

EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITE EUROPEEN DES DROITS SOCIAUX



**REPORT ON THE MEETING WITH  
REPRESENTATIVES OF THE BULGARIAN  
GOVERNMENT  
ON PROVISIONS OF THE REVISED SOCIAL  
CHARTER NOT ACCEPTED BY BULGARIA**

Sofia, 4-5 October 2005

6 December 2005



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# Introduction

## Situation of Bulgaria vis a vis the Revised Charter 1<sup>st</sup> December 2005

### Ratifications

Bulgaria ratified the Revised European Social Charter on 07/06/2000 and has accepted 61 of the Revised Charter's 98 paragraphs.

1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	2.6	2.7	3.1	
3.2	3.3	3.4	4.1	4.2	4.3	4.4	4.5	5	6.1	6.2	6.3	
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8.2	8.3	8.4	8.5	9	10.1	10.2	10.3	10.4	10.5	11.1	11.2	
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23	24	25	26.1	26.2	27.1	27.2	27.3	28	29	30	31.1	
31.2	31.3								= Accepted provisions			

### Reports

Between 2002 and 2004, Bulgaria submitted 3 reports on the application of the Revised Charter. The 4<sup>th</sup> report on the hard core provisions of the Revised Charter was submitted on 31/08/2005.

### Collective complaints

Bulgaria has agreed to be bound by the "collective complaints" procedure. It has not yet made a declaration enabling national NGOs to submit collective complaints.

Two complaints are pending before the European Committee of Social Rights:

- European Roma Rights Center (ERRC) v. Bulgaria (Collective complaint No. 31/2005): Article 16 and E
- Confederation of Independent Trade Unions in Bulgaria (CITUB) / Confederation of Labour "Podkrepa"/ European Trade Union Confederation (ETUC) v. Bulgaria (Collective complaint No. 32/2005) Article 6§4

### Domestic law / International Treaties

Constitution Article 5(4) "Any international instruments which have been ratified by the constitutionally established procedure, promulgated, and come into force with respect to the Republic of Bulgaria, shall be considered part of the domestic legislation of the country. They shall supersede any domestic legislation stipulating otherwise."

## **Context of the meeting**

The Sofia meeting was the fifth such meeting under the new procedure examination of non-accepted provisions – Article 22 of the 1961 Social Charter – agreed by the Committee of Ministers in December 2002<sup>1</sup>.

The Deputies had decided that "states having ratified the Revised European Social Charter should report on the non-accepted provisions every five years after the date of ratification" and had "invited the European Committee of Social Rights to arrange the practical presentation and examination of reports with the states concerned".

Following this decision, five years after ratification of the Revised Social Charter (and every five years thereafter), the European Committee of Social Rights would review non-accepted provisions with the countries concerned, with a view to securing a higher level of acceptance. Experience had shown that states tended to forget that selective acceptance of Charter provisions was meant to be a temporary phenomenon. The aim of the new procedure was therefore to require them to review the situation after five years and encourage them to accept more provisions.

In the case of Bulgaria the European Committee of Social Rights had agreed with the Bulgarian authorities that it would meet representatives of various ministries in Sofia on 4-5 October 2005.

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<sup>1</sup> Committee of Ministers decision of 11 December 2002.

## Composition of the delegation and Government representatives

The Council of Europe delegation comprised of the following persons:

- Mr Jean-Michel BELORGEY President of the Committee,
- Mr Nikitas ALIPRANTIS, member of the Committee
- Ms Claire DUBOIS-HAMDI, administrator, Secretariat of the European Social Charter.

They were assisted by:

- Mrs Tzena MILEVA (interpreter)
- Mrs Ekaterina DRAGANOVA (interpreter)

They held meetings with the following representatives of the relevant Ministries and Agencies:

- Mrs. Assia TCHOLASHKA – head of International Relations Unit, European Integration and International Organizations Directorate, Ministry of Labor and Social Policy (MLSP)
- Mr. Nikolay NAIDENOV – head of International Organizations Section, European Integration and International Organizations Directorate, MLSP; Bulgarian delegate to the Governmental Committee of the European Social Charter.
- Mrs. Elitsa SLAVCHEVA – senior expert, International Organizations Section, European Integration and International Organizations Directorate, MLSP
- Mrs. Dobrinka BONEVA – chief expert, Eurointegration-2 Unit, European Integration and International Organization Directorate, MLSP
- Mr. Krasimir SAVOV – junior expert, International Organizations Section, European Integration and International Organizations Directorate, MLSP
- Mr. Assen IVANOV – head of Eurointegration-13 Unit, European Integration and International Organization Directorate, MLSP
- Mrs. Larissa TODOROVA – senior expert, Labour Law and Social Security Directorate, MLSP
- Mrs. Darina KIURTEVA - senior expert, Labour Law and Social Security Directorate, MLSP
- Mrs. Inna VEDAR – state expert, Social Protection and Social Integration Directorate, MLSP
- Mrs. Ivelina VELEVA – junior expert, Social Protection and Social Integration Directorate, MLSP
- Mrs. Temenujka ZLATANOVA – state expert, Planning, Analyses and Information Directorate, MLSP
- Mrs. Lilia ABADJIEVA – head of Equal Opportunities of Women and Men Section, Labour Market Policy Directorate, MLSP
- Mrs. Elka MILEVA, state expert, Labour Market Policy Directorate, MLSP
- Mrs. Krassimira NIKOLOVA – head of International Cooperation Unit, State Agency for Child Protection
- Mr. Ivan YORDANOV – Agency for Social Protection
- Mrs. Anna ANGELOVA – chief expert, Methodology of the Social Benefits Unit, Agency for Social Protection
- Mr. Todor GUINKOV – Agency for People with Disabilities
- Mrs. Daniela KADIJSKA - EMPLOYMENT Agency

- Mrs. Emiliana DIMITROVA - head of Development and Prospects Unit, Policy in the vocational education and continued training Directorate, Ministry of Education and Science.



## **Programme of the meeting in Sofia**

### **4 October 2005 – Meeting on provisions not accepted**

Meeting with representatives of various Ministries, Building of the Ministry of Labour and Social Policy

#### **Introductory speeches**

Opening speech by Mr Dimitor DIMITROV, Vice-Ministre du Travail et de la Politique sociale, Responsable pour la Politique du marché du travail, l'intégration européenne et les relations internationales, les fonds européens et les programmes internationaux.

Preliminary speeches by:

Ms DUBOIS-HAMDI

Mr BELORGEY

#### **Exchange of views on provisions not accepted**

- Article 2§1 (Right to reasonable daily and weekly working hours)

Presented by Mr ALIPRANTIS

The situation in Bulgaria in law and in practice

- Article 2§3 (Right to annual holiday with pay)

Presented by Mr ALIPRANTIS

The situation in Bulgaria in law and in practice

- Article 4§1 (Right to a decent wage)

Presented by Ms DUBOIS-HAMDI

The situation in Bulgaria in law and in practice

- Article 9 (Right to vocational guidance)

Presented by Ms DUBOIS-HAMDI

The situation in Bulgaria in law and in practice

- Article 10§§1-5 (Right to vocational training)

Presented by Mr BELORGEY

The situation in Bulgaria in law and in practice

- Article 12§§2 et 4 (Right to social security: respect du Code européen de Sécurité sociale et sécurité sociale des personnes se déplaçant entre les Etats)

Presented by Mr BELORGEY

The situation in Bulgaria in law and in practice

- Article 13§4 (Right of non-residents to emergency assistance)

Presented by Ms DUBOIS-HAMDI

The situation in Bulgaria in law and in practice

- Article 15§§1-3 (Right of persons with disabilities to independence, social integration and participation in the life of the community)

Presented by Ms DUBOIS-HAMDI

The situation in Bulgaria in law and in practice

■ Article 17§1 (Right of children and young persons to assistance, education and training)  
Presented by Ms DUBOIS-HAMDI  
The situation in Bulgaria in law and in practice

■ Article 18§§1-3 (Right to engage in a gainful occupation in the territory of other Parties)  
Presented by Mr ALIPRANTIS  
The situation in Bulgaria in law and in practice

■ Article 19 (Right of migrant workers and their families to protection and assistance)

§§1-3/§10 (assistance and information on migration ; departure, journey, reception; co-operation between social services of emigration and immigration states)  
Presented by Mr BELORGEY  
The situation in Bulgaria in law and in practice

§§4-5-7-9/§10 (equal treatment regarding employment, right to organize and accommodation ; taxes and contributions and legal proceedings; transfer of earnings and savings)  
Presented by Mr BELORGEY  
The situation in Bulgaria in law and in practice

§§6-8/§10 (Family reunion and guarantees concerning deportation)  
Presented by Mr BELORGEY  
The situation in Bulgaria in law and in practice

§§11-12/10 (Teaching language of host state and mother tongue of migrant)  
Presented by Ms DUBOIS-HAMDI  
The situation in Bulgaria in law and in practice

## **5 October 2005 – Meeting on provisions not accepted**

### **Exchange of views, continued**

■ Article 23 (Right of elderly persons to social protection)  
Presented by Mr ALIPRANTIS  
The situation in Bulgaria in law and in practice

■ Article 27§1 (Right of workers with family responsibilities to equal treatment and equal opportunities)  
Presented by Ms DUBOIS-HAMDI  
The situation in Bulgaria in law and in practice

■ Article 30 (Right to protection against poverty and social exclusion)  
Presented by Mr ALIPRANTIS  
The situation in Bulgaria in law and in practice

■ Article 31 (Right to housing)  
Presented by Mr BELORGEY  
The situation in Bulgaria in law and in practice

**Conclusions by Mr BELORGEY**

**Meeting with Deputy Ministers of Labour and Social Policy.** Ms Ivanka HRISTOVA, responsible for social protection, social assistance and social integration; Mr Dimitar DIMITROV, responsible for labour market policy, European integration and international relations, the European funds and international programmes; Mr Javor DIMITROV, responsible for population policy, social investment and equal opportunities on the labour market.



## **Executive summary**

The mission consisted of a meeting with members of the various relevant Bulgarian ministries. The meeting was opened by Mr Dimiter DIMITROV, Deputy Minister of the Ministry of Labour and Social Policy who welcomed the process of dialogue with the ECSR and highlighted the Bulgarian willingness to make continuous efforts to comply with the Revised Charter.

Presentations were made by members of the delegation on the provisions which have not been accepted by Bulgaria, and a representative of the competent Ministry gave an explanation of the national situation with regard to the provisions in question of the Revised Charter. This was followed by discussions on the situation in Bulgaria vis-a-vis certain provisions.

Finally the ECSR delegation met with three Deputy Ministers of the Ministry of Labour and Social Policy. They stated that thanks to the ECSR expertise and the confrontation with the current Bulgarian situation in law and in practice, Bulgaria is now ready to study towards further commitments to the Revised Charter.

The delegation had at its disposal a report prepared by the Bulgarian authorities on the provisions not accepted by Bulgaria this was supplemented by information presented during the meeting. The delegation's views were based on this information; information on the current situation in law and in practice or on intended changes to legislation or current developments in the law and practice, in light of the case law of the ECSR.

The delegation concluded that there were certain provisions of the Revised Charter that Bulgaria could accept immediately and other provisions which posed more difficulties for Bulgaria and therefore their acceptance was a more long term goal. For certain provisions, the information available was not sufficient for the delegation to form an opinion. An opinion by the delegation that Bulgaria could accept a provision does not mean that the situation will automatically be found to be in conformity with the revised Charter; it simply indicates that there are no major obstacles to ratification of and compliance with the provision.

### **Provisions which could be accepted by Bulgaria**

Article 2§1 – Right to reasonable daily and weekly working hours

Article 2§3 – Right to annual holiday with pay

Article 15§§1-3 – Right of persons with disabilities to independence, social integration and participation in the life of the community

Article 17§1 – Right of children and young persons to assistance, education and training

Article 19§§ 4a) and b), 5, 7, 9 – Right of migrant workers and their families to protection and assistance

Article 27§1 – Right of workers with family responsibilities to equal treatment and opportunities

### **Provisions which could not be accepted by Bulgaria**

Article 4§1 – Right to a decent wage

Article 12§§2 and 4 – Right to social security

Article 13§4 – Right to emergency assistance for non-residents

Article 18§§1-3 – Right to engage in a gainful occupation in the territory of other Parties

Article 19§§6 and 8, 10 – Right of migrant workers and their families to protection and assistance

Article 23 – Right of elderly persons to social protection

Article 30 – Right to protection against poverty and social exclusion

Article 31 – Right to housing

**Provisions for which the information provided was not sufficient**

For the following provisions, the ECSR delegation pointed out that although the situation in law seems adequate, additional data would be necessary to form an opinion on the situation in practice:

Article 9 – Right to vocational guidance

Article 10§§1-5 – Right to vocational training

Article 19§§1, 2, 3, 4 c) – Right of migrant workers and their families to protection and assistance

For the following provisions, the ECSR delegation pointed out that additional data would be necessary to form an opinion on the situation in law and in practice:

Article 19§§11 and 12 – Right of migrant workers and their families to protection and assistance

## I – Survey provision by provision

Part I has been drafted on the basis of the European Committee of Social Rights Case-Law Digest, May 2005 (document prepared by the Secretariat) as well as the report on provisions not accepted by Bulgaria, a document prepared and submitted by the Ministry of Labour and Social Policy. Reference is also made to the additional information provided and comments made during the meeting. Bulgarian legislation related to the provisions not accepted, which was at the delegation's disposal, is enumerated in Part II. Full texts of legislation available in separate document.

### ■ Article 2§1 (Right to reasonable daily and weekly working hours)

**With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake**

- 1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit.**

### ECSR Case-law presented by Mr N. ALIPRANTIS

Article 2§1 guarantees workers the right to reasonable limits on daily and weekly working hours, including overtime. This right must be guaranteed by any binding mean (through legislation, regulations, collective agreements or any other).

The revised Charter does not expressly define reasonable working hours. The Committee assesses the situations on a case by case basis: extremely long working hours (those of more than 16 hours on any one day or 60 hours in one week) are unreasonable and therefore not in conformity with the revised Charter.

Working overtime must not simply be left to the discretion of the employer or the employee. The reasons for overtime work and its duration must be subject to regulation.

Article 2§1 provides for the progressive reduction of weekly working hours, “to the extent permitted by productivity increases and other relevant factors”. These “other factors” may be the nature of the work and the safety and health risks to which workers are exposed. This obligation is closely related to the reasonable nature or otherwise of working time. The widespread introduction of a working week of less than 40 hours has greatly reduced the need to shorten the working week.

The Committee considers that flexibility measures regarding working time are not as such in breach of the revised Charter. In order to be found in conformity with the revised Charter, national laws or regulations must fulfill three criteria:

- (i) they must prevent unreasonable daily and weekly working time. The maximum daily and weekly hours referred to above must not be exceeded in any case.
- (ii) they must operate within a legal framework providing adequate guarantees. A flexible working time system must operate within a precise legal framework which clearly circumscribes the discretion left to employers and employees to vary, by means of a collective agreement, working time.
- (iii) they must provide for reasonable reference periods for the calculation of average working time. The reference periods must not exceed six months. They may reach a maximum of up to one year in exceptional circumstances.

The Committee considers that the “périodes d’astreinte” during which the employee has not been required to perform work for the employer, although they do not constitute effective working time, cannot be regarded as a rest period in the meaning of Article 2 of the revised Charter, except in the framework of certain occupations or particular circumstances and pursuant to appropriate procedures. The absence of effective work cannot constitute an adequate criteria for regarding such a period as a rest period.

The right enshrined in Article 2§1 is complied with as long as it is enjoyed by the great majority of workers (ie. at least 80%) (Article I of the revised Charter). However, any law which is potentially applicable to all workers must respect Article 2§1 even if it affects less than 20% of workers in practice. Moreover, the application of Article I cannot give rise to a situation in which a large number of persons forming a specific category of workers, even comprising less than 80% of workers, are deliberately excluded from the scope of a legal provision.

### **The situation in Bulgaria**

Rules governing working time, extension of working time, reduced working time, part time, allocation of working time, accounting for working hours are laid down in Articles 136, 136a, 137, 138 and 142 of the Labour Code (as amended by SG, No. 25/2001, No. 52/2004, No. 27/2005)

The amendment SG No. 23/2005, entered into force after the meeting, was not taken into consideration.

### **Conclusion**

In view of the current case law and the current legal situation and practice the provision could be accepted by Bulgaria.



## ■ Article 2§3 (Right to annual holiday with pay)

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake

3. to provide for a minimum of four weeks annual holiday with pay.

### ECSR Case-law presented by Mr N. ALIPRANTIS

Article 2§3 guarantees the right to a minimum of four weeks annual holiday or 20 calendar days with pay.

Workers may be required to have been employed a certain period of time before they become eligible for annual paid leave. This length of service must not exceed twelve months.

Annual leave may not be replaced by financial compensation and employees must not have the option of giving up their annual leave.

Workers who suffer from illness or injury, proved by a medical certificate, during their annual leave are entitled to take the days lost at another time so that they receive the four week annual holiday.

The right enshrined in Article 2§1 is complied with as long as it is enjoyed by the great majority of workers (ie. at least 80%) (Article I of the revised Charter). However any law which is potentially applicable to all workers must respect Article 2§1 even if it affects less than 20% of workers in practice. Moreover the application of Article I cannot give rise to a situation in which a large number of persons forming a specific category of workers, even counting for less than 80% of workers, are deliberately excluded from the scope of a legal provision.

### The situation in Bulgaria

Rules governing annual holiday are laid down in Articles 155 and 156 of the Labour Code (as amended by SG, No. 25/2001 and No. 52/2004).

### Conclusion

In view of the current case law and the current legal situation the provision could be accepted by Bulgaria.

## ■ Article 4§1 (Right to a decent wage)

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake

1. to recognise the right of workers to remuneration such as will give them and their families a decent standard of living;

### ECSR Case-law presented by Mrs C. DUBOIS-HAMDI

Article 4§1 guarantees the right to a remuneration such as to ensure a decent standard of living.

The concept of remuneration, for the purpose of this provision, relates to remuneration – either monetary or in kind – paid by an employer to a worker for time worked or work done. Remuneration should cover, where applicable, special bonuses and gratuities. Reference is made to net amounts, i.e. after deduction of taxes and social security contributions. Social transfers (e.g. social security allowances or benefits) are taken into account only when they have a direct link to the wage.

To be considered fair within the meaning of Article 4§1, the minimum wage must not fall below 60 % of the average wage. Wages must in any event be above the poverty threshold in a given country.

When a national minimum wage exists, it is used as a basis for comparison with the average wage. The yardstick for comparison is otherwise provided by the minimum wage determined by collective agreement or the lowest wage actually paid..

The average wage of a full-time worker is calculated with reference to the labour market as a whole, or, in such cases where this is not possible, with reference to a representative sector, such as the manufacturing industry.

If the minimum wage lies between 50 and 60% of the average wage, States are asked to demonstrate that the wage is sufficient for a decent standard of living, e.g. by providing detailed information on the cost of living.

### The situation in Bulgaria

Rules governing remuneration are laid down *inter alia* in Articles 242, 244, 245 and 247 of the Labour Code (as amended by SG, No. 25/2001 and No. 52/2004) and Ordinance on additional and other Labour remunerations approved by Decree of the Council of Ministers No. 133/1993 (SG No. 678/1993, as amended).

In 2005 the minimum wage adopted by the Government was 150 Bulgaria lev (BGN, 76,69 euros) (Government Decree No. 12/2005) which was an increase by 25 % compared to 2004. The Government adopted this increase with the intent to improve the standard of living of the least qualified workers (Government report on non-accepted provisions).

During the meeting it was indicated that the amount of the gross average wage was 302 BGN (154,4 euros) and that the tax rate was 42 %. It was also pointed out that the employer may chose to pay only 60 % of the due wage and postpone payment of the remaining 40 %. There is no prescribed deadline. However, the employee may claim the unpaid salary through an appeal before a court.

### Conclusion

In view of the current case law and the current legal situation the provision could not be accepted by Bulgaria.

## ■ Article 9 (Right to vocational guidance)

With a view to ensuring the effective exercise of the right to vocational guidance, the Parties undertake to provide or promote, as necessary, a service which will assist all persons, including the handicapped, to solve problems related to occupational choice and progress, with due regard to the individual's characteristics and their relation to occupational opportunity: this assistance should be available free of charge, both to young persons, including schoolchildren, and to adults.

### ECSR Case-law presented by Mrs C. DUBOIS-HAMDI

According to Article 9, the right to vocational guidance must be guaranteed:

1. within the school system (information on training and access to training);
2. within the labour market (information on vocational training and retraining, career planning, etc.).

Vocational guidance must be provided:

- free of charge;
- by qualified and sufficient staff;
- to a significant number of persons.

It shall also be adequately financed by the State and the information available and the means used to disseminate it should be aimed at reaching as many people as possible.

According to the Appendix to the Charter, equal treatment shall be provided to nationals of other States lawfully resident or regularly working on the territory of the State concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the Party concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.

Vocational guidance of persons with disabilities is dealt with under Article 15 of the Charter for States having accepted both provisions.

### The situation in Bulgaria (Source: the Government report on provisions not accepted)

Rules governing vocational guidance are laid down *inter alia* in Act on Vocational Education and Training of 15 July 1999 (SG No. 68/1999), as amended by Act of 19 March 2003 (SG No. 29 /2003) and Employment Promotion Act of 20 December 2001 (SG No. 112/2001).

Bulgaria has long-lasting traditions in vocational guidance as a system of activities both for young people and for adults. This process has been normatively regulated for several decades in relationship with education and training resulting in professional qualifications.

Pursuant to the new start of the Lisbon Strategy, vocational guidance is regarded as an activity that is performed during the whole life span. For this purpose, Bulgaria provides for development and streamlining of the system of vocational guidance as a unified system for both young people and adults. With a view to developing and applying the priorities of the Copenhagen Declaration, the scope of vocational guidance is being extended, and work is going on the streamlining of methods, facilities and quality of vocational guidance as a whole.

#### *Vocational guidance at school:*

In 2004 a National Pedagogic Centre was set up following an arrangement of the Minister of Education and Science. This Centre coordinates activities aimed at the implementation of the Ministry's policy at a national and regional level related to the pedagogic support and consulting

schoolchildren, school teachers and parents. The activities are aimed at the qualifications of teachers and tutors, keeping schoolchildren with schools, and prevention against their fall out; at vocational guidance and consulting. This Centre's structure involves a headquarters and regional centres based in all regional capitals with a personnel consisting of 73 employees on a regular payroll.

*Vocational guidance on the labour market*

The Employment Agency at the Ministry of Labour and Social Policy is performing vocational guidance, consulting and informing here included, not only of adults (these being the main subject of the Agency's services) but of students likewise. The activity is performed on a footing of a regulation included into the Act on Vocational Education and Training of 15 July 1999 (SG No. 68/1999) (see in particular Articles 5 and 6), and Employment Promotion Act of 20 December 2001 (SG No. 112/2001 as amended by SG No. 26/2003) (see in particular Articles 1 and 65)

During the meeting it was indicated that foreign nationals legally residing in Bulgaria have access to vocational guidance services.

The ECSR delegation pointed out that additional data would be necessary to form an opinion on the situation in practice:

**Conclusion**

The information provided was not sufficient to determine whether or not that provision could be accepted.

## ■ Article 10 (Right to Vocational Training)

### ECSR Case-law presented by Mr J-M. BELORGEY

#### Article 10§1 (Right to technical and vocational training and the granting of facilities for access to higher technical and university education)

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake

1. to provide or promote, as necessary, the technical and vocational training of all persons, including the handicapped, in consultation with employers' and workers' organisations, and to grant facilities for access to higher technical and university education, based solely on individual aptitude;

Notion of vocational training under Article 10§1 covers: initial training – i.e. general and vocational secondary education – university and non-university higher education, and vocational training organised by other public or private actors, including continuing training – which is dealt with under Article 10§3 of the Charter. University and non-university higher education are considered to be vocational training as far as they provide students with the knowledge and skills necessary to exercise a profession.

The right to vocational training must be guaranteed to everyone.

States must provide vocational training by several means:

- ensuring general and vocational secondary education, university and non-university higher education; and other forms of vocational training;
- building bridges between secondary vocational education and university and non-university higher education;
- introducing mechanisms for the recognition/validation of knowledge and experience acquired in the context of training/working activity in order to achieve a qualification or to gain access to general, technical and university higher education;
- taking measures to make general secondary education and general higher education qualifications relevant from the perspective of professional integration in the job market;
- introducing mechanisms for the recognition of qualifications awarded by continuing vocational education and training.

Facilities other than financial assistance to students (which is dealt with under paragraph 4, see below) shall be granted to ease access to technical or university higher education based solely on individual aptitude. This obligation can be achieved by:

- avoiding that registration fees or other educational costs create financial obstacles for some candidates;
- setting up educational structures which facilitate the recognition of knowledge and experience, as well as the possibility of transferring from one type or level of education to another.

The main indicators of compliance include the existence of the education and training system, its total capacity (in particular, the ratio between training places and candidates), the total spending on education and training as a percentage of the GDP; the completion rate of young people enrolled in vocational training courses and of students enrolled in higher education; the employment rate of people who hold a higher-education qualification and the waiting-time for these people to get a first qualified job.

According to the Appendix to the Charter, equal treatment shall be provided to nationals of other States lawfully resident or regularly working on the territory of the State concerned. This implies that no length of residence is required from students and trainees residing in any capacity, or having authority to reside in reason of their ties with persons lawfully residing, on the territory of the State

concerned before starting training. This does not apply to students and trainees who, without having the above-mentioned ties, entered the territory with the sole purpose of attending training.

Training of persons with disabilities is dealt with under Article 15 of the Charter for States having accepted both provisions.

## **Article 10§2 (Right to apprenticeship)**

**With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake**

- 2. to provide or promote a system of apprenticeship and other systematic arrangements for training young boys and girls in their various employments;**

According to Article 10§2, young people have the right to access to apprenticeship and other training arrangements. It means any training that combines theoretical and practical training and establishes close ties between training establishments and the working world.

Apprenticeship is assessed on the basis of the following elements: length of the apprenticeship and division of time between practical and theoretical learning; selection of apprentices; selection and training of trainers; remuneration of apprentices; termination of the apprenticeship contract.

The main indicators of compliance are the existence of apprenticeship and other training arrangements for young people, the number of people in, the total spending on these types of training and the availability of places for all those seeking them.

Equal treatment with respect to access to apprenticeship and other training arrangements must be guaranteed to non-nationals in the same conditions as those mentioned under Article 10§1.

## **Article 10§3 (Right to vocational training and retraining of adult workers)**

**With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake**

- 3. to provide or promote, as necessary:**
  - a adequate and readily available training facilities for adult workers;**
  - b special facilities for the re-training of adult workers needed as a result of technological development or new trends in employment;**

The notion of continuing vocational training under Article 10§3 includes adult education. The right to continuing vocational training must be guaranteed to employed and unemployed persons.

The Committee examines under Article 10§3 only those of the activation measures for unemployed people that strictly concern training, while under Article 1§1 it deals with general activation measures for unemployed people. Specific measures for long-term unemployed people are dealt with under Article 10§4.

For both employed and unemployed persons, the main indicators of compliance with this provision are the types of continuing vocational training and education available on the labour market, training measures for certain groups, such as women, the number of persons in training and the gender balance and the total expenditure as a percentage of the GDP.

In addition, the following aspects are taken into account:

- the existence of legislation on individual leave for training and its characteristics, in particular the length, the remuneration, and the initiative to take it;

– the sharing of the burden of the cost of vocational training among public bodies (state or other collective bodies), unemployment insurance systems, enterprises, and households as regards continuing training.

As regards employed persons, the existence of preventive measures against the deskilling of still active workers at risk of becoming unemployed as a consequence of technological and/or economic progress is also taken into consideration. Self-employed persons are also covered by this provision.

As regards unemployed people, the activation rate – i.e. the ratio between the annual average number of previously unemployed participants in active measures divided by the number of registered unemployed persons and participants in active measures – is assessed to analyse the impact of the States' policies.

Equal treatment with respect to access to continuing vocational training must be guaranteed to non-nationals in the same conditions as those mentioned under Article 10§1.

### **Article 10§4 (Right to vocational training for long-term unemployed persons)**

**With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake**

- 4. to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;**

In accordance with Article 10§4, States must fight long-term unemployment through retraining and reintegration measures. For the purpose of this provision a long-term unemployed is a person who has been without work for 12 months or more.

The main indicators of compliance with this provision are the types of training and retraining measures available on the labour market, the number of persons in this type of training, the special attention given to young long-term unemployed, and the impact of the measures on reducing long-term unemployment.

Equal treatment with respect to access to training and retraining for long-term unemployed persons must be guaranteed to non-nationals in the same conditions as those mentioned under Article 10§1.

### **Article 10§5 (Right to the full use of facilities available)**

**With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake**

- 5. to encourage the full utilisation of the facilities provided by appropriate measures such as:**
  - a reducing or abolishing any fees or charges;**
  - b granting financial assistance in appropriate cases;**
  - c including in the normal working hours time spent on supplementary training taken by the worker, at the request of his employer, during employment;**
  - d ensuring, through adequate supervision, in consultation with the employers' and workers' organisations, the efficiency of apprenticeship and other training arrangements for young workers, and the adequate protection of young workers generally.**

States must ensure that vocational training, as defined under Article 10§1, is provided free of charge or that fees are reduced. States must provide financial assistance either universally, or subject to a means-test, or awarded on the basis of the merit. In any event, assistance should at least be available for those in need and shall be adequate. It may consist of scholarships or loans at preferential interest rates.

Equal treatment with respect to fees and contributions and financial assistance must be guaranteed to non-nationals to non-nationals in the same conditions as those mentioned under Article 10§1.

The time spent on supplementary training at the request of the employer during employment must be included in the normal working-hours. Supplementary training means any kind of training that may be helpful in connection with the current occupation of the workers and aimed at increasing their skills. It does not imply any previous training. The term “during employment” means that the worker shall be currently under a working relationship with the employer requiring the training.

States must evaluate their vocational training programmes for young workers, including the apprenticeships. In particular, the participation of employers’ and workers’ organisation is required in the supervision process.

### **The situation in Bulgaria**

Rules governing vocational training are laid down *inter alia* in

- National Education Act of 1<sup>st</sup> October 1991 (SG No. 86/1991 as amended up to SG No. 68/1999) (last amended by Act of 10 September 2002 SG No. 90/2002). See in particular Articles 4 and 9
- Act on Vocational Education and Training of 15 July 1999 (SG No. 68/1999), as amended by Act of 19 March 2003 (SG No. 29 /2003)
- Employment Promotion Act of 20 December 2001 (SG No. 112/2001). See in particular Articles 1, 36, 41, 57, 61, 63, 66.

The ECSR delegation pointed out that additional data on the rate of performance of the vocational training system would be necessary to form an opinion on the situation in practice.

### **Conclusion**

The information provided was not sufficient to determine whether or not these provisions could be accepted.



## ■ Article 12§2 (Right to social security)

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

2 to maintain the social security system at a satisfactory level at least equal to that necessary for the ratification of the European Code of Social Security;

### ECSR Case-law presented by Mr J-M. BELORGEY

Article 12§2 obliges states to establish and maintain a social security system which is least equal to that required for ratification of the European Code of Social Security. The European Code of Social Security requires acceptance of six of the nine contingencies although certain branches count for more than one part<sup>2</sup>. Each contingency sets minimum levels of personal coverage and minimum levels of benefits.

Where the State concerned has ratified the European Code of Social Security the Committee bases its conclusions on the Committee of Minister's Resolutions under the Code (which are in turn based on the assessment of the ILO Committee of Experts and the Committee of Experts on Standard-setting Instruments in the Social Security Field). Failure to comply with the European Code of Social Security will lead to a conclusion of non-conformity with Article 12§2, where the state is not in compliance with at least the minimum parts for ratification.

When the State concerned has not ratified the European Code of Social Security, the Committee makes its own assessment of the social security system in order to decide on the conformity with Article 12§2.

### The situation in Bulgaria

Bulgaria has not ratified the European Code of Social Security. During the meeting it was pointed out that the contingencies covered by the Code are now regulated in domestic law but that efforts will need to be made in order to increase the level of benefits.

Rules governing social security are laid down *inter alia* in the Social Security Code (SG No. 110/2000) as amended (up to SG No. 67/2003); the Act of 8 June 2004 on Health Benefits (SG No. 49/2004); the Act of 4 June 1998 on Health Insurance as amended up to SG No. 114/2003.

### Conclusion

In view of the current case law and the current legal situation and practice the provision could not be accepted by Bulgaria.

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<sup>2</sup> Medical care counts as two parts, and old age counts as three.

## ■ Article 12§4 (Right to social security of persons moving between states)

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

4 to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

a equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

b the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties.

### ECSR Case-law presented by Mr J-M. BELORGEY

In order to ensure the right to social security of persons moving between States the following principles must be guaranteed:

#### Right to equal treatment (Article 12§4a)

States are required to eliminate from their social security legislation all discrimination against foreigners, nationals of other Parties.

National legislation cannot reserve a social benefit to nationals only, or impose extra or more restrictive conditions on foreigners only, apart from the completion of a period of residence for non-contributory benefits. The Committee ascertains whether the length of residence required is in proportion to the objective pursued.

National legislation may not stipulate eligibility criteria for social security benefits which, although they apply without reference to nationality, are harder for foreigners to comply with and therefore affect them to a greater degree.

#### Right to maintenance of acquired rights (Article 12§4a)

The Committee's supervision consists mainly of verifying that invalidity benefit, old age benefit, survivor's benefit and occupational accident or disease benefit acquired under the legislation of one state according to the eligibility criteria laid down under national legislation are maintained whatever the movements of the beneficiary.

#### Right to retention of accruing rights (Article 12§4b)

There should be no disadvantage for a person who changes their country of employment where they have not completed the period of employment or insurance necessary under national legislation to confer entitlement and determine the amount of certain benefits. Implementing this principle entails, where necessary, the aggregation of employment or insurance periods completed abroad and, in the case of long-term benefits, a pro-rata approach to the conferral of entitlement, the calculation and payment of benefit.

#### *Means of implementation*

The guarantee of equal treatment within the meaning of Article 12§4 requires states to remove any form of discrimination from their social security legislation.

As regards the other principles of co-ordination, states may choose between the following means: multilateral convention, bilateral agreement or any other means such as unilateral, legislative or administrative measures.

Where there is little migratory flow between two states, the adoption of unilateral measures in the form of administrative arrangements or solving each existing and future individual case may be considered sufficient.

Where a large number of nationals are concerned, the implementation of these principles is mostly done through the ratification of an international multilateral or bilateral instrument which sets down the technical and practical aspects. States that have ratified the European Convention on Social Security are presumed to have made sufficient efforts to guarantee the retention of accruing rights.

### **The situation in Bulgaria (Source: the Government report on provisions not accepted)**

#### National legislation

The Social Security Code does not differentiate Bulgarians from foreign citizens, in relation to rights and obligations, specified in its provisions. If the person has an income from a job in Bulgaria and belongs to any of the categories listed in Article 4, he is liable to compulsory or voluntary insurance for particular risks, no matter what his nationality is.

In relation to foreign citizens' social security, there is a restriction, specified in the provision of Article 54a§1, point 1 of the Social Security Code. It prescribes a registration of the unemployed person in the respective regional office of the Employment Agency, as a precondition for the right of an unemployment compensation. The interpreted requirement, concerning Article 18 of the Law on Encouragement of Employment, provides a possibility for registration in the regional offices of the Employment Agency only for the Bulgarian citizens, and foreigners with a permit for permanent residence, those who have been granted an asylum, a refugee or humanitarian status, when this is provided in an international agreement where the Republic of Bulgaria is a party. Thus, the requirement specifies those foreign citizens, who do not come under any of the listed categories, cannot get an unemployment compensation.

The registration in the Labour Bureau Directorate is a compulsory requirement for using all the services there. Consequently, foreigners with a continuous or a short-term residence could not use them.

Besides the Bulgarian citizens, as it is prescribed in the Health Insurance Act, the compulsory health-insured people in the National Health Insurance Fund, are foreigners. And also people without citizenship who have a permit for a long-term residence in the Republic of Bulgaria, unless otherwise provided for in an international agreement where the Republic of Bulgaria is a party, as well as people who have granted an asylum, a refugee, or humanitarian status. Consequently, foreigners who have a short-term residence permit cannot insure themselves in the National Health Insurance Fund.

There are two types of agreements in the sphere of social security, concluded between the Republic of Bulgaria and other countries.

#### Bilateral agreements

The older type of agreements concluded in the 50ies and 60ties at conditions different from the present day socio-economic times and some of them are based on the territorial principle - the person receives compensation in the country where he is, regardless of the concrete contributions. At present, Bulgaria is working on a gradual replacement of these agreements with agreements based on the contemporary principles of international and European security law. In particular in all new agreements the rule for equal treatment of the citizens of the parties concerning the right to social security, including retaining the compensations, provided in the legislation in the sphere of social security, regardless of the movements of such persons between the territories of the negotiating parties (the so called export of compensations) is followed. In all our newly drawn up agreements (with the exception of that with the Kingdom of the Netherlands) also applied are the rules for the presentation, maintenance and restoration of the rights of the system for social security through means such as the summing of the periods of security or employment, acquired in accordance with the legislation of any of the contracting parties.

On the other hand, owing to the forthcoming accession of Bulgaria to the EU, which will lead to the direct application of Regulation 1408/1971, and 574/1972 the efforts of the Ministry of Labour and Social Policies also directed towards conclusion of agreements for social security with EU member countries. The aim of the conclusion of these agreements, regardless whether they will cease functioning from the moment of the accession of Bulgaria to the EU, is to prepare the country for the application of the mechanism for coordination of the social security systems established with the cited regulations which function between all EU member countries and the countries of the European economic area.

#### *Existing agreements*

- Agreement on state and social security, between the People's Republic of Bulgaria and the People's Republic of Albania, signed for the purpose of updating the existing legal basis and agreements
- Convention on social security concluded between the People's Republic of Bulgaria and the Federal People's Republic of Yugoslavia: currently applied in the relations with Bosnia and Herzegovina, the Republic of Slovenia, and Serbia and Montenegro.
- Convention on cooperation in social issues, signed by the People's Republic of Bulgaria and the Romanian People's Republic.
- Agreement for cooperation in the sphere of social policies between the People's Republic of Bulgaria and the Hungarian People's Republic.
- Agreement for cooperation in the sphere of social policies between the People's Republic of Bulgaria and the Polish People's Republic.
- Agreement on social security between the People's Republic of Bulgaria and the Great Popular Socialist Arab Libyan Jamahiriya.

#### *New-type agreements*

- Agreement between the People's Republic of Bulgaria and the Federal Republic of Germany for social security in force since February 1, 1999.
- Agreement between the People's Republic of Bulgaria and the Czech Republic for social security in force since January 1, 2000
- Agreement between the People's Republic of Bulgaria and the Slovak Republic for social security in force since January 1, 2000
- Agreement between the People's Republic of Bulgaria and the Ukraine for social security in force since April 1, 2003.
- Agreement between the People's Republic of Bulgaria and the Republic of Macedonia for social security in force since August 1, 2003.
- Agreement between the People's Republic of Bulgaria and the Kingdom of Spain for social security in force since November 1, 2003.
- Agreement between the People's Republic of Bulgaria and the Republic of Croatia for social security in force since October 1, 2004.
- Agreement between the Republic of Bulgaria and the Government of the Republic of Turkey for the payment of Bulgarian pensions in the Republic of Turkey which does not settle relations in the sphere of social security in its entirety but only the payment of Bulgarian pensions on the territory of the Republic of Turkey, in force since March 1, 1999.

#### Agreements in the course of preparation

##### 1. Projects intended to replace earlier agreements from the 1950ies and 1960ies:

- The Republic of Poland, signed June 9, 2005. Pending ratification by the National Assembly as well as signature of the Administrative agreement.
- The Republic of Hungary: draft agreements and administrative agreements have been coordinated, however no date for signature has been discussed, as the Hungarian party has presented information that a procedure of approval is underway.
- Romania: draft agreement coordinated and initialised in April 2005, the date of signature to be fixed.
- The Russian Federation: three rounds of negotiations, the successive round is forthcoming in the autumn of 2005 in Moscow.

- The Republic of Moldova: the first round of preliminary consultations has been held, the fixing of dates and the dates and places for subsequent consultations is forthcoming.
- Serbia and Montenegro: signed, however the exchange of ratification documents is delayed owing to the insistence of the Serbian side.

2. Agreements aiming to prepare the country for the application of the mechanisms of coordination of EU social security schemes. The agreements themselves shall cease to function from the date of Bulgaria's accession to the EU.

- Kingdom of Belgium: signed on June 17, 2005. The administrative agreement to it remains to be prepared.
- Grand Duchy of Luxembourg: signed December 1, 2004, ratified by the National Assembly in April 2005.
- The Hellenic Republic: it is possible that the process of negotiations will not allow its drawing up in time, owing to the delay of the negotiations, so that there will not be enough time to begin applying it before 2007.
- The Kingdom of the Netherlands: signed February 9, 2005, adopted by the Council of Ministers. In order to come into force, the Bulgarian side is waiting to be informed by the Dutch side by a Note that it has been confirmed.
- The Republic of Austria: signed on April 14, 2005 in Sofia, together with the agreement for its application.
- The Portuguese Republic: owing to the late start of the process of negotiations the agreement will probably not come into force by 2007. A second round of consultation is forthcoming in November in Lisbon.
- The Republic of Cyprus: the correspondence on preparation of the texts is conducted entirely by the Bulgarian National Social Security Institute. The date for signature remains to be fixed.
- The Swiss Confederation: the text of the agreement was coordinated between the Bulgarian National Social Security Institute and the Swiss side and the date for signature remains to be fixed.

## **Conclusion**

In view of the current case law and the current situation the provision could not be accepted by Bulgaria.

## ■ Article 13§4 (Right to specific emergency assistance for non-residents)

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

- 4 to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.

### ECSR Case-law presented by Ms C. DUBOIS-HAMDI

Pursuant to Article 13§4, foreign nationals who are, either lawfully or not, present in a Party's territory have the right to emergency assistance.

Emergency assistance entails food, accommodation, clothing and emergency medical care.

Persons covered by this provision may be repatriated, however the relevant provisions of the 1953 European Convention on Social and Medical Assistance must be respected.

### The situation in Bulgaria

Rules governing social assistance are laid down in the Act of 7 May 1998 on Social Assistance (SG No. 56/1998) as amended up to 2003 and in the Act of 4 June 1998 (SG No. 70/1998) on Health Insurance as amended up to SG No. 114/2003.

Article 2§4 of the Social Assistance Act provides that the following foreigners are entitled to social assistance benefits: holders of a permanent residence permit in Bulgaria, refugees, holders of a residence permit issued for humanitarian reasons, and "persons on whom such entitlement is conferred by international treaties to which Bulgaria is party".

Article 33§3 of the Health Insurance Act, amended, provides that this system covers Bulgarian citizens and foreign nationals and stateless persons who are resident in Bulgaria for long periods, "unless otherwise provided in an international treaty to which Bulgaria is party".

During the meeting it was indicated that the Revised Charter is not one of these "international treaties to which Bulgaria is party" as referred to in the abovementioned Acts, notably because in the field of sickness insurance the Act is referring to bilateral rather than multilateral treaties.

### Conclusion

In view of the current case law and the current situation the provision could not be accepted by Bulgaria.

■ **Article 15 (Right of persons with disabilities to independence, social integration and participation in the life of the community)**

**ECSR Case-law presented by Mrs C. DUBOIS-HAMDI**

**Article 15§1 (Right to vocational training for persons with disabilities)**

**With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake,**

- 1. in particular to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;**

According to Article 15§1, all persons with disabilities have a right to education and training: general education, basic compulsory education and further education as well as vocational training in the traditional sense.

Persons with disabilities must be integrated into mainstream facilities; education and training must be made available within the framework of ordinary schemes and, only where this is not possible, through special facilities.

Education in special schools or adapted education in mainstream schools must be of an adequate quality.

Legislation should prohibit discrimination on the basis of disability in the field of education. Such legislation should, as a minimum, require compelling justification for special or segregated educational systems and confer an effective remedy on those who have been unlawfully excluded, segregated or otherwise denied an effective right to education.

States must take measures (such as the support of teachers and the accessibility of premises) in order to enable integration and must demonstrate that tangible progress is being made.

**Article 15§2 (Right to employment of persons with disabilities)**

**With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake,**

- 2. in particular to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;**

Article 15§2 requires states to promote access to employment on the open labour market for persons with disabilities, *inter alia*, by adjusting working conditions to the needs of persons with disabilities.

To this aim, legislation must prohibit discrimination on the basis of disability in employment as well as the dismissal on the basis of disability.

States enjoy a margin of appreciation concerning the other measures they take in order to promote access to employment of persons with disability (e.g. the introduction of quotas).

Sheltered employment facilities must be reserved for those persons with disabilities who, due to their disability, cannot be integrated into the open labour market. They should aim to assist their beneficiaries to migrate to the open labour market. Persons working in sheltered employment facilities

where production is the main activity are entitled to the basic provisions of labour law and in particular the right to fair remuneration and trade union rights.

### **Article 15§3 (Right to integration and participation of persons with disabilities in the life of the community)**

**With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake,**

- 3. in particular to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure.**

This provision requires states to adopt a coherent policy in the disability context: positive action measures to achieve the goals of social integration and full participation of persons with disabilities. Such measures should have a clear legal basis and be coordinated. People with disabilities should have a voice in their design, implementation and review. Furthermore, legislation should prohibit on the ground of discrimination disability in all areas mentioned in this paragraph as well as effective remedies for those who have been unlawfully treated.

The right of persons with disabilities to social integration provided for by Article 15§3 implies that barriers to communication and mobility be removed in order to enable access to transport (land, rail sea and air), housing (public, social and private), cultural activities and leisure.

In addition, sign language must have an official status, telecommunications and new information technology must be accessible.

All new public transport vehicles, all newly constructed or renovated public buildings, facilities and buildings open to the public should be physically accessible.

The needs of persons with disabilities must be taken into account in housing policies; including the construction of an adequate supply of suitable housing including social housing.

Further assistance should be provided for the adaptation of existing housing.

### **The situation in Bulgaria (Source: Government report on the provisions not accepted)**

Rules governing persons with disabilities are laid down in

- the Act of 17 September 2004 on the Integration of Persons with disabilities (SG No. 81/2004);
- the National Education Act of 1<sup>st</sup> October 1991 (SG No. 86/1991 as amended up to SG No. 68/1999) (last amended by Act of 10 September 2002 SG No. 90/2002);
- the Act on Vocational Education and Training of 15 July 1999 (SG No. 68/1999), as amended by Act of 19 March 2003 (SG No. 29 /2003);
- the Employment Promotion Act of 20 December 2001 (SG No. 112/2001)
- the Act on protection against discrimination (2003).

This Act on Integration of Persons with disabilities' objective is to provide conditions and guarantees for equal treatment of persons with disabilities their social integration. Alongside with the established environment of independence, they preserve their rights to social aid, adequate social services, integrated training and education, adequate working environment, opportunities for participation in cultural and sports events.



## Education

In Section II of the Act on Integration of Persons with Disabilities, the measures are regulated connected with the education and the professional qualifications of persons with disabilities.

Teams assisting the regional inspectors of the ministry of Education and science are set up for the complex pedagogic assessment and integrated training of children with disabilities aiming to ensure education and vocational training.

Children with special educational needs are trained and educated integrated in nursery schools and schools.

The ministry of Education and Science provides for:

- Training of pre-school and school age in accordance with the terms and procedures of the National Education Act;
- Supportive environment for children's integrated training;
- Early hearing-and-speech, logaedic and mental rehabilitation and rehabilitation of blind and short-of-sighted children;
- Textbooks, reference books, school aids, modern technology and technical school appliances for the training of schoolchildren under 18 or until the graduation from their high schools;
- Opportunities for training of children with special educational needs who are not integrated into a common educational environment;
- Right to additional free training following programmes aimed at setting up basic skills in cases when the disability has occurred before the child has completed the age of 16.

The schools of higher learning ensure supportive environment, special appliances, appropriate school aids and additional teachers' aid, and prepare experts for work with persons with disabilities.

The vocational training of persons with disabilities is promoted by The Employment Agency, the employers or by the bodies responsible for appointments, private persons or legal entities registered under the Trade Law and legal entities, which provide social services for persons with disabilities as well as by specialised undertakings and co-operations of and for persons with disabilities.

The Agency for persons with disabilities each year finances projects of NGOs of and for persons with disabilities; over 70% of these projects refer to vocational guidance, education and training of those beneficiaries with various types of disabilities.

## Employment

Ensuring access to employment to persons with disabilities with a view to their full scale integration within community life and achieving economic independence proves to be one of the priority tasks of the Government of the Republic of Bulgaria. Measures meant for implementing of this goal were laid down in a number of government documents, such as the National strategy for integration of persons with disabilities, National action plan on equal opportunities for persons with disabilities 2003-2005, the Act on Promotion of Employment, the National Programmes on vocational training and employment of persons with permanent disabilities 2003 – 2005, the Act on Integration of Persons with Disabilities and the Rules for implementation thereof. Section III of the Act on Integration of Persons with Disabilities provides for specific measures aimed at ensuring employment of persons with disabilities in ordinary or specialised environment, the application of these measures is described in details in Chapter IV of the Rules for implementation of the Act on Integration of Persons with Disabilities.

Employment of persons with disabilities is done in integrated working environment, in specialised working environment, in specialised working environment and by own business.

"Integrated working environment" is a kind of working environment ensuring opportunities of joint work between persons with disabilities and persons without disabilities.

"Specialised working environment" is working environment in specialised undertakings adapted for persons with relevant disabilities.

Setting up own business is done with the support of the Agency for persons with Disabilities with financing for development of projects.

The Ministry of Labour and Social Policy and the Employment Agency develop and implement national programmes and measures for encouragement of employment ensuring equal opportunities to persons with Disabilities on the labour market. These programmes and measures provide funding for stimulating employers who would ensure employment to persons with Disabilities. The employers (respectively the body charged of appointments) undertake to adapt the working place to the needs of persons with Disabilities when these are recruited or when the disability occurs after these have already been recruited, except when the expenditures for this are unreasonably high and would be a serious obstacle for the employer.

According to Article 25 of the Act on Integration of Persons with Disabilities when persons with Disabilities are hired, the employers whose undertakings have ordinary environment may apply before the Agency for persons with disabilities submitting projects for financing for the following:

- Ensuring access to a working place;
- Adapting the working place ;
- Equipment of the working place .

The procedure for applying and granting financing is laid down in Article 17 of Rules for implementation of the Act on Integration of Persons with Disabilities. It is important to notice that all legal entities may apply in the quality of employers, if registered under the current legislation (state and municipal firms, private businesses, NGOs, etc.). Their application should be done through developing and submitting a project meeting requirements of methodology made out and endorsed for this purpose by the Minister of Labour and Social Policy; the employers who have gained financing for hiring persons with permanent disabilities are bound to preserve those jobs for such beneficiaries for a term not shorter than 3 years.

For 2005 and until now, the Agency for Persons with disabilities has financed 11 projects starting from 2005 until now of ordinary environment employers coming to a total amount of 110 000 BGN thus providing for employment to 20 persons with permanent disabilities.

The Act on Integration of Persons with Disabilities also stipulates financial stimuli for the employers featuring specialised working environment, the so called specialised undertakings and co-operations of persons with Disabilities. According to Article 28§2 of the Act on Integration of Persons with Disabilities, these may be financed for target projects by the Agency for Persons with disabilities using a procedure laid down in Article 20 of Rules for implementation the Act on Integration of Persons with Disabilities. For this purpose, a methodology was developed, which was endorsed by the Minister of Labour and Social Policy, consisting of 2 sections: Section I, assessment of projects with a social target, and Section II, assessment of business investment projects. This methodology targets, on the one hand, improvement and/or ensuring healthy and safe conditions of work in relevant production structures, enhancement of persons with Disabilities' qualifications or acquiring new such qualifications, adaptation of their new working places, and, on the other, at technologic renovation of these undertakings aimed at increasing labour productivity, production quality, and pay rise.

In respect of these two sections of the above quoted methodology, each year the Agency for Persons with disabilities finances projects of specialised undertakings and co-operations of persons with Disabilities amounting to a total of approximately 2 000 000 BGN

The Council of Ministers states the merchandises and services whose production is assigned, following a procedure stipulated by the Public Procurement Law, to the specialised undertakings and co-operations of persons with Disabilities.

The new Act on integration of persons with Disabilities should be noticed to have, among others, introduced the quota principle for ordinary environment employers having personnel of 50+ (Article 27 of the Act), namely: these employers are bound to assign not fewer than the half of the total lot of jobs in accordance with Article 315, paragraph 1 of the Labour Code to persons with permanent disabilities

and to declare such vacant jobs with the territorial local divisions of the Employment Agency. The law also provides some administrative sanctions against employers who break these regulations.

The new legislation provides some preferences for specialised and ordinary environment employers who enjoy financing of projects from the Agency for Persons with disabilities. These employers have 30% of insurance payments reimbursed paid in for state public insurance, compulsory health insurance, additional compulsory health insurance and additional compulsory pension insurance following a specific procedure laid down in Regulation no. 4 of 20.05.2005.

#### Integration and participation in the life of the community

Section IV of the law stipulates the procedure for providing conditions of affordable living and architectural environment.

Both State authorities and local authorities/governments set up the structure and construction of urbanised territories for the population including urbanised territories for persons with disabilities under conditions and procedures laid down in the Law on Structure of Territory.

The Ministry of Regional Development and Public Works provides conditions of affordable living and architectural environment for persons with disabilities by developing normative acts, rules, norms and standard rates applying to the urbanised territory and its elements, buildings, structures and elements thereof and elements for adapting existing buildings for public usage and their adjacent environment.

The Ministry of Transport and Communications provides for conditions for access of persons with disabilities to transport services by developing normative acts and standards for ensuring accessible transport for public usage, by introducing technical aids in the public space and the public transport aiming to facilitate commuting of persons with disabilities; ensuring special conditions of motion, stopping, parking and stay of motor vehicles driven by persons with disabilities or transporting such people; ensuring unobstructed access to the public transport to persons with disabilities accompanied by guide dogs.

By 31.12.2006 the latest, the competent institutions should provide for free access to public buildings and structures (are municipal or state owned) to persons with disabilities by overcoming relevant architectural, transport or communication barriers.

The Minister of Labour and Social Policy shall issue a Regulation on terms and procedures for the production, import, sale and maintenance of technical support appliances, aids, devices and structures for persons with Disabilities, and annually endorse a list thereof. The import of support appliances, aids, devices and materials for production thereof is duty free and VAT free.

Pursuant to Section IV of the Act on Integration of Persons with Disabilities, persons with disabilities have the right to a target aid for the purchase or repair of an support device, appliance or structure. Ensuring this right is performed monthly by companies manufacturing and/or importing such support devices, which companies have been authorised for such activity under the above stated Regulation of the Minister of Labour and Social Policy. Financing of lawful provision of target aid for the purchase or repair of an support device, appliance or structure is commissioned by the Agency for persons with disabilities. The Agency spends around yearly BGN 32 000 000 on this activity.

Persons with disabilities have the right to a target aid for: a monthly allowances for disabled under 18 with permanent disabilities; purchase and modification of personal motor vehicles, modification of a house for people on wheel-chairs; use of an interpreter from/to gesture-and-mimic language for persons with affected hearing and an assistant for persons with affected sight when these persons would wish to visit any state, municipal, health care, cultural or other institutions. The Act on Integration of Persons with Disabilities was supplemented by a text whereby a companion is assigned to persons with affected mobility with 90 per cent working capacity reduced.

The Agency for Young people and Sports and the Ministry of Education and Science in cooperation with the municipalities, sports federations and sporting clubs provide for conditions targeting the social integration of persons with disabilities through adapting and providing sport facilities, promoting sport events involving media, supporting sportsmen with disabilities' participation in training sessions and competitions and supporting extra school children's and young people's activities.

The Ministry of Culture in cooperation with the municipalities ensures conditions for integration of persons with disabilities by providing them with specialised information on use of services, routes, architectural, transport and other relieves in localities of public use intended for leisure and culture, support for development of talent and encouragement of art appearances.

The municipalities within their competences ensure:

- Construction of accessible architectonic environment in kindergartens and schools;
- Accessible public transport for passengers through adaptation of existing public transport vehicles to transport vehicles technically adapted for disabled persons;
- Access for persons with disabilities accompanied by guide dogs to locations of public use;
- Special transport services;
- Relevant material conditions and means for socialisation.

The Bulgarian National Television, the Bulgarian National Radio and the Bulgarian Telegraph Agency shall ensure information accessible to persons with disabilities and shall include specialised programmes into their broadcasting schedules.

In Section V of the Act the socio-economic protection of persons with disabilities is considered.

Specialised undertakings, work-and-medical-treatment facilities, independent manufacturing units and cooperatives shall benefit preferences pursuant to the Act on Corporate Income Taxation and the Law for Taxation of the Personal Income of Individuals.

Persons with permanent disabilities who earn income from their work activity benefit preferences under the Act for Taxation of the Personal Income of Individuals.

Persons with permanent disabilities have the right to a monthly allowance for social integration. This allowance is differentiated and is in the form of money, which adds to their own income aimed to covering additional expenses on transport, information and telecommunication services, training, medical treatment in spas, and rehabilitation services, dieted nutrition and medicinal products, available information, and meeting some other vital needs. The overall size of such allowance is made up as a sum of funds dedicated to needs determined by a commission. In cases when the persons are accommodated at full governmental or municipal upkeep in medical institutions and in specialised institutions for a period exceeding 1 month, these shall have no right to benefit from the allowance for social integration.

Persons with permanent disabilities, in line with their needs, have the right to import a personal motor vehicle whose equivalence in BGN, volume of motor, and motor output being to a limit specified by the Council of Ministers, shall be duty free and VAT free pursuant the terms and procedures provided by the VAT Law.

The time through which the persons have taken care for a person with a permanent disability and have not been insured shall be deemed to count for insurance length of service at the instance of retiring to pension in conformity with the conditions and procedures provided by the Social Insurance Code. For the same period, the persons are deemed to have been health insured in conformity with the conditions and procedures provided by the Health Insurance Law.

Students with permanent disabilities, as well as children of persons with permanent disabilities have the right to scholarships and other relieves in conformity with the conditions and procedures provided by the Act on National Education and the Higher Education Act.

The municipalities provide for to persons with disabilities housing from the municipal housing stock in conformity with the conditions and procedures provided by the Act on Municipal Property.

## **Conclusion**

In view of the current case law and the current legal situation and practice the provision could be accepted by Bulgaria.

## ■ Article 17§1 (Right of children and young persons to assistance, education and training)

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:

- 1 a to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
- b to protect children and young persons against negligence, violence or exploitation;
- c to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;

### **ECSR Case-law presented by Mrs. C. DUBOIS-HAMDI**

Article 17§1 integrates into the Social Charter rights which are guaranteed by the United Nations Convention on the Rights of the Child.

#### Status of the child

- i) Right to equal status independent of the conditions of birth. Article 17 requires that there is no discrimination between children born within marriage and outside marriage, for example in matters relating to inheritance rights and maintenance obligations
- ii) Right to an identity. There must be procedures for establishing parentage, adoption must be adequately regulated and further, in principle, there must be a right for an adopted child to know his or her origins.

#### Criminal liability and criminal law in respect of children

The age of criminal responsibility must not be too low. Further the criminal procedure relating to children and young persons must be adapted to their age. Minors should only exceptionally be remanded in custody and only for serious offences and should in such cases be separated from adults.

Prison sentences should only exceptionally be imposed on young offenders. They should only be for a short duration and the length of sentence must be laid down by a court. Likewise, pretrial detention should not be of an excessive duration. Young offenders should not serve their sentence together with adult prisoners.

#### Special protection

- i) Prohibition of violence

Article 17 requires states to prohibit all forms of violence against children. The prohibition must have a legislative basis and must cover all forms of violence regardless of where it occurs (whether at school, in institutions in the home etc.) or the identity of the alleged perpetrator. It therefore includes corporal punishment. Furthermore the sanctions available must be adequate i.e. dissuasive and proportionate.

Even if violence against the person is prohibited under the general criminal law and provides for increased penalties where the victim is a child, this will not constitute a sufficient prohibition in law to comply with Article 17 of the Charter, unless a state can demonstrate that such legislation is interpreted as prohibiting corporal punishment and effectively applied as so doing.

ii) Protection of children in public care

Any restrictions or limitations of parents custodial rights should be based on criteria laid down in legislation, and should not go beyond what is necessary for the protection and best interest of the child and the rehabilitation of the family. The long term care of children outside their home should take place primarily in foster families suitable for their upbringing and only if necessary in institutions. Institutional care should be organized in small units and should be as close to a family setting as possible.

Fundamental rights and freedoms such as the right to integrity, privacy, property and to meet with persons close to the child must be adequately guaranteed for children living in institutions.

National legislation must provide a possibility to lodge an appeal against a decision to restrict parental rights, to take a child into public care or to restrict the right of access of the child's closest family. Further a procedure must exist for complaining about the care and treatment in institutions. There must be adequate supervision of the child welfare system, and in particular of the institutions involved.

**The situation in Bulgaria (source: Government report on provisions not accepted)**

Status of the child; criminal law in respect of children; protection against violence

Rules governing these areas are laid down *inter alia* in Act of 31 May 2000 on Child Protection (SG No. 48/2000) as amended up to 2003, Family Code SG No. 41/1985 as amended up to 2005, Criminal Code SG No. 26/1968 as amended up to 2005

Protection of children in public care

Rules governing this area are laid down *inter alia* in Act of 31 May 2000 on Child Protection (SG No. 48/2000) as amended up to 2003, Family Code SG No. 41/1985 as amended up to 2005,

A specialised body for implementing specific measures ensuring child protection at a municipality level is the Social Assistance Directorate acting through the *State Agency for Child Protection*. Pursuant to the Rules for implementation the Child Protection Act, each claim brought to the Social Assistance Directorate on a child for whom there is a risk of abandoning or placement with a specialised institution, the State Agency for Child Protection conducts an inspection and an investigation on what the possibility is for the family to cope with their child, the risk for the child, and on the footing of the assessment made, the social report worked out and the relevant action plan, takes a measure for protection of the child with a family environment or placing the child out of the family with a view to protecting his rights and interests. Placing a child out of his family is a measure taken after all possibilities have been exhausted for protection within a family environment. The State Agency for Child Protection searches for a possibility to accommodate the child with a family or friends or with an adoptive family. Placing a child with a specialised institution is only taken as an extraordinary protection measure after all possibilities have been exhausted of raising the child with a family or friends or adoption and in case of lack of an appropriate adoptive family, since leading principles in the sphere of the child protection are raising children in a family environment and ensuring his interests to the best possible extent. In family environment, basic needs of a child are met indispensable for setting up his personal identity: autonomy, individualised attitudes and emotional propinquity with an adult besides the basic physiological needs of children such as shelter, food, health assistance and education.

Implementing the Child Protection Act, a number of texts were adopted focusing on ensuring raising children in family environment and protection of their interests, namely:

1. Regulation on terms and procedures for applying, selection and approving adoptive families and accommodation of children with such families; this Regulation regulates various types of accommodation with an adoptive family, the criteria to be met by candidates from an adoptive family, the selection process, etc.

2. Regulation on terms and procedures aimed at implementing measures focusing on child abandoning prevention and accommodation of children with institutions, as well as their reintegration, thereby a mechanism is specified whereby the State Agency for Child Protection at Social Assistance Directorates render assistance to families experiencing hard times through providing conditions for raising and educating a child in a family environment aiming to overcome the risk of placing such a child with a specialised institution;

3. Regulation on specialised protection of children in public locations; the objective of this Regulation is to ensure protection to children against dangers for their physical, mental, moral and social development, and to encourage children to take responsibility of themselves. Specialised protection of children in public locations is ensured by the bodies of the Ministry of the Interior, the Social Assistance Directorates at the Social Assistance Agency, the municipalities, the regional inspectorates on education at the Ministry of Education and Science, the regional health care centres, and by the owners, leaseholders and users of commercial units, cinemas and theatres, as well as by promoters of public events;

4. Regulation on criteria and standards for children oriented social services: By introducing criteria and standards for children oriented social services, safe and secure environment is ensured for raising and education of children and protection of children's interests. Criteria and standards are obligatory for all social services for children providers, such as the State, the municipalities, the private persons registered under Article 43 b of the Child Protection Act.

Furthermore, the Council of Ministers adopted a number of strategic documents providing specific commitments in the sphere of child protection, namely the *National Strategy on Child* for the period 2004-2006, the 2005 National Child Protection Programme, the 2003-2005 National Strategy on Street Children's Rights Protection and the 2003-2005 National Action Plan on Street Children's Rights Protection. All these documents are based on the principle of guaranteeing the supreme child's interests and on the principles of raising a child in a family environment and consideration and respect of child's personality. These focus on providing for conditions for respecting rights of all children in Bulgaria aiming to improving their well being and supporting their families.

## **Conclusion**

In view of the current case law and the current legal situation and practice the provision could be accepted by Bulgaria.

**■ Article 18§1 (Right to engage in a gainful occupation in the territory of other Parties – Applying existing regulations in a spirit of liberality)**

**ECSR Case-law presented by Mr N. ALIPRANTIS**

**With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake**

**1. to apply existing regulations in a spirit of liberality;**

Article 18 applies to employees and the self-employed who are nationals of Parties to the Charter. It also covers members of their family allowed into the country for the purposes of family reunion.

Article 18 covers not only workers already on the territory of the Party concerned, but also those in their country of origin.

This article also covers foreign workers who have obtained employment but subsequently lose it.

The Committee's assessment of the degree of liberality used in applying existing regulations is based on figures showing the refusal rates for work permits. To this end, the figures supplied must be broken down by country and must also distinguish between first-time applications and renewal applications.

**Article 18§2 (Right to engage in a gainful occupation in the territory of other Parties – Simplifying existing formalities and reducing dues and taxes)**

**With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake**

**2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;**

Formalities and dues and other charges are one of the aspects of regulations governing the employment of workers covered by paragraph 3 but are dealt with specifically under this provision.

With regard to the formalities to be completed, conformity with Article 18§2 presupposes the possibility of completing such formalities in the country of destination as well as in the country of origin and obtaining the residence and work permits at the same time and through a single application. It also implies that the documents required (residence/work permits) will be delivered within a reasonable time.

Chancery dues and other charges for the permits in question must not be excessive and, in any event, must not exceed the administrative cost incurred in issuing them.

**■ Article 18§3 (Right to engage in a gainful occupation in the territory of other Parties – Liberalising regulations)**

**With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Party, the Parties undertake**

**3. to liberalise, individually or collectively, regulations governing the employment of foreign workers;**

Under Article 18§3, States are required to liberalise periodically the regulations governing the employment of foreign workers in the following areas:



- Access to the national labour market: The conditions laid down for access by foreign workers to the national labour market must not be excessively restrictive, in particular with regard to the geographical area in which the occupation can be carried out and the requirements to be met.
- Right to engage in an occupation: A person who has been legally resident for a given length of time on the territory of another Party should be able to enjoy the same rights as nationals of that country. The restrictions initially imposed with regard to access to employment (which can be accepted only if they are not excessive) must therefore be gradually lifted.
- Rights in the event of loss of employment: Loss of employment must not lead to the cancellation of the residence permit, thereby obliging the worker to leave the country as soon as possible. In such cases, Article 18 requires extension of the validity of the residence permit to provide sufficient time for a new job to be found.

### **The situation in Bulgaria (source: Government report on provisions not accepted)**

Rules governing the right to engage in gainful employment are laid down *inter alia* in:

- the Employment Promotion Act of 20 December 2001 (SG No. 112/2001),
- the Foreigners in the Republic of Bulgaria Act (No. SG 153/1998, as amended up to 2002)
- the Decree No. 77 of 2002 adopting the Order establishing the conditions and procedures for the issuance, refusal and cancellation of work permits for foreigners in Bulgaria SG No. 39/2002 as amended up to 2004,
- the Ordinance No. 2 of 10 September 2002 of the Ministry of Labour and Social affairs on the conditions and procedures to issue permits to foreigners for the performance of free-lance activities (SG No. 90/2002)

Pursuant to the Order establishing the conditions and procedures for the issuance, refusal and cancellation of work permits for foreigners in Bulgaria, all foreign citizens wishing to exercise an activity and be employed under an employment relationship, within the meaning of the Labour Code, or who would wish to be commissioned to a business travel on the territory of the Republic of Bulgaria, within the framework of provisioning services, need a work permit. Except foreigners who:

- have a residence permit for the Republic of Bulgaria, or those who have equalisation of their rights by granting them an asylum, recognised as a refugee status or humanitarian status;
- are employed or sent to work under international agreement and the Republic of Bulgaria is a party in it, and when the exoneration from liability for a work permit is provided by this agreement;
- are sent in the country under intergovernmental agreement or programs for lending legal, financial, expert, humanitarian or other assistance to Bulgarian institutions and have no employment relationships with them;
- manage trading corporations or a branch of a foreign legal person;
- are members of Boards of managers and Boards of Directors of trading corporations, as far as they have no employment relationships;
- are representatives of foreign trading corporations, registered in the Bulgarian Chamber of Commerce and Industry;
- are accredited as delegates of foreign, diplomatic, consular or trade representations, as well as representations of international organisations in the Republic of Bulgaria;
- are officially accredited to the Ministry of Foreign Affairs of the Republic of Bulgaria as correspondents of foreign mass media;
- who keep their usual residence abroad and participate in scientific, cultural or sports events of public significance, and if their activities on the territory of the Republic of Bulgaria do not exceed 3 months;
- apply for refugee status, right of asylum or humanitarian status or for employment in the centres of the State Agency for Refugees at the Council of Ministers;

The sustained integration of particular categories of personnel as prescribed in Article 10, Paragraph 3 of the Order, allows unlimited extension of the term of the issued permits. If the person has resided in the country for an uninterrupted period of 5 years, he receives a permanent residence and the right to

get a job without work permits. The 10% restriction of the number of foreigners is not imposed to the number of Bulgarian personnel for issuing permits under the requisition of local companies, receiving people on a business trip, within the framework of an agreement for supply services. A relief regime for issuing work permits without labour market survey, is provided for people, married to Bulgarian citizens, if they have a continuous residence permit on this ground (Article 6, Paragraph 2, Point 9 of the Order).

A work permit can be issued to foreigners, who reside legally on the territory of the Republic of Bulgaria if they are:

1. members of the family of a foreigner who has a continuous or a permanent residence permit;
2. people who got married to a Bulgarian citizen;
3. people of Bulgarian origin;
4. people who worked in a preceding period, before the requisition of a work permit, in accordance with the conditions of Article 4, Paragraph 1, Points 2 and 3;
5. people who worked without work permits, in accordance with the conditions of Article 4, Paragraph 3, with continuing employment above 3 months;

The cases specified above are those, which allow short-term employment of foreigners. The term of employment without work permits, subjected to registration with the Employment Agency, has been extended from 3 to 6 months. It regards officers of foreign travel agencies, commissioned to a business trip within one tourist season, in order to accomplish their tasks, concerning the coordination and control of the execution of a contract for tourist services with a Bulgarian tour operator or a hotelkeeper.

Along with this, the normative acts ensure liberalised access to the labour market under particular conditions, of an internal corporate essential personnel transfer, in comply with Article 51 of the European agreement and the engagements, concerning our accession to the World Trade Organisation. A preliminary labour market survey is not required for issuing a work permit to a foreigner, under the conditions of the internal corporate transfer, when there is a proved 12 months' period of employment in the local legal person's overseas structures, and it precedes the sending of a stated foreigner. A differential approach, relating to the required documents for employment of foreigners on business trip or those, under employment relationships, has been provided.

Some norms of the secondary EU legislation have been reproduced in the Order on the Procedure and Conditions for Reception of Aliens on Business Travel, within the supply of services, to guarantee that the conditions of work in the receiving country are not worse than the established within the National legislation, as well as they guarantee compliance with particular conditions on the foreign employer's part (Article 4, Paragraph 1 of the Order).

The Ordinance No. 2 of 10 September 2002 of the Ministry of Labour and Social affairs on the conditions and procedures to issue permits to foreigners for the performance of free-lance activities is based on Article 24 a of the Foreigners in the Republic of Bulgaria Act (No. SG 153/1998, as amended up to 2002) (FRBA). It defines its action in relation to foreigners who do not have a visa or a residence permit on other grounds and want to reside continuously, in order to perform an activity as free lanced profession, i.e to reside, following the procedure of Article 24, Paragraph 1, Point 15 of the FRBA. An exchange of information between institutions (Ministry of the Interior and Ministry of Foreign Affairs) has been provided, concerning the entry and residence of foreigners.

The relevant measures that are to be applied by Republic of Bulgaria as regards citizens of present and new Member States should be equivalent to measures that a present or a new Member State applies to Bulgarian citizens until the date of accession thereof to the EU and during the transition period. In case during the transition period any of the Member States terminates the application of the authorisation regime the Republic of Bulgaria will neither require work permits from the citizens of such a country or citizens thereof will enjoy an alleviated regime and thereby a relevant bilateral contract will be concluded. The Law on Encouragement of Employment contains provisions allowing the direct application of Regulation 1612/68 by the moment of the factual accession of the Republic of Bulgaria to the EU regarding falling off of the permit regime and acquiring an equal access to registration with territorial departments of the Employment Agency aiming to use the mediating services provided by

the Employment Agency, and by members of families of workers from the Member States inclusive, as well as the right to compensation.

In Article 72, paragraphs 3, 4 and 5 of the Act of Promotion of Employment regulating due fees for issuing work permits, amendments should be made specifying that citizens from Member States who are not in a transition period are exempted from such work permits and a minimum fee should be specified measuring about 15 to 20 BGN charged for expenses arising from servicing.

Over the last two years, a constant trend has been detected of augmentation of requests for issuing work permits submitted by foreigners with the Employment Agency, their number being 1007 in 2004, i.e. there was a 40% increase in comparison with the preceding year. This is due to implementation of large scale projects financed under international contracts whereby Bulgaria is a Party, and usually entrusted by the Regional Ministry of Foreign Contractors and Subcontractors, such as the upgrading and reconstruction of the Thermal Power Station Marica Iztok – 3, the Sofia Airport, construction works on portions of the Trakia Highway, the construction of the Plant for production of household and flat glass in Târgoviște, etc.

### **Conclusion**

In view of the current case law and the current legal situation and practice the provision could not be accepted by Bulgaria.

## ■ Article 19 (Right of migrant workers and their families to protection and assistance)

### Article 19§§1 – 3

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

### ECSR Case-law presented by Mr J-M. BELORGEY

#### Adequate and free services - protection against misleading propaganda

In order for prospective migrants to make a well-founded decision on whether or not to migrate, they have the right to access to reliable information on formalities to be completed as well as on conditions of life and work in the country of destination. Article 19§1 requires States to undertake the following obligations:

#### Adequate and free services

States are required to provide information and assistance services to migrants wishing to emigrate and to migrants of other Parties who wish to immigrate, including reliable and objective information on necessary formalities and on living and working conditions in the country of destination. In this regard, mention can be made of vocational guidance and training, social security, trade union membership, housing, social services, education and health, or information on websites of e.g. the Ministry of Foreign Affairs. The services provided should be free of charge and, if possible in a language understandable to migrants.

#### Protection against misleading propaganda

States are required to take measures against misleading propaganda relating to immigration and emigration. Such measures should prevent the communication and dissemination of misleading information to migrants leaving the country and act against false information targeted at migrants seeking to enter. To be effective, action against misleading propaganda should include legal and practical measures to tackle racism and xenophobia as well as women trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease. States are required to take specific measures to raise awareness and combat misleading propaganda, in particular targeted at female migrants, who are fulfilling jobs which make them more vulnerable, such as jobs as domestic staff, or in the catering industry or home-work. Many recruited for jobs as hostesses or maids, end up in the sex industry.

States are required to take measures to raise awareness amongst law enforcement officials, such as awareness training of officials who are in first contact with migrants, in order to combat xenophobia.

#### Facilitation of departure, journey and reception

Under Article 19§2, migrants have the right to the facilitation of their departure and journey to and reception in the receiving State. They have the right to the issuance of travel documents, health care during their journey, reception including assistance with placement and integration in the workplace as well as assistance in helping workers and their families to overcome certain problems, such as short-term accommodation, illness, shortage of money and adequate health measures

The provision applies in particular to migrant and their families who travel either collectively or under arrangements aimed at collective recruitment; it does not apply to migrant and their families making their own travel arrangements.

#### Promotion of co-operation between social services

Article 19§3 requires States to establish contacts and information exchanges between public and/or private social services in emigration and immigration countries. If there is little migratory movement, practical co-operation on a needs basis may suffice. Co-operation is useful for example where the migrant, needs to be contacted for family reasons or where s/he has returned to his or her country but needs to claim unpaid wages or benefits.

#### **Conclusion**

The information provided was not sufficient to determine whether or not these provisions could be accepted.

## **Article 19§4**

**With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake**

**4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:**

- a remuneration and other employment and working conditions;**
- b membership of trade unions and enjoyment of the benefits of collective bargaining;**
- c accommodation;**

### **ECSR Case-law presented by Mr J-M. BELORGEY**

Migrant workers, lawfully within their territories, have the right to equal treatment concerning remuneration and other employment and working conditions, including in-service training, promotion and vocational training. Any length of residence requirement is contrary to the Charter, since a migrant lawfully within the territory is entitled to equal treatment.

Migrant workers have the right not to be discriminated in law or practice concerning trade union membership and enjoyment of the benefits of collective bargaining, including access to administrative and managerial posts in trade unions. Any length of residence requirement is contrary to the Charter since a migrant lawfully within the territory is entitled to equal treatment.

Migrant workers, lawfully within their territories, have the right to non-discrimination concerning access to public and private housing. All conditions of access to housing must be the same for nationals as well as for migrant workers. There must be no legal or de facto restrictions on home-buying, access to subsidised housing, low cost housing, or housing aids, such as loans or other allowances, bearing in mind that accommodation was a matter of prime importance for the situation of a migrant worker and his/her family. Any length of residence requirement is contrary to the Charter, since a migrant lawfully within the territory is entitled to equal treatment.

### **The situation in Bulgaria**

Rules governing non-discrimination in employment and rights related to are laid down *inter alia* in the Protection against discrimination Act (2003).

### **Conclusion**

In view of the current legal situation in Bulgaria, Article 19§4 a) and b) could be accepted.

The information provided was not sufficient to determine whether or not Article 19§4 c) could be accepted.

## **Article 19§§5 and 7**

**With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake**

**5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;**

**7 to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;**

### **ECSR Case-law presented by Mr J-M. BELORGEY**

Under Article 19§5, migrant workers, lawfully within their territories, have the right to be treated equally in law and in practice regarding the payment of employment taxes, dues or contributions. Treatment not less favourable than that of nationals should be accorded in such matters as tax deduction, rate of taxation on income, tax refunds, etc.

Under Article 19§7, migrant workers, lawfully within their territories, have the right to equal treatment with nationals in respect of legal proceedings relating to matters referred to in Article 19, or to violation of these rights. Access to legal proceedings includes equal access to courts, assistance of lawyers and entitlement to free legal aid. Those forms of legal assistance available to nationals should be available to migrants. Any length of residence requirement is contrary to the Charter, since a migrant lawfully within the territory is entitled to equal treatment.

### **The situation in Bulgaria (source: Government report on provisions not accepted)**

During the meeting the representatives of the Government stated that Bulgarian law secures for workers lawfully in Bulgaria treatment not less favourable than that of nationals with regard to employment taxes, dues or contributions and legal proceedings.

### **Conclusion**

In view of the statement made during the meeting, these provisions could be accepted by Bulgaria.

## **Article 19§§6 and 8**

**With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake**

- 6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;**
- 8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;**

### **ECSR Case-law presented by Mr J-M. BELORGEY**

#### Family reunion

Migrant workers, permitted to establish themselves in the territory, have the right be (re)joined by their family as stated in Article 19§6 of the Charter. For the purpose of this provision the term '*family of a foreign worker*' is understood to mean: at least the worker's spouse and unmarried children, as long as the latter are considered to be minors by the receiving State and are dependent on the migrant worker'

#### Worker's spouse

Instead of covering the migrant worker's wife, the Revised Charter covers the spouse (person's partner in marriage) of the migrant worker, whether a husband or a wife

#### Children, dependent, unmarried, minor

Children of the migrant worker are allowed to enter the territory for the purposes of family reunion. They should be dependent, meaning have no independent existence outside the family group, particularly for economic or health reasons, or because they are pursuing unpaid studies, and are unmarried. The children should be minors according to the relevant laws of the receiving states

#### Other family members

The words at least indicate that States may decide to extend the notion of the family of the migrant worker beyond those mentioned above, e.g. to disabled children.

#### *Refusal of the right to family reunion on health grounds*

A State may not deny entry to its territory for the purpose of family reunion to a family member of a migrant worker for health reasons. Refusal may only be admitted for specific illnesses which are so serious as to endanger public health. These are the diseases requiring quarantine stipulated in the World Health Organisation's International Health Regulations and concern cholera, plague and yellow fever. These are also other serious contagious or infectious diseases such as tuberculosis or syphilis.

Very serious drug addiction or mental illness may justify refusal of family reunion, but only where the authorities establish on a case-by-case basis that the illness or condition constitutes a threat to public order or security.

#### *Conditions*

States may require that certain conditions be fulfilled before allowing the family to be reunited with the migrant worker, such as a certain length of residence of migrant workers, the obtaining of sufficient or suitable accommodation, and/or sufficient means of subsistence. It must be stressed that these conditions must not be so restrictive as to prevent any family reunion.

Length of residence: States may require that migrant workers reside in the country before their family can join them. Such a length of residence requirement is reasonable if it is up to one year.



Housing condition: States may require that migrant workers have sufficient or suitable accommodation to house the family or certain family members.

Means requirement: States may require that migrant workers have a level of means required to bring in the family or certain family members.

#### Safeguards against expulsion

Under Article 19§8, States are prohibited by law to expel migrant workers lawfully residing within their territories unless they endanger national security or offend against public interest or morality.

#### *Expulsion*

Expulsion (or deportation) is to remove or drive out with force, in this case, the migrant worker from the territory of the State Party, to the territory of that Party of which s/he is a national. It is distinct from the notion of leaving the country oneself in case e.g. the resident permit has expired, or in case of non-extended of an employment contract.

#### *Endanger national security.*

As stated above, one of the limitative grounds under which a migrant worker may be expelled, is if s/he endangers national security.

#### *Offend against public interest or morality*

A migrant worker may be expelled if s/he offends against public interest or morality. However, expulsion in such cases can only be in conformity with the Charter if it constitutes a penalty for a criminal act, imposed by a court, or under judicial authority. Furthermore, it should be based not solely on the existence of a criminal conviction but on all aspects of the non-nationals' behaviour, as well as the circumstances and the length of time of his/her presence in the country concerned.

Risks to public health are not in themselves risks to public order and cannot be the basis for expulsion, unless the person refuses to undergo suitable treatment. Seeking social assistance is also not against public order and cannot be the basis for expulsion.

#### *Right to appeal against expulsion order*

Migrants have the right to appeal to a court or other independent body against the expulsion decision, even in cases where national security, public order or morality are at stake.

#### *Migrant workers family members*

States are prohibited from expelling the migrant worker's family members, spouse, minor or major children, as a consequence of his or her own expulsion. Being restrictive in its wording Article 19§8 must be interpreted in a restrictive manner i.e. it does not allow for the expulsion of the family members, including the minor children, of the migrant worker as a consequence of his/her expulsion. These family members -even in the case they have entered the country on the basis of the right to family reunion- have an independent right to stay.

### **The situation in Bulgaria (source: Government report on provisions not accepted)**

Rules governing family reunion and expulsion are laid down in the Act on Foreigners in the Republic of Bulgaria SG No. 153/1998 as amended up to 2005 (SG 11/2005).

### **Conclusion**

In view of the current legal situation in Bulgaria, these provisions could not be accepted.

## **Article 19§9**

**With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake**

- 9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;**

## **ECSR Case-law presented by Mr J-M. BELORGEY**

The transfer from the receiving state to the country of origin of earnings and savings (or remittances) is closely connected to such issues as financial support for the family remaining in the country of origin, family reunion and/or length of stay of the migrant worker in the receiving state.

Under Article 19§9, migrants have the right, within legal limits, to transfer such parts of their earnings and savings as they may desire. The intended scope of the words within legal limits, should not be understood as permitting a State to place any obstacles in the way of transferring a reasonable amount of earnings and savings, having regard to the situation of the migrant worker and his/her family.

Amongst permissible restrictions, besides restrictions as to amounts which can be transferred, mention can be made of measures to prevent tax avoidance, such as measures to facilitate a check on the authenticity of declared income, or limiting transfer of earnings net of any taxes payable.

Restricting the transfers of money to the country of origin (and thus not to third countries) should not restrict the payment of maintenance obligations, payments to dependants and other similar expenses to which a migrant worker is liable.

This right should be granted also once the migrant worker has left the territory and returned to his/her country of origin (so-called final departure).

## **The situation in Bulgaria**

During the meeting the representatives of the Government stated that Bulgarian law does not restrict the right of migrants to transfer their savings and earnings.

## **Conclusion**

In view of the statement made during the meeting, the provision could be accepted by Bulgaria.

## **Article 19§11 and 12**

**With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake**

**11 to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;**

**12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.**

### **ECSR Case-law presented by Mr J-M. BELORGEY**

#### National language

Learning the language of the host country has been considered important for the protection of migrant workers' health and safety at work and for the guarantee of their other employment rights 20. Furthermore, it is considered important for them as well as their families for the integration into society at large.

Under Article 19§11, States are required to promote and facilitate the teaching of (one of) the national language(s) of the receiving state to migrant workers, their children of school age, and other family members not of school age.

In order not to worsen the already difficult position of migrant workers on the labour market, the services should be free. The teachings should be encouraged within enterprises and voluntary associations, or in public institutions such as universities.

Although, the language of the host country is automatically taught to primary and secondary school students throughout the school curriculum, that is not enough to satisfy the obligations laid down by Article 19§11. Therefore, in order for migrant workers' children not to lag behind their classmates, support activities alongside schooling should be introduced.

#### Mother tongue teaching

Learning the mother tongue is important for children of migrant workers in order for them to maintain their cultural and linguistic heritage *inter alia* for a possible reintegration if and when the migrant worker returns to his/her home country.

Under Article 19§12, mother tongue teaching should be promoted and facilitated, as far as practicable, to the children of the migrant workers. The notion as far as practicable entails that the obligation under 19§12 be carried out e.g. where there are a significant number of children warranting lessons in their mother tongue to be organised.

### **The situation in Bulgaria (source: Government report on provisions not accepted)**

Rules governing education of foreign nationals are laid down in the National Education Act of 1<sup>st</sup> October 1991 (SG No. 86/1991 as amended up to SG No. 68/1999) (last amended by Act of 10 September 2002 SG No. 90/2002) (see in particular §4 of the Additional provisions) and in Regulation No. 11/2005 on Admission of students to the State and municipal schools. The Protection against discrimination Act (2003) was also mentioned.

### **Conclusion**

The information provided was not sufficient to determine whether or not these provisions could be accepted.

## **Article 19§10**

**With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake**

**10. to extend the protection and assistance provided for in this article to self-employed migrants insofar as such measures apply;**

The protection under the Charter and under Article 19 applies to all categories of workers, be they wage-earners or self-employed

Article 19§10 requires of States to extend the protection and assistance to self-employed migrants, mentioning explicitly insofar as such measures apply. This means that where the context so requires, the term worker, may have to be considered as restricted to employed persons, e.g. in case of the right of a worker to earn his/her living in an occupation freely entered into States must ensure that the protection and assistance provided for in paragraphs 1 to 9 and 11 and 1225 of Article 19 are extended to self-employed migrant workers and their families. There should be no discrimination, in law or in practice between, on the one hand wage-earning migrant workers and self-employed migrants and, on the other, self-employed migrants and self-employed nationals.

### **The situation in Bulgaria (source: Government report on provisions not accepted)**

Rules governing the self-employed migrants are laid down *inter alia* in:

- the Foreigners in the Republic of Bulgaria Act (No. SG 153/1998, as amended up to 2002)
- the Decree No. 77 of 2002 adopting the Order establishing the conditions and procedures for the issuance, refusal and cancellation of work permits for foreigners in Bulgaria SG No. 39/2002 as amended up to 2004,
- the Ordinance No. 2 of 10 September 2002 of the Ministry of Labour and Social affairs on the conditions and procedures to issue permits to foreigners for the performance of free-lance activities (SG No. 90/2002)

### **Conclusion**

The information provided was not sufficient to determine whether or not these provisions could be accepted.

## ■ Article 23 (Right of elderly persons to social protection)

With a view to ensuring the effective exercise of the right of elderly persons to social protection, the Parties undertake

1. to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to enable elderly persons to remain full members of society for as long as possible, by means of:
  - a adequate resources enabling them to lead a decent life and play an active part in public, social and cultural life;
  - b provision of information about services and facilities available for elderly persons and their opportunities to make use of them;
  
2. to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to enable elderly persons to choose their lifestyle freely and to lead independent lives in their familiar surroundings for as long as they wish and are able, by means of:
  - a provision of housing suited to their needs and their state of health or of adequate support for adapting their housing;
  - b the health care and the services necessitated by their state;
  
3. to adopt or encourage, either directly or in co-operation with public or private organisations, appropriate measures designed in particular to guarantee elderly persons living in institutions appropriate support, while respecting their privacy, and participation in decisions concerning living conditions in their institution.

### ECSR Case-law presented by Mr J-M. BELORGEY

The main objective of the first paragraph of Article 23 is to enable elderly persons to remain full members of society. It provides two means by which this can be achieved: goal-adequate resources and information on services and facilities. According to the explanatory report, the expression “full members” means that elderly persons must suffer no ostracism on account of their age, since the right to take part in society’s various fields of activity is not granted or refused depending on whether an elderly person has retired or is still vocationally active or whether such a person is still full of legal capacity or is still subject to some restrictions in this respect (*diminutio capitis*).

The primary focus of the right to adequate resources is on pensions. Pensions and other state benefits must be sufficient in order to allow elderly persons to lead a ‘decent life’ and play an active part in public, social and cultural life. The Committee compares pensions with the average wage levels and the overall cost of living. Pensions must be index-linked.

The Committee also takes into consideration the cost of transport as well as the cost of medical care and medicine, as well as the existence of a carer’s allowance for family members looking after an elderly relative.

Although Article 23§1b only refers to the provision of information about services and facilities, the Committee considers that 1§b of Article 23 presupposes the existence of services and facilities and that elderly persons have the right to certain services and facilities. Therefore, the Committee examines not only information relating to the provision of information about these services and facilities but also these services and facilities themselves. In particular, information is sought on the existence, extent and cost of home help services, community based services, specialised day care provision for persons with dementia and related illnesses and services such as information, training and respite care for families caring for elderly persons, in particular, highly dependent persons, as well as cultural leisure and educational facilities available to elderly persons.

The needs of elderly persons must be taken into account in national or local housing policies. The supply of adequate of appropriate housing for elderly person must be sufficient. Housing law and policy must take account of the special needs of this group. National policies should help elderly persons to remain in their own homes for as long as possible through the provision of sheltered/supported housing and assistance for the adaptation of homes.

In the context of a right to adequate health care for elderly persons Article 23 requires that health care programmes and services (in particular primary health care services including domiciliary nursing/health care services) specifically aimed at the elderly must exist together with guidelines on healthcare for elderly persons. In addition, there should be mental health programmes for persons with dementia and related illnesses and adequate palliative care services.

Article 23§3 deals with the rights of elderly persons living in institutions. In this context, it provides that the following rights must be guaranteed; the right to appropriate care and adequate services, the right to privacy, the right to personal dignity, the right to participate in decisions concerning the living conditions in the institution, the protection of property, the right to maintain personal contact with persons close to the elderly person and the right to complain about treatment and care in institutions.

There should be a sufficient supply of institutional facilities for elderly persons (public or private), care in such institutions should be affordable and assistance must be available to cover the cost. All institutions must be licensed or approved and an independent inspection mechanism must exist to examine, in particular, the quality of care delivered.

Issues such as the requirements of staff qualifications, staff training and the wage levels of staff, compulsory placement, social and cultural amenities and the use of physical restraints are also examined under this provision.

## **The situation in Bulgaria (source: the Government report on provisions not accepted)**

### Adequate resources and health care

Reference is made to the Social Security Code (SG No. 110/2000) as amended (up to SG No. 67/2003); the Act of 7 May 1998 on Social Assistance (SG No. 56/1998) as amended up to 2003 and the Act of 4 June 1998 (SG No. 70/1998) on Health Insurance as amended up to SG No. 114/2003. The benefits provided to elderly are dealt with by the European Committee of Social Rights in its conclusions under Article 12§1 (right to social security) and 13§1 (right to social assistance) (Conclusions 2006, conclusions to be published in 2006; see lastly Conclusions 2004, Bulgaria, pp. 60-72).

### Services and facilities and housing

One of the methods of achieving social integration of adults is through priority development of social services provided for within the community aiming deinstitutionalisation. These services aim at improving elderly people's life conditions. Developing social services in elderly people's community, possibilities are provided to organise leisure time, making social and personal contacts, and support of professionals of various dominions. Consequently, Day Centres as social services complexes providing availability of full-scale servicing of elderly people over the day time and of satisfying daily, health care, education and rehabilitation needs as well as of needs of free time scheduling and organisation of personal contacts, prove to be one of the best forms boosting improvement of care after elderly people. Another social service deemed to be appropriate for the social integration of elderly people the social assistant. A social assistant is a person providing a complex of services aimed at social work and consultations for consumers and connected with meeting needs related to organisation of free time and making contacts.

Social services for elderly people provided by the community also include the home social patronage and the community soup-kitchens. Home social patronage is a complex of social services provided at homes consisting of food supplies, maintenance of personal hygiene and hygiene of home premises used by the user, assistance in supply of relevant technical aids to users with disabilities; household

services, etc. Soup-kitchens are social services aimed at meeting needs of food for people who are unable to provide thereof by themselves.

### **Conclusion**

In view of the current case law and the current legal situation and practice the provision could not be accepted by Bulgaria.

■ **Article 27§1 (Right of workers with family responsibilities to equal participation in professional life)**

**With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake**

**1. to take appropriate measures:**

- a to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;**
- b to take account of their needs in terms of conditions of employment and social security;**
- c to develop or promote services, public or private, in particular child day care services and other childcare arrangements;**

**ECSR Case-law presented by Ms C. DUBOIS-HAMDI**

Under Article 27§1a of the Revised Charter States should provide people with family responsibilities with equal opportunities in respect of entering, remaining and re-entering employment. It underlines that persons with family responsibilities may face difficulties on the labour market due to their family responsibilities. Therefore, measures need to be taken by States to ensure that workers with family responsibilities are not discriminated against due to these responsibilities and to assist them to remain, enter and re-enter the labour market, in particular in the field of vocational guidance, training and re-training. Actions must be taken to promote training aimed at facilitating the remaining and the reintegration of workers with family responsibilities in the employment market. Particular attention should be devoted to part-time workers' unemployment.

The aim of Article 27§1b is to take into account the needs of workers with family responsibilities in terms of conditions of employment and social security. Measures need to be taken to implement this provision, especially measures concerning the length and organisation of working time. Furthermore, workers with family responsibilities should be allowed to work part-time or to return to full-time employment. It should be borne in mind that worker's needs cannot be left to the mere employer's goodwill but must be provided in some binding legal instrument. Periods of unemployment due to family responsibilities should be taken into account in the calculation of pension schemes.

The aim of Article 27§1c is to develop or promote services, in particular child day care services and other childcare arrangements, available and accessible to workers with family responsibilities. Where a State has accepted Article 16, childcare arrangements are dealt with under that provision. In any event, under Article 27§1 parents should be allowed to reduce or cease work because of the serious illness of a child.

**The situation in Bulgaria (source: Government report on provisions not accepted)**

The topic of combining professional and family life is particularly significant for Bulgarian women who must share both responsibilities for bringing up children, care for elderly members of the family, and their financial contribution to the family in the conditions of the constant limitation of the access to good quality social services. Single parents, divorcees, mothers with many children and mothers of disabled children are in an even more difficult position.

The policies for combining family and professional obligations can be enhanced through a change in labour legislation and by reducing the length of the leave for bringing up children, combined with an increase of monthly benefits will improve the quality and accessibility of the system for services for bringing up and educating children.

If this is not done, the insufficient pay forces the mother to interrupt her leave, which would deprive the child of the necessary care and would cause additional difficulties to the family budget.



In order to find the most balanced solution the Ministry of Labour and Social Policies initiated a public discussion on this matter.

In order to resolve these issues and in addition to legislative norms Government policies have been worked out and applied for the provision of equal opportunities for men and women for access and participation public life in the following spheres;

- The drawing up of a strategy for better combining of work and family life and the development of a social infrastructure, which represents services for child care.
- Carrying out structural changes in some sectors and sub-sectors of the economy, directed towards increasing the share and efficiency of services for the inclusion of women on the labour market;
- Improvement of the system for support and improvement of qualification, and activating the policy for life-long studies for the combining of programmes for career development of women. The building up of skills for flexible understanding of careers and the conviction for participation in the system of life-long-learning shall overcome the model of individual strategies for survival;
- The introduction of flexible forms of employment for parents with small children.

#### Employment, vocational guidance and training

The question of providing conditions for the return of the parent to work after leave for child care is of particular importance. In this case the provisions of the Act on Promotion of Employment are applied. Annually, in the National plan for activities on employment programmes and measures aimed at combining family and professional obligations are included and at the achieving of equality between men and women and avoiding discriminatory practices on the labour market, such as the "Back to Work" Project. The project started in November 2003.

This project intended for women who have been on maternity leave, leave for child birth, adoption, or child care for children at the age between 2 and 3. They can avail themselves of the opportunity to be trained for up to 2 years after going back to work and if they wish to enrich their knowledge and skills, with the aim to keep their career and develop it further. The tasks of this project are to motivate mothers with small children towards an active attitude at the labour market, to improve the quality of the workforce, to support women and their families in combining family life with professional life.

#### Organisation of working time

Rules governing organisation of working time and part time are laid down in the Labour Code.

#### Child day-care services and other childcare arrangements

As Bulgaria has accepted Article 16 of the revised Charter, the measures concerning childcare arrangements are dealt with under that provision (next conclusion on Article 16 to be published in Conclusions 2006; see lastly Conclusions 2004, Bulgaria, p.p. 74-79).

### **Conclusion**

In view of the current case law and the current legal situation and practice the provision could be accepted by Bulgaria.

## ■ Article 30 (Right to protection against poverty and social exclusion)

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b to review these measures with a view to their adaptation if necessary.

### ECSR Case-law presented by Mr N. ALIPRANTIS

By introducing into the Charter a new Article 30, the Council of Europe member states considered that living in a situation of poverty and social exclusion violates the dignity of human beings. With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion Article 30 requires States Parties to adopt an overall and coordinated approach, which shall consist of an analytical framework, a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights as well as monitoring mechanisms involving all relevant actors, including civil society and persons affected by poverty and exclusion. It must link and integrate policies in a consistent way moving beyond a purely sectoral or target group approach.

The measures taken in pursuance of the approach must promote access to social rights, in particular employment, housing, training, education, culture and social and medical assistance. It should be noted that this is not an exhaustive listing of the areas in which measures must be taken to address the multidimensional poverty and exclusion phenomena. The measures should strengthen entitlement to social rights, their monitoring and enforcement, improve the procedures and management of benefits and services, improve information about social rights and related benefits and services, combat psychological and socio-cultural obstacles to accessing rights and where necessary specifically target the most vulnerable groups and regions. As long as poverty and social exclusion persist they should also represent an increase in the resources deployed to realise social rights.

Finally, the measures should be adequate in their quality and quantity to the nature and extent of poverty and social exclusion in the country concerned. In this respect the definitions and measuring methodologies applied at the national level and the main data made available are systematically reviewed.

### The situation in Bulgaria (source: the Government report on provisions not accepted)

#### Employment policy

The Employment Promotion Act of 20 December 2001 (SG No. 112/2001) is aimed at ensuring an equal access to the labour market, appropriate employment and prevention of discouragement and social isolation of various groups of risk. See in particular Articles 53, 55,

For the purposes of preventing and reducing the negative consequences of social isolation, discouragement and poverty, national, regional and local employment and vocational training programmes are worked out and applied, which are included in the annual National Action Plan on Employment and are financed by the State budget.

Employment policy is assessed by the European Committee of Social Rights in its conclusion under Article 1§1 (policy of full employment) (Conclusions 2006, conclusions to be published in 2006; see lastly Conclusions 2004, Bulgaria, pp. 21-25).

### Social assistance

Reference is made to the Act of 7 May 1998 on Social Assistance (SG No. 56/1998) as amended up to 2003. Social assistance benefits provided to persons in need are dealt with by the European Committee of Social Rights in its conclusion under Article 13§1 (right to social assistance) (Conclusions 2006, conclusions to be published in 2006; see lastly Conclusions 2004, Bulgaria, pp. 68-72).

### Social services

Reference is made to the Act of 7 May 1998 on Social Assistance (SG No. 56/1998) as amended up to 2003 and regulation for the implementation of the Act. Social assistance services are dealt with by the European Committee of Social Rights in its conclusion under Article 14 (right to social services) (Conclusions 2005, Bulgaria, pp. 32-39).

### National Plan for Combating Poverty and Social Exclusion for 2005-2006 (NPCPSM)

The National Plan for Combating Poverty and Social Exclusion for 2005-2006 was prepared on the basis of the principles, targets and content of the following:

- The Strategy for combating poverty and social exclusion 2003-2007 adopted by Decision 694/2003 of the Council of Ministers;
- A report on the results of the fulfilment of the First National Plan for Combating Poverty Social Exclusion in 2004;
- The pre-accession economic programme of the Republic of Bulgaria for 2004 - 2007 adopted by Decree of the Council of Ministers on November 22, 2004;
- The joint memorandum on social inclusion, signed between the Bulgarian Government the European Commission on February 3, 2005;
- The National Action Plan on Employment for 2005

The National Plan for Combating Poverty and Social Exclusion for 2005-2006 (NPCPSM) is the basic managerial instrument of the social policy of the Government of the Republic of Bulgaria for the resolution through programmes and mechanisms, programmes, projects, assignments and measures of the existing problems of overcoming poverty and social exclusion in the process of accession of the country to the EU.

#### NPCPSM 2005-2006

- Understanding of poverty and its dimensions;
- Structures and factors of the actual Bulgarian economic and social context, influencing the processes of impoverishment;
- Target groups in the policies in this sphere – those living in poverty and those threatened with poverty;
- Main challenges and priorities in this struggle;
- Strategies and operative aims;
- Programmes, projects, tasks and measures for combating poverty and social exclusion;
- Methods and approaches for the study of poverty, social exclusion, and monitoring of the results of the applied policies in this field.
- Involvement of the government institutions, business, social partners, academic, non-government and international organisations;
- Financial resources for implementation of programmes, projects and tasks;
- Mechanisms, forms and practices for the realisation of programmes, projects and tasks by institutions acting as representatives of the public authorities, the economic sector and the civil society;
- Social outcomes and the effect of the implementation of programmes, tasks and measures.

The realisation of the Plan shall rely on establishing an open and intensive dialogue with people and communities, threatened with impoverishment or fallen into impoverishment and exclusion, as well as their greater involvement in the resolution of their own social problems.

This Plan has been drawn up on the basis of the national aims and priorities, under the conditions of an accelerated preparation of the country for the accession to the EU in 2007 and the preparation of the Operative programme Development of Human Resources, as part of the National Development Plan 2007-2013.

Combating poverty and exclusion is a central element in the modernisation of the European social model with the following characteristics: competitiveness, social cohesion, and control over inequality and social solidarity. It is part of the global strategy of the European Union. The European Council noted as a strategic target of the European Union to achieve considerable progress in doing away of poverty and social exclusion by the year 2010, at the same time with the political commitment of the European Union to become 'the most competitive economy, based on knowledge, with a sustainable growth, with more and better work places, higher social cohesion' (Lisbon, March 2000). NPCPSM is part of the Road map for the accession to the European Union and is given as a planned resource in Chapter 8 'Social inclusion'.

NPCPSM corresponds to the four priority aims defined by the European Council (Nice, December 2000) in combating poverty and social exclusion:

1. to facilitate the participation in employment and access to all resources, rights, goods and services;
2. to avoid the risk of exclusion;
3. to assist the most vulnerable persons;
4. to mobilise all interested parties.

After accession to the EU the Republic of Bulgaria shall receive considerable assistance from the European structural funds and the Cohesion fund. The total amount of the expenditure for structural activities shall amount to 2,30 billion EUR for the period 2007-2009. The European social fund shall be the main instrument for the funding of these activities.

The main tasks realised through NPCPSM 2005-2006 allow a successful development of activities for the overcoming of poverty and social isolation throughout the 2007-2009 period, as they have been given in the joint Memorandum for social inclusion, namely:

1. Active measures for risk groups on the labour market;
2. Social integration of groups, threatened by exclusion;
3. Doing away with discriminatory practices against people with disabilities;
4. Life-long studies, improvement of educational studies and systems;
5. Encouraging entrepreneurship and initiative among the population with an emphasis on groups in an unequal position;
6. Equal opportunities for men and women and for those for whom support shall be sought by the Structural Funds of the EU.

The process of planning within NPCPSM for 2005-2006, corresponds directly with the PHARE programme, taking into account the priorities, recorded in the strategic documents of the Bulgarian Government, such as the New Strategy for Social Policy, the Joint Report on the Priorities in the Policy on Employment in Bulgaria, and the Employment Strategy 2004-2010, which constitute the political framework of the future interventions of the type of the European Social Fund, together with the Lisbon strategy and the European strategy on employment. At present a great number of activities on social inclusion are being funded by the pre-accession funds of the EU. For the 2000-2004 period this funding amounts to a total of 78,88 million EUR.

NPCPSM for 2005-2006 is the focus in a practical plan chiefly of these decisions and documents of the European Union, making them a political commitment of the Bulgarian Government, part of our national priorities, through the outlining of the respective strategies and operative aims, programmes and projects for combating poverty and social isolation. The main emphasis are support of

employment as a way out of poverty, the facilitation of access to resources and rights, the reduction of the social isolation risk and support of people poverty and isolation.

The structure of NPCPSM is analogical to the structure of the respective National Action Plans on social inclusion of the EU member states. NPCPSM applies a method of coordination and is open to coordination, through the creation of an institutionalised capacity for combating poverty and social exclusion, directly linked with the remaining steps on acceleration of economic growth and through the use of various pre accession and accession structural funds of the European Union.

The present NPCPSM is a direct continuation of the analogical national plan for 2004. The year through which the first NPCPSM was realised, demonstrated the use and how timely action on was as a form of political social responsibility. There is continuity between the two plans in the separate groups of tasks, exceeding the planned resource within one year.

The main plan period for the second NPCPSM is the budget for 2005, where the tasks requiring planning of measures for 2006 are given as measures for the inclusion in the programme consolidated budget for 2006.

The outcome of the realisation of the plan shall be of primary importance for the readiness of the country in meeting the high standards and ambitious aims of the European project in the social policy concerning persons, households and vulnerable groups, life-long in poverty and threatened by poverty.

The parameters and possibilities for the realisation of NPCPSM for 2005-2006 are determined by the concrete socio-economic situation in the country. The Bulgarian type of poverty directly and greatly is under the influence one set of social and macroeconomic processes and to a lesser extent indirectly by others.

I. An indirect, however lasting impact on the processes of poverty and social isolation for the 2001-2004 period involve the following social and macroeconomic processes:

1. Economic growth. Following a cautious fiscal policy, based on a low budget deficit and mechanisms for coping with foreign influences, leading to the accumulation of unforeseen expenditure, economic growth in the country in the course of six years was realised. Since 2000 economic growth has regularly exceeded 4 percent.

2. The Net internal product grew in 2003 by 4.3 percent in real terms thanks to the sustainable rates of the growth in internal demands. Individual consumption<sup>3</sup> has the highest contribution for the growth of the Net internal product for 2003. Expectations are that the growth of Net internal product for 2004 would be about 5,3 percent as a prerequisite for achieving it is the high growth of investments and export.

3. The structure of gross added value in the economic sectors in 2003 is as follows: services – 58,6 %, industry – 30,0%, agriculture 11.4%. In 2003 the net added value in the sector of services has grown by 3,5% in real terms. Industrial production in 2003 had a growth of 7.1% in comparison with 2002. In 2003 net added value in the agrarian sector recorded a fall from 1.3% in real terms. The main reason for this fall are the unsatisfactory results in agriculture and forestry, and in particular the bad wheat harvest in 2003. The share of the private sector in GDP in 2003 was 73.3%, which represents a growth of 5.6% in comparison with 2002.

4. There has been a trend in the level of inflation over the last three years towards reducing the influence of external factors, in particular the delayed development of world economics and the

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<sup>3</sup> National accounts in Bulgaria are kept in accordance with internationally accepted methodological principles of the publication in Bulgarian The European System for Accounts 1995 (EU'95), published by Eurostat and the System of National Accounts, 1993 – a joint edition of the UN, OECD, Eurostat, the IMF, and the World Bank. Individual consumption of households includes: end consumer expenses of households, end consumer expenses of the Government for presented individual services for households; the end consumer expenses of OECD

related fall of the prices of some raw materials. The average inflation rate has fallen to 5.8 percent in 2002 to 2.3 percent in 2003. The reported average annual inflation for 2004 is 6.15 percent.

5. Demographic tendencies have been unfavourable over the years, and towards the 31<sup>st</sup> of December the population of Bulgaria amounted to 7 801 300 inhabitants. In comparison with the preceding year there is a decrease of 45,000 persons. The coefficient of the birth-rate in Bulgaria has been constantly for the last several decades, reaching the minimal value 7.7 per mil in 1997. In 2003 this indicator reached 8.6 per mil. Other negative tendencies are immigration processes from the early 90ies. The total numbers of the immigration flow for the 1989-2001 are estimated to 300,000 or about 10 percent of the work force. The comparison of the data of the latest two censuses of the population, conducted in 1992 and 2001 provides a clearer picture of mobility of the population. Over the years between the censuses the population has fallen by 514 000 persons, which is due both to the natural mobility of the population and emigration. The number of persons who have emigrated for the same period is about 196 000. At the same time about 19 000 persons have returned in the country. Thus, net emigration calculated on basis of these two flows in opposite directions amount to 177 000 persons, or on average 22 000 persons annually have emigrated from Bulgaria over the examined period. In 2002, the population fell by 46 000, or by 0,5 percent in comparison with the preceding year. This decrease was largely due to the negative natural birth rate of the population.

The negative natural birth rate is the reason for the ageing of the population. The absolute number and the relative share of the population up to 15, show a regular decline while, on the other hand, the share of the population above 65 shows a sustainable increase. In 2003, the share of young people up to the age of 15 fell to 14,2 percent (in 2002 the persons in this age group were 14,6 percent of the total population), while for the same year elderly people already were 17,1 percent of the population (in 2002 they were 17 percent). The coefficient of age dependence<sup>4</sup> was 45.5 percent in 2003. An important result from the ageing of the Bulgarian population that should be taken into account by the employers in the future is the decreasing share of the active population (between 15 and 64 years of age). It will have a considerable negative impact on the costs required for health care and social services.

The unfavourable demographic processes are accompanied by a deterioration of the health status of the population. The level of child mortality in Bulgaria is very high: over 13 per mil live born children up to the age of 1 year (in the European countries this indicator varies between 3.5 and 9 per mil). The average life expectancy of the population for the 2001 – 2003 period is 72.1 years. This indicator is higher with women (75.6 years) than that of men (68.7 years). The average life expectancy has increased from 70.6 for 1995 to 72.1 for 2003, whereas life expectancy for people at 65 has increased from 14.1 to 14.3 years for the same period.

According to data from the last census, the average number of household members is 2.7 which is a relatively higher figure on the background of the situation of the EU where this indicator for the 1999-2001 period is 2.4. In 2001, 1-member households were 663 000. There is also a trend towards a reduction of the number of family couples. The number of single persons above 30 is growing. The average number of children in a family shows a sustainable decrease to 1.3 in 2001. The number of single-child families is highest: nearly 30 percent. The share of families with 3 and more children is less than 3 percent.

6. Alarming trends are to be found in the educational structure. The instances of early dropping out of school is connected with the unfavourable socio-economic status of the households: 36.3 percent of the dropouts. According to National Statistics Institute data from 2003, 21.9 percent of the Bulgarian population at the age between 18 and 24 had an education lower than secondary (this is an indicator for early dropout of school). The value of this indicator for the 25 EU member countries was 16.4 percent in 2002.

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<sup>4</sup> The coefficient of age dependence is the correlation between the number of dependent persons (according to the UN methodology, these are persons at ages between 0 and 15, and above 65 years), and the number of independent persons (the age between 60-64) at the end of the year.

A significant share of the households in Bulgaria own their dwellings, however there is a large number of unoccupied houses. Hence, the actual provision of housing in some urbanised areas (chiefly in the bigger cities) is much lower than the European standards.

The total balance of the indirect impact of these major social and macroeconomic processes on poverty and social isolation for the last three or four years is shown in a positive trend of delay in the considerable rates of impoverishment of the population, as well as reaching the possibility to reverse the tendency into positive values in a rise of the standard of living. This is an important prerequisite for the planning of wider and more efficient measures for direct influence on the reduction of poverty and social isolation.

II. A considerably more immediate impact on poverty and social isolation in the country comes from factors affecting the increase of the standard of living.

The fulfilment of the tasks and measures envisaged in NPCPSM for the 2005-2006 period, provided this positive trend is retained regardless of its indirect influence on the standard of living of the population shall create prerequisites for a greater social effect. The tasks and measures in NPCPSM for 2005 – 2006 are connected with social and macroeconomic indices which have a direct impact on the increase of the standard of living and overcoming of poverty as an increase of the incomes of households and employment of the population.

NPCPSM for 2005 – 2006, as a real policy instrument, makes use of active measures of influence over processes with a direct factorial dependency on poverty, such as the system of minimum incomes, pensions, social welfare and conditions for social inclusion, the activation of government institutions and civic society, the more effective and purpose-oriented use of pre-accession funds, the improvement of prerequisites for active inclusion of communities threatened by poverty in industrial processes.

## **Conclusion**

In view of the current case law and the current legal situation and practice the provision could not be accepted by Bulgaria.

## ■ Article 31 (Right to housing)

With a view to ensuring the effective exercise of the right to housing, the Parties undertake

1. to take measures designed to promote access to housing of an adequate standard.
2. to take measures designed to prevent and reduce homelessness with a view to its gradual elimination.
3. to take measures designed to make the price of housing accessible to those without adequate resources.

### ECSR Case-law presented by Mr J-M. BELORGEY

I. States must guarantee the right to adequate housing.

The notion of adequate housing must be defined in law. Adequate housing means a dwelling which is structurally secure, safe from a sanitary and health point of view and not overcrowded, with secure tenure supported by the law.

The criteria for adequate housing are:

a dwelling is safe from a sanitary and health point of view if it possesses all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity, etc and if specific dangers such as the presence of lead or asbestos are under control.

over-crowding means that the size of the dwelling is not suitable in light of the number of persons and the composition of the household in residence.

security of tenure means protection from forced eviction and other threats (dealt with under paragraph 2 of Article 31).

The standards of adequate housing shall be applied not only to new constructions, but also gradually, in the case of renovation, to the existing housing stock. They shall also be applied to housing available for rent as well as to housing occupied by their owners. The situation in practice is also assessed.

It is incumbent on the public authorities to ensure that housing is adequate through different measures such as, in particular, an inventory of the housing stock, injunctions against owners who disregard obligations, urban development rules and maintenance obligations for landlords. Public authorities must also guard against the interruption of essential services such as water, electricity and telephone.

The effectiveness of the right to adequate housing implies its legal protection. Adequate procedural safeguards are requested. Tenants or occupiers must be given access to affordable and impartial judicial remedies.

Equal treatment with respect to housing (Article E) must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, the unemployed, single parent households, young persons, persons with disabilities including those with mental health problems.

II. With regard to the reduction of homelessness, reactive and preventive measures must be taken.

Homeless are those individuals who legally do not have at their disposal a dwelling or other form of adequate shelter.

States must gradually reduce homelessness, towards its elimination. Reducing homelessness implies the introduction of emergency and longer-term measures, such as the provision of immediate shelter and care for the homeless as well as measures to help such people overcome their difficulties and to prevent them from returning to a situation of homelessness. The temporary supply of shelter, however adequate, cannot be considered satisfactory. Individuals living in conditions of homelessness should be provided with adequate housing within a reasonable period.



States must also take action to prevent categories of vulnerable people from becoming homeless. To this purpose they must implement a housing policy for all disadvantaged groups of people to ensure access to social housing (access to social housing is primarily examined under Article 31§3).

States must set up procedures to limit the risk of evictions and to ensure that when these do take place, they are carried out under conditions which respect the dignity of the persons concerned.

Forced eviction can be defined as the deprivation of housing which a person occupied due to insolvency or wrongful occupation. Legal protection for persons threatened by eviction must include, in particular, an obligation to consult the parties effected in order to find alternative solutions to eviction and the obligation to fix a reasonable notice period before eviction. The law must also prohibit evictions carried out at night or during the winter period, provide legal remedies and offer legal aid to those who are in need of seeking redress from the courts. Procedural safeguards are of great importance. Compensation for illegal evictions must also be provided. When an eviction is justified by the public interest, authorities must adopt measures to re-house or financially assist the persons concerned.

Equal treatment with respect to housing must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, the unemployed, single parent households, young persons, persons with disabilities including those with mental health problems.

III. An adequate supply of affordable housing must be ensured.

Housing is affordable if the household can afford to pay initial costs (deposit, advance rent), current rent and/or other costs (utility, maintenance and management charges) on a long-term basis while still being able to maintain a minimum standard of living, according to the standards defined by the society in which the household is located.

It is incumbent on states to:

- adopt appropriate measures for the construction of housing, in particular social housing; ensure access to social housing for all disadvantaged groups of people. Measures to reduce waiting times which are very long must be adopted. Legal remedies must be available in the event of excessive waiting times.
- introduce housing benefits for low-income and disadvantaged sections of the population. Housing allowance is an individual right: all qualifying households must receive it in practice; legal remedies must be available in case of refusal.

Equal treatment with respect to housing (Article E) must be guaranteed, in particular, to the different groups of vulnerable persons, particularly low-income persons, the unemployed, single parent households, young persons, persons with disabilities including those with mental health problems.

### **The situation in Bulgaria (source: the Government report on provisions not accepted)**

By Decision no. 395 of May 14 2005 the Government adopted the National Housing Strategy of the Republic of Bulgaria.

This Strategy stipulates the fundamental goals and subgoals of the new housing policy and outlines the principles and guidelines of governance activities, which should be implemented for the completion thereof aiming to improve the situation with the housing stock and the housing environment and increasing the degree of housing contentedness.

This strategy will serve as a footing for development of specific national, regional and municipal action plans.

The necessity of adopting such a National Housing Strategy is argued by the circumstance that the housing plays an important role in the development of society and is of utmost importance for social, cultural and economic progress. If no specified national housing policy is implemented the

needed level of housing contentedness should be unachievable, the latter leading to favourable social and economic outcome and contributing to society's welfare and welfare of any single person.

The implementation of the national housing policy, pursuant to the Strategy, is based on the following vision: "Creation of a balanced, proportionately developing and persistent housing system through provision of accessibility to quality housing (either private or rented) that would meet the needs of Bulgarian citizens."

In the light of the results of the summarised analysis made of characteristics typical of the housing system, and of the principle of the new housing policy in the conditions of a market economy: from a policy providing housing to a policy providing opportunities, the following strategic goals of the national housing policy are outlined:

1. Putting a brake to the processes of deterioration of the existing housing stock.
2. Setting up a working mechanism aimed at ensuring new accessible housing (for purchase and successive renting out)."

These priorities and the succession of actions aimed at implementing the strategic goals of the national housing policy are addressed to the most urgent reforms and housing needs considering critical financial deficits of the State, the municipalities or the households.

The Action Plan et the National Housing Strategy 2004 – 2007 contains specific tasks arising from different programmes, executors in charge and financing needed for completion thereof.

Specifically, as regards compulsory measures that are to be undertaken for ensuring of the effective exerting of the right to housing stipulated in the provisions of the European Social Charter, the Action Plan to the National Housing Strategy provides for the implementation thereof, and there are a few programmes in progress:

1. Refinement of finance-credit and fiscal system as regards the housing sector;
2. Providing for access to housing for low income families;
3. Enhancing housing conditions in urban environment as regards ethnic minorities in unequal condition.

The goal of development of these programmes is to suggest mechanisms and instruments and proposals on changes in the legislation, in the first place financial and fiscal, that would lead to improvement of accessibility for persons with insufficient resources and to relaxation of homelessness situation.

In pursuance of the National Housing Strategy and aiming to improve the standard of the existing housing stock, several programmes are also being developed:

1. Renovation of residential buildings.

By a Decision under Protocol no. 3 of the sitting of the Council of Ministers of 20 January 2005, a National Programme for Renovation of Residential Buildings in the Republic of Bulgaria was adopted. A priority of this Programme are the panel blocks of flats within the existing housing stock in the Republic of Bulgaria. The Programme spans the period 2005 – 2020. When the programme should be implemented, the State undertakes to support and stimulate the renovation through providing for an adequate legal framework, housing subsidies up to 20% of the renovation cost, methodological and technical assistance and informing and awareness activities.

2. Restructuring of housing estates

A draft project has been developed of a Concept for restructuring of housing estates. This concept is based on the following key elements:

- specific rules and standards for urban restructuring of housing estates related to regulation of landed estate;

- a new regulation for privatisation of the land (the formula "property against repair" is suggested)

### 3. Management and maintenance of the existing housing stock

Subject of this programme are the following:

- the status of building estate and of estate in joint tenancy;
- requirements to constructions;
- introduction of a technical testing certificate of a building;
- introduction of a system of energetic marking of buildings;
- identification of subjects of management of housing stock.

In pursuance of this programme, a Management of Building Estate and of Estate in Joint Tenancy in Residential Buildings Bill has been prepared.

The leading and coordinative role in the implementation of the action plan to the National Housing Strategy belongs to the Ministry of Regional Development and Public Works. However, a successful implementation may only be achieved provided there should be an active participation and successful cooperation between all relevant institutions and organisations.

### **Conclusion**

In view of the current case law and the current legal situation and practice the provision could not be accepted by Bulgaria.



## **II – Legislation related to provisions not accepted**

The following legislation was at the Council of Europe delegation's disposal:

- the Labour Code (as amended by SG, No. 25/2001, No. 52/2004, No. 27/2005)
- the Act on protection against discrimination (2003) (in English)
- the Employment Promotion Act of 20 December 2001 (SG No. 112/2001) (in English)
- the Social Security Code (SG No. 110/2000) as amended (up to SG No. 67/2003) (in English)
- the Act of 7 May 1998 on Social Assistance (SG No. 56/1998) as amended up to 2003 (Original version)
- the Act of 4 June 1998 (SG No. 70/1998) on Health Insurance as amended up to SG No. 114/2003 (Original version)
- the National Education Act of 1<sup>st</sup> October 1991 (SG No. 86/1991 as amended up to SG No. 68/1999) (last amended by Act of 10 September 2002 SG No. 90/2002) (in English)
- the Act on Vocational Education and Training of 15 July 1999 (SG No. 68/1999), as amended by Act of 19 March 2003 (SG No. 29 /2003) (in English)
- the Act of 17 September 2004 on the Integration of Persons with disabilities (SG No. 81/2004) (in English)
- the Act of 31 May 2000 on Child Protection (SG No. 48/2000) as amended up to 2003 (in English)
- the Family Code SG No. 41/1985 as amended up to 2005 (in English)
- the Criminal Code SG No. 26/1968 as amended up to 2005 (in English)
- the Foreigners in the Republic of Bulgaria Act (No. SG 153/1998, as amended up to 2002) (in English)

Full texts of legislation available in separate document.