



Република България
ИКОНОМИЧЕСКИ
И СОЦИАЛЕН СЪВЕТ

ANALYSIS
of
THE ECONOMIC AND SOCIAL COUNCIL
on the
**APPLICATION OF THE ILO CONVENTIONS AND
RECOMMENDATIONS
IN BULGARIA**
(Own-initiative analysis)

The plan for work of the Economic and Social Council (ESC) in 2010 includes development of an own-initiative analysis entitled „Application of the ILO Conventions and Recommendations in Bulgaria”.

The President of the Economic and Social Council, Professor Lalko Dulevski, by a letter No. 023-RD-06/08.02.2010, pursuant to Article 15(1), item 9 of the ESC’s Rules of Procedure, assigned the elaboration of the analysis to the Commission for Labour, Incomes, Living Standard and Industrial Relations in collaboration with the Commission for Social Policy.

By a decision made at a joint meeting of both Commissions Dr. Konstantin Trenchev was appointed rapporteur on the analysis; Dr. Trenchev is Vice President of the Economic and Social Council and an ESC member from Group II - employees' organisations.

Nikolay Naydenov, a lawyer, former Head of the the International Organisations and International Affairs Department at the European and International Cooperation Directorate at the Ministry of Labour and Social Policy, was involved in the preparatory work for the analysis.

At a joint meeting held on 31st May 2010 the Commission for Labour, Incomes, Living Standard and Industrial Relations and the Commission for Social Policy discussed and submitted the draft of the analysis for approval by the Plenary session.

At its Plenary session held on 9th June 2010 the Economic and Social Council approved this analysis.

1. Introduction

1.1. The International Labour Organisation (ILO) is a universal international organisation established in 1919, after the end of World War I, during the Paris Peace Conference. Although it had been established before the United Nations Organisation was, as from 1946 the ILO has had the status of a UN specialised organisation on labour issues. An essential and unique peculiarity of the ILO is its tripartite structure. Its main bodies comprise representatives of the State (governmental representatives), representatives of the employees' organisations and of the employers' organisations at a ratio of 2:1:1. This structure of the organisation allows the three most interested parties in this field to participate in the settlement and discussion of the labour and social issues, thus commonly accepted settlements or settlements by compromise are reached. In this way the idea of tripartism is implemented in the work of the organisation, in particular in all its bodies and activities. The ILO is the „birthplace” of the practical implementation of the tripartite cooperation, afterwards the latter was implemented at national level.

1.2. The activities of the ILO are very wide-ranging and various ones, but still they can be confined mainly to three directions as follows:

- √ Rule-making activity;
- √ Technical cooperation;
- √ Research and information activity.

This analysis is dedicated mainly to the rule-making activity of the ILO and the application of the results thereof in Bulgaria. Three of the ILO's programme declarations are of essential importance in respect to this activity – the Declaration of Philadelphia (1944), the Declaration on Fundamental Principles and Rights at Work (1998) and the Declaration on Social Justice for a Fair Globalisation (2008). The Global Jobs Pact, which was adopted in 2009 to stress mainly on tackling the global financial and economic crisis, is also a significant achievement. Based on the principles as laid down in this document, a consensus was reached among the social partners regarding the elaboration and signing of a National Jobs Pact in

Bulgaria, by means of which consent to the future anti-crisis policies and to reforms in key social systems shall be ensured.

1.3. The ILO adopts conventions and recommendations through its main body - the General Conference of the Representatives of the membercountries of the ILO, called also the International Labour Conference (ILC), which is held at least once per year, usually at the organisation's headquarters - Geneva. **The conventions are a classic multilateral international treaty**, which is subject to ratification **and is binding on the states having joined it**. The recommendations, as implied by the name itself, are not binding on the member countries of the ILO and respectively the recommendations do not specify a judicial procedure for obligation. The choice whether an issue shall be settled by a convention or recommendation is made taking into consideration to what extent willingness to settle a particular issue under international law and to undertake the relevant legal obligations exists. Sometimes the same issue is covered by a **convention specifying the minimum standards**, and as a supplement, by **a recommendation, which provides guidelines for further development of the national legislation and practice in the relevant field**.

1.4. The ILO Constitution specifies certain general obligations for the member countries of the ILO under the conventions and recommendations as adopted, no matter whether they have attended the ILC and whether they have voted for, against or abstained from voting during the adoption. These obligations are as follows:

1.4.1. The first obligation of the governments of the member countries of the organisation is within a year or, as an exclusion, within 18 months as from the closure of the ILC session, where the respective conventions and recommendations have been adopted, **the governments to submit the latter to the law-making national authorities with a view to their transposition in the national legislation**. The competent authority in each country shall be defined by its Constitution. This is the legislative body (usually the Parliament). The purpose of this obligation is the international acts, as adopted by the ILO, to receive vast publicity, to be notified to the legislative body, discussions to be carried out and a possibility to be provided to the legislative body to get acquainted with them and to take them into consideration in its future legislative activity. This procedure **does not include an obligation for ratification of the conventions and**

recommendations or for the immediate application of the latter. The ratification of the conventions is a sovereign right of the member countries of the ILO and they are free to decide and assess on their own whether and why to ratify particular conventions following the relevant procedures as laid down in the national Constitutions.

1.4.2. The second obligation of the governments of the member countries of the ILO **is to submit to the International Labour Office – ILO** (the ILO Secretariat) **reports on the application** of the above-mentioned procedure. These reports shall indicate when the respective conventions and recommendations have been submitted to the bodies of the competent authority, data on the relevant body of the competent authority itself, on its position and functions in the organisation of the State, on the decisions made and the discussions carried out following the submission of the documents, etc.

1.4.3. The third obligation of the governments **is to submit national reports on conventions and recommendations selected by the Administrative Council** (the executive body of the ILO), the reports shall give picture of the status of the respective national legislation and practice regarding the particular conventions and recommendations as well as the difficulties faced on applying them. The government is obliged to submit **to the ILO initial and progress reports on the measures undertaken to apply the conventions, which the respective State has joined.** These reports shall be of the structure and contents endorsed by the Administrative Council. They should contain complete, correct and true data both on the legislation and on the practical application of the respective convention. The government is obliged to submit copies of these reports to the nationally representative (employees' and employers') organisations. The purpose of this obligation is these organisations to be acquainted with the information that the government provides to the ILO and with the assessment made by the government concerning the application of the ratified conventions; these organisations to give their comments on the reports; the comments are directly submitted to the International Labour Organisation.

1.5. The fulfillment of the obligations of the states, which ensue from the conventions and recommendations adopted by the ILO, is subject to regular control. The organisation is famous for its specific, widespread-ranging and orderly system for international control, which has existed and

has been streamlined for decades now. The regular control is exerted in respect to the fulfillment of the States' obligations under all conventions and recommendations as well as the obligations, which ensue from the ratified conventions in particular. The control is exerted by the following bodies:

1.5.1. Committee of Experts on the Application of Conventions and Recommendations (CEACR)¹. It is composed of 20 independent experts - prominent jurists, experts in national and international labour law as well as other prominent experts in labour relations. This body examines the reports of the governments on the ratified and non-ratified conventions and recommendations and it also exerts control over the submission of the adopted conventions and recommendations to the competent national authorities. Where the Committee of Experts on the Application of Conventions and Recommendations (the Committee) finds non-compliance of an effective national legislation and practice with the requirements as specified in the ratified conventions, the Committee elaborates comments (the so-called observations) to the governments, which are published in a special report, or the Committee asks the governments directly. The governments are obliged to give answers to these observations and direct requests in the next national reports.

1.5.2. Committee on the Application of Standards. It is constituted as a body of the International Labour Conference at each ILC session. This is a tripartite body and it comprises representatives of the governments, employees' and employers' organisations at a ratio of 2:1:1. This is one of the main working committees at each ILC session. Its main task is to examine the reports of the Committee of Experts on the Application of Conventions and Recommendations and on the basis of these reports to submit its own report for approval by the ILC in plenary.

1.5.3. In addition to the regular control in respect to the elaboration of national reports, the ILO has developed another procedure, which is based on complaints lodged against the government of a state, which has ratified a particular convention. An important role in this case plays the Committee on

¹ Committee of Experts on the Application of Conventions and Recommendations (CEACR)

Freedom of Association, which is a special control body regarding the freedom of association and the right to organise. The particular attention that the ILO attaches to these issues is prompted both by the key importance of the right to organise as a main right of man and by the significant role of the employees' and employers' organisations in the tripartite structure and in the overall activity of the International Labour Organisation.

2. THE ILO CONVENTIONS IN THE BULGARIAN LEGAL SYSTEM

2.1. Bulgaria has been a member of the ILO since 6th December 1920, which means that this year is the 90th anniversary of this country's membership in the International Labour Organisation.

2.1.1. The ILO has adopted 188 conventions and 199 recommendations since it was set up. Eight out of the 188 conventions, which were supplemented by 6 recommendations, are considered fundamental ones as they provide for basic labour rights. Another 4 conventions, which were supplemented by 6 recommendations, are considered priority ones.

2.1.2. As per the number of ratified conventions (84 ratified and effective conventions, including all the 8 fundamental and 3 priority ones), Bulgaria is one of the leaders among the 182 member countries of the ILO.

2.2. Since the organisation was set up, the ILO conventions ratification activity has passed through various periods of intensity. Having become a member of the organisation in 1920, for about 30 years our country joined more than 50 conventions. After this period /the 50s of last century/ the intensity of ratification started to reduce gradually; for the period 1950-1970 thirteen conventions were ratified and for the period 1970-2000 only 4 conventions were ratified. Since 2000 Bulgaria has ratified 16 conventions, which are mainly up-to-date and topical international instruments of latest generation. It is certainly important to note that **the ratification activity is not as an end in itself and the focus should not be on the quantitative measurement of the number of ratifications, but on the efficient implementation of the modern international labour standards in the national legislation of this country.**

2.3. Sometimes the vigorous progress and evolution of the social relations in the field considered leads to the need of implementing new standards, which shall replace the existing ones. Because of that there are a number of conventions, which were adopted in different periods and provide for the same matter. For example, Convention No. 3 on Maternity Protection was adopted in 1919, then in 1952 Convention No. 103 on Maternity Protection (Revised) was adopted, and in 2000 Convention No. 183 on Maternity Protection was adopted to revise the previous one. This means that **the international labour standards have not been established once for all, but they have developed according to the new social realities.** Hence, on shaping and implementing the ratification policy of this country, it is important to consider the application of new and up-to-date instruments, which shall gradually replace the existing ones in order to provide higher level of protection, which shall be in line with the social realities.

2.4. The activity on the implementation of the international labour standards in this country does not finish with the formal act of ratification. Prior to ratification, an analysis of the national legislation concerning the matter covered by the relevant convention should be performed and, if necessary, laws and regulations should be amended.

2.5. The ILO conventions do not come into effect immediately after their ratification, but usually within a year after notification to the ILO Director-General of the act of ratifying. The „grace period” from the ratification of a convention to its coming into effect is sufficient time for possible changes in legislation. Moreover, technical assistance is provided to our country within the frames of the ILO, which constitutes another key aspect of the organisation's activity. This also includes assistance to the member countries of the organisation in the fields within the competence of the ILO, for example: establishing and improving the labour and social security legislation, vocational education and training, and many others. Our country has been provided assistance in the fields of labour and social security, social assistance, labour inspection, employment, vocational education and training, promoting social dialogue and others via relevant projects, consultations by experts, workshops, round tables, analyses of regulations, etc.

2.6. It should be explicitly noted that in Bulgaria, pursuant to Article 5(4) of the Constitution of the Republic of Bulgaria, the ILO

conventions ratified by this country, were published and came into effect, they are part of the national legislation. **They have priority over the relevant standards of the national law in case of antinomy.** As for the interpretations on the application of these conventions in Bulgaria made by the ILO or its bodies, they also become binding on our country, pursuant to Article 23 of the International Treaties of the Republic of Bulgaria Act. **Hence, not only the text put down in the relevant ILO conventions should be analysed and interpreted, but attention should be paid to the observations and requests, as made by the control bodies.**

3. ILO CONVENTIONS OBSERVANCE IN BULGARIA

This section includes the main non-conformities of the Bulgarian legislation with the ILO conventions, as ratified by this country, which were found by the Committee of Experts on the Application of Conventions and Recommendations.²

3.1. C1 Hours of Work (Industry) Convention, 1919, ratified in 1921, published, the State Gazette, No. 36 of 6th May 1997.³

3.1.1. Pursuant to Article 113(2) of the Labour Code, the working hours under an employment contract for additional work, together with the duration of the working hours under the primary employment relationship, with the explicit written consent of the employees, may exceed forty-eight in the week. The CEACR considers that this provision contradicts Article 2 of the Convention, as under this provision the working hours of persons employed in any public or private industrial undertaking shall not exceed eight in the day and forty-eight in the week.

3.1.2. Pursuant to Article 136 a, paragraphs 1 and 2 of the Labour Code, for reasons relevant to the production process the employer may, by order in writing, extend the working hours in some work days and compensate that in other work days. The duration of the extended work day under the provisions of paragraph 1 may not exceed 10 hours. The Committee considers that this provision contradicts Article 2, item b of the

² The individual requests and observations of the Committee are published at the ILO's website at the following URL address: <http://www.ilo.org/ilolex/cgi-lex/countrylist.pl?country=Bulgaria>

³ CEACR: Individual Direct Request concerning Hours of Work (Industry) Convention, 1919 (No. 1) Bulgaria (ratification: 1922) Submitted: 2010

Convention, which generally provides for the working hours to be extended, but the daily limit of eight hours shall not be exceeded by more than one hour.

3.1.3. Pursuant to Article 142(2) of the Labour Code the employer may establish summarised calculation of the working hours – weekly, monthly, or for another calendar period, which shall not be longer than 6 months. Pursuant to paragraph 4 of the same provision, the maximum duration of a work shift under a summarised calculation of working hours may be up to 12 hours, while the duration of the working week shall not be more than 56 hours and for employees at reduced working hours it may be up to one hour more than their reduced working hours. The CEACR considers that these provisions contradict Articles 2-5 of the convention concerned. Under the convention, where persons are employed in shifts, it shall be permissible to employ persons in excess of eight hours in any one day and forty-eight hours in any one week, if the average number of hours over a period of three weeks or less does not exceed eight in the day and forty-eight in the week. In those processes which are required by reason of the nature of the process to be carried on continuously by a succession of shifts, the working hours shall not exceed fifty-six in the week on the average, while the requirement for compensatory rest shall be met. In exceptional cases, where it is recognised that the limits specified cannot be applied, agreements between workers' and employers' organisations may be given the force of regulations issued by the national authority, where another way of summarised calculation of working hours shall be defined. Even in such cases the average number of hours worked in the week, over the number of weeks defined by the particular schedule, shall in no case exceed forty-eight.

3.1.4. As for the possibility on the strength of Article 139 of the Labour Code - for some categories of employees the employer may establish open-ended working hours - the CEACR notes that exceptions from the normal working hours under the convention concerned may be allowed only after the agreements between workers' and employers' organisations have been given the force of regulations, while the hours worked in the week shall not exceed forty-eight. Moreover, in order to be allowed, such exceptions should concern only preparatory or complementary work, which must necessarily be carried on outside the limits laid down for the general working of an

establishment, or for certain classes of workers whose work is essentially intermittent.

3.2. C30 Hours of Work (Commerce and Offices) Convention, 1930, ratified in 1932, not published⁴

3.2.1. The Committee observes that, pursuant to Article 142 of the Labour Code, the employer may establish summarised calculation of the working hours – weekly, monthly, or for another calendar period, which shall not be longer than 6 months. This provision allows the employers, as they find appropriate, to establish variable distribution of working hours throughout the six months' period, which clashes with the requirements defined by Article 6 of the convention under consideration. In this connection the Committee recalls that, pursuant to Article 6 and Article 8 of the convention, in exceptional cases, where the circumstances in which the work has to be carried on make the relevant standards inapplicable, the specified 8 hours of work in any day and forty-eight hours in the week may be exceeded. The Committee notes that this issue has also been brought up by the European Committee of Social Rights (the body which monitors the compliance of the European Social Charter (Revised)) in its conclusions of 2007, wherein the European Committee of Social Rights has noted that flexible organisation of the working hours averaged over a certain period of time, may only be allowed, if safeguards against groundless increase of the working hours in the day and in the week exist.

3.3. C87 Freedom of Association and Protection of the Right to Organise Convention, 1948 /a fundamental convention/, ratified in 1959, published, the State Gazette, No. 35 of 2nd May 1997.⁵

3.3.1. According to the ILO's control bodies, the provisions of Article 11, paragraph 2 and paragraph 3 of the Collective Labour Disputes Settlement Act (CLDSA), which concern the requirements regarding the exercise of right to strike, do not comply with Article 3 of the convention under consideration. The Committee's understanding is that in strike ballots

⁴ CEACR: Individual Direct Request concerning Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) Bulgaria (ratification: 1932) Submitted: 2010

⁵ CEACR: Individual Observation concerning Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) Bulgaria (ratification: 1959) Published: 2010

only the votes cast should be counted (unlike what is specified in the current revision of Article 11(2) - all the votes of the employees at an enterprise) and the quorum for a general meeting of the employees and for making valid decisions should be fixed at a reasonable level. The Committee considers also that the requirement specified in Article 11(3) of the act in question, which implies obligation to notify the duration of the strike, clashes with Article 3 of the convention under consideration.

3.3.2. Secondly, the Committee gives consideration to the requirement specified in Article 51 of the Railway Transport Act, which implies that in case of strike the workers and the transport operators, acting as employers, shall ensure that satisfactory transport services are provided to the population where the volume of those services is not less than 50 percent of the volume before the commencement of industrial action. The Committee finds that the stipulation of such a high threshold of minimum services during a strike is not in compliance with the convention under consideration and it also notes that the employees' organisations should participate in the negotiations on the definition and organisation of a minimum service and where an agreement is not possible, the matter should be referred to an independent body.

3.3.3. As regards the limits of the right of the civil servants to strike (the civil servants are allowed to carry and mount appropriate signs and symbols, protest posters, ribbons etc. without terminating the fulfillment of the civil service) the Committee considers that such a limit is not in compliance with Convention No. 87, since this limit would be allowable only for the civil servants exercising authority in the name of State, and the right to strike should be ensured for all the rest.

3.3.4. It should be noted that the issues related to the above-mentioned limits of the right to strike, as specified in the Civil Servants Act and the Railway Transport Act, have been subject to criticism many times. During the International Labour Conference in 2008 the limits under consideration were discussed in plenary at a sitting of the Committee on the Application of Standards, in the presence of governmental representatives and representatives of the employees' and employers' organisations of all member countries of the International Labour Organisation. Bulgaria undertook to foster the continuation of the tripartite consultations so as to come to a mutually acceptable decision, which would fulfil the

recommendations of the Committee, having in mind the national socio-economic conditions, the positions of each of the participants in the tripartite dialogue and the obligations ensuing from international legal instruments, which are binding on Bulgaria. Technical support was requested from the ILO for the purposes of developing concrete proposals, taking into account the specific situation in this country.

3.3.5. Besides, in 2005, within the frames of the control mechanism under the European Social Charter (Revised) and as a result of a collective claim lodged by the Podkrepa Confederation of Labour, the Confederation of Independent Trade Unions in Bulgaria and the European Trade Union Confederation, the European Committee of Social Rights decided that the above-mentioned limits concerning the rights of the civil servants and the employees in the railway transport to strike constitute violation of the European Social Charter (Revised). In spite of this obvious violation of international commitments of our country, the necessary legislative changes have not been made so far. Still as a positive change made under a considerable pressure exerted by the representative employees' organisations in Bulgaria and at international level, we can report the legislative change by which the prohibition on strike in the energy, communications and health sectors was repealed (Article 16(4) of the Collective Labour Disputes Settlement Act).

3.4. C98 Right to Organise and Collective Bargaining Convention, 1949 /a fundamental convention/, ratified in 1959, published, the State Gazette, No. 35 of 2nd May 1997.⁶

3.4.1. In its comment on the application of the convention in question, the Committee has expressed its understanding that the national legislation should explicitly prohibit all acts of interference by the employees' and employers' organisations in each other's affairs, and the prohibition should be supported by dissuasive sanctions against acts of interference. In this respect the Committee requests the Bulgarian government to take the necessary measures to ensure adequate protection, including by means of dissuasive sanctions, against any acts of interference by the employees' and employers' organisations in each other's affairs.

⁶ CEACR: Individual Observation concerning Right to Organise and Collective Bargaining Convention, 1949 (No. 98) Bulgaria (ratification: 1959) Published: 2010

3.4.2. Next, the Committee recalls that although Article 6 of the convention in question excludes from the application of this convention state servants engaged in the administration of the State, the other categories of state servants should be entitled to participate in collective bargaining of working conditions, including wages. With this regard the Committee has requested the government to amend the Civil Servants Act so as to ensure the right to collective bargaining of all civil servants, with the only possible exception being those engaged in the administration of the State.

3.5. **C94 Labour Clauses (Public Contracts) Convention, 1949**, ratified in 1955, published, the State Gazette, No. 36 of 6th May 1997⁷

3.5.1. This convention concerns the public contracts. According to the requirements defined in this convention, the public contracts should contain clauses to ensure to the involved workers wages (including allowances), hours of work and other conditions of labour which are not less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried out. The Committee's position is that the main requirement defined by the convention concerned is to ensure, through obligatory inclusion of special labour clauses in all public contracts, that the workers engaged in the performance of a public contract, should enjoy the most favourable wages and other conditions of labour as compared to those established by law, a collective labour agreement or in any other way, for work of the same character in the district where the work is carried out.

3.5.2. As the labour legislation and provisions usually define the minimum standards, which presumably may be exceeded by collective bargaining, it is obvious that the fact itself that general labour law is also applied on performing public contracts is not sufficient to ensure to the workers concerned the most favourable wages and other conditions of labour as established for work of the same character in the district where the work is carried out. As public contracts entail the expenditure of considerable public funds, it is normal to establish a requirement for most favourable treatment of the workers and employees concerned. With a view to ensuring the adherence to the labour clauses, the convention in question

⁷ CEACR: Individual Observation concerning Labour Clauses (Public Contracts) Convention, 1949 (No. 94) Bulgaria (ratification: 1955) Published: 2010

requires concrete measures for adequate publicity as well as an appropriate system of sanctions (suspension of contract performance or withholding payment), which are beyond the sanctions set by general labour law. Such a system in the Bulgarian legislation concerning public contracts is almost completely missing, which leads to violation of the requirements defined by the convention concerned.

3.6. C100 Equal Remuneration Convention, 1951 /a fundamental convention/, ratified in 1951, published, the State Gazette, No. 35 of 2nd May 1997.⁸

3.6.1. The issues ensuing from the application of this convention are related to the existing considerable differences between the average monthly salaries of men and women /over 20%/. The Committee has requested information about the reasons for this situation and the measures taken or foreseen to manage the situation. The government is also expected to provide more detailed information about the pay of men and women as well as about the measures geared to redressing differences in pay in the economic activities, where the differences are particularly distinct ones.

3.6.2. Moreover, the Committee has repeatedly stressed on the importance of the objective assessment of jobs as an instrument, which shall ensure that the remuneration is defined according to the principle of equal pay for work of equal value for men and women. With regard to this the Committee regretted that the latest report of the government does not provide any information in response to the comments on this issue. So the Committee has repeated its request to the government to provide information about the measures taken or foreseen to foster the development and use of methods for objective assessment of jobs, free of gender-based prejudice, in particular in the private sector. The Committee also requests from the government to specify the concrete measures for seeking cooperation on this issue with the social partners.

3.7. C144 Tripartite Consultation (International Labour Standards) Convention, /priority convention/, ratified in 1999, published, the State

⁸CEACR: Individual Direct Request concerning Equal Remuneration Convention, 1951 (No. 100) Bulgaria (ratification: 1955) Submitted: 2010

Gazette, No. 56 of 22nd June 1999⁹

3.7.1. According to the requirements defined in the convention in question, the states having ratified it are bound to implement the procedures, which ensure effective consultations between the representatives of the government, the employees and the employers on the issues concerning the activity of the ILO, which are subject of the convention. These consultations should be held at certain intervals, for which an agreement has been reached, but at least once a year. The competent state authority bears responsibility for the administration of the procedures as laid down in the convention. Appropriate measures should be defined between the competent state authority and the representative organisations with a view to funding the necessary training of the participants in such procedures. As far as the National Council for Tripartite Cooperation is the body, within which the consultations as laid down in the convention are held, it should be noted that such a report has not been issued since this body was set up, which is a failure to meet the requirements defined in the convention.

3.8. C95 Protection of Wages Convention, 1949, ratified in 1955, published, the State Gazette, No. 37 of 9th May 1997¹⁰

3.8.1. According to the convention in question, partial payment of wages in the form of allowances in kind is allowable only in case it is provided by national laws, regulations or collective agreement, but not by individual agreement. So the ILO's control bodies find that Article 269(2) of the Labour Code is not in full compliance with the convention as this provision specifies that additional labour remunerations or part of them may be paid in kind if this is provided in an act of the Council of Ministers, in a collective agreement or in the individual agreement.

3.9. Convention No. 156 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family

⁹ CEACR: Individual Direct Request concerning Convention No. 144, Tripartite Consultation (International Labour Standards), 1976 Bulgaria (ratification: 1998) Submitted: 2005.

¹⁰ CEACR: Individual Direct Request concerning Protection of Wages Convention, 1949 (No. 95) Bulgaria (ratification: 1955) Submitted: 2008, Submitted: 2005

Responsibilities, ratified in 2006, published, the State Gazette, No. 29 of 6th April 2007¹¹

3.9.1. On the basis of the report on this convention submitted by the government, the Committee notes that a number of measures geared to facilitating the reconciliation of professional and family responsibilities defined by the Bulgarian legislation and collective agreements, concern only women with children, but not men and women with family responsibilities (for example: an opportunity for teleworking, the requirement for a written consents for overtime or night work, consent for going on business trip as well as a preliminary permission by the Labour Inspection in some cases of dismissal).

3.9.2. The Committee recalls that the convention has a dual aim - establishing equal opportunities and relations in the professional life between men and women with family responsibilities, on the one hand, and on the other hand, between men and women with family responsibilities and workers without any family responsibilities. Hence the measures geared to the needs of workers with family responsibilities should cover men and women workers under equal conditions. The Committee considers that legislation, which is based on the presumption that the main responsibility for family work and household chores lies with women, strengthens the stereotype attitudes towards the roles of men and women as well as the existing gender inequality, which for its part contradicts the aims laid down in the convention concerned. The Committee has requested from the government to review the respective measures with the participation of the employees' and employers' organisations as well as to ensure that the measures regarding the convention application cover men and women workers with family responsibilities under equal conditions.

4. CERTAIN NON-CONFORMITIES RELATED TO CURRENT PROPOSALS FOR LEGISLATIVE CHANGES

4.1. It is worth noting that the poor knowledge of the international labour standards as introduced by the ILO via the conventions and

¹¹ CEACR: Individual Direct Request concerning Workers with Family Responsibilities Convention, 1981 (No. 156) Bulgaria (ratification: 2006) Submitted: 2010, <http://www.ilo.org/ilolex/cgi-lex/countrylist.pl?country=Bulgaria>

recommendations of the organisation may lead to discussing and adopting non-informed decisions at national level, which constitute direct breach of the international acts concerned. Actually, a function of the international conventions in the national legal order is related to establishing stability and durability in the organisation of a certain domain of social relations. It often happens that the level of national law has already reached or gone beyond the minimum standards ensured under a convention being ratified. In such cases the expediency of ratifying the international act may be questioned, since in the long run its legal effect would not bring anything new in the national system. The problem lies with the fact that, once having been adopted, the international convention cannot be changed by any State, and the denunciation is a process much more complex than the amendment of the respective national legislation, at that denunciation entails a number of international complications.

4.2. As an illustration to the above-mentioned considerations, it is worth attaching attention to certain current proposals for legislative amendments concerning the labour and social security rights of Bulgarian citizens, namely the change in the amount of accrual of annual holidays, which have not been taken due to termination of the employment contract, as well as the change in the amount of short-term incapacity benefit.

4.3. According to the proposed amendments in the Labour Code and the Civil Servants Act, the annual holidays with pay for previous calendar years, which have not been taken, may be taken only within a specified period, and after the expiry of this period the annual holidays with pay will be „subject to prescription”. The amendment proposed was very felicitously characterised in the media as „annual holiday nationalisation”. Insofar this analysis does not concern the compliance of labour legislation or the proposals for its amendment with the relevant EU directives or even with the Constitution of the Republic of Bulgaria (non-compliance with the documents mentioned exists), we will only mention the ILO Convention No. 52 concerning Annual Holidays with Pay, which was ratified by Bulgaria and published in the State Gazette, No. 37 of 9th May 1997. Pursuant to Article 6 of the convention in question, a person dismissed for a reason imputable to the employer before he has taken a holiday due to him shall receive in respect of every day of holiday due to him in virtue of this Convention the relevant remuneration. Although the provisions of the effective legislation are more favourable than those laid down in the convention (i.e. not only a

person dismissed for a reason imputable to the employer, but all the workers and employees shall receive cash indemnity for annual holidays with pay, which have not been taken), the adoption of the amendments proposed will lead to conflict with the above-mentioned provision of the convention. This may entail a number of further complications. On the one hand, the Constitutional Court of the Republic of Bulgaria, whose powers, inter alia, include ruling on compliance of laws with the international treaties, to which Bulgaria is a contracting party, may declare unconstitutional the legislative changes, if it has been approached with such a request. On the other hand, within the control mechanism of the ILO, conflict between the amendments and the convention concerned will be found. Thus although designed to be a measure for reducing expenses, the adoption of this proposal for amendment will not lead to the results meant, what is more, it may establish legal uncertainty and bring about unfavourable consequences for our country at international level.

4.4. The situation is similar with the proposals concerning the amendment of the national Social Insurance Code (SIC) concerning the amount of short-term incapacity benefit. It is worth recalling that short-term incapacity constitutes a risk covered by social allowance; this risk implies unguilty non-provision of labour force due to falling in incapacity to work. This principle has also been included in the ILO Convention No. 102 concerning Minimum Standards of Social Security, 1952, which came into effect in our country not long ago (published, the State Gazette, No. 54 of 13th June 2008). Pursuant to Article 18, item 1, sickness benefit shall be granted throughout the contingency, except that the benefit may be limited to 26 weeks in each case of sickness, in which event it need not be paid for the first three days of suspension of earnings. Such an exception does not exist in the Bulgarian legislation. Hence, the State is to provide the receipt of periodic payment (benefit) throughout the whole period of existence of a risk covered by social allowance - in this case short-term incapacity is concerned. The convention in question provides the minimum standards for structuring the benefits, for their administration and funding, as well as common guidelines for development of all branches of social security; the convention also sets a requirement, any cash indemnity to be paid periodically and provided throughout the whole period of contingency, for which the cash indemnity is designated, and the State should at least take on the general responsibility for the due benefits to be provided. The

convention under consideration, which was adopted in the early 50s of last century, underpins the up-to-date instruments of the Council of Europe in the field of social security. The European Social Charter (Revised) is one of these instruments ratified by our country. Article 12(3) of the European Social Charter stipulates that with a view to ensuring the effective exercise of the right to social security, the Parties undertake to endeavour to raise progressively the system of social security to a higher level. During the discussion and final adoption of the proposed amendments of the SIC concerning the amount of short-term incapacity benefit, not only the temporary unfavourable economic conditions should be taken into consideration, but also and mostly the relevant international treaties ratified by our country, the principles and guidelines as provided by these treaties and the reached level of development of the social security system.

5. CONCLUSIONS AND RECOMMENDATIONS

Certain general conclusions on the application of the ILO conventions in Bulgaria may be drawn on the basis of the above-mentioned considerations.

5.1. First, the persons and authorities, who are to apply these international instruments, do not understand them quite well. The ignorance of the rights ensured by these instruments leads respectively to the absence of claims to the observance of these rights laid by the persons affected - a particular worker, employee or employer and employees' or employers' organisations.

5.2. Although ensured by the Constitution, the application of these instruments directly and with a priority over the national standards is still just words on paper. Practically referring to a provision of the convention instead of a provision of the national legislation, especially in case of antinomy, is neither frequent, nor usually with the relevant importance and effect. This is easily explicable, at least due to the fact that immediate sanctions for the responsible persons are foreseen in case of non-observance of standards defined by national law, while in case of non-observance of labour standards defined by the ILO, the sanction implies mainly a political reprimand on the part of the international community addressed to the State. It is the State's responsibility and obligation to implement in national law the mechanisms, rights and obligations as specified by the ratified conventions and to make

their application effective. The fulfillment of this obligation is not underpinned by a sanction in the strict sense of the word. The sanctions against the states, which do not observe an international commitment undertaken by them, are a rarity and are mainly of political nature. Once a sovereign State has voluntarily undertaken a commitment, it is reasonable to expect voluntary fulfillment thereof, while this is namely one of the main principles in the international law of treaties - bona fide fulfillment of the commitments undertaken (Pacta sunt servanda).

5.3. The poor knowledge of the ILO conventions by the judiciary system leads again to difficulties in the direct application of the conventions by court. The standards specified by national law, in particular in the field of labour law, are much more familiar to the masters of law and much more „effective” from their perspective. The absence of thorough knowledge of these rights by the interested persons, combined with the poor knowledge of these rights by court, practically lead to ineffective application of part of the conventions at national level. The reasons for this situation need to be thoroughly analysed and measures should be undertaken to improve the situation. Certainly, the measures should include information and awareness campaigns organised and carried out by public institutions, by the employees' and employers' organisations as well as by human rights organisations. Representatives of the judiciary system should also be always involved in these activities.

5.4. It should be noted that although our country has ratified a relatively great number of conventions, most of them are conventions adopted before 1960. Some of these instruments later on were revised by new conventions as per the current development of the social and labour relations, but most of the new conventions were not ratified by Bulgaria. Other ratified conventions have no practical application any more, but they have not been denounced. Other conventions reflect newly developed or further developed legal forms in the relevant field. Hardly over the recent decade there has been a trend of our country's being bound by conventions of more modern generation. An integral assessment should be performed on the ratification policy of our country, while in the context of Convention No. 144 concerning Tripartite Consultations to Promote the Implementation of International Labour Standards it would be appropriate a consensus to be reached among the participants in the tripartite dialogue regarding the future

ratifications, the need of denouncing outdated conventions and the period over which these activities to be carried out. To illustrate the above-mentioned considerations, here follow some of the „old” conventions ratified by Bulgaria, for which new and revised conventions exist, but our country has not joined the latter.

Old Convention	Revising Convention
C20 (Shelved) Night Work (Bakeries) Convention, 1925	C171 Night Work Convention, 1990
Convention No. 21 concerning the Simplification of the Inspection of Emigrants on Board Ship, 1926	C97 Migration for Employment Convention (Revised), 1949
C32 Protection against Accidents (Dockers) Convention, (Revised), 1932	C152 Occupational Safety and Health (Dock Work) Convention, 1979
C44 (Shelved) Unemployment Provision Convention, 1934	C168 Employment Promotion and Protection against Unemployment Convention, 1988
C45 Underground Work (Women) Convention, 1935	C176 Safety and Health in Mines Convention, 1995
C52 Holidays with Pay Convention, 1936	C132 Holidays with Pay Convention (Revised), 1970
C62 Safety Provisions (Building) Convention, 1937	C167 Safety and Health in Construction Convention, 1988

During the discussion on the future ratification policy of our country, it would be appropriate to analyse the possibilities for Bulgaria's joining certain important international labour conventions, which are ratified by a considerable number of member countries of the ILO and which cover important spheres of social relations in the field of labour, as for example the following conventions:

- C150 Labour Administration Convention, 1978;
- C151 Labour Relations (Public Service) Convention, 1978;
- C154 Collective Bargaining Convention, 1981;
- C155 Occupational Safety and Health Convention, 1981;

- C167 Safety and Health in Construction Convention, 1988;
- C175 Part-Time Work Convention, 1994;
- C185 Seafarers' Identity Documents Convention (Revised), 2003.

Attention should also be paid to the ILO Convention No. 102 concerning Minimum Standards of Social Security, 1952, which was ratified by Bulgaria in 2008. Our country has submitted a declaration reading that Bulgaria undertakes the commitments under this convention, except for those related to the risks covered by social allowance - unemployment and disability. It would be appropriate to discuss the possibilities to withdraw the declaration submitted and to undertake all the commitments under the instrument in question.

5.5. Next, with a view to enhance the effectiveness of the implementation of the up-to-date labour standards, the procedure for submission of the conventions and recommendations adopted at the annual ILC sessions to the national competent authority (in this case - the National Assembly) should be changed. Currently the Council of Ministers is to adopt a decision for a proposal to the National Assembly for the so-called taking note of the respective newly adopted instruments. Following a discussion of the proposal at the commissions at the National Assembly, the latter shall adopt a decision, by virtue of which note of the respective instruments shall be taken. It would be appropriate, on implementing the procedure in question, discussions and round tables to be organised and expert analyses to be performed regarding the need and preparedness of our country to join the newly adopted instruments, or at least the perspective for such an act to be discussed.

5.6. From this point of view it would be appropriate, prior to adoption of the relevant decision by the National Assembly, the Economic and Social Council to be also advised about the newly adopted international labour standards, while an ESC's opinion shall also be requested pursuant to Article 4(1), item 2 of the Law for the Economic and Social Council. Thus the main function of the procedure described would be realised to a greater extent; this function is an obligation of the State - the international acts as adopted by the ILO to receive broad publicity, to be subject of discussions and the legislative body to be given the possibility to thoroughly explore the

acts concerned and, on the basis of an analysis of the acts, to take them into consideration in its future legislative action.

5.7. The capacity for elaborating periodical national reports on the ratified conventions should be further developed and enhanced. A mechanism should also be provided for undertaking the relevant legislative changes in case of non-compliance found. Currently, as per the Rules of Procedure of the Ministry of Labour and Social Policy, the preparatory activity related to the elaboration of the reports shall be carried out by the specialised administrative staff of the ministry in question, and the Minister of Labour and Social Policy shall represent the government at the International Labour Organisation. The scope of the ILO conventions, however, is much broader than the competence of the Ministry of Labour and Social Policy, which leads to a great number of requests for provision of information and analyses by other departments and often the information provided is not complete, correct or timely. This has an adverse effect on the quality of the reports and it often gives cause for questions for clarity sake put by the control bodies on the application of the conventions. Case law, which illustrates the application of the respective convention in real settings, is seldom referred to and provided, although it needs to be included in the reports. The situation is the same in respect to the assessment that our country is to give on the application of each convention at national level. The assessment should include excerpts from official reports, statistical information, etc., but currently this requirement is seldom met. This means that practically an overall analysis of the application of a particular convention and of the problems and difficulties encountered is not performed, and this makes it impossible to define policies and measures to settle problems possibly found. Although in the recent years enhancement of the quality of the information provided has been observed, the information still comprises mainly quotes of regulations and provisions thereof, while relevant comment and analysis are missing. It is not taken into consideration that in spite of being outstanding experts, the experts at the Committee are not Bulgarians and are not acquainted in detail with the Bulgarian legal system, which implies that the information in the reports should be provided in a form systematised and clear to the experts. Namely as a result of the problems mentioned above, there are many requests made by the Committee for additional information and clarification of the information provided in the reports. For example, only in 2010 the Committee has made

23 requests to the Bulgarian government regarding the reports submitted (see the Annex). In addition to the quality of the reports, a problem also exists regarding their submission by the time fixed. The failure to meet the deadlines in 2009, for example, led to the following painful general direct request by the Committee, which was published in the Report on the Application of Conventions and Recommendations for 2010: „*The Committee notes that the 25 reports on the application of the ratified conventions, in pursuance of the commitments of the government, have not been received (Conventions No. 8, 16, 22, 23, 53, 55, 56, 68, 69, 71, 73, 87, 98, 100, 108 , 111, 144, 146, 147, 163, 164, 166, 178, 179 and 180). The Committee hopes that the government will soon submit these reports, in compliance with its obligations pursuant to the Constitution of the International Labour Organisation*”.¹²

5.8. Another problem is related to the existing mechanism of response to the received negative conclusions regarding the application of a particular convention at national level or rather the lack of application. Usually at least a year passes from the publication of the Committee's conclusions on the application of the conventions and recommendations till the elaboration of the next national report concerning the conclusions in question. In spite of being known, neither the negative conclusions are commented, nor are any actions undertaken in response, at least till the moment when the work on the elaboration of the reports starts. Hardly then the conclusions are analysed and submitted to the competent institutions for comments, but at this point it is too late to undertake the relevant legislative changes, which could be presented along with the reports on the conventions. With this regard the signal function of the employees' and employers' organisations is important; they can see the negative conclusions published at the ILO's website and they can initiate the relevant debates for undertaking actions regarding the non-compliance found.

5.9. Another aspect of this problem is related to the fact that on undertaking legislative initiatives in the labour and social field, no preliminary expert evaluation is performed regarding the compliance of the proposed

¹² See <http://www.ilo.org/ilolex/cgi-lex/pdconv.pl?host=status01&textbase=iloilc&document=4&chapter=16&query=Bulgaria%40ref%2BRequest%40ref%2B%23YEAR%3D2010&highlight=&querytype=bool&context=0>

amendments with the effective international acts, which are binding on our country.

5.10. Attention should also be paid to the quality of the translation in Bulgarian of the conventions proposed for ratification. These instruments contain specific terms, whose correct translation is a precondition for the right interpretation and implementation of the respective standards. Under the existing Bulgarian legislation, following the ratification of a particular international instrument, there is no procedure for correction of technical mistakes in the translation as found later. For example, the title in Bulgarian of the ratified convention No. 87 – „concerning Employees’ Freedom and Protection of the Right of Employees’ Association”, 1948 - does not convey correctly the title of the convention in English (Freedom of Association and Protection of the Right to Organise Convention). Thus the scope of the convention seems narrowed, the employers' organisations being unduly excluded from it. It is necessary to make the terms precise and to revise the conventions proposed for ratification; in general, there should be discussed the possibilities for establishing a procedure for correction of any technical mistakes in the translation of an international legal instrument after the latter has already been ratified and published.

Finally, a conclusion may be drawn that for the valuable and efficient implementation of the international labour standards in our country, a thorough analysis of their implementation so far is needed. The implementation of the Community law, which is binding on all EU Member States, including Bulgaria, should also be considered in the analysis. On the basis of the analysis it will be possible to define objectives and priorities, which shall be integrated in a future medium-term policy. The aim of this policy is to incorporate, in the most valuable and efficient way, the principles and institutes laid down both in the ILO conventions and in the instruments in this field adopted by the Council of Europe in an up-to-date, all-embracing and efficient labour legislation.



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PRESIDENT OF THE ECONOMIC AND SOCIAL COUNCIL

ANNEX

The table below comprises the requests (in English) by the Committee to the Bulgarian government in 2010 made after the provision of information in the national reports on the application of the conventions and recommendations.¹³

1	CEACR: General Direct Request - Bulgaria. Published: 2010
2	CEACR: Individual Direct Request concerning Hours of Work (Industry) Convention, 1919 (No. 1) Bulgaria (ratification: 1922) Submitted: 2010
3	CEACR: Individual Direct Request concerning Seamen's Articles of Agreement Convention, 1926 (No. 22) Bulgaria (ratification: 1929) Submitted: 2010
4	CEACR: Individual Direct Request concerning Repatriation of Seamen Convention, 1926 (No. 23) Bulgaria (ratification: 1929) Submitted: 2010
5	CEACR: Individual Direct Request concerning Hours of Work (Commerce and Offices) Convention, 1930 (No. 30) Bulgaria (ratification: 1932) Submitted: 2010
6	CEACR: Individual Direct Request concerning Officers' Competency Certificates Convention, 1936 (No. 53) Bulgaria (ratification: 1949) Submitted: 2010
7	CEACR: Individual Direct Request concerning Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55) Bulgaria (ratification: 1949) Submitted: 2010
8	CEACR: Individual Direct Request concerning Sickness Insurance (Sea) Convention, 1936 (No. 56) Bulgaria (ratification: 1949) Submitted: 2010
9	CEACR: Individual Direct Request concerning Food and Catering (Ships' Crews) Convention, 1946 (No. 68) Bulgaria (ratification: 1949) Submitted: 2010
10	CEACR: Individual Direct Request concerning Certification of Ships' Cooks Convention, 1946 (No. 69) Bulgaria (ratification: 1949) Submitted: 2010
11	CEACR: Individual Direct Request concerning Medical Examination (Seafarers) Convention, 1946 (No. 73) Bulgaria (ratification: 1949) Submitted: 2010
12	CEACR: Individual Direct Request concerning Equal Remuneration Convention, 1951 (No. 100) Bulgaria (ratification: 1955) Submitted: 2010
13	CEACR: Individual Direct Request concerning Seafarers' Identity Documents Convention, 1958 (No. 108) Bulgaria (ratification: 1977) Submitted: 2010
14	CEACR: Individual Direct Request concerning Discrimination (Employment and Occupation) Convention, 1958 (No. 111) Bulgaria (ratification: 1960) Submitted: 2010
15	CEACR: Individual Direct Request concerning Seafarers' Annual Leave with Pay Convention, 1976 (No. 146) Bulgaria (ratification: 2003) Submitted: 2010
16	CEACR: Individual Direct Request concerning Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) Bulgaria (ratification: 2003) Submitted: 2010
17	CEACR: Individual Direct Request concerning Workers with Family Responsibilities Convention, 1981 (No. 156) Bulgaria (ratification: 2006) Submitted: 2010
18	CEACR: Individual Direct Request concerning Seafarers' Welfare Convention, 1987 (No. 163) Bulgaria (ratification: 2004) Submitted: 2010
19	CEACR: Individual Direct Request concerning Health Protection and Medical Care (Seafarers) Convention, 1987

¹³ Information available at the following URL address: <http://www.ilo.org/ilolex/cgi-lex/pqconv.pl?host=status01&textbase=iloeng&querytype=bool&hitdirection=1&hitstart=0&hitsrange=2000&sortmacro=sortyear&query=Bulgaria@ref&chspec=9&>

	(No. 164) Bulgaria (ratification: 2005) Submitted: 2010
20	CEACR: Individual Direct Request concerning Repatriation of Seafarers Convention (Revised), 1987 (No. 166) Bulgaria (ratification: 2003) Submitted: 2010
21	CEACR: Individual Direct Request concerning Labour Inspection (Seafarers) Convention, 1996 (No. 178) Bulgaria (ratification: 2005) Submitted: 2010
22	CEACR: Individual Direct Request concerning Recruitment and Placement of Seafarers Convention, 1996 (No. 179) Bulgaria (ratification: 2003) Submitted: 2010
23	CEACR: Individual Direct Request concerning Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) Bulgaria (ratification: 2003) Submitted: 2010