



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

19 May 2016

Case Document No. 1

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

COMPLAINT

Registered at the Secretariat on 25 April 2016



EQUAL RIGHTS TRUST

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By email: social.charter@coe.int

22 April 2016

Dear Executive Secretary,

COLLECTIVE COMPLAINT: Equal Rights Trust v Bulgaria

1. The Equal Rights Trust (ERT) complains, pursuant to Art 1(b) of the 1995 Additional Protocol to the European Social Charter, that the Republic of Bulgaria's *Family Allowances for Children Act* ['FACA'], most recently amended on 28 July 2015, presently contains three features which breach Bulgaria's obligations under the Revised European Social Charter ['RESC']:

(i) monthly child allowance can only be paid in-kind rather than in cash, if the qualifying parent is a minor [Art 2.6(4) FACA];

(ii) monthly child allowance terminates where the child stops attending school [Art 7.1(3) and Art 7.11(2)], and is thereafter stopped for a minimum period of one year, even if the child quickly returns to school [Art 7.11(12)];

(iii) monthly child allowance terminates where that child becomes a parent [Art 7.11(3)].

2. ERT asks the Committee to prioritise this complaint, pursuant to Rule 26 of the ECSR Rules, because of the large number of affected persons and the gravity of the matters complained of.

3. Set out below are:
 - a. the basis on which the Committee has jurisdiction to consider this complaint;

 - b. relevant provisions of the RESC and international law;

 - c. relevant domestic law;

 - d. the grounds of complaint;

 - e. the appropriate remedy.

(a) JURISDICTION

4. ERT is entitled to submit this complaint pursuant to Art 1(b) and Art 3 of the 1995 Additional Protocol because it: is an international non-governmental organisation holding consultative status with the Council of Europe; has been put on a list established for this purpose by the Governmental Committee; and has been recognised as having particular competence in the field of children's rights, economic and social rights and the rights of minorities.¹

¹ The ERT is grateful to the National Network for Children in Bulgaria for providing advice and information in the process of drafting the present complaint. The National Network for Children (NNC) is a non-governmental organisation based in Sofia, Bulgaria. It is an alliance of civil society organisations and

5. Bulgaria signed the RESC on 21 September 1998. The National Assembly of Bulgaria adopted the Law on the Ratification of the RESC on 29 March 2000, and it was published in the Official Gazette on 11 April 2000. With the same law, Bulgaria accepted the collective complaint procedure envisaged in the Additional Protocol from 9 November 1995. The ratification was effective from 7 June 2000. Therefore Bulgaria has accepted the jurisdiction of the Committee to consider a complaint of this nature.

(b) RELEVANT PROVISIONS OF THE RESC AND INTERNATIONAL LAW

Revised European Social Charter

6. Bulgaria has agreed to be bound by the following articles of the RESC:

Article 12 – The right to social security

With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

(1) to establish or maintain a system of social security;

...

(3) to endeavour to raise progressively the system of social security to a higher level;

...

Article 16 – The right of the family to social, legal and economic protection

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

supporters, working with and for children and families across the whole country. The NNC's expert team develops informed policies about children and families. The NNC took active participation in the discussions during the parliamentary consideration of the 2015 amendments to the Family Allowances for Children Act, subject of the present complaint. Additional information about the NNC is available on <http://nmd.bg/en/about-us/>

Article 17 – The right of children and young persons to social, legal and economic protection

With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

...

(2) to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

Article E – Non-discrimination

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.

Article G – Restrictions

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

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

Relevant international legal instruments

7. The RESC is a living instrument, which must be interpreted in accordance with developments in the national laws of the Council of Europe member states as well as relevant international instruments, including but not limited to the European Convention on Human Rights: see e.g. *World Organisation against Torture v Greece - Complaint No. 17/2003* (26 January 2005), §31.

8. The United Nations *Convention on the Rights of the Child* (New York, 20 November 1989) states:

Article 3(1)

in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 12

(1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

...

Article 28

(1) States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

...

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

...

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

(c) RELEVANT DOMESTIC LAW

9. Following amendments in July 2015, Bulgaria's Family Allowances for Children Act ['FACA'] now provides:

Art 2

(1) Family allowances under this Act shall be single and monthly.

...

(3) The monthly family allowances shall be:

(1) monthly allowances for raising a child until reaching the age of 1 year;

- (2) monthly allowances for raising a child until finishing high school but not longer than 20 years of age;
- (3) monthly benefits for raising a child with permanent disability.

(4) The family allowances under... Para. 3, p. 3 shall be provided in cash.

(5) The family allowances under Para. 2, p. 6, Para. 3, p. 1 and 2 may be provided in cash or in kind.

(6) Allowances in kind shall be provided in the form of goods and/or services for the child in compliance with his individual needs, evaluated by the Social Assistance Directorate **in case that:**

- (1) the parents or persons, receiving the family allowance fail to take care of their child/ children;
- (2) the family allowance is not being used for the child/children;
- (3) the parents or persons, receiving the family allowance fail to fulfill the obligation under Art. 8, Para. 6 of the Child Protection Act;
- (4) **the mother**, who has been given the right to allowances under Para. 3, p. 1 and 2 **has not reached the age of 18 years.**

Art 7

(1) The monthly family allowance for a child till finishing high school but not more than 20 years of age shall be provided to families, whose income per family member is lower or equal to the [prescribed] income... provided that the family lives permanently in the country and the child:

...

- (2) regularly attends the preparatory groups in the kindergartens for mandatory pre-school preparation, unless impossible due to health reasons;
- (3) continues his/her studies till graduation of high school but not more than 20 years of age, **regularly visits school**, unless this is impossible due to the child's health status;

...

(11) The monthly assistance under Para. 1 shall be terminated before expiry of the term for which it has been granted in case of dropping and/or found failure to fulfil the conditions for its granting, as well as:

...

- (2) **after interruption of the assistance for 3 successive months or for 6 months within the frame of 1 school year**

**because of failure to fulfil the conditions under Para. 1, p. 2 and 3;
(3) where the child, for whom the assistance is received becomes a parent.**

(12) In the cases under Para. 11, p. 2 the monthly assistance may be granted again, not earlier than 1 year from the date of termination.

[emphasis added]

(d) GROUNDS OF COMPLAINT

(i) Withholding of cash benefits from minor parents

10. Monthly child allowance can only be paid in-kind rather than in cash, if the qualifying parent is a minor [Art 2.6(4) FACA].

Unlawful discrimination under Art E

RESC engaged

11. Bulgaria's system of child allowances falls within the ambit of arts 12, 16 and 17 RESC. Therefore it is obliged to avoid unjustified discrimination, in the provision of that system, against groups protected by Art E RESC.

Correct approach to discrimination

12. *DH v Czech Republic - 57325/00* [2007] ECHR 922, (2008) 47 EHRR 3, §175 is authority for the proposition that the concept of discrimination encompasses:

- a. 'treating differently, without an objective and reasonable justification, persons in relevantly similar situations' ['direct' discrimination];

- b. 'a general policy or measure that has [without an objective and reasonable justification] disproportionately prejudicial effects on a particular group' ['indirect' discrimination]:
- c. '[an unjustified] failure to attempt to correct inequality through different treatment' [*Thlimmenos*' discrimination].²

13. So for prima facie discrimination to be established, a protected group must experience worse treatment than a comparator group.

14. A prima facie discriminatory effect may be demonstrated in a range of ways, including by drawing inferences from facts and the parties' submissions: *DH*, §178. It is not necessary to prove discrimination through statistical evidence: *DH*, §178 and 186; see also the UK case of *Secretary of State for Work and Pensions v Bobezes* [2005] EWCA Civ 111, R(IS) 6/05, §45.

15. Once prima facie discrimination is demonstrated, the burden of proof is on the State to justify the discriminatory effect: *DH*, §177.

16. Discrimination is unjustified if it 'does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised': *Burden v United Kingdom - 13378/05* [2008] ECHR 357, (2008) 47 EHRR 38, §60.

17. The UK case of *Bank Mellat v Her Majesty's Treasury* [2013] UKSC 39, [2014] AC 700, §20 usefully summarises the scope of the proportionality assessment of a measure under the ECHR as a review of:

² *Thlimmenos v Greece 34369/97* [2000] ECHR 162, (2001) 31 EHRR 15.

- a. whether its objective is sufficiently important to justify the limitation of a fundamental right;
 - b. whether it is rationally connected to the objective;
 - c. whether a less intrusive measure could have been used; and
 - d. whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the community.
18. The intensity of scrutiny varies according to the circumstances, the subject-matter and the background: *Stec v United Kingdom* 65731/01 [2006] ECHR 1162 (2006) 43 EHRR 47, §52.
19. 'Direct' forms of discrimination should be scrutinised more intensively than 'indirect' forms: see the English case of *Humphreys v HM Revenue and Customs* [2012] UKSC 18, [2012] 1 WLR 1545, §19.
20. The justification of discrimination on racial grounds against Roma people should be scrutinised with special care, because '[r]acial discrimination is a particularly invidious kind of discrimination and, in view of its perilous consequences, requires from the authorities special vigilance and a vigorous reaction': *DH*, §176, §181.
21. The justification of discrimination on gender grounds should be subjected to strict scrutiny and requires 'weighty reasons': *Abdulaziz, Cabales And Balkandali v United Kingdom* – 9214/80, 9473/81, 9474/81 [1985] ECHR 7, [1985] EHRR 471, §78 because 'the advancement of the equality of the sexes is today a major goal in the member States'.

Detriment

22. The provision of support through 'in kind' assistance only is detrimental because it risks being:

- a. demeaning, contrary inter alia to the constitutional protection against encroachment upon dignity afforded by Art 32(1) of the Bulgarian constitution ('Everyone shall be entitled to protection against any unlawful interference in his private or family affairs and against encroachments on his honour, dignity and reputation');
- b. unable to take into account the views of the recipient, contrary to Art 3 and Art 12 UNCRC. For example, in *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166, §34 the Supreme Court of the UK referred to 'discovering the child's views' as an 'important part' of making a child's best interests a primary consideration;
- c. inferior to cash payment, because it is less flexible; and
- d. less valuable, because the value of the goods and services provided is potentially opaque.

Disparate impact on protected group

23. The withholding of cash benefits from minor parents is directly discriminatory on the ground of age, which is an 'other status' within the meaning of Art E RESC: see e.g. *Schwizgebel v Switzerland* - 25762/07 (ECHR First Section, 10 June 2010), §85 where the ECHR accepted that age was a status within the meaning of Art 14 ECHR.

24. The provision is indirectly sexually discriminatory, for two reasons. Firstly, Bulgaria women are more likely than men to become parents while minors.³ Secondly, and more significantly, women who become parents while minors are much more likely to be recognised as parents than males who become parents while minors, due to the nature of pregnancy and birth, and it is only if the child is formally recognised as being a parent that there will be an effect on his benefit entitlement.

25. The provision is also indirectly racially discriminatory, in that Roma are much more likely than other ethnic groups to be adversely affected:

- a. statistics from the Bulgarian Agency for Social Assistance show that there are about 800 underage births annually and up to 90% of them are from the Roma minority⁴, who form less than 10% of the total Bulgarian population;⁵ and
- b. Roma constitute a substantially higher proportion among persons who are poor and among those who rely on social assistance.⁶

³ This is confirmed by the statistics showing that females are many times more likely to be married before they have turned 18. In 2014, for example, the number of married females under 18 was 393 whilst the number of married males under 18 was only 20. See Национален статистически институт, Сключени бракове по местоживееене и възраст на встъпилите в брак лица, 2015: <http://www.nsi.bg/bg/content/3035/%D1%81%D0%BA%D0%BB%D1%8E%D1%87%D0%B5%D0%BD%D0%B8-%D0%B1%D1%80%D0%B0%D0%BA%D0%BE%D0%B2%D0%B5-%D0%BF%D0%BE-%D0%BC%D0%B5%D1%81%D1%82%D0%BE%D0%B6%D0%B8%D0%B2%D0%B5%D0%B5%D0%BD%D0%B5-%D0%B8-%D0%B2%D1%8A%D0%B7%D1%80%D0%B0%D1%81%D1%82-%D0%BD%D0%B0-%D0%B2%D1%81%D1%82%D1%8A%D0%BF%D0%B8%D0%BB%D0%B8%D1%82%D0%B5-%D0%B2-%D0%B1%D1%80%D0%B0%D0%BA-%D0%BB%D0%B8%D1%86%D0%B0>

⁴ See inter alia, United Nations Development Programme Interim Report II, *The Roma pilot project: tools and methods for evaluation and data collection*, showing that per 1000 births of age below 18: Bulgarian 41.3, Roma 508.8; births per 1000 at age below 15: Bulgarian 2.4, Roma 35.6 (2001); *Health and the Roma Community, analysis of the situation in Europe Bulgaria, Czech Republic, Greece, Portugal, Romania, Slovakia, Spain*, FSG (Madrid 2009): "Bulgaria has Europe's highest teen-age pregnancy rate and it is highest among Roma women – 10-12 times higher than that of ethnic Bulgarians."

⁵ 2011 census states that there are 325,343 Roma in Bulgaria accounting for 4.9% of the Bulgarian population, but the Council of Europe estimates the Roma population in 2011 to have been between 700,000 to 800,00 (9.94%): [http://europa.eu/rapid/press-release MEMO-14-249_en.htm](http://europa.eu/rapid/press-release_MEMO-14-249_en.htm)

⁶ See, e.g., http://www.osf.bg/cyeds/downloads/roma_social_benefits_feb_2012.pdf

26. Therefore the different treatment of the two age groups requires justification to be lawful.

Appropriate level of scrutiny

27. A high level of scrutiny is appropriate for the new measure. Firstly, it engages the suspect grounds of gender and race. Secondly, the particular racial group involved – Roma people – is recognised to be an historically marginalised minority both in Bulgaria and across Europe. Finally, for the reasons set out below, there is a basis for considering that the particular impact of the measure on Roma people is deliberate.

28. The new measure was adopted in a political context that was heavily influenced by nationalist and far-right parties, which have for a long time insisted on the need to restrict the higher birth rates among the Roma minority and decrease the financial compensations they receive for their children.⁷

29. One of these parties is the Patriotic Front, which has since its inception been particularly vocal in its anti-Roma rhetoric. The Patriotic Front holds no ministerial positions in the current government, however the ruling coalition needs the party's support to secure a majority in parliament. The Patriotic Front, along with three other parties holding ministerial positions in the current government, pledged its support to the ruling party in order to deliver a majority to the government after the last parliamentary election in October 2014. One of the party's flagship issues has been underage births among the Roma community. The Patriotic Front insisted on the amendment

⁷ This is common knowledge, and there are numerous political statements and media publications. See for instance a political declaration on the Patriotic Front's website, which talks about the Roma and their criminality: <http://www.nfsb.bg/positions.php?action=show&art=1397>

to FACA providing for the cessation of allowances for underage children who have become parents (given to their parents), as well as the amendment providing that allowances given to the underage parents themselves for their new-born babies shall always be given in kind.⁸

30. The Patriotic Front were the most vocal defenders of the measure in the parliamentary debates that took place prior to the adoption of the amendments, both within the parliamentary commissions and in the plenary sessions. This is evidenced by the speeches of one of the party's leading figures, Dimitar Bayraktarov, who acted as the primary spokesman during the debates. During a session of the Parliamentary Commission on Labour and Social Policy on 1 July 2015, he stated in relation to the amendments proposed by his party:⁹

This is high time, in line with the Roma integration strategy, to really take effective prevention measures through legislation... You see the tragedies that are happening in the ghettos, where there are mothers who are 16-17 years old with 3-4 children, living in unregulated slums... I am convinced that you know the structure of the population and it is good to say it out loud, that 22% of children under the age of 10 are Roma. At the moment there is the possibility that they are already one-fifth of the population of children, and they are illiterate, uneducated, without any health culture. Yes, I agree that [the children] are not to blame, but it has become a form of business and I am sure that you realize it. And we as lawmakers must somehow resist this, because tomorrow there will explode a very serious time bomb and the first to explode will be the social security system, especially the pension system, because after eight years we will rely on those children who have already become adult citizens, to start working and to pay in social security contributions, but they will not be fit for the labour market because they are uneducated and even if

⁸ The Patriotic Front has made numerous appeals to this effect on the media, including for instance on SKAT television channel. Note also that the Patriotic Front submitted an even more restrictive parallel bill disadvantaging the Roma than the one introduced by the government: <http://parliament.bg/bills/43/554-01-88.pdf>

⁹ National Assembly of the Republic of Bulgaria, meeting of the Committee on Labor, Social and Demographic Policy: <http://www.parliament.bg/bg/parliamentarycommittees/members/2337/steno/ID/3804>

someone wanted to give them work, they are not able to do so. We have to put the brakes on this thing.

31. Another deputy from the Patriotic Front, Iskren Veselinov, stated during the plenary debate on the bill on 17 June 2015:¹⁰

We talk about problems in the Schengen area and the claims of certain of our partners in the European Union in terms of the behaviour of our Roma... Currently we have a boom in birth rates particularly in this marginal strata - births, primarily aimed at draining the social funds, aimed at converting giving birth into a profession, into some form of parasitism on the social organism of the state, which no normal country can afford... We must, however, start from the lack of incentives for this condemnable from every point of view behaviour, the phenomenon of children bearing children... In this respect, my call is to support the bills – both the government’s bill and that of the Patriotic Front, which will solve this issue.

Justification

32. The detrimental treatment of minor parents is unjustified.

33. Avoiding giving cash benefits to persons who will misuse them is potentially a legitimate aim. But age does not make cash payments inherently unsuitable, as is implicitly accepted by the legislator, through his provision under Art 2.3(3) and Art 2.4 FACA of cash-only payments to minor parents in respect of their disabled children. Further, if a minor parent is in fact at risk of misusing cash payments, the other provisions of Art 2.6 FACA already provide adequate discretion to cater for such circumstances. So a less intrusive measure was available.

¹⁰ National Assembly of the Republic of Bulgaria, Plenary Sitings:
<http://www.parliament.bg/bg/plenaryst/ns/51/ID/5402>

Breach of Art 12 RESC: Lowering of level of social security protection

34. Art 12(3) RESC requires a signatory state to 'endeavour to raise progressively the system of social security to a higher level'. The replacement of the possibility of cash benefits by mandatory in-kind assistance represents a lowering of the level of social protection, and is accordingly incompatible with Bulgaria's RESC obligations.

(ii) Suspension and termination of benefit where a child leaves school

35. Monthly child allowance terminates where the child stops attending school [Art 7.1(3) and Art 7.11(2) FACA], and is thereafter stopped for a minimum period of one year, even if the child returns to school within that period [Art 7.11(12) FACA].

Breach of Art 17(2) RESC

36. Art 7.11(12) FACA prevents a child allowance being paid for a 12 month period after a previous allowance has been terminated due to a child's school non-attendance.

37. The provision discourages regular attendance at school throughout that 12 month period, and is therefore contrary to Art 17(2) RESC read with Art G RESC. It discourages attendance because, for example, where a child has left school to pursue paid work, if he leaves the paid work to return to school within that 12 month period he is likely to have no means of support in the absence of a child allowance.

38. The provision is therefore likely to lead to more children permanently dropping out of school. That is especially serious in the Bulgarian context because:

- a. school non-attendance is a serious problem in Bulgaria. According to data from the National Statistical Institute, there were 17,794 children who dropped out of the education system during the 2013/14 school year,¹¹ or approximately 2.4% of all children. This is a significantly higher rate than that found in most EU countries;¹² and
- b. the Committee reviewed Bulgaria's compliance with the RESC in 2011¹³ and noted that the most common economic reason for dropping out of school was poverty. The Committee concluded that the situation in Bulgaria was not in conformity with Art 17(2) RESC because it had not been established that measures taken to increase secondary education enrolment rates were sufficient.

Breach of Art 16 RESC

39. The provision for suspension and termination of child allowance in cases of school non-attendance also breaches Art 16 RESC read with Art G RESC. The provision is not a proportionate response to the perceived policy goal.

40. Any rationale for the policy is essentially deterrent in character: the state considers that it is undesirable for children to leave school early, and so has

¹¹ National Statistical Institute, *Students and Drop-outs by Reasons and Level of Education*: <http://www.nsi.bg/bg/content/3435/%D1%83%D1%87%D0%B0%D1%89%D0%B8-%D0%B8-%D0%BD%D0%B0%D0%BF%D1%83%D1%81%D0%BD%D0%B0%D0%BB%D0%B8-%D0%BF%D0%BE-%D0%BF%D1%80%D0%B8%D1%87%D0%B8%D0%BD%D0%B8-%D0%B8-%D1%81%D1%82%D0%B5%D0%BF%D0%B5%D0%BD-%D0%BD%D0%B0-%D0%BE%D0%B1%D1%80%D0%B0%D0%B7%D0%BE%D0%B2%D0%B0%D0%BD%D0%B8%D0%B5>

¹² See Eurostat for relevant statistics: <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&language=en&pcode=tsdsc410&plugin=1> and http://ec.europa.eu/eurostat/statistics-explained/index.php/Europe_2020_indicators_-_education

¹³ European Committee of Social Rights, *Conclusions 2011 (Bulgaria)* (2011/def/BGR/17/2/EN) Art 7 §2. See [http://hudoc.esc.coe.int/eng#{\"ESCArticle\":\[\"17-00-163\", \"17-02-163\"\], \"ESCDIdentifier\":\[\"2011/def/BGR/17/2/EN\"\]}](http://hudoc.esc.coe.int/eng#{\)

provided not only for child allowance to terminate when they do, but for it to be withheld in future.

41. In every case where a child allowance is withheld from a child who has left school, the policy has by definition failed that child. Yet that group of children are compelled to bear a considerable individual burden, *pour encourager les autres*.¹⁴

Disproportionality

42. The deterrent based approach, placing the fiscal burden of tackling truancy on the afflicted family, is disproportionate, essentially for the reasons set out in the very similar case of *European Committee for Home-Based Priority Action for the Child and the Family v France – Complaint No. 82/2012* (19 March 2013):

[37] As to the proportionality of the substance of the contested measure, the Committee notes that the measure applies the punishment of suspending and possibly suppressing family allowances for truancy to only one of the parties with obligations in this sphere, namely the parents. The exclusive punishment of this party (although it undoubtedly has a *prima facie* obligation) amounts to a failure on the part of the authorities to respect their positive obligations in the sphere of education...

[38] The Committee considers that not only is the suspension of family allowances because of truancy liable to make the economic and social situation of the family concerned more vulnerable (thereby making it more difficult to create the necessary conditions for the full development of the family, as required by Article 16) but also that there is no evidence that it helps to achieve the aim of returning the child to school (which is also one of the aims of the Charter – in Article 17, talks “to encourage regular attendance at schools”)...

...

¹⁴ Voltaire, *Candide*: ‘Dans ce pays-ci il est bon de tuer de temps en temps un amiral pour encourager les autres.’

[41] Lastly, in so far as the family allowances concerned help to provide an income supplement in accordance with Article 16 of the Charter, attaining a sufficient economic level is more crucial for a significant number of families affected by the application of the impugned measure. Social vulnerability, which is linked to not being in a position to fulfil parental responsibilities, often goes hand in hand with increased economic hardship. Consequently, the contested measure is not reasonable in the light of Article 16 of the Charter.

[42] In conclusion, the Committee considers that the contested measure of suspending and possibly suppressing family allowances makes parents exclusively responsible for pursuing the aim of reducing truancy and increases the economic and social vulnerability of the families concerned. Consequently, the measure in question is not proportionate to the aim pursued and therefore constitutes a restriction to the right of families to social, legal and economic protection guaranteed by Article 16 of the Charter which is not proportionate to the aim pursued and does not therefore satisfy the requirements of Article G of the Charter.

43. See also Committee on the Rights of the Child, *General Comment 14 on the right of the child to have his or her best interests taken as a primary consideration*:

Potential conflicts between the best interests of a child, considered individually, and those of a group of children or children in general have to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise. The same must be done if the rights of other persons are in conflict with the child's best interests. If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.

44. Further, the provision is in tension with Art 47 of the Bulgarian constitution, which commits the State to 'assist' in the 'raising and upbringing of children until they come of legal age', an obligation which is not expressed as being conditional upon school attendance.

Unlawful discrimination under Art E RESC

RESC engaged

45. Bulgaria's system of child allowances falls within the ambit of arts 12, 16 and 17 RESC.

Detriment

46. A child who is in school having within the previous 12 months had a child allowance terminated, is treated worse than a child who has not, in that the former is ineligible for a child allowance.

Disparate impact on protected group

47. The provision is indirectly racially discriminatory in that it has a disparately detrimental impact on Roma people:

- a. Roma people are disproportionately reliant on social security assistance;
- b. educational enrolment and attainment levels are already far worse among the Roma than among the majority ethnic Bulgarians, as are the rates of school non-attendance and drop-out.¹⁵

¹⁵ The proportion of Roma children of compulsory school age not attending school was 12% in 2010/11, while 9% of Roma aged 16 and above have never been to school. More than 15% of Roma children attend de facto segregated school classes. European Commission, *Education and Training Monitor 2015: Bulgaria*, p.4:
http://www.romaeducationfund.hu/sites/default/files/publications/bg_country_assessment_2015_web.pdf

Justification

48. A high level of scrutiny is appropriate of the new measure, for the reasons set out at §§27-28 above.

49. The prima facie discriminatory treatment is not justified, for the reasons set out above in relation to the breach, on proportionality grounds, of Art 16 RESC.

(iii) No benefits in respect of children who themselves become parents

50. Monthly child allowance terminates where that child becomes a parent [Art 7.11(3) FACA].

Unlawful discrimination under Art E RESC

RESC engaged

51. Bulgaria's system of child allowances falls within the ambit of arts 12, 16 and 17 RESC.

Detriment

52. The termination of the benefit entitlement of a child, upon that child becoming a parent, is detrimental in that it reduces the family income.

Disparate impact on protected group

53. The provision discriminates directly against parents, parenthood being an 'other status' within the meaning of Art E RESC: see *Weller v Hungary* –

44399/05 [2009] ECHR 530 (31 March 2009), §35 where the ECHR accepted that parental status engages Art 14 ECHR.

54. The provision is indirectly sexually discriminatory, for two reasons. Firstly, in Bulgaria women are more likely than men to become parents while minors. Secondly, and more significantly, women who become parents while minors are much more likely to be recognised as parents than males who become parents while minors.¹⁶ It is only if the child is formally recognised as being a parent that there will be an effect on his benefit entitlement.

55. The provision is also indirectly racially discriminatory in that it has a disparately detrimental impact on Roma people:

- a. statistics from the Bulgarian Agency for Social Assistance show that there are about 800 underage births annually and up to 90% of them are from the Roma minority;¹⁷ and
- b. Roma constitute a substantially higher proportion among persons who are poor and among those who rely on social assistance.¹⁸

Justification

56. A high level of scrutiny is appropriate of the new measure, for the reasons set out at §§27-28 above.

¹⁶ See above, §23.

¹⁷ See above, footnote 4.

¹⁸ Roma men and women are either in a permanent state of unemployment or are only employed temporarily and in very low paid jobs: Parliament of the Republic of Bulgaria (2012) *National Roma Integration Strategy of the Republic of Bulgaria 2012-2020*, Sofia: State Gazette as cited in Todor Todorov, *Roma MATRIX, Country Report: Bulgaria*, July 2014:

https://romamatrix.eu/file/296/download?token=E5vw-A2CV1F2y4irbUyb5j8izFTOMVB6mkk70kC_FjE

57. The detrimental treatment is not justified. There is no basis for considering that the material needs of a child reduce or disappear upon his becoming a parent. Therefore any rationale for the policy is essentially deterrent in character: the state considers that it is undesirable for children to become parents, and so has provided for them to be subjected to harsh treatment when they do.

58. That deterrent approach is unlawful, for the reasons set out above at §41-43 in respect of the suspension and termination of benefit where a child leaves school.

(e) REMEDY

59. ERT respectfully invites the Committee to find the above alleged violations of the RESC proven, and to urge the Bulgarian government to:

- a. repeal Arts 2.6(4), 7.1(2), 7.1(3), 7.11(2), 7.11(3) and 7.12 FACA as soon as possible; and
- b. depending on when the above articles of FACA are repealed and how many persons have been affected - to retroactively remedy the situation of all those affected.



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