

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

DECISION ON ADMISSIBILITY

17 October 2023

Eurochild v Bulgaria

Complaint No. 221/2023

The European Committee of Social Rights, committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 337th session attended by:

Aoife NOLAN, President
Eliane CHEMLA, Vice-President
Tatiana PUIU, Vice-President
Kristine DUPATE, General Rapporteur
Jozsef HAJDU
Karin Møhl LARSEN
Yusuf BALCI
Paul RIETJENS
George THEODOSIS
Mario VINKOVIC
Miriam KULLMANN
Carmen SALCEDO BELTRÁN
Franz MARHOLD
Alla FEDOROVA

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having regard to the complaint registered on 14 February 2023 as number 221/2023, lodged by Eurochild against Bulgaria, and signed by Marie Louise Coleiro Preca, President of Eurochild, and Tanya Ward, Vice-President of Eurochild, requesting the Committee to find that the situation in Bulgaria is not in conformity with Articles 11, 13, 14, 16, 17, 27 and 30, as well as Article E in conjunction with the aforementioned provisions of the revised European Social Charter ("the Charter");

Having regard to the observations of the Government of Bulgaria ("the Government") on the admissibility of the complaint registered on 12 April 2023;

Having regard to the Charter and, in particular to Articles 11, 13, 14, 16, 17, 27, 30 and E, which read as follows:

Article 11 – The right to protection of health

Part I: "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable."

Part II: "With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;
2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents."

Article 13 – The right to social and medical assistance

Part I: "Anyone without adequate resources has the right to social and medical assistance."

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

1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;
2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;
3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;
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."

Article 14 – The right to benefit from social welfare services

Part I: “Everyone has the right to benefit from social welfare services.”

Part II: “With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;
2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services.

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

Part I: “The family as a fundamental unit of society has the right to appropriate social, legal and economic protection to ensure its full development.”

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

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

Part I: “Children and young persons have the right to appropriate social, legal and economic protection.”

Part II: “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 and exploitation;
- c. to provide protection and special aid from the state for children and young persons temporarily or definitely deprived of their family’s support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.”

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

Part I: “All persons with family responsibilities and who are engaged or wish to engage in employment have a right to do so without being subject to discrimination and as far as possible without conflict between their employment and family responsibilities.”

Part II: "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 daycare services and other childcare arrangements;

2 to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;

3 to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment...."

Article 30 – The right to protection against poverty and social exclusion

Part I: "Everyone has the right to protection against poverty and social exclusion."

Part II: "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."

Article E – Non-discrimination

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status."

Having regard to the Additional Protocol to the European Social Charter providing for a system of collective complaints ("the Protocol");

Having regard to the Rules of the Committee adopted by the Committee on 29 March 2004 at its 201st session and last revised on 6 July 2022 at its 328th session ("the Rules");

Having deliberated on 17 October 2023;

Delivers the following decision, adopted on this date:

1. Eurochild alleges that Bulgaria has failed to ensure effective early childhood education and care to all children, thus breaching its obligations in terms of Articles 11, 13, 14, 16, 17, 27 and 30, as well as Article E in conjunction with the aforementioned provisions of the Charter .

2. The Government does not object to the admissibility of the complaint.

THE LAW

3. The Committee observes that Bulgaria accepted the collective complaints procedure by a declaration made at the time of ratification of the Revised Charter on 7 June 2000 and that this procedure entered into force in respect of Bulgaria on 1 August 2000. In accordance with Article 4 of the Protocol, the complaint has been submitted in writing and concerns Articles 11, 13§§1 to 3, 14, 16, 17§2 and 27§2, provisions accepted by Bulgaria when it ratified this treaty on 7 June 2000 as well as Article E. Bulgaria has been bound by these provisions since the entry into force of the treaty in its respect on 1 August 2000.

4. The Committee notes that Eurochild invokes Articles 11, 13, 14, 16, 17, 27 and 30 of the Charter in their entirety. However, Articles 13§4, 17§1, 27§1 and 30 of the Charter are provisions which were not accepted by Bulgaria when it ratified this treaty and nor have they been accepted subsequently. The Committee recalls that, pursuant to Article 4 of the Protocol, a complaint shall relate to a provision of the Charter accepted by the State Party concerned (see in this sense *European Federation of Employees in Public Services (EUROFEDOP) v. Greece*, Complaint No. 3/1999, decision on admissibility of 13 October 1999). The Committee considers therefore that the complaint is inadmissible as regards Articles 13§4, 17§1, 27§1 and 30 of the Charter.

5. The Committee notes that, in accordance with Articles 1 (b) and 3 of the Protocol, Eurochild is an international non-governmental organisation with participatory status with the Council of Europe. It is included on the list established by the Governmental Committee of non-governmental organisations entitled to lodge complaints before the Committee.

6. As regards whether Eurochild has particular competence for the purpose of the collective complaints procedure within the meaning of Article 3 of the Protocol, the Committee notes that according to Article 3 of its Statutes, Eurochild is an active network of organisations and individuals working to improve the quality of life of children and young people. Its activities include, inter alia, producing, developing and sharing information on policy and practice; monitoring and influencing policy development at European level and promoting human rights and fundamental freedoms in Europe. On this basis, the Committee considers that the complaint relates to a matter in which Eurochild has particular competence under the collective complaints procedure within the meaning of Article 3 of the Protocol.

7. The Committee further notes that the complaint is signed on behalf of Eurochild by Marie Louise Coleiro Preca and Tanya Ward, President and Vice-President of

Eurochild respectively, who are statutorily empowered to represent the organisation under Article 15.2. of its Statutes. The Committee considers therefore that the complaint complies with Rule 23 of its Rules.

8. With respect to the grounds of the complaint, the Committee notes that:

- as to the alleged violation of Article 16 read alone and of Article E taken in conjunction with said provision of the Charter, Eurochild refers in particular to the existing gaps in the provision of early childhood education and care services due to the uneven distribution of early childhood education and care institutions, notably between different cities and their insufficient capacity, as well as the lack of appropriate support from public authorities. In particular, Eurochild alleges that the lack of available places limits the access of the most disadvantaged children to pre-school education, thereby compromising their chances of attending and succeeding at school and escaping poverty. Eurochild further maintains that the Government Ordinance of 12 March 2021 providing for compensation to parents whose children are not admitted to pre-school is discriminatory. This is because it fails to ensure an adequate level of compensation to ensure that all families can pay for early childhood education and care services. The Ordinance is also discriminatory because de facto it does not allow compensation to be paid for two-year-old children born in the second half of the year. According to Eurochild, the Ordinance results in unequal treatment for parents of children under the age of three who are practically deprived of any type of care for their children;

- as to the alleged violation of Articles 11, 13§§1 to 3, 14, 17§2 and 27§§2 and 3 as well as of Article E taken in conjunction with these provision of the Charter, Eurochild merely makes reference to these provisions of the Charter without further specifying the links between the allegations and the requirements of these provisions of the Charter.

9. On the basis of the above, the Committee considers that the complaint indicates in what way Bulgaria has not ensured the satisfactory application of Article 16 read alone as well as of Article E read in conjunction with said provision of the Charter. The complaint thus meets the requirements of Article 4 of the Protocol and is therefore admissible with respect to these provisions.

10. As regards the alleged violation of Articles 11, 13§§1 to 3, 14, 17§2 and 27§§2 and 3 as well as Article E taken in conjunction with these provisions of the Charter, the Committee considers that the relationship between the situation complained of and the material scope of the Charter provisions invoked has not been made sufficiently clear and therefore has not been substantiated. The Committee considers that it has not been indicated with sufficient precision in what way Bulgaria has not ensured the satisfactory application of these provisions, as required by Article 4 of the Protocol. It therefore considers that the complaint is inadmissible with respect to these provisions.

11. For these reasons, the Committee, on the basis of the report presented by Aoife NOLAN, and without prejudice to its decision on the merits of the complaint,

DECLARES THE COMPLAINT ADMISSIBLE AS FAR AS IT CONCERNS ARTICLE 16 AS WELL AS ARTICLE E IN CONJUNCTION WITH ARTICLE 16 OF THE CHARTER AND DECLARES THE REMAINDER OF THE COMPLAINT INADMISSIBLE.

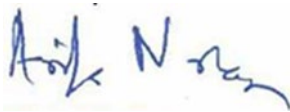
In application of Article 7§1 of the Protocol, requests the Deputy Executive Secretary to notify the complainant organisation and the Respondent State of the present decision, to transmit it to the parties to the Protocol and the States having submitted a declaration pursuant to Article D§2 of the Charter, and to publish it on the Council of Europe's Internet site.

Invites the Government to make written submissions on the merits of the complaint by 15 December 2023.

Invites Eurochild to submit a response to the Government's submissions by a deadline which the Committee shall determine.

Invites the Parties to the Protocol and the States having submitted a declaration pursuant to Article D paragraph 2 of the Charter to notify by 15 December 2023 any observations they may wish to submit.

In application of Article 7§2 of the Protocol, invites the international organisations of employers or workers mentioned in Article 27§2 of the European Social Charter to make observations by 15 December 2023.



Aoife NOLAN
President and Rapporteur



Henrik KRISTENSEN
Deputy Executive Secretary