**TRADE UNION OF SELF-EMPLOYED and informal WORKERS "unity"**

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**Report on the Implementation of Convention 177**

**on Homework by Bulgaria**

**Submitted by Trade Union of Self-employed and Informal Workers (UNITY) to the ILO**

**31 August 2018**

**I. Introduction**

The Trade Union of Self-employed and Informal Workers (UNITY)[[1]](#footnote-1) was created in July 2014 and is a registered and recognised trade union in Bulgaria.  UNITY (TUSIW “Edinstvo”)’s founding member was the Association of Homeworkers in Bulgaria, which was also the driving force behind Bulgaria’s ratification of Convention 177 on Homework together with allied trade unions.[[2]](#footnote-2)

On 23 October 2014, Unity sent a letter to the ILO registering the following concerns:

1. Despite amendements to Bulgaria’s Labour Code, there is no national policy on homework in Bulgaria (Art 3)
2. UNITY approached the Ministry of Labour and Social Policy government for discussions on a homeworker policy and was denied ‘consultation rights’ as ‘an organisation that is concerned with homework’ (Art 3).
3. The Ministry of Labour and Social Policy insists that homeworkers are independent contractors and fall outside the scope of C177 and of the Labour Code, despite their receiving orders from intermediaries, workshops and factories.
4. Piece rates paid to homeworkers fall well below the minimum wage.

The Committee of Experts requested the Bulgarian government to respond to our letter in its next report.

The situation in Bulgaria with respect to homeworkers has not changed, and homeworkers’ terms and conditions of work are diabolical. Please see the attached study on homeworkers’ terms and conditions of work by Women in the Informal Economy, Globalising and Organising (WIEGO).

1. **Report on implementation of C177**
2. **Lack of Contracts**

Article 1 of Convention 177 defines homework as follows:

The term ***home work***means work carried out by a person, to be referred to as a homeworker,

(i) in his or her home or in other premises of his or her choice, other than the workplace of the employer;

(ii) for remuneration;

(iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used,

The purpose of the Convention was to identify homeworkers (industrial outworkers) as disguised employees who should be accorded the same rights and protections as other employees who work in factories.

In Bulgaria, as in all parts of the world, homeworkers are the most marginalised workers in the supply chain, with no bargaining power.[[3]](#footnote-3) Their terms and conditions of work are determined unilaterally by their employers and the agreement is verbal. Bulgaria’s Ministry of Labour and Social Policy argues that the absence of a written contract of employment means that homeworkers are not employees and are therefore not entitled to the rights and protections outlined in Section VIIIa “Additional Conditions for Work at Home” of the Labour Code.

Labour law scholars around the world would argue that an *employment relationship* is established if one person exercises *control* over another person’s work. Whether or not there is a contract, it is not determinative of whether an employment relationship exists. Different jurisdictions establish control by the presence of factors such as: (i) who determines what is produced; (ii) who determines the price; (iii) who supplies the raw materials; and (iv) for whom is the product made. As set out in the attached research, homeworkers never decide on what is produced. They are producing products for the garment and footwear sector (as well as other sectors) from their homes, and most work only for one contractor/workshop or factory. Their deadlines are determined by the employers, as well as how much and when they are paid –often payment is delayed and threats are made that they will not be paid at all if they do not complete the entire order on time. These orders eminate from Greek, Italian, French, and Bulgarian brands.

There is no homework policy, and the Labour Code does not have a defintion of homework that allows us to contest the Ministry’s incorrect interpretation of Convention 177.

**Homeworkers’ perspectives on their terms and conditions of work (these are perspective that are verbalised over and over again):**

* ‘Every day there is a different request regarding the amount (pairs of shoes) that we must make in a particular time’
* ‘Work needs to be picked up and brought back to the middleman -- transport is not paid, lifting heavy material, our time is not paid for’
* ‘I am not provided working clothes (as the factory workers)’
* ‘I don’t have a regular job, there is not always work’
* ‘No norms for working time’
* ‘I don’t receive working tools’
* ‘There are no contracts for homeworkers’
* ‘They don’t create documentation for payments’
* ‘There are pressures with deadlines’
* ‘I have no information’
1. **National Policy on Homework periodically reviewed in consultation with organisations concerned with homeworkers (Art 3)**

Article 3 of Convention 177 provides that each member that has ratified the Convention on Homework shall “adopt, implement and periodically review” a national policy on homework. This policy should be written and reviewed “in consultation with the most representative organisations of employers and workers, and where they exist, *with organisations concerned with homeworkers*”

Not only does such a policy not exist, but the Ministry of Labour and Social Policy is not willing to engage in consultations with UNITY as an organisation “concerned with homeworkers”.

**3. Equality of Treatment (Article 4)**

Article 4 provides for “equality of treatment between homeworkers and other wage earners.” Few countries in the world recognise democratic, membership-based organisations of informal workers as trade unions. Bulgaria is one such country and we commend our government. Our government has therefore complied with Art 4 (2) (a).

We are limiting our comments on compliance with Article 4(2) to 2(d) and (e) only – the provisions that deal with renumeration and social security. With respect to Article 4 (2) (d) and (e), the Labour Code has been amended to comply with the Convention, but is not enforced.

*Renumeration (Art 4(2)(d)*

 Art 4(2)(d) provides for equal renumeration to other wage-employees. Bulgaria’s minimum wage is BGN 510 (€ 255/€ 260) per month.[[4]](#footnote-4) Homeworkers in the garment and footwear sector are earning as little as 1 BGN (0,51 Euro) per hour (please see attached study). If one extrapolates that to 8 hours a day and 22 days a month, many homeworkers earn 89,09 Euros per month. If they are sick or take a day’s leave, they lose income. In addition to their labour, they provide the working space for production, electricity to work at night, and tools such as sewing machines and needles.

According to the Ministry of Labour and Social Policy, homeworkers who do not have a written contract of employment are not entitled to the rights set out in Article 4(2). As stated previously, the government is not requiring employers to sign employment contracts with homeworkers.

*Homeworkers’ perspectives on their renumeration*:

* ‘We are paid below the minimum wage’
* ‘Payments are very low and irregular’
* Shoe makes are paid on average BGN 1-2.5 per hour.
* Late/delayed payments
* No payments – workshops can disappear over night without paying and re-open a few months later. Intermediaries threaten that if the full order is not produced on time, the homeworker will not be paid for items already completed.

*Social Protection Art 4(2) (e)*

Art 4(2)(e) provides for equal treatment with respect to “statutory social security protection”. Bulgaria’s social security system is a contributory system and both employers and employees make contributions. One can register oneself if you are a registered firm or are working in the professions, in which case the insurance threshold is BGN 510. Since homeworkers do not qualify for any of these categories, they cannot register themselves.

*Homeworkers’ perspectives:*

* ‘I cannot use the doctor through health insurance’.
* ‘I don’t get insurance for professional illness or sick payment (paid sick leave)’.
* ‘My work doesn’t count for social insurance’.
* ‘We have no social insurance’.
* ‘No health insurance’.
* ‘No pension’
1. **Occupational Health and Safety OHS [Art 4 (iii)] (also Article 7)**

Homeworkers’ occupational health and safety issues are caused primarily by the excessively long hours they have to work because of low pay. These include back problems, problems with eyesight and, arthritic fingers that are punctured by needles.

1. **Statistics on homework (Article 6)**

Article 6 of C177 states that labour force statistics must include homeworkers. Homeworkers are not captured in labour force surveys.

1. **Intermediaries (Article 8)**

Article 8 states that if intermediaries are permitted by the member state, the law must determine the responsibilites of both intermediaries and employers. The Labour Code does not refer to intermediaries. As one homeworker put it, “We don’t even know the name of the intermediary/middle man and therefore they cannot be held responsible”.

1. **Enforcement and Remedy (Article 9)**

Article 107(b) of Bulgaria’s Labour Code states that:

(3) Employers shall keep records of each employee working at home.

(4) Upon request, employers shall provide the General Labour Inspectorate Executive Agency with the information referred to in Paragraph (3).

These provisions—for employers to keep records and for the inspectorate to check these records—are critical for enforcing the Labour Code. There are, however, problems with the formulation of this section, as well as practical problems that mean these provisions are not enforced.

The provision is circuitous, as it requires employers to keep records of “employees” working at home. Within the broader Labour Code, or certainly the way the Ministry of Labour and Social Policy is interpreting the labour code, an employee is someone who has an employment contract. This means, therefore, that in practice employers are not required to keep a record of homeworkers in their supply chains in the absence of an employment contract.

As reflected in the attached research, there are no official records of homeworkers. At most, employers keep a notebook with lists of homeworkers –their first names only –and the number of items they are producing per contract. Homeworkers do not sign any document, and there is no record with their full names or details –they are therefore invisible and enforcement is impossible. And they feel that it is impossible for them to prove that they are working for employers without any documentation. They fear that if they take photos of their products as proof, they will lose their work.

Homeworkers’ observations:

* ‘Employers must keep an official record but records are informal or not existing’.
* ‘There is no documentation. Lack of documents means we cannot prove that we are workers’.

Inspectors have received official training, but as far as homeworkers are concerned, it was never enforced. A very real fear for homeworkers is that the labour inspectorate may inspect the homeworker’s premises and in the absence of a contract of employment, fine the homeworker and confiscate the goods. Moreover there is a concern that inspection will lead to banning, rather than protecting, homework.

The onus to should shift to the employer to have to prove that there is not an employment relationship. Member states such as South Africa[[5]](#footnote-5) have rebuttable presumptions that homeworkers are employees (for example if the employer provides materials, determines the price etc.) and employers carry the onus to prove that homeworkers are not employees.

**8. Unity’s demands**

1. The Labour Code must provide a definition of homework in accordance with Convention 177.
2. Employers must be obliged to keep official records of homeworkers that include their full names, addresses, the number of items they produce, and the piece rates.
3. Employers must conclude written contracts with homeworkers that include the full details of the middlemen (intermediaries) and the name of the factory or workshop that is giving the work. Homeworkers must be given a copy of the contract.
4. It is the responsibility of employers to conclude contracts and inspectors must fine employers if they do not comply. Homeworkers are not to be fined if they are working without an employment contract.
5. Homeworkers must receive equal treatment to employees in factories.
6. Homeworkers must be paid at least the minimum wage and payments may not be delayed.
7. Social security has to be paid according to the law.
8. The government must create a register for homeworkers, similar to the register for people with disabilities. Homeworkers can register themselves in accordance with the law. The burden of proof should rest on employers that homeworkers are not producing for them.
9. The Ministry of Labour and Social Policy must consult with UNITY on all aspects related to homework, in accordance with Article 3 of Convention 177.
10. Factories and workshops should have a duty to disclose their records of homeworkers to both the government AND the trade unions. Disclosure should also be made to UNITY, as a trade union of informal workers which “is concerned with homeworkers” (C177 Art 3).
11. Labour Force surveys must include statistics on homeworkers. WIEGO (Women in Informal Employment, Globalising and Organising)’s Statistics Programme has assisted the Government of Thailand with formulating questions to capture homework, and can also assist the Bulgaria.
12. The ILO should undertake a diagnostic process of the situation of homeworkers in supply chains in Bulgaria and facilitate a social dialogue with government, social partners and Unity.

 **24,08,2018** Sincerely

 

 Sofia

Violeta Zlateva

(Chair of Trade union of self-employed and informal workers)

1. See details at https://www.eurofound.europa.eu/publications/article/2015/bulgaria-new-union-for-homeworkers [↑](#footnote-ref-1)
2. http://www.wiego.org/sites/default/files/publications/files/Spooner-Organizing-Home-Based-Workers-Bulgaria-WIEGO-OB7.pdf [↑](#footnote-ref-2)
3. *See* R. Burchielli; A. Delaney & N. Goren, ‘Garment homework in Argentina: Drawing together the threads of informal and precarious work *The Economic and Labour Relations Review* 2014, Vol. 25(1) 63–80; M. Von Broembsen, ‘Constitutionalising labour rights: informal homeworkers in global value chains’ *International Journal of Comparative Labour Law and Industrial Relations*, (forthcoming, September 2018) [↑](#footnote-ref-3)
4. https://countryeconomy.com/national-minimum-wage/bulgaria [↑](#footnote-ref-4)
5. See Section 200A of the Labour Relations Act, 65 of 1995. [↑](#footnote-ref-5)