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1961 EUROPEAN SOCIAL CHARTER

15th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF THE CZECH REPUBLIC

Articles 2, 4, 5, 6, and Article 2 and 3 of the 1988 Additional Protocol

for the period 01/01/2013 - 31/12/2016

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CYCLE XXI-3 (2018)

EUROPEAN SOCIAL CHARTER

THE FIFTEENTH REPORT

ON THE APPLICATION OF THE EUROPEAN SOCIAL CHARTER

SUBMITTED BY THE GOVERNMENT OF THE CZECH REPUBLIC

I.
Information on the follow-up given to the decision of the European Committee of Social Rights relating to the collective complaint No 96/2013 Association for the Protection of all Children Ltd v. Czech Republic

Violation of Article 17§1 of the 1961 Charter

Apart from the amendment of Act No 200/1990 Coll., regulating contraventions, adopted in October 1, 2016, sanctioning all less serious bodily harm of a child, including corporal punishment, verbal abuse of a child, insult or humiliation, no other legislative changes were adopted.

Information on the follow-up given to the decision of the European Committee of Social Rights relating to the collective complaint No 104/2014 European Roma and Travellers Federation v. Czech Republic

Violation of Article 16
In general, the policies of the Czech Republic are not generally based on ethnicity.

Follow-up given
1. Roma Integration Strategy for years 2015 - 2020
Strategy for years 2015 - 2020 deals specifically with Roma population in the Czech Republic. Main task of the Strategy is to reverse negative trends in the development of the situation of Roma in the Czech Republic by 2020, especially in education, employment, housing and social affairs; accelerate positive change and make progress in removing unjustified and unacceptable differences between a substantial part of the Roma and the majority population, ensuring effective protection of Roma against discrimination, safe coexistence and encouraging the development of Romany culture and language.

2. Social Housing Act
The Ministry of Labour and Social Affairs, in co-operation with other ministries, submitted to the government a bill on social housing and housing allowance, as well as the relevant law amendments. On February 1, 2017, the bill was sent to the Office of the Government and on March 8, 2017, the government approved a bill. On March 21, 2017, the government

submitted a bill to the Chamber of Deputies. The first reading took place twice (25 April 2017and 17 May 2017). Both hearings were interrupted. The future of the Social Housing Act will leave on new government (election to the Chamber of Deputies will be held on 21 – 22 October 2017).

3. Fulfilling the Social Housing Concept 2015-2025
The Report on the Implementation of the Social Housing Concept 2015-2025 is sent annually for information to the government. The Ministry of Labor and Social Affairs collects and submits data for this report and evaluates the implementation of the individual measures.

4. Proposal of specific problems solution in the housing sector Based on Government Resolution from 27 July, 2016 No 669, adopted concerning problems related to housing of socially excluded citizens and proposal of their solutions, and Government Resolution from 27 July, 2016 No 670, to identify the problems in the housing sector, a meeting of all involved actors was initiated on the issue of assessing the suitability of housing areas in 2017. In cooperation with the Office of the Government, the Ministry for Regional Development, the Ministry of the Interior and the Ministry of Health draft standards were prepared. Currently, negotiations are underway over the precise definition and setting these standards.

5. The project "Social housing - methodological and information support in the Social Agenda"
The main objective of the project "Social Housing Support" is the development of a social housing system in the Czech Republic through international cooperation, education, research activities and methodological backgrounds.
Since October 2017, the Contact Centre has been launched in the frame of the project. Its services are intended for public, municipalities or NGO´s methodological and informational support is provided.

6. Impacts of poor housing for children in the Czech Republic
The Ministry of Labour and Social Affairs presented an analysis on the issue of children growing up in unsatisfactory housing and the impact of this factor on 28 August 2017, especially on the educational characteristics of the child. The analysis deals with the following indicators:- a comprehensive description of the number and age of children growing up in an inappropriate setting,- learning outcomes, educational and family issues of children growing up in an inconvenient environment,- study and work characteristics of children growing up in an inappropriate setting (retrospective view), whether adolescence in an unsatisfactory environment influences the education, selection of studies and subsequent employment on the labour market.

7.The project "Children Growing in Unsuitable Housing
The Impact of Housing on Their Learning Perspectives and Social Applications (TB05MPSV009)" was implemented on the basis of the research needs of the Ministry of Labour and Social Affairs and funded by the Technology Agency of the Czech Republic in the Beta Program.

II.

Information required by the European Committee of Social Rights
[Conclusions XX-3(2014)]

1. Article 2 Paragraph 1 – Right to just conditions of work, Reasonable working time

Conclusion of the Committee

"The situation in the Czech Republic is not in conformity with Article 2§1 of the 1961 Charter on the ground that a rest period may be reduced to a minimum period of 8 hours within 24 consecutive hours for employees in various occupations."

Statement of the Czech Republic

The Czech legislation (Labour Code) enables an employee to work exceptionally up to 16 hours within the shift and the following period overtime. It It should be emphasized that these are extraordinary and marginal situations which occur only due serious operational reasons [Section 93 (2) of the Labour Code]. An employee may not be ordered to do more than 8 hours of overtime work a week and 150 hours of overtime work per year. An employer may only require such a work to be performed in sudden and accidental situations which may not be planned in advance (e.g. natural disaster, emergency interventions of rescue forces or equipment failures resulting in national security, public health, protection of rights and freedoms of others , public interest, etc.).

The uninterrupted rest period between two shifts must not be shorter than 8 hours within 24 consecutive hours. It can be only reduced this way when the subsequent rest period of the employee is extended by the time for which his preceding rest period was reduced. That means that the subsequent rest period is extended from the guaranteed minimum of 11 hours of rest between two shifts (within 24 consecutive hours) to a minimum of 14 hours so the occupational safety and health protection principles are respected.

The purpose of the legal regulation of the Labour Code is employees´ protection which guarantees that in case of an exceptional reduction of a rest period between two shifts, the rest is compensated within the subsequent rest period (usually next day).

As exceptional situations in practice cannot be ruled out, it is essential these cases must be properly legally regulated as a protection for the employee to guarantee him/her to claim extra pay for overtime work, compensatory time off for overtime work, compensatory uninterrupted rest period between shifts if a rest period is reduced etc.

The Czech Republic maintains the position that the regulation of Section 90 Subsection 2 of the Labour Code is not at conflict with Article 2 para 1 of the Charter and meets the conditions of its interpretation which establishes that a legal regulation includes following rules is in accordance with the Charter:

1. It is regulated by law or collective agreement.
2. The working hours do not exceed 16 hours a day and 60 hours a week.
3. A reference period for averaging the working hours does not exceed a period from four to six months.

4. An employee must be informed about the working hours changes properly and on time.
5. The working hour's observation must be a subject of a regular control of the labour inspection.
6. It stipulates a minimum rest period (40 hours a week) and maximum length of working hours (which must not exceed 16 hours a day).

In the matter in question, the legal regulation of the Czech Republic is also in accord with the European Parliament and Council directive 2003/88/ES of 4th November 2003 concerning certain aspects of the organisation of working time and also with the International Labour Organization conventions.

2. Article 2 Paragraph 5 – Right to just conditions of work, Weekly rest period

Conclusion of the Committee

"The situation in the Czech Republic is not in conformity with Article 2§5 of the 1961 Charter on the ground that agricultural workers may, pursuant to collective agreement or individual contract, postpone weekly rest resulting in an excessive number of consecutive working days."

Statement of the Czech Republic

The period of uninterrupted rest period of an employee may not be less than 35 hours a week (Sec. 92 Subsec. 1 of the Labour Code). In agriculture, it can only be reduced based on an individual agreement between an employer and an employee or based on a collective agreement. In this case, the uninterrupted rest period must make a minimum of 24 hours every week, with a minimum of 105 hours in a three-week time period and a minimum of 210 hours in six weeks (and only in case of a seasonal work).

The reason why the Labour Code allows the aforementioned possibility of rest period postponement is the objective specifics of agriculture works dependent on the four seasons and the weather conditions which cannot be regulated by law.

However, it is precisely from the point of protecting the employees´ interest that workers in agriculture are guaranteed to take an equivalent rest period a week in a subsequent adequate period of the rest when the rest was reduced under 35 hours a week up to 24 hours a week (which means, it is not the uninterrupted three-week period of work as the conclusions of the Committee states).

The Czech Republic is of the opinion that by providing the equal rest period within the subsequent rest period guaranteed by law, meets the requirement interpreted by the Committee to provide equal statutory rest period to workers in agriculture and to the employees in other sectors on average.

Based on the aforementioned reasons, the Czech Republic considers that the relevant legislation determined in Sec. 92 Subsec. 4 of the Labour Code, is fully in compliance with the wording of Article 2 para 5 of the Charter and at the same time with the Article 5 of the EU directive 2003/88/ES concerning certain aspects of the organisation of working time.

3. Article 4 Paragraph 2 – Right to a fair remuneration, Increased remuneration for overtime work

Conclusion of the Committee

"The Committee concludes that the situation is not in conformity with Article 4§2 on the ground that an increased compensatory time-off for overtime hours is not guaranteed."

Statement of the Czech Republic

The Czech Republic is aware of the repeated remittance of the Committee concerning the increased compensatory time-off for overtime hours. The topic will be discussed on an expert level with the social partners and the Czech Republic will inform the Committee about the results.

However, the Czech Republic remarks that according to Sec. 114 of the Labour Code, an employee is entitled primarily to his salary and to a supplement of at least 25 % of his average earnings for overtime work. Only when the employer and the employee have agreed that instead of the supplement for overtime work the employee will take compensatory time-off, the employee is provided time-off in the scope of the hours of overtime.

„The Committee notes that the length of the overtime work reflect in the wage will be negotiated in advance. The fact that the wage will already take into account the possible overtime does not, according to the report, mean that the overtime will not be remunerated. The Committee asks whether any limits apply to the total possible overtime.

As regard non-managerial staff whose negotiated wage will take into account the maximum 150 hours of overtime, the Committee recalls that Article 4§2 of the Charter (which is inextricably linked to Article 2§1) requires that working overtime must not simply be left to the discretion of the employer of the employee. The reason for overtime work and its duration must be subject to regulation and the workers should be granted an effective right to an increased rate of remuneration for overtime work. In this context, it is not clear to the Committee whether by negotiating the wage which makes allowance for the maximum of 150 hours of the potential overtime, the right to increase remuneration for all overtime hours, including those that may be worked beyond the ones that have been negotiated, is effectively guaranteed.

The situation in the Czech Republic is not in conformity with Article 4§2 of the 1961 Charter on the ground that an increased compensatory time-off for overtime hours is not guaranteed."

Statement of the Czech Republic

With regard to the Committee's opinion, the Czech Republic notes that reality is exactly the opposite. The managerial employees are granted a higher negotiated wage even in months when they do not work overtime. Such remuneration can only be negotiated if the scope of the overtime work reflected in the contract was negotiated at the same time. The delimitation of the scope of the overtime work is a necessary condition for negotiating a higher monthly remuneration.

The purpose of this legal regulation is to simplify the administrative procedure for the wage calculation, in particular in cases where a smaller extent of overtime is expected or the overtime work is balanced during the calendar year.

If the agreed scope of overtime work is lower than 150 hours per year is and the managerial employee exceeds this limit within his/her overtime work, the procedure is equal to any overtime work, i.e. the managerial employee is entitled to the wage and to a supplement at least 25 % of his average earnings for overtime work.

Overtime work is regulated by the Labour Code. It is not left to the decision of the employee and the employer. The maximum scope of overtime work is determined by the Labour Code (Sec. 93 Subs. 4) as max. 8 hours a week and maximum 150 hours a calendar year (Sec. 93 Subsec. 2). The Labour Code also guarantees remuneration for overtime work, including a supplement of at least 25 % of an employee's average earnings.

4. Article 4 Paragraph 3 – Right to a fair remuneration, Non-discrimination between women and men with respect to remuneration

Conclusion of the Committee

The Committee recalls that legislation must provide effective protection against any retaliatory measures taken by the employer against a worker asking to benefit from the right to equal pay. The latter requirement includes in particular an obligation to prohibit dismissal in such cases and to provide for the reinstatement of the workers in cases of unlawful dismissal. Where reinstatement is not possible or is nit desired by the worker, financial compensation instead may be acceptable, but only if it is sufficient to deter employer and to compensate worker. The Committee asks what rules apply in this regard.

Statement of the Czech Republic

According to the Sec. 346b Subsec. 4 of the Labour Code, an employer may not impose any sanction on the employee or put him/her at disadvantage due to the fact that such employee claims rights arising from labour relations in a lawful manner.

The employer may give notice of termination to an employee only for the reasons stipulated in Sec 52 of the Labour Code, i.e. organisational reasons, incapability of the employee to perform his current work due to his state of health (an industrial injury, an occupational disease etc.), long-term unsatisfactory work performance results or breach of an obligation arising from statutory provisions and related to the work performed

Where the employer has given an employee notice that is void or terminated an employment relationship with his employee immediately in a void manner, and the employee has informed the employer in writing without delay that he/she insists on being further employed by this employer, the employee's employment relationship will continue and the employer shall pay compensatory wage or salary in the amount of the employee's average earnings as of the date he/she has informed the employer that he/she insists on continuation of his employment relationship until the time when the employer enables this employee to continue his work performance or until the employment relationship is terminated in a valid manner.

In case the employee does not insist on continuation of employment, then the employment relationship terminates on the expiry of the notice period, unless another date of termination

is agreed. In case the employment relationship has been terminated either immediately or within the trial period, the employment relationship terminates on the date on which it ought to have come to an end; however, the employee is entitled to compensatory wage or salary in the amount of his average earnings for the notice period, unless another manner is agreed (Sec. 69 of the Labour Code).
Nullity of termination of an employment relationship by notice, by immediate dismissal or resignation, by notice during the trial period or by agreement may be claimed both by the employer and the employee before the competent court within two months of the date when the employment relationship in question ought to have come to an end as a result of such termination (Sec. 72 of the Labour Code).

Conclusion of the Committee

The Committee notes that the report requests more clarifications regarding the meaning and application of the principle of pay comparisons. Usually, pay comparisons are made between persons within the same undertaking/company. However, there may be situations where, in order to be meaningful this comparison can only be made across companies/undertakings. Therefore, the Committee requires that it be possible to make pay comparisons across companies in one or more of the following situations:

1. *cases in which statutory rules apply to the working and pay conditions in more than one company;*
2. *cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;*
3. *cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate.*

The Committee asked whether pay comparison outside the company are possible in equal pay litigation cases, when the difference identified in the pay conditions of female and male workers performing work of equal value is attributable to a single source.

Statement of the Czech Republic

The legal regulation stipulated in Sec. 110 of the Labour Code, which lays down the right to the equal remuneration for the same work or work of equal value, is not limited to the gender aspect, but respects the basic principles of labour-law relations (Sec. 1a of the Labour Code) and antidiscrimination provisions (Sec. 16 of the Labour Code). The legislation thus guarantees the right to equal pay for all employees of the same employer.

1. cases in which statutory rules apply to the working and pay conditions in more than one company;

Data concerning remuneration are concerned personal data in the Czech Republic and, as such, are protected against unauthorized disclosure by the constitutional protection provided for in Article 10 of the Charter of Fundamental Rights and Freedoms. Employers therefore are not entitled to publish wage data of his individual employees. An exception is the obligation to provide data for statistical purposes. Furthermore, employers do not have data necessary to assess the principle of "equal pay for equal work", such as specific conditions at the workplace, working time, professional training, knowledge and performance of employees of other employers. Employers therefore have no means of comparing the remuneration of their employees with the employers of other employers, nor can they be fairly required to do so.

2. cases in which several companies are covered by a collective works agreement or regulations governing the terms and conditions of employment;
3. cases in which the terms and conditions of employment are laid down centrally for more than one company within a holding (company) or conglomerate.

For the above mentioned reasons, it is not possible to compare remuneration either for employers who are covered by a collective works agreement or employers associated centrally for more than one company within a holding or a conglomerate because companies are not financing from one source and the same working conditions in the collective agreement do not automatically mean the same economic results and consequently the earnings.

The comparison could be made among employees' of employers whose remuneration conditions are regulated by the same regulation and that wage/salary financing can be assigned to one source. These are employees whose employer is the state (the Czech Republic). Here, equality of pay for women and men is guaranteed in the Labour Code by defining uniform criteria for determining salaries for all employees directly and in implementing regulations, including a binding hierarchy for classification in individual grades according to the level of education, experience or - specialisation.

5. Article 4 Paragraph 4 – Right to a fair remuneration, Reasonable notice of termination of employment

Conclusion of the Committee

"The situation in the Czech Republic is not in conformity with Article 4§4 of the 1961 Charter on the ground that the period of notice and/or the amount of severance pay is not reasonable in cases where the worker has more than 15 years of service."

Statement of the Czech Republic

The Czech Labour Code protects all employees by setting a minimum period of notice of two months. Moreover, Section 67 of the Labour Code stipulates the conditions for entitlement to severance pay. Employees with over two years of employment are entitled to severance pay equivalent to at least three months' average earnings. That means that an employee receives at the end of the two months' notice period the amount of minimum three months' average earnings (i.e. in fact five months' notice period after two years employment for every employee who worked more than two years).

As the ESCR has accepted the principle of providing compensation in multiples of monthly' average earnings in lieu of a longer notice period, the Czech Republic believed has proved that its legislation is in compliance with the Charter.

Furthermore, collective agreements or internal rules can stipulate a higher severance pay and period of notice. Legislation was based on a consensus of representatives of employers and employees, respecting their mutual interests. The Government believed that 5 months of protection, consisting of 2 months of period of notice and 3 months of average earnings, can be considered as adequate.

Conclusion of the Committee

"The Committee asks the next report to indicate the period of notice and/or the amount of severance pay applicable in the cases of termination of employment provided under Article 52, paragraph 1(e) to (h) of the Labour Code. for information on the period of notice applicable to employee during the probationary period, employees on fixed-term contract, tenured civil servants, and contractual staff in the civil service.

The employer may give notice of termination to an employee only for following reasons stipulated in Sec. 52 Subsec. d) to h):

d) if, according to a medical certificate issued by the occupational medical services provider or under a ruling of the competent administrative agency having reviewed the medical certificate, the employee is not allowed to perform his current work due to an industrial injury, an occupational disease or due to threat of an occupational disease, or if the employee´s workplace has been subjected to a maximum permissible level of some harmful exposure, under a ruling of the competent agency concerned with the public health protection;

e) if, according to a medical certificate issued by the occupational medical service provider or under a ruling of the competent administrative agency having reviewed the medical certificate, the employee has lost, long-term, his capability to perform his current work due to his/her state of health;

f) if the employee does not meet the prerequisites prescribed by statutory provisions for performance of the agreed work or if, through no fault on the employer´s, the employee does not meet the prerequisites for proper performance of such a work; where the employee´s failure to fulfil these requirements is reflected in his/her unsatisfactory work performance results and where the employer called upon him/her in writing in the last 12 months to rectify the failure to meet the said requirements, and the employee has not done so within a reasonable period of time, the employee may be given notice of termination due to this reason;

g) if there are reasons on the employee´s side due to which the employer could immediately terminate the labour-law relationship or if the employee has seriously breached obligations arising from statutory provisions relating to work performed by him/her, or in case of ongoing but less serious breaches of obligations that arises from statutory provisions and relates to the work performed by the employee, this employee may be given notice of termination by employer provided that in the last six months the employer notified the employee of this possibility in writing;

h) if the employee breaches another obligation pursuant to section § 301a of the Labour Code in especially gross manner (the obligation to observe the prescribed regime during the first 14 calendar days of his/her temporary incapacity to work and to observe the time and scope of permitted leaves pursuant the Sickness Insurance Act).

The notice of termination must be in writing and shall be at least two months for all cases regulated in Sec. 52 Subsec. a) – h) of the Labour Code.

In case of termination of employment by mutual agreement, termination within the probationary period, termination of fixed-term employment or upon the death of employee no notice period is applied. Financial compensation cannot replace the notice period.

An employee whose employment was terminated by notice given by his/her employer for the reason laid down in Sec. 52 d) of the Labour Code or by an agreement for the same reason, is entitled to receive severance pay in the amount of at least twelve times his/her average earnings upon termination of the employment.

Labour Code stipulates the minimum notice of period (determined by an expression „at least“). Collective agreement, agreement with an employer or internal rules can stipulate longer notice of period a higher redundancy payment.

The fixed-term employment relationship ends with the expiry of the agreed time. But can also end by other ways determined in Sec. 48 Subsec. 1,3 and 4 of the Labour Code, i. e. by mutual agreement or by termination.

Where a duration of fixed-term employment is restricted by a period in which specified working task are to be performed, the employer shall notify his employee in time that the work will be completed, as a rule, at least three days in advance (Sec. 48 Subsec. 2, Sec 65 of the Labour Code).
Where after expiry of the agreed term the employee continues to perform his/her work and the employer is aware of it, such employment shall be deemed to change into an employment for an indefinite period.

Probationary period
Probationary period enables to contracting parties of the employment the chance to try the work and the mutual relationship in practice, especially if the work, place of work, conditions, earnings and other conditions suits to an employee and if the employee meets the requirements of the employer to fulfil working obligations. In practise, it enables to quit fast, informally and easily the employment from both sides from any/or without a reason. It is not considered as a notice period; that is why protection period is not applied, but it is a legal act of termination of the employment at its very beginning. It must be made in writing and shall come to an end on the day when the notice is delivered to the other contracting party, unless a later date is stated therein.

Prohibition of notice by the employer – it is prohibited to give a notice to an employee at a probationary period during first 14 days of employee´s temporary incapacity to work.

b) Civil servants
Conditions of termination of service relationship stipulates Act No. 234/2014 Coll., regulating Civil Service, as amended („Civil Service Act“).

Service relationship terminates under conditions determined in Civil Service Act, unless the death of a civil servant or declaration of the death of the civil servant or the expiry of the period in case of a fixed-term service relationship.

<u>Ways of termination of service by the Service Authority specified in Section 72 of the Civil Service Act):</u>
(a) Where a civil servant does not fulfil the requirement of citizenship of a Member State of the European Union or of a State which is a contracting party to the Agreement on the European Economic Area,
(b) Where two consecutive staff assessments of a civil servant contain a conclusion that the service has had poor results,
(c) Where a civil servant does not fulfil the other prerequisite for the performance of the service without the fault of the service;

(d) Where the period during which a civil servant was placed outside the service for organizational reasons has expired.

In case of termination of service concluded for an indefinite period on the ground of section 1, (d) the civil servant is entitled to the reduced bonus paid at the termination of the service. The amount depends on the duration of service:
(a) Three monthly salaries when the duration of service does not exceeding three years,
(b) Six monthly salaries when duration of service was from three to six years,
(c) Nine monthly salaries – duration of service was from six to nine years,
(d) Twelve monthly salaries when duration of service lasted more than nine year.

If the bonus according to Subsec. 2 was not paid to a civil servant on the date of termination of service, it shall be paid at the earliest time limit for salary payment specified by the Service Authority.

The service relationship shall terminate with the expiration of ten days following the date of delivery of the decision (in cases under Subsec. 1 (a) and (d), or 60 days following the date of delivery of the decision if cases specified in Subsec. 1 b) and c).

Termination of service based upon the request of a civil servant (Section 73 of the Civil Service Act)
The service may end upon a written request submitted by a civil servant. The service relationship shall terminate on a day specified in the decision, but not earlier than 60 days from the date of submitting the request.

Termination of service by law (Section 74 of the Civil Service Act)
The service relationship will end
(a) where a civil servant has been convicted upon a final and conclusive judgment of an intentional offense or of a criminal offense against public order in negligence or of an unconditional sentence of imprisonment, by a day when a decision shall take full legal force,
(b) where, in a criminal proceeding under Subsec. (a) committed by a public servant, for which the law imposes a term of imprisonment less than five years, the prosecution has been conditionally discontinued or a decision has been made to approve the settlement and the prosecution was discontinued, by the day on which the decision shall take full legal force,
(c) where sentence of prohibition of service has been imposed to a civil servant, by the day on which the decision shall take full legal force,
(d) where, upon a final judicial decision, a civil servant´s legal capacity has been restricted to, by the day on which the judgment shall take full legal force,
e) if a civil servant has been legally sanctioned by a disciplinary measure of dismissal, by the date on which the decision shall take full legal force,
f) termination of a service by a Service Authority or by a civil servant during a probationary period for any reason or without giving a reason, on the date of delivery of the written notice of service termination, unless later date of termination was agreed; the Service Authority may not terminate the service during the probationary period during the first 14 days of temporary incapacity to perform the service;
(g) the last day of the calendar month in which the civil servant did not successfully complete the re-examination, or
(h) on 31 December of the calendar year in which the civil servant has reached the age of 70 years.

Unlawful termination of service (Section 75 of the Civil Service Act)
(1) In case a final decision to terminate the service is cancelled for unlawfulness, the service relationship shall not be terminated and civil servant shall is entitled to salary from the

effective date of the decision to terminate the service until the day of reinstallment of a service
(2) If a civil servant announces in writing to the Service Authority that he does not intend to continue in service, the termination under Section 73 shall be proceeded. In such a case, the civil servant is entitled to salary until the day of full legal force of the decision

Contractual staff in the civil service
It is not clear who should be considered as a "contract staff in civilian services". The performance of civilian service replacing basic military service was abolished in connection with the abolition of basic military service. From January 1, 2005, the army is fully professional in the Czech Republic.

It further wishes to know what rules apply for other causes of termination of employment such as bankruptcy, invalidity or the death of the employer.

Statement of the Czech Republic
Disability
Where an employee has lost his/her capability to perform his current work due to his/her long-term unfavourable state of health, the employer can give him/her a notice of termination in line with Sec. 52 Subsec. e). If the reason of incapability is industrial injury, an occupational disease or risk of occupational disease, the notice of termination will be according Sec. 52 Subsec. d) of the Labour Code.

Bankruptcy
As a consequence of cancellation of the employer due to bankruptcy, the notice of termination can be given to an employee in accordance with Sec. 52 Subsec. a). Termination period and redundancy belongs in the scope mentioned above.

The death of the employer
Upon the death of an individual (natural person) who is an employer, the labour relationship shall terminate (Sec. 48 Subsec. 4 of the Labour Code). This shall not be the case on continuation of carrying on a trade or on continuation of providing medical services pursuant to the Medical Services Act. Where a responsible person (proxy) does not intend to carry on a trade, the labour relationship shall terminate on expiry of three months from the date of the employer´s death.
The regional branch of the Labour Office that is competent according to the place of activity of the employer shall issue an employment statement to an employee whose employment terminated. The employment statement shall be issued on the basis of documents submitted by the employee.

Article 5– Right to organise

Conclusion of the Committee

The Committee would like to know what is the different between registration and notification procedure and what consequences the notification procedure has in practice in relation to establishment of a trade union.

Statement of the Czech Republic

The method of incorporation of most legal entities in the Czech Republic is built on the principle of registration. A legal entity is constituted by a founding legal act which is a document signed by its founders. However, after the establishment of a legal person, the

person does not yet exist and cannot be a subject of rights and obligations. A legal entity shall be established only on the day of its inclusion in the public list. Enrollment into the public list is an act performed by the authority responsible for the administration of the list, i.e. the Commercial Court, most often at the request of the founder of a legal entity. From the date of registration, a legal person exists and can enter into legal relations.

Unlike the registration principle mentioned above, the establishment of trade unions is based on the principle of notification introduced with respect to the wording of ILO Convention 87, which states in Article 8 that national legislation must not restrict the guarantees laid down by it. Article 2 of ILO Convention 87 stipulates that "all workers and employers have the right to establish organizations, without prior authorization, or become its members".

The trade union organization shall be established on the day following the day, on which a notice of the establishment of that legal person was delivered to the competent Public Administration Office (the Commercial Court). The Court will make a registration of the trade union´s proposal within 5 working days. No special claims are requested. The role of the Commercial Court is only as a form of notification. The establishment of a trade union is not a subject to any decision of the Public Administration Office. The record in the Public Administration Office has only a declaratory effect. Once a trade union has been established, it cannot be claimed that it has not been established and that its register in the public list cannot therefore be cancelled.

In the event that a trade union was found in breach of the law, it can only be declared void by the court or ex officio. But before that declaration, the court is obliged to provide the organization with a reasonable time for redress in case it is an imperfection that can be removed. The abovementioned procedure based on the notification principle substantially simplifies the establishment of a trade union and is fully in line with the principle laid down in Article 2 of ILO Convention 87

Relevant law
Act No. 89/2012 Coll., Civil Code (Sec. 3025), as amended,
Act No. 304/2013 regulating public registers of legal and natural persons and the registration of trust funds, as amended.

The Committee asks the Government to provide detailed information concerning protection against anti-union discrimination in the Anti-discrimination Act.
The Anti-Discrimination Act, in line with the relevant EU law and Charter of Fundamental Rights and Freedoms and the international treaties bound for the Czech Republic, defines the right to equal treatment and non-discrimination in the field of

(a) The right to employment and access to employment,;
(b) Access to occupation, business and other self-employment activities;
(c)Labour and civil service relationship and other dependent activities, including remuneration;
(d) **Membership and activities in trade unions, councils of employees or employers' organizations, including the benefits provided by such organizations to their members;**
(e)Membership and activities in professional chambers, including the benefits provided by such public corporations to their members;
(f) Social security;
(g) Granting of social benefits;
,(h) Access to healthcare;

(i) Access to education,
(j) Access to goods and services, including housing.

Protection against discrimination on the ground of membership in trade unions or employers' organizations is also specified in the Labour Code and the Employment Act. The Labour Inspectorate (Section 3 of the Labour Inspection Act) is responsible for monitoring of compliance with labour law obligations.

By Act No. 206/2017 Coll., (effective from 29 July 2017), the provisions of the Labour Code and the Employment Act were amended as follows:

Sec. 16 Subsec.2 stipulates "In the labour law relations, any discrimination, in particular discrimination on grounds of sex, sexual orientation, racial or ethnic origin, nationality, nationality, social origin, gender, language, health, age, religion or belief, property, marital and family status, family or political or other relationship, political or other opinion, membership and activity in political parties or political movements, trade unions or employers' organizations; discrimination on grounds of pregnancy, maternity, paternity or sexual identification shall be considered discrimination on grounds of sex. "

Amendment of Section 4 Subc.2 of the Employment Act: "The right to employment cannot be denied to a citizen on ground of sex, sexual orientation, racial or ethnic origin, nationality, nationality, social origin, gender, language, age, religion or belief, property, marital and family status, political or other opinion, membership and activity in political parties or political movements, **trade unions or employers' organizations,** discrimination on the ground of pregnancy, maternity, paternity or sexual identification is considered to be discrimination on grounds of sex. "

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Conclusion of the Committee

3. "In order to assess if this specific service is part of the armed forces, the Committee asks clarification and detailed information on the provisions of the mentioned legislation regulating the status of the members of Security and Intelligence Service. It also asks what are the activities performed by the members of the Security and Intelligence Service as well as their duties."

Statement of the Czech Republic
The Security Information Service (BIS) is an independent office and as such is not a part of any ministry. Under Act No 153/1994 Coll. Intelligence Services Act, the Security Information Service (BIS) is responsible for acquiring, collecting and evaluating information concerning:

- Terrorist threats
- Activities jeopardizing the security or major economic interests of the State
- Activities of foreign intelligence services in the territory of the Czech Republic
- Intents or acts aimed at undermining democratic foundations, sovereignty or territorial integrity of the Czech Republic
- Organized crime
- Activities posing a threat to classified information.

Terrorism
BIS has been appointed the central intelligence service responsible for processing analytical and field intelligence related to the security of the Czech Republic and to the fight against terrorism. BIS focuses on international cooperation in this area. Combating terrorism is characterized by a pragmatic approach to assessing potential threats to the

interests of the Czech Republic and to evaluating the possibility of an attack on buildings, citizens or interests of other states carried out in the Czech Republic.

Protection of major economic interests

The BIS informs authorized state representatives about risks threatening major economic interests of the Czech Republic. The goal of the BIS is to provide information on the risks to relevant addressees in a timely manner and to ensure that they have all relevant information crucial for their key economic decisions – e.g. information on external attempts to influence these decisions, on the plans of entities posing threats or on covert interests tied to these plans.

Counterintelligence

BIS as a counterintelligence service, identifies activities undertaken by foreign powers and by natural or legal persons (mainly intelligence services of foreign powers) acting in the interest of foreign powers in the Czech Republic. BIS keeps track of these activities and gathers information about them. BIS fulfils both the informative and the preventive function of counterintelligence and aims to avoid classified and sensitive information and device leaks to foreign powers; openly or discreetly hinder the activities of intelligence services of foreign powers; and detect and disrupt operations extending the influence of foreign powers (disinformation, manipulation, deceit, propaganda, etc.).

Protection of constitutionality and democratic principles

BIS looks into the activities of entities that openly or covertly profess ideologies incompatible with the legal system and democratic foundations of the Czech Republic; are engaged in politically, economically or socially motivated activities, instigate actions against the democratic system of the Czech Republic, promote the use of violence against representatives of the democratic system of the Czech Republic, their ideological opponents and other groups of citizens, and call for the limitation of the rights of certain groups of citizens.

Trade in military equipment and proliferation

In securing information on trade in military equipment and proliferation BIS cooperates with the following institutions: the Licensing Office of the Ministry of Industry and Trade, the State Office for Nuclear Security, the Ministry of Foreign Affairs, the Ministry of Finance (the Customs Administration of the Czech Republic, the Financial Analytical Unit), and the Ministry of the Interior. The goal is to block deliveries when the items are demanded and a trade is prepared. As far as international trade in military equipment is concerned, BIS aims to minimize the risks posed by exports to countries which do not provide sufficient guarantees that they will not excessively stockpile lethal weapons, use them for repression or for re-export to other countries posing risks.

Organized crime

The BIS focuses mainly on informal non-institutionalized structures taking the form of lobbyist and clientelistic networks. In some cases these networks create parallel power structures threatening to disrupt or disrupting the activities of state authorities and local administration bodies. Occasionally, legal persons - difficult to punish given the character of their activities - have close ties to the above mentioned structures.

Cybersecurity

BIS looks into various types of cyber-attacks affecting protected interests of the Czech Republic. Furthermore, it gathers and analyses information on real or potential threats and risks related to the existence of strategic information and communication systems. The destruction or disruption of such systems could seriously impact the security of the Czech Republic and the country’s economic interests. The above mentioned systems

include: systems run by state offices, public administration authorities and other juridical persons also from the private sector. The general perception is that these systems are protected by heightened security given their importance or their potential inclusion on the list of critical infrastructure entities in the Czech Republic.

Protection of classified information

The task for the BIS is to protect people and entities who work with classified information (under Act No 412/2005 Coll., regulating Protection of Classified Information), and to evaluate and highlight key points where there is a danger of disclosure. If BIS identifies warning indications of an attempt at a breach of information security, it takes action to eliminate them. It also investigates the background of activities endangering the security of classified information, the seriousness of the security threat involved, the scope of potential consequences etc.

The Act No 153/1994 Coll., Intelligence Services Act defines the powers and responsibilities of BIS. The role of BIS is to identify threats, issue early warnings and take steps eliminating the threats. In this respect its work differs from that of the police, who do not intervene before a criminal offense is committed. Furthermore, BIS does not aim to gather evidence enabling arrests and leading to criminal prosecutions.

Intelligence Services Act stipulates that only the Government and the President of the Czech Republic have the right to task BIS within the scope of BIS´s powers and responsibilities. The President of the Czech Republic is entitled to task BIS with the knowledge of the Government. Furthermore, the Intelligence Services Act stipulates that BIS submits a report on its activity to the President of the Czech Republic and to the Government annually or whenever requested.

The President of the Czech Republic, the Prime Minister and relevant cabinet members also receive Service reports on extremely urgent findings. Furthermore, BIS provides findings to state and police authorities, provided such information falls within their powers and responsibilities and sharing this information does not jeopardize a major interest pursued by BIS.
In order to fulfil its mission, BIS has to work covertly, but always in strict compliance with the law.

Gathering intelligence

The principal techniques for gathering intelligence are:

- Intelligence technology
- Surveillance
- Cover means and documents

The use of intelligence technology is subject to approval by the Chairman of the Panel of Judges of the respective High Court. Surveillance is approved by BIS Director or an appointed senior officer.

BIS has the legal duty to protect its agents from exposure, injury to their honour, life or property which might arise from the provision of their services or in connection with it.

Cooperation within the Czech Republic

BIS cooperates with the following Czech intelligence services: the Office for Foreign Relations and Information (foreign intelligence service of the Czech Republic falling under the Ministry of the Interior) and Military Intelligence (falling under the Ministry of Defence). The law also allows BIS to co-operate with the police on the basis of agreements concluded with relevant police bodies.

International Cooperation

Co-operation with foreign partner intelligence services is irreplaceable and of key value for BIS. It is of essential importance to fulfilling BIS's objective to protect the Czech Republic against global threats not confined to states and continents.

Article 6 Paragraph 2 – Right to bargain collectively, Negotiation procedures

Conclusion of the Committee

According to the Czech-Moravian Confederation of Trade Unions (ČMKOS), collective bargaining coverage was 34% in 2011. The Committee asks the Government to provide information on the measures taken by the Government to promote machinery for voluntary negotiations.

Statement of the Czech Republic

The Ministry of Labour and Social Affairs („MLSA") keeps records of higher-level collective agreements and files them. Agreements are published on the MLSA website. Collective corporate agreements are not centrally registered.

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High Level Collective Agreements („HLCA") concluded in 2014 – 2017, filed at MLSA

Year	Number of HLCA or number of its amendments
2014	14 HLCA; 5 amendments
2015	18 -HLCA 5 amendments
2016	18 -HLCA 7 amendments
2017	15 HLCA 2 amendments

Extension of HLCA bindingness to other employees in 2014 - 2017

Rok	Number of HLCA bindingness extensions or amendments to HLCA
2014	3
2015	4
2016	3 + 1 amendment
2017	4 + 2 amendment

In addition, the MLSA conducts limited statistical surveys and monitors employee and labour and payroll conditions of employees and other agreed benefits in collective agreements, including collective corporate agreements, to monitor and analyse collective bargaining in the Czech Republic to get an overview of collective bargaining trends. However, there is no data on the scope of collective bargaining at the MLSA. For these reasons, MLSA cannot nor confirm neither confute allegation provided by ČMKOS concerning collective bargaining in 2011.

Data concerning regular monitoring of corporate collective agreements and higher-level collective agreements in the Czech Republic in the form of a statistical survey sample are published on the website of the MLSA (www.mpsv.cz) in the section "Revenue and Living Standard" (https://www.mpsv.cz / cs / 1928) and at http://www.kolektivnismlouvy.cz/.

The MLSA is an active body within the framework of the Economic and Social Agreement Council (a tripartite body composed of representatives of the government (ministers) and senior representatives of trade unions and employers' associations, which actively participated in the conclusion of the first ever high level collective agreement for state

employees. MLSA also supports the development of social dialogue and collective bargaining, answers questions of collective bargaining bodies, especially trade unions, employers and employers' associations, and the general public. To solve collective disputes, MLSA declares mediators upon a request of one of the parties to the collective bargaining. In case of failure of the proceedings before the mediator, MLSA declares arbitrators. Costs of arbitration, including their remuneration, are borne by the MLSA. The above mentioned monitoring of collective agreements provides important information for contracting parties as well as general public on what can be achieved through collective bargaining and facilitates collective bargaining, in the Czech Republic.

In accordance with Section 320a of the Labour Code, and based on the agreement in the Council of the Economic and Social Agreement, MLSA covers a contribution to trade union organizations and employers' organizations to support mutual negotiations at national or regional level concerning the important interests of workers, especially economic, manufacturing, labour, wage and social conditions, and thus indirectly promoting the development of collective bargaining.

Article 6 Paragraph 3 – Right to bargain collectively, Conciliation and arbitration

Conclusion of the Committee

The Committee notes from the observation of the ILO Committee of Experts on Application of Conventions and Recommendations on Article 4 of Convention No. 98, adopted in 2011 that „it has not been established that trade unions have the right to denounce to the labour inspection authorities case of non-compliance with the legislation and collective agreements".

Statement of the Czech Republic

Conciliation and arbitration proceedings are regulated by Act No. 2/1991 Coll. determine collective bargaining, as amended (Collective Bargaining Act). This proceeding concerns collective disputes, i.e. disputes concerning the conclusion of a collective agreement and disputes concerning the fulfilment of obligations from the collective agreement.

Conciliation:

Contracting parties may, based on agreement, choose an intermediary in the dispute. The contracting parties and the intermediary are obliged to provide each other with the required cooperation. If the contracting parties do not agree with the intermediary nomination, MLSA appoints other intermediary from the list of intermediaries and arbitrators upon the request of any of the contracting parties.

In a dispute on the conclusion of a collective agreement, the application for the appointment of an intermediary may be submitted not earlier than 60 days after the submission of a written proposal for the conclusion of the contract. The intermediary may be an individual with full legal capacity under the law of the Czech Republic or a legal entity if he/she agrees with the performance of this function registered on the list of mediators and intermediaries at MLSA.

The intermediary shall notify the contracting parties in writing of the proposal for settlement of the dispute within 15 days from the date of receipt of the request by the intermediary and from the legal force of the decision to designate an intermediary. Proceedings before an intermediary shall be considered unsuccessful if the dispute is not settled within 20 days of the date of receipt of the request by the intermediary or from the date of delivery of the decision on the appointment of the intermediary, unless the contracting parties to the agreement agreed with the intermediary another period. If the proceedings before an

intermediary are declared unsuccessful, the contracting parties may jointly request the MLSA to appoint a new intermediary. Each Contracting Party shall bear half of costs of proceeding.

Intermediaries who are on the list of intermediaries are natural persons, with legal, capacity, without a criminal record, graduated in law or economics and there is a prerequisite for a peaceful and impartial performance of this activity. These conditions are verified by the advisory body of the MLSA. Minister of Labour and Social Affairs decides on the appointment and registration on the list of mediators and arbitrators.

Given the above-mentioned impartiality of intermediaries, labour inspectorates or other state authorities cannot intervene to their activities.

Disputes concerning the conclusion of a collective agreement are very common and the proceeding with the intermediary has a high success rate.

Arbitration

In case of failure of the mediation proceeding, the contracting parties may, upon the agreement, ask the arbitrator in writing to decide the dispute. The contracting parties and the arbitrators are obliged to provide each other with the required cooperation. If there is not a consensus on the appointed arbitrator between the contracting parties, MLSA appoints the arbitrator from the list of intermediaries and arbitrators kept by the MLSA, on the proposal of contracting parties. The same person may not be the arbitrator in the same collective dispute.

The arbitrator shall notify the contracting parties in writing within 15 days of the opening of the proceedings. The arbitrator shall decide the litigation within the limits given by the contracting parties' proposals. The agreement is concluded by delivering the arbitrator's decision to the contracting parties. The costs of arbitration proceedings, including arbitrator's remuneration, are borne by the MLSA.

MLSA decides on the appointment of an arbitrator in the administrative proceedings. Remonstrance against the decision as a regular remedial measure can be appealed. Against the MLSA decision an action is admissible brought at the Administrative Court.

In case a contracting party disagrees with the arbitrator's decision, it may propose its annulment or amendment with the District Court, within 15 days of delivery of the decision. The Regional Court may amend, revoke or confirm the decision of the arbitrator. If the arbitrator's decision has been revoked, the same arbitrator shall decide on the dispute. In case that one of the contracting parties disagrees with such a proceeding, or if it is not possible for other reasons, MLSA will appoint a new arbitrator from the list of mediators and arbitrators.

The Regional Court shall revoke or amend the decision of the arbitrator to fulfil the obligations under a collective agreement, upon a proposal by a contracting party if it is not in compliance with law or collective agreements.

The final decision of the arbitrator concerning the performance of the obligations from the collective agreement is enforceable.

The arbitrator, as well as the intermediary must be impartial and therefore the labour inspectorate or other state authorities are not allow to intervene in the work of arbitrators.

In relation to collective bargaining, labour inspection bodies, inter alia, supervise the obligations from collective agreements in the areas where the individual labour law rights of employees are governed by legal regulations.

Article 6 Paragraph 4– Right to bargain collectively, Collective actions

Conclusion of the Committee

"The situation in the Czech Republic is not in conformity with Article 4§4 of the 1961 Charter on the ground that:

- *The thresholds for calling a strike in disputes regarding the conclusions of collective agreements are too high;*
- *The time that must elapse before mediation attempts are deemed to have failed and strike action can be taken is excessive.*

Statement of the Czech Republic

The legal regulation of strike in accordance with Article 27 (4) of the Charter of Fundamental Rights and Freedoms is enshrined in Collective Bargaining Act.

Section 17 Subsec. 1 and 2 of the Collective Bargaining Act, in the wording effective until 6 June 2006, required the consent of at least half of the staff covered by this agreement for declaration of strike in a dispute over the conclusion of a collective bargaining agreement or a higher-level collective agreement.

The provision has been amended by Act No. 264/2006, so that the consent of at least two thirds of the employees of the employer participating in the voting on the strike is required, provided that at least half of all the employees of the employer covered by the agreement in question (which means, 2/3 of 1/2). The amendment was adopted in reaction to the previous statement of the ESCR criticizing the high quorum of votes needed to declare the strike. For this reason, in agreement with members of Czech trade unions and employers, a consensual change was made.

The period of 30 days provided for in Sec. 12 Subsec. 2 of Collective Bargaining Act was reduced to 20 days by the above mentioned amendment effective from 7 June 2006. In addition, the strike should be understood as a last solution after exhaustion of other forms of negotiation, including the involvement of an intermediary and an arbitrator.

The Committee wants to know which categories of workers are excluded from the right co bargain collectively.

Statement of the Czech Republic

Article 27 Sec. 4 of the Charter of Right and Freedoms excludes from the exhaustive list concerning the right to strike judges, prosecutors, members of the armed forces or security forces. The right to strike is completely denied to those individuals.

The term "judges" means judges of ordinary courts and the Constitutional Court.

The term "Prosecutors" means, in accordance with Article 109 of the Constitution of the Czech Republic, a public prosecutor.

The members of the Armed Forces are soldiers in service within the meaning of Section 3 (3) of Act No. 219/1999 Coll., regulating the Armed Forces of the Czech Republic.

Members of security forces according to Sec. 1 Subsec. 1 of Act No. 361/2003 Coll., On the Service of Members of Security Forces are meant members of Police, Fire and Rescue Guard, Customs Administration, Prison Service, Security Information Service and the Office for Foreign Relations and Information.

The Charter of Rights and Freedoms allows in Art. 44 to restrict the right to strike under Article 27 Sec. 4 civil servants and local self-governing units in the scope determined by law as well as those in occupations essential for the protection of life and health.