for social aid and get registered with the respective employment bureau, will not loose their priority when exercising this right.

- as regards the payment of fees for kindergartens: pursuant to the Local Taxes and Fees Act (Art. 8, para. 6) the Municipal Council may exempt separate categories of persons, from the full or partial payment of separate types of fees under a procedure adopted with an Ordinance for Definition and Administration of the Local Fees And Prices of Services.

Municipal Councils have the authorities to independently decide upon the categories of persons to be subject to full or partial exemption. On the other hand, as already mentioned above, application of the provision of Art. 12c of SAA, i.e. exclusion of the respective person from the scope of the monthly assistance shall not affect the other family members who will not be deprived of the social assistance.

2. As regards the statement about disparate consequences for Roma people

Complained is grounded on past statements of officers in the press about the estimated number of persons who will no longer be eligible for social assistance. According to current data as of 01.01.2008 submitted by all territorial offices of the Social Assistance Agency, the number of persons is **11 038**, who used to receive permanent social aid for a period of 18 months. As already mentioned, the SAA allows for no discrimination, either direct or indirect, on the grounds of various criteria, including ethnicity. On the other hand, pursuant to the Bulgarian legislation no collection of personal data separated by ethnic groups shall be allowed.

As of present there are no reliable data about the share of Roma in the total number of persons eligible for social assistance. So as to avoid discrimination by ethnicity to date no **such estimation has been assigned or made**. All eligible persons file standard social aid applications which have no section about the ethnicity or affiliation with an ethnic group.

We reckon that the two references attached to the complaint can not be deemed representative for the whole country.

We would like to stress on the statutory, administrative and organizational measures adopted so as to eliminate or mitigate the unfavorable consequences of changes to the SAA and we hereby attach some of them (such as references and instruction letters).

Number of programmes for promotion of employment among Roma population are already operational to take into account the specifics of this group, such as low literacy level. These are programmes aim to increase the literacy and qualifications, as well as promote the employment.

As for the claimants' statement that the Roma community is affected by poverty and social isolation, we would like to point out that Bulgaria, as a democratic country and EU member state, considers the adequate social integration of Roma in the society as a key element in its social policy. Bulgarian government is actively working to find solutions of the social, educational, health and cultural problems of Roma. Integration of Roma is of utmost importance for the prosperity of the whole society, its social cohesion and security. Integrated approach that simultaneously solves the most urgent issues and gradually limits and eliminates the main reasons for poverty among Roma and their social exclusion is currently applied.

Bulgaria has joined the international initiative called "The decade of Roma inclusion 2005 – 2015", and in 2007 the Action Plan under this initiative was developed to support the coordination of efforts of government institutions, local government authorities and the non-governmental organizations in the implementation of Roma-oriented strategies, programmes and action plans.

The government has implemented various initiatives and programmes with special focus on Roma. For example, two of the JOBS project components are:

- Roma Employment Component

“Roma employment” is a pilot initiative aiming to implement a viable mechanism for creation of employment opportunities and business support in disadvantaged communities. Under this component two business centers in the Roma neighborhoods “Pobeda” in Burgas and “Iztok” in Pazardjik have been established. The local community terms are working in newly established offices granted free-of-charge by municipalities.

Activities implemented in these two centers are aiming to increase the employment eligibility of the Roma community and support Roma entrepreneurs. They provide the standard pack of services under the project, such as qualification and motivation trainings, business consultations and access to financial leasing while stressing on the better level of information among entrepreneurs and the community. In July 2006 a grant scheme to support the start up of small businesses was launched. Under this scheme beneficiaries receive up to BGN 2000 for initial expenses such as fees and permits, insurances, training of the entrepreneur and his employees, materials etc. In order to start up and further develop the business, these centers are providing grant scheme (up to BGN 2000) for Roma people combined with up to BGN 25 000 lease with 9 months grace period and 48 months repayment period.

- Inclusion of the Roma Community through Business Support Component

In December 2006 a new initiative was launched to establish two external offices to the business centers of JOBS in Elhovo and Pestera, co-financed by the Great Britain, Switzerland and UNDP. These offices are located in Roma neighborhoods in these two towns and provide the full pack of services for employment promotion and business support, developed under the project. The experience gained in Burgas and Pazardjik will be implemented in the activities of these new offices and for dissemination of successful good practices.

Another component under the project is oriented towards unemployed persons in regions with high poverty and social isolation rate, including Roma:

- Support for Cultivators of Herbs and Alternative Agricultural Products Component

This component supports cultivators of herbs and alternative agricultural products through a network of eight specialized centers in Velingrad, Polski Trambesh, Byala Slatina, Elhovo, Karlovo, Parvomaj, Dulovo and Teteven. Through various trainings the producers having micro and small agricultural businesses learn techniques for cultivation of herbs and alternative products and develop basic skills about how to develop sustainable and competitive business. The continuing support from local agronomists, provision of seedlings, establishment of dryers and storage facilities, marketing ideas and unification of producers in groups are the other major aspects of this component. The initiative is co-financed by the Kingdom of Norway. Producers from minorities are also taking part in this initiative.

Since the start of JOBS project there are 4 404 openings in total for representatives of minority ethnic groups, of which 702 are under the Employment of Roma Component and 7 688 persons have been trained, of which 2 672 are Roma.

In 2006 the Employment Agency introduced and is actively implementing another new instrument – the so called “**career fairs**”. Their goal is to promote the employment opportunities and involve economically inactive persons in the labor market in different regions of the country. Not only the unemployed persons referred from the employment intermediaries in the local employment bureaus take part in the

career fairs, but also other individuals searching jobs in the region. Career fairs provide for direct contact between job seekers and employers and facilitate the agreement reaching between parties and starting a job on the spot. Out of the 22 career fairs organized in 2006, 10 took place in regions with compact Roma population and 2 were under the aegis of the European EURES network. As a result of the career fairs held in 2006 over 3 000 job seekers have started different jobs. During the first nine months of 2007 18 career fairs took place in different regions of Bulgaria. Out of them 4 were general and 14 were specialized ones. Four of these specialized fairs were in the area of tourism, hotel and restaurant management, two were in the area of construction, one in the tailoring industry and one in machinery construction, one for young people up to 29 years of age, one for graduates and four for the Roma community. These fairs were attended by 344 employers and 3 790 job seekers. At these fairs 4 048 vacancies were made available. 3 131 job seekers found employment (which is 82.6% of the total number of all job seekers).

By the end of May 2008 15 career fairs were organized including 4 general and 11 specialized. Four of the specialized fairs are oriented towards the Roma community, three are for rose-picking, 2 in the field of tourism, hotel and restaurant management, one in the field of agriculture and agricultural products reprocessing industry and one for persons with disabilities.

3 790 job seekers and 267 employers were present at the fairs. The employers announced 4 611 vacancies. 3 181 persons started working. By the end of 2008 will be organized 6 more career fairs including 3 general and 3 specialized

As set out in the Employment Encouragement Act, the main groups of beneficiaries of the employment policy are to be defined through the National Action Plan about Employment for the respective year. Upon adoption of the Plan by the Council of Ministers the government commits to implement concrete actions for integration of people of disadvantaged groups, including Roma. Pursuant to the National Action Plan about Employment for 2007:

„...the active labor market policy will be applied with priority to the following target groups: unemployed persons with low education level and no specialized knowledge or profession, including Roma, unemployed young people with no specialized skills or profession and/or professional experience, inactive discouraged persons, unemployed persons with disabilities, unemployed persons of over 50 years of age³”.

One of the accents of the National Employment Action Plan for 2008 is “integration of people from disadvantaged groups at the labor market, especially of the Roma people”. A model for validation of knowledge acquired through informal education or independent study is expected to be developed, which would give a chance to many Roma people to find realization on the labor market. Another measure is the implementation of the “apprenticeship” as a method for acquiring skills and inclusion in the labor market of the uneducated low educated unemployed people.

The results of the Multipurpose Monitoring of Households carried out in Bulgaria are just one of the statistical sources confirming the direct relation between the degree of education and the level of poverty. In 2003 the level of poverty among persons with no elementary education was 28%, with secondary education - 18.3%,

³ National Action Plan for Employment, page 17,
<http://www.mlsp.government.bg/bg/docs/NPDZ/index.htm>

with high school education – less than 10%, with university education – less than 5%⁴. At the same time, the percentage of Roma people is disproportionately high in the groups of persons with low or no education. Therefore, the persons with very low education level or with no specialized skills or profession are the main target group of the active labor market policy. Different options for literacy courses, training, improvement of employment eligibility and employment options create real opportunities for permanent improvement of this group's situation at the labor market. During their participation in various programmes and measures the persons involved receive labor remuneration, all contributions payable by the employer to the "Pensions" fund, "Labor Accident and Professional Diseases" fund, "General sickness and maternity" fund, as well as other payments as provided for by the Labor Code, funded by the state budget. We have to mention that the measures in this regard have a very positive effect. For example, research on the net effect of the application of 17 active programmes and measures applied in 2005 shows that the programmes for permanently unemployed persons have a net effect of 37.1%, i.e. this is the percentage of persons involved who were in better conditions one year following their graduation from these programmes, compared to persons of the controlling group who were not involved in any of these programmes⁵. The services provided by the local employment bureaus are of big support for unemployed persons of the Roma community both through participation in specialized programmes for them, and through participation in other programmes and measures resolving specific problems of persons of this target group.

3. As regards the possible disparate consequences for women

The complaint states (on page 10 of the English version) that *"including mothers raising kids of less than three years of age, but not the fathers, in the categories of persons to whom the 18-month limitation is not applicable, the law obviously would force the mothers of poor families to take maternity leave to raise their kids. Thus they would be deprived of the possibility to proceed with their career out of their homes"*.

We deem that this statement is ungrounded due to the following:

Provision of Art. 12c, para. 1 of the SAA reads as follows: "Unemployed persons in active age, except for persons under Art. 12b, para. 2, are entitled t monthly social aid for 18 months on the run." It is obvious that the 18 months rule applies only with regard to **"unemployed persons in active age"**. The right to maternity leave pursuant to the Bulgarian labor legislation is a right of any mother who is employed under a labor contract, i.e. of any **employed** mother, which right she can transfer to the father. Therefore, the assumption mentioned in the complaint is not possible since, as we already mentioned, the provision of Art. 12c, para. 1 of the SAA applies to unemployed, not to employed persons. Due to this reason, the statement that the law would force mothers of poor families to take maternity leave to raise their kids is ungrounded. In no way would they be deprived of the opportunities to advance in their carrier, as their right to work is not restricted and they have the opportunity to seek jobs and start working at any time. The legislator has excluded

⁴ Bulgaria – Challenges of the poverty, NSI, 2003

⁵ Нетна оценка на въздействието на активните програми на пазара на труда – Заключителен доклад, WYG International, Sofia, 2007

unemployed mothers of kids of under 3 years of age from the category of unemployed persons in active age to whom the 18 months rule apply, so as to provide them with protection and security that they will receive their social aid without interruption and limitation in time up until the kid turns 3 years of age or possibly, up until any changes to conditions and/or circumstances under which the aid was granted occur.

Pursuant to the provision of Art. 10, para. 3 and Art. 12, para. 3 of the RRISAA no prior registration with the Employment Bureau Directorates is required or socially useful work from the parents taking care of a 3-year old kid. These clauses eliminate any allegation about the existence of discrimination criteria in terms of gender. Both parents have equal rights.

As regards the employed mothers, i.e. the mothers working under labor contracts, we would like to point out that several programmes and measures are being implemented in their support, such as the “Supporting the Maternity” national programme. Its goals are to encourage the professional development of mothers through secured rising of their kids by unemployed persons up until the kid turns 2 years of age. Employers under this programme are the Social Assistance Directorates within the territory of the whole country. Implementation of the programme is funded from the State Social Insurance budget and the active policy budget of the MLSP pursuant to the National Action Plan for Employment for the respective year. This programme allows mothers to go back to work before the kid turns 2 years of age (3 years of age in 2008) and thus not losing the opportunity to advance in her career.

In 2007, announced the year of equal opportunities, Bulgaria has carried out an information campaign and various project activities. In the course of implementation of the Action Plan under the Inclusion of Roma Decade in 2006 and 2007 eight specialized seminars devoted to the Roma woman were organized (attended by over 400 Roma women) so as to raise the level of information, encourage the new social role of Roma women and the responsible parenthood. We would like to mention also the research carried out in 2007 called “Roma about Roma people”, which supported the integration of the Roma ethnos in the Bulgarian society. The research was carried out through the “focus-groups” sociological approach among 40 community representatives– formal and informal Roma leaders, young people and Roma women. The results of the research show that the Roma community, and Roma leaders in particular, are eager to be the promoters in the integration of poor community members. Activities aiming to motivate the Roma who have authority and enjoy community’s trust to help institutions in the establishment of the so called “responsible parenthood”, for kids’ regular attendance at school, encouragement of entrepreneurship and civil activity of the community were undertaken. It turned out that the Roma women define themselves as the more active part of the community. Very important is the research conclusion that the Roma women are becoming aware of what responsible parenthood means. Their idea about the number of kids they can afford to support is two or three, and sometimes even one, so as to be able to raise them. For mothers the prosperity is connected with their kids occupying high level positions.

II. As regards the statement about the violation of Article D, in connection with Art. 13.1 of the European Social Chart (revised)

We deem that the claimants’ statement for discrimination is ungrounded and therefore, the conclusions are incorrect. As mentioned above, the right to social aid is regulated in Art. 2, para. 3 of SAA. Such right pertains to Bulgarian citizens, families

and persons living together who, due to health, age, social or other reasons beyond their control can not secure satisfaction of their basic living needs through their labor or income from property owned or with the help of persons obligated by law to support them.

One of the key constitutional principles in the Republic of Bulgaria is the principle of equality of all citizens before the law (Art. 6, para. 2). The main law allows for no limitation of rights or privileges on the grounds of race, nationality, ethnic affiliation, gender, origins, religion, education, beliefs, political affiliation, personal or social position, or property status. In its Interpretation Decision № 14 of 1992 relating to this clause the Constitutional Court of the Republic of Bulgaria has ruled that the equality of all citizens before the law within the meaning of Art. 6, para. 2 of the Constitution shall mean equality before all statutory documents. In the same Decision the interpretation that privileges on the grounds of criteria listed in Art. 6, para. 2 of the Constitution shall be deemed violation of the principle of equality of all citizens before the law. This main principle is further developed in number of laws and bylaws, including the Law on Protection against Discrimination in compliance with the Constitution, the intergovernmental commitments of the Republic of Bulgaria and the EU law (*acquis communautaire*). At the same time, the legal provisions have been further developed and applied by the respective legal and administrative authorities.

In no way can the national legislation make distinction according to the contested ethnic criteria when defining and granting opportunities for use of citizens' rights, and the right to social assistance in particular. Therefore, due to this reason there is no way to get exact data about the number of Roma people receiving assistance, neither of those whose assistance will be terminated pursuant to Art. 12c of SAA.

The contested restriction of the SAA was introduced following thorough analysis of the social assistance system and the specifics of its beneficiaries. In the Republic of Bulgaria we have significant number of persons whose age, health condition and marital status do not allow them to work. As these persons are in permanent dependence on the social aid, the state has undertaken before the society to provide them with opportunities to get actively involved in the social life as all other Bulgarian citizens who work and generate income. Notwithstanding the government's activities aiming to teach them to read and write, increase their qualification and create real opportunities for beneficiaries of the social assistance system to find jobs at the labor market, there are still great number of people who live from social assistance by formally complying with the requirements of the Social Assistance Act and the Employment Encouragement Act. Thus on one hand they receive assistance and on the other, become part of the grey economy by having income they do not report. This group of people that we can provisionally call those practicing the profession of "socially weak" individuals, in practice defraud the state and taxpayers by receiving social assistance for years and at the same time, failing to report their income from illegal employment, not paying social insurance and in the long term remaining within the scope of the social assistance system due to lack of insurance length of service and ineligibility for having any pension.

Within this meaning the measures undertaken are kind of protection of rights and interests of all Bulgarian citizens – of those who work and pay insurance in compliance with the requirements of the Bulgarian legislation, as well as of those who have been long time dependent in the social assistance. The priority groups of persons

receiving social aid shall be defined with the goal of achieving the main principle of the Bulgarian legislation such as the equality and social justice principle, through specialized measures for balancing the resources of disadvantaged people.

With reference to the future decrease from June 2008 of the 18 month limiting period to 12 months for continuous receiving of social assistance by the unemployed persons in working age, it is motivated by the following considerations:

The aim of the implemented policy in the field of social assistance is that unemployed persons subject to monthly social assistance to be completely engaged into the labor market. In this sense the decrease of the restrictive period is a natural continuation of the implemented governmental policy. With the modification of the SAA the measure, concerning only the unemployed persons whose age, medical condition or family status enables them to work, is reinforced. The main goal of the decrease of the 18 month restrictive period for continuous receiving of social assistance is to put an end to the already formed habits for their passive and gratuitous obtaining, which still exist, regardless the introduced legislative restrictions.

The applied model of stimulation and activation of the beneficiaries of the system to search actively for a job, instead of counting exclusively on the assistance, is already giving positive results – the number of unemployed persons at working age who are subject of monthly social assistance is constantly decreasing. Great importance in this process is given to the very good coordination between the system for social assistance and the labor market policy through the developed programs for employment, aimed to educate, to train and to create real opportunities for realization on the labor market for the beneficiaries of the system.

The termination of the monthly social assistance after the expiration of a 12 month period of their continuous receiving will stimulate the active people with working capacity to realize themselves on the labor market and will in fact assist to their social inclusion after a continuous period of absence from working environment. During this 12 month period people can use the full set of opportunities given by the National Employment Action Plan through the Employment Bureau Directorates for education, training, re-training and employment.

With this regard we would like to once again list the number of positive measures undertaken by the government with regard to the social inclusion of disadvantaged persons, and Roma in particular:

- involvement in and the one-year presidency of Bulgaria of the international initiative called “Decade of Roma Inclusion (2005-2015)”;
- the National Action Plan under the “Decade of Roma Inclusion (2005-2015)” initiative and system of indicators for monitoring of its implementation and measures undertaken;
- programs and projects for the labor, educational, health and social integration of Roma people such as the specialized employment fairs organized in regions with compact Roma population, specialized seminars devoted to the Roma woman, implementation of projects for Roma communities, the national programme for improvement of literacy and qualification of Roma, and many others.

These measures are not comprehensively described, but if needed and upon request by the ECSR we can provide additional information on the matter.

Considering the above and in reply to claims made in the collective

complaint, we hereby express the following position:

There are many arguments in favor of the contested changes to the SAA as well as plenty of mechanisms for integration in the labor market of persons who, as a result of these changes, will no longer be eligible for social assistance. Therefore, we do not accept the requested repeal of this provision and the reverse compensation respectively of the situation of the affected persons.

We hereby emphasize that the restriction for provision of social assistance for a period longer than 18 respectively 12 consecutive months do not apply to person in most disadvantaged situation and in the biggest need, who will still be protected by law.

We believe that Bulgaria has provided for observance of the principle of non-discrimination based on ethnic affiliation or gender, by timely undertaking number of positive measures for balancing the disadvantaged situation of Roma, including Roma women as disadvantaged groups.

As for Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe, we would like to remind that joining or not any international legal document is a matter of sovereign judgement of the concrete state.

Due to the above, the government of the Republic of Bulgaria addresses the European Committee of Social Rights with the following legal request:

1. To acknowledge the efforts of the Bulgarian government for equal integration in the labor market of persons who will no longer be eligible for social assistance, including Roma.
2. To acknowledge the efforts of the Bulgarian government for compliance with the principle of non-discrimination based on ethnic affiliation and gender, as well as the positive measures undertaken with regard to the Roma community, including Roma women.
3. To reject the claims of the International Roma Rights Centre as ungrounded.

The Bulgarian government remains open to provide any additional information and details that the claimant or ECSR may request, including through participation in person before ECSR of the so appointed governmental officer, so as to allow for complex examination of facts and fair decision on this present case.