

Resolution CM/ResChS(2010)2
Collective complaint No. 48/2008
by the European Roma Rights Centre (ERRC) against Bulgaria

*(Adopted by the Committee of Ministers on 31 March 2010
at the 1081st meeting of the Ministers' Deputies)*

The Committee of Ministers,¹

Having regard to Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints;

Taking into consideration the complaint lodged on 28 March 2008 by the European Roma Rights Centre against Bulgaria;

Having regard to the report transmitted by the European Committee of Social Rights, in which it found that Article 12 (c) of the Social Assistance Act, following amendments introduced in 2006 and 2008, breached the right to social assistance of unemployed persons with insufficient resources within the meaning of Article 13§1 of the Revised Charter, for the following reasons:

“Pursuant to Article 13§1 of the Revised Charter, states are required to guarantee minimum income and social assistance for persons without adequate resources. The right to social assistance takes the form of an individual right in circumstances where a basic condition of eligibility is satisfied, which occurs when no other means of reaching a minimum income level consistent with human dignity are available to that person. Reducing or suspending social assistance benefits may only be in conformity with the Charter if they do not deprive persons in need of their means of subsistence.

The Committee considers that the contested amendments to the Social Assistance Act, which establish the interruption of social assistance for unemployed persons in active age after 18, 12 or 6 months, cannot be considered to be a permissible restriction on the right to receive social assistance under the provisions of Article 13§1.

The Committee notes that the government has taken measures to improve the education and training of unemployed persons, as well as measures to encourage the reintegration into the labour market of persons that will be losing social assistance as a result of the contested legislative amendments. Nevertheless, despite these measures, it remains probable that only a limited number of persons affected by the social assistance cuts will actually obtain employment.

Taking into account the serious risk that persons affected by the denial of continued social assistance will be deprived of adequate resources, and that social assistance must be provided as long as need persists to enable the person concerned to continue to live in a manner compatible with their human dignity, the Committee holds that the amendments to the Social Assistance Act interrupting minimum income for persons in need after 18, 12 or 6 months are in breach of Article 13§1 of the Revised Charter.

¹ In accordance with Article 9 of the Additional Protocol to the European Social Charter providing for a system of collective complaints, the following Contracting Parties to the European Social Charter or the revised European Social Charter have participated in the vote: Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, “the former Yugoslav Republic of Macedonia”, Turkey, Ukraine and United Kingdom.

With respect to the complainant's allegations that the amendments to the Social Assistance Act also violate Article E of the Revised Charter because they will have a disparate and unjustified impact on Roma, the Committee finds that they can be regarded as subsumed in the circumstances of this complaint within the wider question of whether Article 13§1 has been breached by the impugned amendments. Therefore, having regard to the finding of a violation of the right to social assistance of all those persons affected by the amendments to the Social Assistance Act, the Committee does not consider it necessary to examine the allegations of a breach of Article E of the Revised Charter read in conjunction with Article 13§1."

1. Welcomes the abrogation of Article 12 (c) of the Social Assistance Act, which will enter into force on 1 January 2011 (see appendix to this resolution);
2. Looks forward to Bulgaria reporting, at the time of the submission of the next report concerning the relevant provisions of the European Social Charter, that the new legislation is implemented in practice.

Appendix to Resolution CM/ResChS(2010)2

Information provided by the Permanent Representative of Bulgaria on 19 March 2010 concerning Collective complaint No. 48/2008

"With reference to Collective complaint No. 48/2008 of the European Roma Rights Centre against Bulgaria, where the European Committee of Social Rights found that the interruption of social assistance for unemployed persons in active age after 18 or 12 months, as foreseen by Article 12(c) of the Social Assistance Act of the Republic of Bulgaria, could not be considered to be a permissible restriction on the right to receive social assistance under the provisions of Article 13, paragraph 1 of the European Social Charter (revised), please be informed of the following:

The impugned provision 12 (c) was abolished by an amendment of the Social Assistance Act, adopted by the National Assembly of the Republic of Bulgaria on 10 February 2010 (promulgated in issue 15 of the State Gazette, 23 February 2010). The amendment will enter into force on 1 January 2011.

The said amendment provides an effective long-term solution to the issue raised by the European Committee of Social Rights in the conclusion of its report on Collective complaint No. 48/2008.

It should also be noted that the adoption of the said amendment also completely resolves the one partly remaining issue concerning Collective complaint No. 46/2007 of the European Roma Rights Centre against Bulgaria."