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EUROPEAN SOCIAL CHARTER

7th National Report on the implementation of the European Social Charter

submitted by

THE GOVERNMENT OF SERBIA

Article 2, 4, 5, 6, 21, 22, 26, 28 and 29

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

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CYCLE 2018

REPORT ON IMLEMEMENTATION OF THE REVISED EUROPEAN SOCIAL CHARTER IN THE REPUBLIC OF SERBIA, 2017

Thematic Group III Labour Rights – Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29

Article 2 – All workers have the right to just conditions of work

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;
2. to provide for public holidays with pay;
3. to provide for a minimum of four weeks' annual holiday with pay;
4. to eliminate risks in inherently dangerous or unhealthy occupations, and where it has not yet been possible to eliminate or reduce sufficiently these risks, to provide for either a reduction of working hours or additional paid holidays for workers engaged in such occupations;
5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;
6. to ensure that workers are informed in written form, as soon as possible, and in any event not later than two months after the date of commencing their employment, of the essential aspects of the contract or employment relationship;
7. to ensure that workers performing night work benefit from measures which take account of the special nature of the work.

Appendix to Article 2§6

Parties may provide that this provision shall not apply:

a. to workers having a contract or employment relationship with a total duration not exceeding one month and/or with a working week not exceeding eight hours;
b. where the contract or employment relationship is of a casual and/or specific nature, provided, in these cases, that its non-application is justified by objective considerations.

Information to be submitted

Article 2§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or factual information, in particular: average working hours in practice for each major professional category; any measures permitting derogations from legislation regarding working time.

Reply

Under the amended Labour Code (Official Gazette of RS, 75/14) which entered into effect on 29 July 2014, certain provisions which were mentioned in the previous report have been revised.

Under amended Article 50 of the Labour Code, working time or hours of work is a period of time in which an employer is bound to work, or to be available for work, on the instructions of an employer, in the place where such work is performed, under law. Both employee and employer may agree that one period of the contracted hours of work may be performed by the employee at home. Working hours shall not include such time within which an employee stands ready to respond to call of an employer to perform work if such need arises; in which case the employee is not in the place where his/her job is performed, under law. The period of time when the employee is ready to respond to the call (stand-by time) and the reward/compensation for such work shall be governed under law, general rules and regulations (such as collective agreement, company policy) and employment contract. The time during the stand-by period which the employee spends working upon the employer's call shall be understood to be working time or hours of work.

Under the amended Article 51 of the Labour Code, full working time shall last 40 hours per week, unless otherwise provided for under this law. Full working time may be set at shorter than 40 hours a week under general rules and regulations (collective agreement, company policy). However, it may not be under 36 hours per week. An employee working fewer than 40 hours a week, but not fewer than 36 hours a week is entitled to all the rights derived from employment relation as if working full time. Part-time work, within the meaning of this law, shall be the working time or hours of work which is shorter than full time.

Article 52 of the Labour Code has remained unchanged.

Regarding overtime work, under amended Article 53 of the Labour Code, an employee is bound to work longer hours than full hours of work on the employer’s request in case of vis major, sudden extension of the scope of activites and in other cases when it is required to complete unplanned work within a certain deadline. The overtime may not exceed eight hours a week. The employee may not work longer than 12 hours a day, including overtime. The employee working on the jobs with shortened working time under Article 52 thereof may not be granted overtime on such jobs unless otherwise provided for under law.

Under amended Article 55 of the Labour Code, a working week shall as a rule last five business days. The schedule of hours of work within a working week shall be set by an employer. A business day, as a rule, shall last eight hours. In the company where work is performed in shifts, at night or when nature of activity and organisation of work so required – working week and working hours schedule may be organized in different fashion. If the nature of activity or organization of work allow the beginning and end of working time may be set, i.e. contracted within a certain time interval (flexible working hours).

Under amended Article 56 of the LC, employer shall notify the employee about the work schedule and changes of the work schedule at least five days in advance, except in the case of introducing overtime. In exceptional cases, the employer may inform the employees on the schedule and changes of the work schedule in the shortest time period of 5 and not shorter than 48 hours in advance should the need for work arise in case of unforeseen events. With the employer where the work is organized in shifts or that is required by work organisation, full or part-time of the employee may not be distributed equally per workweek. It is determined as the average weekly working hours per month. In the case of paragraph 3 of this Article, an employee may work up to 12 hours per day or 48 hours per week with overtime included.

Regarding rescheduling of working hours, under amended Articles Employer may re-schedule working hours when the nature of business, organization of work, better use of

occupational means, more effective use of working hours and performance of certain jobs by set deadline require so. Re-scheduling of working hours of the employee shall be accomplished so that the total working hours of an employee for a six-month period in a calendar year do not exceed the contracted full-time of the employee. The collective agreement may determine that re-scheduling of working hours is not associated with a calendar year or that it may last longer than six months, but not longer than nine months. In the case of an employee who agreed to re-schedule of working hours or to work for a longer time than the working hours specified in para. 2 and 3 of this Article, the time longer than the average working hours of the employee shall be calculated and paid to him as overtime. In case of such re-scheduling, working hours shall not exceed 60 hours per week. Re-scheduling of working hours shall not be treated as overtime. Re-scheduling of working hours shall not be feasible for jobs for which reduced hours apply, pursuant to Article 52 of this law. An employee whose labour relation has been terminated before the expiry of time for which the re-scheduling is introduced shall be entitled to have his/her overtime realised in re-scheduling period calculated within his regular working hours, to be unregistered by the employer from mandatory social insurance upon the expiry of that period and to be paid those calculated extra working hours as overtime.

Reply to the ECSR commnets

Under the Labour Code daily working hours are limited in compliance with the Revised European Social Charter, including:

- Under Article 53, paragraph 2, whereby an employee may not work longer than 12 hours a day, including overtime,
- Under Article 66, paragraph 1, whereby an employee is entitled to a rest in the duration of minimum 12 hours continuously within 24 hours, unless otherwise provided for under this law (paragraph 1). The exceptions to this rule is given under paragraph 2 thereof, whereby the employee who works within the meaning of Article 57 thereof (when the hours of work are re-scheduled) is entitled to a rest in the duration of minimum 11 hours continuously within 24 hours.

Under the Labour Code (including its amendments of 2014, which come into effect as of 29 July 2014) working hours or working time is the period of time in which an employee is bound to or available for work against the employer’s orders, in the place where activities are undertaken, under the law (Article 50, paragraph 1).

Stand-by (“on-call)l work are regulated under Article 50, paragraphs 3-5 thereof. Thus, working time/hours of works not the period of time in which an employee is on stand-by to respond to the employer’s call to work if the need arises, in which case the employee is not in the place where the activites of his/her working place are undertaken, as provided for under law (paragraph 3); the stand-by time and amount of compensation for it shall be regulated under law, general rules and regulations (collective agreement, company policy) (paragraph

4); the time during stand-by that the employee spends working on employers' orders is considered to be working time/hours of work (paragraph 5).

Article 2§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Reply

Under Article 114 of the Labour Law (Official Gazette of RS, 24/05, 61/05, 54/09, 32/13, 75/14, and 13/17-CC) any employee shall be entitled to wage compensation in the amount of the average salary in the **preceding 12 months**, pursuant to general rules and regulations (company policy, collective agreement) and employment contract, for the time he/she has been absent from work during public holidays, annual holiday, paid leave, military drill and response to the summons of a public body.

The provision is in effect as of 29 July 2014, i.e. as of the Amended Labour Code (Official Gazette of RS, 75/14). In comparison to the previous provision, only the period based on which the wage compensation is calculated for leave from work on the day of holiday which is celebrated out of workplace i.e. as a non-business day is amended to 12 months.

Under Article 108, paragraph 1, point 1) of the Labour Code, the employee working on the day of public holiday, is entitled to an increased wages as set under general rules and regulations (collective agreement or company policy) and employment contract, at minimum by 110% of base pay, for every hour of such a work.

We emphasize that under Article 2, paragraph 2 of the Labour Code, the provisions of the law are applicable to public employees – i.e. of public authorities, authorities of territorial autonomy and local government and public services, unless otherwise specified under law. Thus, we underline that the Public Authority Employees' Wages Law (applicable to civil servants as well), and the Public Authorities and Services Employee's Wages Law (applicable also to public employees in public services at local level) sets out the entitlement to wage compensation during the time of leave from work on the day which is a public holiday celebrated out of workplace i.e. as non-banking day. Under the Ministries Code, the referred to Laws fall under the remit of the Ministry of Public Administration and Local Government.

The data on wages and pays, and other cash emoluments in public sector (public services, local government, agencies, public enterprises, etc.) are available with the Ministry of Finance

and Ministry of Public Administration and Local Government given that they are in charge of keeping the Register on Public Sector Employees.

Reply to the ECSR comments

The entitlement to leave from work on the day of public or religious holiday is provided for under the Public and Other Holidays in the Republic of Serbia (Official Gazette of RS 43/01, 101/07, and 92/11). Under Article 3, paragraph 1 thereof, on the days of public or religious holidays celebrated in the Republic of Serbia the public and other authorities as well as companies and other forms of organizing/incorporating the purpose of which is pursuing the activites or providing services shall not work, except on the Victory Day which is celebrated on job.

Under paragraphs 2 and 3 thereof, requirements are specified when it may be possible to work on the days of public or other holidays, including:

- when public and other authorities, companies and other forms of organizing and incorporating the purpose of which is pursuance of activity or provision of services, under law, by-law, are bound to ensure continuous pursuance of the activity and/or provision of services, which due to their discontinuation would result in harmful and adverse consequences for citizens and state.
- In the case of companies and other forms of incorporation and organizing for the purpose of pursuance of activites or provision of services, when the nature or their activites or work processes and technology require continuity of work.

The Committee asks what compensation applies **to** work performed on public holidays (in terms of salary and/or of compensatory time off), in addition to the normal salary paid on account of the public holiday.

Under Article 108, paragraph 1, point 1) of the Labour Code, employees working on the day of public holiday are entitled to increased wages in the amount set under general rules and regulations (i.e. collective agreement, company policy, etc.) or employment contract, minimum in the amount of 110% of base pay, for every hour of such a work. For example, under Article 38, paragraph 1, point 1) of the Sectoral Collective Agreement for Electric Power Industry of Serbia (Official Gazette of RS 15/15) the base pay shall be increased by 150% for every hour of overtime on a public or religious holiday.

We emphasize that under Article 2, paragraph 2 of the Labour Code, the provisions of the law are applicable to public employees – i.e. of public authorities, authorities of territorial autonomy and local government and public services, unless otherwise specified under law. Thus, we underline that the Public Authority Employees' Wages Law (applicable to civil servants as well), and the Public Authorities and Services Employee's Wages Law (applicable

also to public employees in public services at local level) sets out the entitlement to wage compensation during the time of leave from work on the day which is a public holiday celebrated out of workplace i.e. as non-banking day. Under the Ministries Code, the referred to Laws fall under the remit of the Ministry of Public Administration and Local Government.

Article 2§3

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Reply

Under amended Article 68 of the Labour Code, an employee shall be entitled to the annual leave under the law. The employee shall acquire the entitlement to annual leave in the calendar year following a month of continuous work from the date of entering into employment. The continuous work shall include the period of temporary incapacity for work under health insurance legislation and leave from work with compensation of wages. The employee may not wave the entitlement to annual leave, nor the entitlement may be withdrawn or replaced by a cash compensation, save in the case of termination of employment under the law.

Articles 69 and 70 have remained unchanged and the same is applied as in the previous report.

During absence from work on account of access to annual leave, the employee shall be entitled to wage compensation in the amount of an average wages payable in the previous 12 months, as provided for under general rules and regulations (company policy/collective agreement) and employment contract (Article 114 of the law).

Article 2§4

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Reply

Articles 80, 81, and 52 of the Labour Code have remained unchanged as in the previous report.

Article 2§5

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular: circumstances under which the postponement of the weekly rest period is provided.

Reply

Under the amended Article 66 of the Labour Code, an employee is entitled to a rest in the duration of 12 hours minimum, continuously, within 24 hours, if not otherwise specified under this law. The employee who works within the meaning of Article 57 thereof is entitled to minimum 11-hour rest continuously within 24 hours.

Under the amended Article 67 of the Labour Code, an employee is entitled to weekly rest in the duration of minimum 24 hours continuously which is increased by the period of rest under Article 66 thereof, if not otherwise specified under law. As a rule, the weekly rest is accessed on Sunday. The employer may set any other day as the day of weekly rest if the nature of the business activity and organization of work require so. Without prejudice to paragraph 1 thereof, the employee who due to working in different shifts or under a rescheduled hours of work cannot access the rest in the duration as provided for under paragraph 1 thereof, shall be entitled to the weekly rest in the duration of minimum 24 hours continuously. If the employee is required to work on the day of his/her weekly rest, s/he shall have access to the rest of minimum 24 continuous hours in the course of the following week.

Reply to the ECSR comments

Under Article 67, paragraph 5 of the Labour Code (including the amendments to the LC as of 2014), if an employee is required to work on the day of weekly rest, the employer shall ensure the rest in the duration of minimum 24 hours continuously in the following week. Given Article 67, paragraphs 1-4 thereof on duration and access to weekly rest, it may be concluded as a result that the weekly rest the employee had spent working shall be granted to the employee before the weekly rest s/he is entitled to in the following week, which is after 12

days of continuous work at the latest. According to the rule, the rest needs to be ensured even earlier, because under the amended provision of the Labour Code (Article 67, paragraphs 1 and 4) the weekly rests lasts 36 hours continuously (exceptionally 24 hours in the case of shift work and rescheduling of hours of work).

Article 2§6

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Reply

Employment is entered into by employment contract concluded by an employee and employer. Under Article 32 of the Labour Code, the contract of employment shall be concluded in writing before undertaking the employment by the employee. Under the amended Article 33 of the Labour Code, the compulsory elements of the employment contract shall include: 1) employer's business name and registered office; 2) employee's full name, place of temporary/permanent residence;3) employee's type and level of qualification, and/or education which are a requirement of the job for which the contract of employment is being concluded; 4) job title and description to be carried out by the employee;5) place of work; 6) type of employment (fixed-term or indefinite);7) fixed-term employment duration and grounds for entering into employment for fixed term;8) the date of commencement of work; 9) working hours (full, part-time, reduced hours);10) cash amounts of base pay on the date of the conclusion; 11) elements for setting the base pay, performance, wage compensation, increased wages and other emoluments the employee is entitled to; 12) timelines for disbursement/payment of wages and of other emoluments the employee is entitled to;13) periods of daily and weekly rests and weekly hours of work.

The employment contract need not include the elements referred to in Article 1, points 11–13) thereof if they are set under law, collective agreement, company policy, or any other rules and regulations adopted by the employer under law, in which case the name of the rule or regulations under which such entitlements are specified need to be included in the employment contract at the moment of its conclusion.

To the rights and obligations not specified under the employment contract relevant provisions of law and of general rules and regulations shall apply.

Reply to the ECSR comments

Under Article 121 of the Labour Code, and Article 2 of the Rulebook on the content of calculating wages and/or wage compensation (Official Gazette of RS, 90/14), every time when paying out/disbursing the wages and/or wage compensation to the employee, the employer shall, communicate/deliver a calculation of the wages (pay roll) which shall include all the data required for calculating the wages and wage compensation, including also the data on the hours of leave from work completed and the amount of the calculated wage compensation accordingly.

An employment contract shall not include as binding the elements of information in case of termination/breach of employment contract or employment. Under Article 189, paragraph 1 of the Labour Code, in case of dismissal as a result of underperformance, employer may dismiss the employee in which case the employee is entitled to notice period. The notice period shall be set under general rules and regulations (i.e. collective agreement or company policy) depending on the insurance period the employee has completed and cannot be under 8 and exceed 30 days.

In case an employee resigns, under Article 178, paragraphs 2 and 3 of the Labour Code, the employee shall notify the employer on the termination of employment in writing, minimum 15 days ahead of the date the employee referred to in writing as the date of resignation (notice period). General rules and regulations or employment contract may spell out a notice period which is longer, however within 30 days.

Article 2§7

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular: the hours to which the term ‘night work’ applies.

Reply

Under Article 108, paragraph 1, point 3) of the Labour Code, an employee working overtime shall be entitled to increased wages under general rules and regulations (collective agreement or company policy) or employment contract, if the value of such a work is not taken into account when base pay was determined – it shall not be below 26% of base pay for every hour of such a work. Collective agreement or company policy and employment contract may spell out higher percentage (than 26%) i.e. more advantageous entitlement than under law.

Note: the night work allowance is regulated under State Authority Employees’ Wages Law (the personal scope of which are civil servants as well) and under the State Authorities and Public Services Employees’ Wages law. Also, as of 1 January 2018, the Public Sector Pay Law shall come into force.

Article 62 of the Labour Code has remained unchanged as in the previous report.

Reply to the ECSR comments

Regarding the health check in case of night work, we emphasize that, the Labour Code does not set out any obligation of pre-emptive and periodical health checks i.e. examinations for workers on night work. Safety and health at work is ensured under the Safety and Health at Work Law. .

The Labour Code provides for the protection for a certain specified categories of employees from night work, including:

- Workers under the age of 18 – Under Article 88, paragraph 2 of the Labour Code, a worker under the age of 18 may not work at night, except: 1) when undertaking activities in culture, sports, art and advertising sectors; 2) when the work interrupted due to vis major needs to be resumed, under condition it will last for a certain period and must be completed without any delay, and when adult manpower is not available at the company in the required number. In the case referred to in paragraph 2 thereof, the employer shall ensure oversight by an adult employee of the work of an employee who is under the age of 18 (Article 88, paragraph 2).

- Pregnant or nursing workers – under Article 90, paragraph 1 of the Labour Code, may not work overtime and at night, if such a work would be detrimental for her health or the health of her child, based on the findings of a competent health authority.

- A parent of a child under the age of 3 – under Article 91, paragraph 1 of the Labour Code may work overtime, and/or at night, only upon consenting to it in writing.

- A parent from one-parent family with a child under the age of 7 or a child who is seriously disabled may work overtime, and/or nights only upon consenting to it in writing (Article 91, paragraph 2 of the Labour Code).

Under Article 62, paragraph 3 of the Labour Code, the employer shall, before inducting night work, seek an opinion from a trade union on the measures of safety and protection of life and health at work of workers employed to perform night work.

No other provisions are specified in the Labour Code on regular consultations with workers' representatives on the induction of night work.

Article 4 – The right to a fair remuneration

With a view to ensuring the effective exercise of the right to a fair remuneration, the Contracting Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;
2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;
3. to recognise the right of men and women workers to equal pay for work of equal value;
4. to recognise the right of all workers to a reasonable period of notice for termination of employment;
5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

Information to be submitted

Article 4§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures on national net average wage[1] (for all sectors of economic activity and after deduction of social security contributions and taxes; this wage may be calculated on an annual, monthly, weekly, daily or hourly basis); national net minimum wage, if applicable, or the net lowest wages actually paid (after deduction of social security contributions and taxes); both net average and minimum net wages should be calculated for the standard case of a single worker; information is also requested on any additional benefits such as tax alleviation measures, or the so-called non-recurrent payments made available specifically to a single worker earning the minimum wage as well as on any other factors ensuring that the minimum wage is sufficient to give the worker a decent standard of living; the proportion of workers receiving the minimum wage or the lowest wage actually paid.
Where the above figures are not ordinarily available from statistics produced by the States party, Governments are invited to provide estimates based on *ad hoc* studies or sample surveys or other recognized methods.

Reply

Under Article 104 of the Labour Code (setting out the employee's entitlement to appropriate wages, which is set under law, general rules and regulations (collective agreement, company policy) and employment contract. The law guarantees equal pay for equal work or work of equal value, whereby the work of equal value shall men the work for which equal

[1] The concept of wage, for the purpose of this provision, relates to remuneration – either monetary or in kind – paid by an employer to a worker for time worked or work done. Remuneration should cover, where applicable, special bonuses and gratuities. The Committee's calculations are based on net amounts, i.e. after deduction of taxes and social security contributions. The national net average wage is that of a full-time wage earner, if possible calculated across all sectors for the whole economy, but otherwise for a representative sector such as manufacturing industry or for several sectors.

qualification level is required, i.e. level of education, knowledge and skills, resulting in equal performance on the basis of equal accountability).

Under Articles 111-112 of the Labour Code, the employee shall be entitled to minimum wages for standard performance and time spent at work. Minimum wages shall be set based on the minimum wages per hour of work as set under the Labour Code, time spent at work, taxes and contributions paid out of the wages i.e. by a wage-earner. General rules and regulations (collective agreement, company policy) and employment contract shall spell out the reasons for the adoption of the decision on minimum wages. After six-month period lapses from the decision on induction of minimum wages, the employer shall notify a representative trade union on the reasons for its continuation. The employer shall pay minimum wages to employees in the amount as set based on the decision on minimum wages per hour of work in effect for the month of the payment. The employee on minimum wages shall be entitled to an increased wages under Article 108 thereof, to compensation of costs, and other emoluments regarded of as wages under law. The base for calculation of the increased wages is minimum wages paid to an employee

Minimum wages per hour of work is set by the decision on the National Social and Economic Council (hereinafter referred to as: SEC). If the SEC fails to reach the decision within 15 days from the commencement of bargaining, the decision on minimum wages per hour shall be made by the Government of the Republic of Serbia (GoS) in the following 15-day period. When setting minimum wages per hour of work the following are taken into account: subsistence and social needs of an employee and employee's family expressed as the minimum consumer basket value, employment rate trend at labour market, GDP rate growth, consumer prices trends, productivity trend and national average wages trend. The decision on setting the minimum wages per hour shall include explanatory memorandum reflecting all the above mentioned components. If any of the components significantly changes, the SEC shall take into consideration the initiative to have the bargaining to set new minimum wages per hour launched with the accompanying explanatory memorandum submitted by one of the parties to the SEC. Minimum wages per hour of work is set as per hour of work without taxes and contributions, for the calendar year, by 15 September at the latest, and shall be in effect as of 1 January following year. Minimum wages per hour of work may not be set below the minimum wages as set for previous year.

Minimum wages per hour in the period between April 2012 and December 2014 was set at RSD115 per hour, i.e. RSD20.010 per month. Minimum net wages per hour in 2015 and 2016 was RSD 121 per hour or RSD21.054 per month. As of January 2017, minimum wages per hour is set at RSD 121 per hour of work, i.e. RSD22.620 per month.

We note that the provisions of the LC which pertain to setting national/living minimum wages and minimum wages per hour have been amended in comparison to the data submitted for the Revised European Social Charter. In particular, as of 29 July 2014, the provision of the Labour Code as Amended (Official Gazette of RS, 75/14) is in effect.

Data on average wages (gross and net) are published on the official web page of the Republic Statistical Office at. http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=26

The Citizens' Income Tax Law sets out tax reliefs on wages and other cash emoluments disbursed to citizens. The enforcement of the Law, as well as other financial legislation

allowing for other tax reliefs for employers and employees is under the competence of the Ministry of Finance as provided for under the Ministries Code.

Reply to the ECSR

Law on Ratification of the ILO Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries, No. 131 was adopted on 30 December 1982 in SFRY (Official Gazette of SFRY – International Treaties no14/82). The provisions of the Convention have been incorporated into the Labour Code (Official Gazette of RS 24/05, 61/05, 54/09, 32/13, 75/14, and 13/17-CC).

We note that the provisions of the LC which pertain to setting national/living minimum wages and minimum wages per hour have been amended in comparison to the data submitted for the Revised European Social Charter. In particular, as of 29 July 2014, the provision of the Labour Code as Amended (Official Gazette of RS, 75/14) is in effect. Under Articles 111-113 of the Labour Code, an employee shall be entitled to minimum wages for standard performance and period spent at work. Minimum wages shall be set based on the minimum wages per hour as set under the law, period spend at work and taxes and contributions paid out of the wages, i.e. paid by the wage earner. The general rules and regulations (collective agreement /company policy) and/or employment contract identify reasons for the decision on minimum wages imposition. After the elapse of six-month period from the adoption of the decision on imposition of minimum wages, the employer shall inform a representative trade union on the reasons for continuing the imposition of minimum wages. The employer shall pay minimum wages in the amount as set based on the decision on minimum wages per hour applicable in the months of the disbursement. The employees on minimum wages is entitled to an increased wages under Article 108 thereof, compensation of costs and other emoluments which are regarded of as the wages under law. The base pay for calculation of the increased wages is the employee's minimum wages.

Minimum wages shall be set by the decision of National Social and Economic Council (hereinafter referred to as: SEC). If the SEC fails to reach the decision within 15 days from the start of bargaining, the decision on the level of minimum wages shall be taken by the Government of the Republic of Serbia (hereinafter referred to as: the GoS) within the following 15 days. When fixing minimum wages per hour, the following shall be taken into account: existential (subsistence) and social needs of the employee and their families expressed as the minimum consumption basked value, employment rate trends at labour market, GDP rate growth, consumption prices trends, productivity trend, and average wages trend at national level. The decision on minimum wages per hour shall contain explanatory memorandum reflecting all the abovementioned points. If any of the points referred to in paragraph 3 thereof are significantly changed, the SEC shall take into consideration the initiative with an explanatory memorandum submitted by one of the parties to the SEC submitted to launch the bargaining of new minimum wages per hour. Minimum wages per hour shall be fixed as per hour of work without taxes and contributions, for the calendar year, not later than by 15 September in the current year, and shall be in effect as of 1 January the

following year. Minimum wages per hour may not be set in the amount which is below the minimum wages per hour set for the previous year. The decision on minimum wages per hour shall be published in the “Official Gazette of the Republic of Serbia ".

Minimum wages per hour in the period between April 2012 and December 2014 was set at RSD115 per hour, i.e. RSD20.010 per month. Minimum net wages per hour in 2015 and 2016 was RSD 121 per hour or RSD21.054 per month. As of January 2017, minimum wages per hour is set at RSD 121 per hour of work, i.e. RSD22.620 per month.

Employers shall comply with the provisions of the Labour Code as an umbrella law regulating employment based labour rights, obligations and responsibilities. The Labour Code specifies safety mechanisms which may be triggered in case of non-compliance of wages or minimum wages payment. The safety mechanism may be triggered in the procedure of regular inspection by labour inspectors who identify irregularities in the disbursement of wages or they may be triggered against the report filed by an employee whereby the wages s/he receives for his work is below the minimum one. The Labour Code specifies fines in case of non-compliance with the provisions on wages and wage compensation calculation

There are no data available with the Ministry of Labour on the number of workers on minimum wages, or on their dependants.

Also, there are not data available by this Sector on living standards of workers.

The number of employees and the data regarding the wages and pays of the public sector employees (public services, local government units, agencies, public enterprises, etc.) are available with the Ministry of Finance and Ministry of Public Administration and Local Government given that thy are in charge of maintaining of the Public Employee Register. Further, the data on wages disbursed in Serbia are available with the Republic Statistical Office at. http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=26

According to the latest data available with the Republic Statistical Office, national average net wages in May was RSD 47.136. The May Minimum wages (for 23 working days, i.e. 184 working hours) amounted to RSD 23.920 net, which is 50.75% average net wages. The referred to data are not completely comparable because the data of the RSO includes a higher number of the components taken into account for minimum wages. In particular, the data on a published net wages includes, in addition to base pay and all the increases (compensations, etc.) on top of the wages (for overtime, shift work, night work, work for public holiday, etc.) all the emoluments included in the wages which have the character of wages (i.e. meal allowance, annual leave recourse, bonuses, etc.) in comparison to the data under examination of net minimum wages which is in fact the lowest base pay.

Given that the employee whose base pay is equal with minimum wages is entitled to all the abovementioned increases of the wages and other wage-like emoluments, if such would be included in the data related to all the employees on minimum wages, in our opinion, the requirement from the

Position 1 of the European Committee for Social Justice would be met, i.e. if taken in such a manner, minimum wages would amount to about 60% national net average wages in Serbia.

Other data are given in the schedules to the report.

Article 4§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics (estimates, if necessary) or any other relevant information, in particular: methods used to calculate the increased rates of remuneration; impact of flexible working time arrangements on remuneration for overtime hours; special cases when exceptions to the rules on remuneration for overtime work are made.

Reply

Under Article 108, paragraph 1, point 3) of the Labour Code, an employee working overtime shall be entitled to increased wages under general rules and regulations (collective agreement or company policy) or employment contract, if the value of such a work is not taken into account when base pay was determined – it shall not be below 26% of base pay for every hour of such a work. Collective agreement or company policy and employment contract may spell out higher percentage (than 26%) i.e. more advantageous entitlement than under law.

Note: the night work allowance is regulated under State Authority Employees' Wages Law (the personal scope of which are civil servants as well) and under the State Authorities and Public Services Employees' Wages law. Also, as of 1 January 2018, the Public Sector Pay Law shall come into force.

Reply to the ECSR

Under Article 108, paragraph 1, point 3) of the Labour Code, an employee working overtime shall be entitled to increased wages in the amount as set under company policy or collective agreement or employment contract, unless such a work is not taken into account when setting the base pay – at least in the amount of 26% of base pay per every hour of such a work. Collective agreement or company policy or employment contract may spell out higher percentage (than 26%), or more favourable entitlement than provided for under law. For example, under Article 38, paragraph 1, point 2) of the Sectoral Collective Agreement for Electric Power Enterprise of Serbia, the entitlement to increased wages for the work exceeding full hours of work (overtime) is set tat 45% per every hour of such a work.

Note: the right to bonus to wages, i.e. free hours of work based on overtime is governed under the Public Authority Employees' Wages Law (the personal scope of which are public employees), as well as under the State Authority and Public Services Employees' Wages Law under the competence of Ministry of Public Administration and Local Government (MoPALG)

Overtime pay for civil servants

For every hour worked as ordered by superior based on the decision on requirement for overtime work is entitled to one and half hours from work. The work which lasts longer than full working hours per month is calculated into hours away from work that a civil servant concerned must use during following month. Exceptionally, with previous consent of the employee concerned, overtime may be imposed in the duration exceeding the one as set under general labour rules and regulations however not longer than 20 hours per week. the overtime referred to in paragraph 3 thereof may be imposed for maximum 90 days within a calendar year. A civil servants who, due to the nature of job is not able to use free hours off work in the course of the following month, shall receive, for every hour of overtime, the payment in the value of his/her base pay for every hour of work increased by 26%. The entitlement to paid overtime work shall be decided upon by the decision issued by a manager of an authority which must spell out the reasons for which the civil servant in question cannot use free hours off work.

Article 4§3[2]

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please supply detailed statistics or any other relevant information on pay differentials between men and women not working for the same employer by sector of the economy, and according to level of qualification or any other relevant factor.

Reply

Under Article 5, paragraph 1 of the Labour Code, an employee, within the meaning of this law, is a natural person who is in employment relation with an employer. Given that under Article 104, paragraph 2 thereof, employees are guaranteed equal pay for equal work or work of equal value, this means that equal pay for equal work or work of equal value shall be guaranteed to all the employees working for the employee (man and women alike).

Also, under Article 18 of the Labour Code, both direct and indirect discrimination on the basis of sex, extraction, language, race, skin colour, age, pregnancy, health status, and/or disability, national origin, religion, marital status, family responsibilities, sexual orientation, political or other belief, social origin, property, affiliation with political organisations, trade union or any other personal characteristics of job-seekers, employed persons shall be prohibited.

[2] States party that have accepted Article 20 of the European Social Charter (revised) do not have to reply to questions on Article 4§3, but must take account of these questions in their answers on Article 20.

Under Article 18 thereof, direct discrimination, within the meaning of the law, shall be regarded of as any action caused by any of the basis referred to in Article 18 thereof whereby a job-seeker or employee shall be placed in less favourable position in comparison to other persons in similar situation.

Indirect discrimination, within the meaning of this law, is in place when a certain seemingly a neutral provision, criterion, or practice places or would place, on account of a certain characteristic, status, belief or opinion referred to in Article 18 thereof, a job-seeker or employee in less advantageous position in comparison to other persons. Under Article 20 of the Labour Code, discrimination referred to in Article 18 thereof shall be prohibited related to: 1) employment, recruitment and selection requirements;2) working conditions and all rights resulting from employment; 3) education, training and advanced training;4) career promotion ;5) termination of employment contract.

Under Article 274, paragraph 1, point 1 of the Labour Code, an employer shall be fined between RSD 600.000 and 1,500,000 for any form of discrimination.

In practice, women accept lower paid jobs more often than men, and thus as recorded in the statistical data, women's wages are below that of men's.

The data on average wages (for men and women) are published on the official web page of the Republic Statistical Office at http://webrzs.stat.gov.rs/WebSite/Public/PageView.aspx?pKey=26

Reply to the ECSR

Labour Department

Under Article 20 of the Labour Code, Discrimination referred to in Article 18 of this law shall be prohibited in relation to:1) employment, recruitment and selection requirements;2) working conditions and all rights resulting from employment; 3) education, training and advanced training;4) career promotion ;5) termination of employment contract.

Provisions of an employment contract establishing discrimination pursuant to some of the grounds referred to in Article 18 thereof shall be null and void.

Under Article 23 of the Labour Code, in cases of discrimination within the meaning of Articles 18 - 21 thereof, a job-seeker and employed person may start proceedings for compensation claim by the employer before the competent court, pursuant to the law.

If in the course of the proceedings, the prosecutor made it probable that discrimination has been performed in terms of this law, the burden of proof that there was no conduct that constitutes discrimination shall be laid on the defendant.

Under Article 23 of the Labour Code, in cases of discrimination within the meaning of Article 18 – 21, a job-seeker and employee may institute before a competent court the indemnification procedure claiming indemnification from the employer, under law. If during

the proceedings, the plaintiff has made probable that discrimination occurred in practice within the meaning of the law, the burden of proof to the contrary shell rest with the defendant.

Under Article 183, paragraph 1, point 6 of the Labour Law, approaching of an employee to a trade union or authority in charge to provide protection of employment rights under law, company policy or employment contract shall not be regarded of as a reasonable ground for dismissal / termination of employment, within the meaning of Article 179 of the Labour Code. If employment contract is terminated on such a ground it shall be an unfair dismissal with all the legal effects to ensure as provided for under Article 191 of the Labour Code.

Namely, under Article 191 of the Labour Code, if a court, during the proceedings, establishes that employment was terminated on no legal grounds whatsoever, it shall, upon the employee's request, rule on reinstatement, and indemnification and payment of all the compulsory social insurance contribution as appropriate for the period when the employee was out of work. The indemnification referred to in paragraph 1 thereof shall be set at the level of the wages lost which includes taxes and contributions as appropriate in compliance with law, without meal allowance, annual leave recourse, bonuses, rewards and other employments based on the contribution by the employee to business performance and success of the company.

The indemnification referred to in paragraph 1 thereof shall be disbursed to the employee in the amount of the wages loss, which does not include tax and contribution calculated on wage/pay base under law.

Taxes and compulsory social insurance contributions for the period when the employee was out of work shall be calculated and paid on the set monthly amount of the wage loss referred to in paragraph 2 thereof.

If the court, during the proceedings, establishes that dismissal was unfair, and the employee does not require reinstatement, the court shall, upon the employee's request, bound the employer to indemnify the employee in the amount not exceeding of 18 wages of the employee, which will depend on the service period with the employer, employee's age, and number of dependent family members of the employee.

If the court, during the proceedings, establishes that the dismissal was unfair, but however, the employer, during the proceedings, proves that there are circumstances which justifiably indicate that the resumption of employment is not possible after all the circumstances and interests of the both parties to the dispute have been duly taken into account, the court shall not accept the employee's request for reinstatement and shall rule on indemnification to be paid in double amount of the amount set under Article 5 thereof.

If the court, during the procedure, establishes that the dismissal was fair, but however that the employer acted in contravention to the legal provisions setting out the procedure for termination of employment, the courts shall rule out the reinstatement and for the indemnification to the employee in the amount of maximum six wages.

The wages referred to in paragraphs 5 and 7 thereof shall be the wages of the employee generated in the month before the month of termination.

The amount of the income the employee has generated based on work after the termination of employment shall be subtracted from the indemnification referred to in paragraphs 1, 5, 6, and 7 thereof.

Article 4§4

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reply

Article 177 on the termination of employment by mutual consent has remained unchanged as reported in the last report.

Under the amended Article 178 of the Labour Code, when resigning, an employee shall notify in writing the employer on the termination of employment contract not later than 15 days prior to the date of termination (notice period). A longer notice period may be laid down in company policy or employment contract, which my not exceed 30 days.

Under the amended Article 179 of the Labour Code, an employment contract may be terminated by the employer for a just cause related to the employee's working ability and conduct, if the employee:

1) underperforms or does not have knowledge and skills to effectively carry out the job;

2) is sentenced based on the final court decision for a criminal offence committed at workplace or in relation to work;

3) fails to resume employment within 15 days upon the expiry of dormancy of employment referred to in Article 79, and/or unpaid leave referred to in Article 100 thereof.

An employment contract may be terminated by the employer in case of the employee's wilful misconduct (mismanagement), if the employee:

1) performs the duties of the post without due care and diligence;

2) abuses position or exceeds authority;

3) misuses or misappropriates instruments of work;

4) fails to use or misappropriates duly provided personal protective equipment (PPE);

5) misconducts in workplace in any other manner contrary to company policy or employment contract

An employment contract may be terminated by the employer in case of the employee's professional misconduct (disciplinary infraction) regarding, if the employee:

1) is insubordinate contrary to law;

2) fails to provide a certificate on temporary incapacity for work as provided for under Article 103 therein;

3) misuses the entitlement to leave on account of temporary incapacity for work;

4) comes to work intoxicated or on drugs, for intoxication or drug abuse at workplace, which may affect performance;

5) conducts and behaves in such a manner so as to commit a criminal offence at work or in relation to work, regardless of any criminal charges that may be brought against the employee; - (Constitutional Court ruled out this ground for dismissal as unconstitutional, and it is repealed, as published in the Official Gazette 13/17)

6) provides false information critical for entering into employment;

7) refuses health evaluation while employed at a high-risk job the requirement of which is specified health status;

8) misconducts contrary to the company policy, and/or conducts in such a manner so as that employment is no longer possible.

The employer may at own expense refer the employee may at the expense of the employer be referred to the authorized medical institution as designated by the employer for relevant analysis to be conducted to establish the circumstances referred to in paragraph 3, items 3 and 4 thereof or to otherwise establish the existence of the said circumstances as provided for in company policy. Refusal by the employee to respond to the employer's referral shall be considered the misconduct within the meaning of paragraph 3 thereof.

Employment may be terminated if there are reasonable grounds for it regarding the company's needs, including:

1) If due to technological, economic or organizational changes, a particular job becomes redundant or volume of work is reduced;

2) If employee refuses to sign the annex to employment contract within the meaning of Article 171, paragraph 1, items 1-5 thereof.

Under new Article 179a, if in cases referred to in Article 179, paragraphs 2 and 3 the employer deems that there are mitigating circumstances or misconduct is not of such a nature so as to result in termination of employment for misconduct, instead of the termination one of the following measures may be imposed:

1) Temporary suspension from work without any wage compensation in the period from one to 15 business days;

2) A fine not exceeding three month period and 20% of the employees base pay payable in the month of the fine imposed as suspended wages on the basis of the decision issued by the employer;

3) A warning notice with the announced dismissal indicating that employment shall be terminated without any subsequent warning notice referred to in Article 180 thereof, if the same misconduct occurs in the next six-month period.

Under Articles 180.-183 of the Labour Code the procedure on termination of employment or imposing the required measure are set out. Prior to cancelling employment contract in cases referred to in Article 179, paragraphs 2 and 3 thereof, the employer shall notify the employee

concerned on the existence of the reasons for termination of employment and leave the employee a timespan of minimum eight days from the delivery of the notification to present own position. Employment contract may be terminated or any measure undertaken as referred to in Article 179a thereof regarding Article 179, paragraph 1, point 1) only if the employee concerned has previously received a written notification by the employer indicating irregularities identified in the employee's performance of duties, required instructions and appropriate statutory period for improving the performance which subsequently have not been improved within the duly given statutory period after which the employee concerned has not managed to improve the performance within the duly given statutory period.

With the position, the employee concerned may enclose the opinion of the affiliating trade union, within the statutory period referred to in Article 180 thereof. The employer shall take the so enclosed trade union opinion into consideration.

If terminating the employment contract for the reasons referred to in Article 179, paragraph 5, point 1) thereof, the employer may not hire other worker for the job within three months after the termination of employment, except in cases referred to in Article 102, paragraph 2 thereof. If prior to expiry of period referred to in paragraph 1 thereof a need arises for the same job, the prcedent to conclude employment contract is given to the employer whose employment has terminated.

Reasonable grounds for the cancellation of employment contract/dismissal within the meaning of Article 179 shall not include:

1) temporary incapacity for work caused by illness, occupational injury/accident or disease;

2) being at maternity leave, leave from work for child care or special child care purposes;

3) military service period or completion of military service period undertaken earlier;

4) affiliation with a political organisation, trade union, national origin, social origin, religious belief, political or other belief, or any other personal characteristic of an employee;

5) acting in the capacity of workers' representative, under the law;

6) seeking by an employee protection from a trade union or authorities dealing with the protection of labour rights under law, company policy or employment contract.

If any of the reasons for dismissal under law is in place, it shall become effective as of the date of delivery of the decision on dismissal i.e. termination of employment, upon previously conducted due procedure and delivery of the notification to the employee concerned which he/she may respond to in written form within 8 business days – (previously five business days) from the notification (receipt of the notification). After the procedure has been conducted, the employer may terminate the employment contract and the employment shall cease on the date of delivery of the decision or on the date which might be stated in the decision on termination of employment.

Article 189 of the Labour Code, spells out the notice period and pecuniary compensation for the employee in case of termination of employment. According to the amended Article 189 of the Labour Code, an employee with terminated employment due to underperformance, i.e. lacking knowledge and skills within the meaning of Article 179, paragraph 1, point 1) thereof, is entitled to a notice period established under company policy or employment contract, depending upon the insurance period, which must be between eight and 30 days at maximum. The notice period shall start as of the date of delivery of the decision on termination. The

employee may, consensually with the competent authority referred to in Article 192 thereof, cease working before the expiry of the notice period, and is entitled to wage compensation during that period, the level of which is fixed under company policy or employment contract.

Reply to ECSR

Article 180, paragraph 1 of the Labour Code is amended on account of which employers shall be required to notify the employees on the reasons for their dismissal before termination of the employment contract in case referred to in Article 179, items 2 - 3 of this law and provide them with at least an eight-day term from the date of the warning notice to respond to the allegations stated in the notice. Such a period is not understood to construe the notice period, but rather a period to allow the employee concerned to provide the position on the warning notice by the employer which includes reasons and evidence for cancellation of labour contact (Within the notification referred to in para. 1 of this Article, the employer shall be obliged to include the grounds for dismissal, facts and evidence suggesting that the conditions have been met for the dismissal and deadline for submitting the response to such notification).

Under the amended Article 189 of the Labour Code, employee whose employment contract has been terminated for lack of performance, i.e. qualifications and skills in terms of Article 179, para. 1, item 1 of this law, shall have the right to a notice period determined by the company policy or employment contract depending on the total duration of insurance period, and which may not be shorter than eight or longer than thirty days. The notice period starts on the day after the decision on termination of the employment contract has been served. Employee may, in agreement with competent bodies in terms of Article 192 of this law, cease work even before expiry of the notice period, where the wage compensation shall be paid for the period in the amount set in the company policy and employment contract.

Under Article 36, paragraph 3 of the Labour Code, either employer or employee may, before the expiry of contractual probation period, terminate the contract of employment, in which case the minimum notice period may not be shorter than five business days.

Under Article 178, when resigning, an employee shall notify in writing the employer on the termination of employment contract not later than 15 days prior to the date of termination (notice period). A longer notice period may be laid down in company policy or employment contract, which my not exceed 30 days

The notice period for non-standard employment patterns under Articles 197-.202 of the Labour Code is not a statutory but may be contractual one.

Article 4§5

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Reply

The legal framework is described under Article 4§1 of the form.

According to the latest data available with the Republic Statistical Office (RSO), the national average net wages in May was RSD 47,136. The minimum wages for May (for 23 week days, i.e. 184 hours of work) amounted to RSD23.920 after paid taxes and contributions, which is 50, 75% of average net wages.

We note that the data on the published net wages include, in addition to the basic wage, all the wage increases (for overtime, shift work, night work, work on the days of official holidays, etc.), and all the income which has the character of wages (meal allowance, additional monthly wages for holiday leave (holiday leave recourse), bonuses, etc.), in comparison to the data under examination on the net minimum wages which in fact includes only the data on basic wages/pay.
Given that a worker on minimum wages is entitled to all the referred to wage increases and other emoluments which are by their character wage-like, in case the data are included in the information concerning workers on minimum wages, in our opinion, paragraph 1 of the European Committee for Social Rights would be satisfied, or in other words, when taken in such a way, minimum wages would amount to 60% of net wages in Serbia.

Reply to the ECSR

Under Article 123 of the Labour Code, employer may collect any monetary claim from an employee by withdrawal of his/her salary only upon valid decision of the court in cases stipulated under the law or agreement of the employee. Upon valid decision of the court employer may withdraw up to one third of the salary or compensation of salary maximum, unless the law stipulates otherwise.

Also we point out that under Article 163 of the Labour Code, employees shall be liable for work or work-related damages inflicted to the employer at work or in relation to work by them wilfully or by gross negligence (paragraph (1). The existence of the damage, its extent, circumstances under which it has occurred, who inflicted it and how it will be indemnified, shall be determined by the employer as provided for under the general rules and regulations (i.e. Company policy or collective agreement), and/or contract of employment (paragraph 5). If the damage is not indemnified as provided for under paragraph 5 thereof, it shall be decided on by a competent court.

Article 5 – The right to organise

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this Article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

Information to be submitted

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate

Reply

Under Article 55 of the Constitution of Republic of Serbia freedom of political, union and any other form of association shall be guaranteed, as well as the right to stay out of any association. Associations shall be formed without prior approval and entered in the register kept by a state body, in accordance with the law. Secret and paramilitary associations shall be prohibited.

Constitutional Court may ban only such associations the activity of which is aimed at violent overthrow of constitutional order, violation of guaranteed human or minority rights, or inciting of racial, national and religious hatred. Justices of Constitutional Court, judges, public prosecutors, Ombudsperson, members of police force and military persons may not be members of political parties.

Under Article 206 of the Labour Code, freedom to organise trade unions and pursue trade union activity shall be granted to employees, with pertinent entry into a register. Further, under Article 207 of the LC, employee shall become a member of the trade union by signing the registration form. Under Regarding the exercising the trade union activity, under Article 208, a trade union shall supply the employer with a certificate of entry into the register of trade unions and decision on election of the president and members of trade union bodies eight days after the day the certificate of entry into the register of trade unions has been supplied, or on the day the trade union bodies have been elected.

Under Article 6 of the Labour Code, a trade union, pursuant to this law, shall be an independent, democratic and self-supporting organization of employees that they join voluntarily for advocacy, representation, promotion and protection of their professional, labour, economic, social, cultural and other individual and collective interests. Under Article 215 of the LC, a trade union, in terms of Article 6 of this law, may be established pursuant to trade union policy.

Under Article 7 of the Labour Code, an association of employers, pursuant to this law shall be an independent, democratic and self-supporting organization of employers that they join for representation, promotion and protection of their business interests pursuant to the law.

Under Article 217 (216- tr.note), an association of employers may be established by employers that employ no less than 5% of employees of the total number of employees in a certain branch, group, subgroup or line of business, or territory of a certain territorial unit. Under Article 218 a trade union and association of employers shall be entered into the register pursuant to the law and other regulations. Under Article 217, paragraph 2 and the minister shall prescribe the mode of such entry of trade unions and associations of employers into the register, as well as deadlines and procedure for registering as provided for under the Registration of Trade Union Rules (Official Gazette of RS, 50/05 и 10/10) and Registration of

Employers Association Rules (Official Gazette of RS, 29/05). The register must include among other data entered, the level that an employers' association or trade union has been established at. Also, a trade union organization as an organization of workers may be registered for the purpose of exercising trade union freedoms and rights at the level of a company, a territorial autonomy unit or local government unit level, at national level or in a branch, group, subgroup or line of economic activity at the level of a specified territory, as provided for under Article 1 of the Registration of Trade Union Rules.

Further, regarding an employers' association, within the meaning of Article 4 of the Registration of Employers' Association Rules, the registration shall contain the data on the level that an association of employers is established at, i.e. employers' association may be established for the territory of a specified territorial unit, in a branch, group, subgroup or line of economic activity. The data shall also include information on membership of employers' association in an employers' association organized at a higher level of organization of employers.

Trade unions and employers' association are free to regulate under their statues arrangements for and terms and conditions of affiliating into alliances, organisations of territorial or occupational level of activity.

Under Article 238 of the Labour Code a trade union and association of employers acquire the capacity of a legal entity on the day of their entry into the register, pursuant to the law and other regulations. Under Article 239 of the LC, A trade union, or association of employers, for which representativeness has been established pursuant to this Law, shall be entitled to: 1) right to collective bargaining and collective agreement on the respective level; 2) right to participation in collective disputes; 3) right to participation in tripartite and multipartite bodies on the pertinent level; 4) other rights, pursuant to the law.

Regarding the restriction (a ban on) of organizing of police officers and military personnel, we note that the matter is provided for under a separate piece of legislation.

Reply to ECSR

Under Article 6 of the Labour Code. A trade union shall be an independent, democratic and self-supporting organization of employees that they join voluntarily for advocacy, representation, promotion and protection of their professional, labour, economic, social, cultural and other individual and collective interests.

Under Article 206 of the Labour Code, freedom to organise trade unions and pursue trade union activity shall be granted to employees, with pertinent entry into a register.

Under Article 215 of the LC, a trade union, in terms of Article 6 of this law, may be established pursuant to trade union policy.

Under Article 217 of the LC a trade union and association of employers shall be entered into the register pursuant to the law and other regulations. Based on Article 217, paragraph 2 of

the Labour Code, the Registration of Trade Union Rules is issued which regulates rules of procedure for registration of a trade union.

Under Article 4 of the referred to Rules, a trade union shall apply to a ministry in charge of labour, within 15 days from the establishment of the trade union. The application shall be submitted by a person authorized by the trade union. In case of a trade union which is affiliated, or is affiliating to a national-level trade union, an authorized person to submit an application shall be a person authorized by an applying trade union. Who is to be regarded of as a person with powers for representation and advocacy shall be determined based on the official document adopted by the trade union or of a national-level trade union in case of its affiliated trade union, as provided for under the trade union policy. The application shall contain trade union name, registered seat and address of a trade union, full name of a person with powers of representation and advocacy and shall be duly signed by the person.
Article 5 of the Rules spells out the documentation to be enclosed with the application.
Under Article 7 of the Rules, the Ministry shall issue a decision on the registration of a trade union if all the requirements for its establishment are met under law, and/or the relevant trade union policy document, i.e. statute or similar.
Under Article 9 of the Rules the trade union shall be deleted from the Register based on the officially adopted trade union document on dissolution of the trade union; in case of a trade union of a company which has been dissolved – based on the official document on the dissolution or termination of business operation of the company; if the trade union which is deleted should no longer meets the establishing requirements as provided for under law and/or the trade union official policy document i.e. statute, and if it was registered based on inaccurate data.
Based on Article 10 of the Rules, the Ministry shall issue a decision on deletion of a trade union from the Register, if all the conditions under Article 9 thereof are met.
Under Article 2 of the National Administrative Fees Law, tariff item 27 a fee payable for the issuance of the decision on registration of a trade union and/or employers' association amounts to RSD 520.

Article 216 of the Labour Code an association of employers may be established by employers that employ no less than 5% of employees of the total number of employees in a certain branch, group, subgroup or line of business, or territory of a certain territorial unit.

According to the data available with the Ministry of Labour, Employment, Veterans and Social Affairs in charge of maintaining the Register, there are more than 24.000 registered trade unions. The Register does not contain information on the number of members of a trade union, as this is provided for under the trade union policy and there is no legal obligation to report the size of membership when registering a trade union. Also, the Register is not maintained according to public or private sector affiliation of a trade union, which is why there is no requested information available.

Under Article 206 of the Labour Code, freedom to organise trade unions and pursue trade union activity shall be granted to employees, with pertinent entry into a register.

Under Article 207 of the Labour Code employee shall become a member of the trade union by signing the registration form.

Article 188 of the Labour Code sets out a special protection from cancellation of employment contract whereby an employer may not cancel an employment contract, or in any other manner place an employee in unfavourable position due to their status or activity undertaken in the capacity of a workers' representative, trade union membership or participation in trade union activities. Burden of proof that a cancellation of a contract of employment or placing of an employee in unfavourable position is not a result of their status or activity referred to in paragraph 1 thereof shall rest upon an employer.

Also, we note that under Article 152 of the Criminal Code, whoever by wilful violation of law or other unlawful manner prevents or disturbs political, trade union or other alliance or activity of citizens or activity of their political, trade union or other organisations, shall be punished with a fine or imprisonment of up to two years. If the offence referred to in paragraph 1 of this Article is committed by an official in the discharge of duty, such person shall be punished with imprisonment of three months to three years.

Under Article 2016 of the Labour Code freedom to organise trade unions and pursue trade union activity shall be granted to employees, with pertinent entry into a register.

Under Article 215 of the LC, a trade union, in terms of Article 6 of this law, may be established pursuant to trade union policy.

The Labour Code does not proscribe any restrictions or rules regarding internal structure or functioning of a trade union. The matters in question are regulated by a trade union statue or other policy.

Under Article 209, a trade union shall be informed by the employer on economic and occupational-social issues relevant for the position of employees, or trade union members.

Under Article 210 of the Labour Code, an employer shall provide the trade union gathering the company employees with technical conditions and office space and taking into account spatial and financial capacities shall provide it with an access to data and information required for the pursuance of trade union activites. Technical conditions and office space shall be set out in the collective agreement or agreement between the employer and trade union.

Under Article 224 of the Labour Code representativeness of a trade union for the territory of the Republic of Serbia or unit of territorial autonomy or local government, or in a branch, group, subgroup or line of business shall be established by the minister upon a recommendation of the Representativeness Committee, pursuant to this Law.

Under Article 225 of the Labour Code, the Representativeness Committee shall be composed of three representatives each of the Government, trade union and association of employer appointed for a four-year term. Representatives of the Government shall be appointed by the Government upon a recommendation of the minister, while representatives of trade unions and associations of employers shall be appointed by respective trade unions and associations of employers – members of the Social and Economic Council. The ministry shall provide administrative and technical services to the Representativeness Committee.

The Labour Code as amended in July 2014 contains revised provisions on rules of procedure and decision-making by three parties to the Committee, whereby the Committee may work and adopt a proposal if minimum two-third of its members is in attendance. The Committee shall adopt the proposal by majority vote out of a total membership. If the Committee fails to communicate the reached recommendation within due period which shall not exceed 30 days from the date of submission of application, the labour minister may decide on the application without the Committee's recommendation.

If the "formation" of a trade union (as referred to in point a) is understood to mean the establishment of a trade union, we would like to note that representativeness is not a requirement for trade union establishment, but rather contrary: in order to establish representativeness of a trade union, it needs to be established and registered as provided for under the Labour Code. The size of membership is not a condition or requirement for the establishment of a trade union.

The criteria of representativeness for trade unions are spelled out in Article 2018 of the Labour Code. A trade union shall be regarded of as a representative if it is established and active based on the principles of freedom of trade union organizing and activity, if it is independent from state authorities and employers, if funded predominantly from membership fees and other own resources, if it has necessary number of members based on registration forms under Article 2019 and 220 of the Law, and if registered under law and other regulation.

Under Article 219 of the Labour Code, a company-level representative trade union shall be a trade union which meets the requirements referred to in Article 2018 thereof and with minimum 15% of affiliated employees of a total number of the company staff. A company-level trade union is understood to be a trade union in a branch, group, subgroup or line of economic activity with affiliated membership to minimum size of 15% of all the company staff.

Under Article 220 of the Labour Code, a recognized national-level trade union, i.e. a recognized trade union at the level of a territorial autonomy/local government unit, and/or for a branch, group, sub-group or line of economic activity shall be understood to be a trade union with minimum 10% membership of a total number of employees in the branch, group, subgroup or line of economic activity, and/or territory of a relevant territorial unit.

Article 233 of the Labour Code spells out rules of procedure for reviewing/re-examination of the established representativeness rather than for the establishment of representativeness.

Therefore, under the referred to Article, a company-level trade union, employers and employers' associations may apply for the reviewing/re-examination of the established representativeness upon the expiry of three-year period from the date of the decision establishing representativeness. The reviewing/re-examination of representativeness of a company level trade union the representativeness of which is established based on the decision issued by the employer, may be launched on the employer's initiative and/or any other trade union's which is organized within the same company. Reviewing /re-examination of representativeness of a company-level trade union the representativeness of which is established based on the decision issued by the minister may be requested by the company

(employer/management) in which the company-level trade union in question is organized or any other company-level trade union in that company. Reviewing of representativeness of the trade union referred to in Article 220 thereof may be requested by a trade union organized at the level of a territorial unit, and/or branch, group, subgroup or line of economic activity of the trade union under review /re-examination. Reviewing/re-examination of representativeness of an employers' association under Article 222 thereof may be requested by an employers' association organized to represent employers in a branch, group, subgroup, or line of economic activity, and/or in the territorial unit of the employers' association under review/re-examination.

Under Article 234 of the Labour Code, the applications referred to in Article 233, paragraph 2 of the Law, shall be filed with a company at the level of which the re-examined/reviewed trade union is organized The application and initiative referred to in Article 233, paragraph 2 shall contain the trade union's name, the reference number of the document on its registration, reasons for which re-examination/review of representativeness is applied for, and evidence to support them. The employer shall notify the trade union within 8 days from the receipt of the application referred to in paragraph 1 thereof, and/or from the launching of the initiative referred to in paragraph 2 thereof, and shall request the evidence on meeting the requirements for representativeness under the law to be delivered to him. The trade union shall deliver the requested evidence within 8 days from the receipt of the notification referred to in paragraph 3 thereof.

Under Article 235 of the Labour Code, the application referred to in Article 233, paragraphs 3-5 of the Law, shall be submitted to the Representativeness Committee and shall contain the trade union/employers' association name, reference number of the decision on its registration, reasons for applying for reviewing/re-examination of representativeness and enlisting evidence to support them. The Committee shall within eight days from the receipt of the application referred to in paragraph 1 thereof notify the trade union and/or employers' association the representativeness of which is under review/re-examination and ask for the evidence that the requirement for representativeness are met as provided for under the law. The trade union/employers' association shall, within 15 days from the receipt of the notification referred to in paragraph 2 thereof, deliver the evidence that the requirements for representativeness are met.

Under Article 236 of the Labour Code, the representativeness review/re-examination procedure shall be conducted as provided for under Articles 228-232 thereof.

No ban on or prevention from trade union activity for police officers, military personnel or any other staff is provided for under the Labour Code.

Under Article 14, paragraph 3 of the Serbian Armed Forces Law, when participating in the groups the character of which is that of a trade union, the professional military personnel of the Serbian Armed Forces shall do so as provided for in the rules and regulations of military service. *("Professional military personnel shall be entitled to the right to trade union organization in accordance with the Government regulations. ")*

For further information on the content of the rules and regulations of military service, please refer to the Ministry of Defence.

Under Article 169 of the Police Law, police officers and other staff shall be entitled to trade union, occupational or any other organizing and activity which shall be exercised as provided for under law.

No ban on or prevention from trade union activity for police officers, military personnel or any other staff is provided for under the Labour Code.

Under Article 6 of the Labour Code. A trade union shall be an independent, democratic and self-supporting organization of employees that they join voluntarily for advocacy, representation, promotion and protection of their professional, labour, economic, social, cultural and other individual and collective interests.

Under Article 5 of the Labour Code, an employee shall be a natural person in employment relationship with the employer. An employer shall be a domestic or foreign legal or natural person who employs or hires for work one or more persons.

Therefore, under the Labour Code the right to trade union organizing is guaranteed to employees, while other categories, such as unemployed persons, retirees, etc. are entitled to organizing under Associations Law the compliance of which falls under the remit of the Ministry of Labour, Employment, Veterans and Social Affairs and the Ministry of Public Administration and Local Government.

We note, however, that there are no impediments for retirees, unemployed persons, and others who do not enjoy the worker status to be members of a trade union. However, when representativeness is established such are not taken into account as their status is not that of a worker.

Article 6 – The right of workers to bargain collectively

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake

1. to promote joint consultation between workers and employers;
2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;
4. recognize the right of workers and employers to collective action in cases of conflicts

of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

Information to be submitted

Article 6§1

1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Reply

The Labour Code binds employers to consultations with workers' representatives in situations when specified economic, social individual and collective rights accorded to employees are addressed. Under Article 13 of the Labour Code employees shall be entitled, directly or via their representatives, to association, participation in bargaining process for collective agreement, amicable settlement of collective and individual labour disputes, consultation, information and expression of their position on important labour issues. Employees or their representative may not, due to their activities referred to in para. 1 of this Article be called to account or put into less favourable position, when the working conditions are concerned, if complying with the law and collective

Under Article 274, paragraph 1, point 1) employer shall be liable for a petty offence if having called to account a compliant workers' representative as provided for under Article 13 of the LC.

Workers' representatives' rights to mandatory consultations with the employer is separately provided for under Chapter XI Redundancy, governed under Labour Code (Articles 153-160). When addressing redundancies, the employer shall inform the workers' representatives on the redundancy management plan before the redundancy management programme is adopted. Employer shall submit the proposal of the redundancy management programme to the recognized trade union for its opinion eight days after finalizing the proposal at the latest. The trade union's opinion must reach the employer 15 days from the receipt at the latest, and the employer is bound to take the opinion so passed into account and to provide his feedback within eight days.

Further, under Article 180 of the Labour Code, in case when the employer notifies the employee of dismissal, he must consult the trade union of notified employee's affiliation. The trade union shall pass its opinion on the notification within five days from the date of the delivery of notification.

Under the Labour Code, the employer shall be liable for a petty offence if terminating employment contract contrary to the Law (Art. 179 – 181, and 187 and 188), or if failing to

comply with the due procedure for termination of employment contract or to consult with the trade union which the employee being dismissed is with or to consult with it in good time.

Consultations with workers' representatives are conducted through the National Social and Economic Council and local social and economic councils constituted with an aim to establish and develop social dialogue on the matters of relevance for exercising economic and social freedoms and rights of man, material, social and economic situation of workers and employers and their working and living conditions, development of bargaining culture, encouragement and promotion of amicable settlement of labour disputes, development of democracy and publication of magazines, bulletins, and other publications falling under the scope of its remit, as provided for under Article 3 of the Social and Economic Council Law (Official Gazette of RS 125/04)

Also, under Article 9 of the Law, a social and economic council shall discuss the issues of: development and advancement of social dialogue, impact of economic policy and implementation measures to social development and stability, employment policy, wages and price policy, competition and productivity and other matters of structural adjustment, protection of working and natural environment, education and vocational training, health and social care and security, demographic trends and other matters as provided for under policies of the economic and social council. Social and economic council shall adopt the position on the referred to issues under discussion and communicate them to the government. The position adopted shall require the consent of all the members of the SEC.

Under Article 10, the SEC shall discuss draft laws and proposals of other regulations of relevance for the economic and social situation of employees and employers and pass opinions thereon. The opinion shall be communicated to relevant line ministry drafting the legislation or other regulations. The ministry shall notify the SEC on its position with 30 days from the submission. In case the opinion is not accepted, the SEC may submit it to the government.

Reply to ECSR

The Social and Economic Council Law governs setting up, registration, remit and rules of procedure, funding and other matters of relevance for the work of the Social and Economic Council (SEC).

Under Article 2 of the Law, SEC is an independent body comprising:

1) for the territory of the Republic of Serbia: representatives of the Government of Serbia, of representative employers' associations, of recognized trade unions, constituted for the territory of the Republic of Serbia;

2) for the territory of autonomous province and local government unit: representatives of competent executive bodies of the autonomous province or local government unit, representatives of employers and trade unions constituted for that particular territorial unit.

Under Article 5 of the Law, SEC shall have 18 members of which six each from a national-l level trade union and employers' associations and government. The trade union and employers' association representatives shall be designated in proportion with their membership. The SEC members shall be appointed for a four year term. Every member shall have its alternate to substitute the member at the sessions in case of the absence.

Under Article 6 of the Social and Economic Council Law, The Government shall appoint and dismiss its own representatives in the Council upon the proposal of the minister in charge of labour issues (hereinafter: the Minister), and trade union and employer representatives shall be appointed and dismissed by trade unions and employers respectively. The membership status of the Council member shall cease: 1) upon resignation; 2) upon expiry of the term for which he was appointed; 3) if he has been convicted to an unconditional prison sentence of no less than six months; 4) upon dismissal.

Under Article 14 of the Law, The Council for the territory of autonomous province or local government unit (hereinafter: Local Council) may be established by the agreement of the competent executive body of the territory of autonomous province or local government unit, trade unions and employers established the territory of autonomous province or local government unit (hereinafter: participants). The agreement on establishment of the Local Council shall contain but not be limited to: the composition and number of local council members, scope of work, purpose of establishment and work, manner of funding and performance of administrative and technical operations and other issues of relevance for the work of the local council in accordance with this Law.

The criteria of trade union representativeness are unambiguous and provided for under Article 218 of the Labour Code. A trade union is considered representative if: it has been set up and active on the basis of principles of freedom of trade union organization and activity; it is independent from public bodies and employers; it is funded mostly from membership fee and own sources; if it has the sufficient number of members on the basis of registration forms in terms of Articles 219 and 220 of this law; it is entered into the register pursuant to the law and other regulations.

Under Article 219 of the Labour Code, a representative company-level trade union shall be one that meets the requirements set in Article 218 of this law and whose membership comprise no less than 15% of the total number of employees of the company concerned.

A representative company-level trade union shall also be the trade union in the branch, group, subgroup or line of business comprising no less than 15% of the total number of employees at the company concerned.

Under Article 220 of the Labour Code, a representative trade union for the territory of the Republic of Serbia or unit of territorial autonomy or local self-government, or branch, group, subgroup of line of business shall also be the one that meets the criteria referred to in Article 218 of this law comprising the membership of no less than 10% of employees in that branch, group, subgroup of line of business on the territory of a certain territorial unit.

In addition, under Article 249 of the Labour Code, Should neither of trade unions, or neither of associations of employers,, meet the requirements of representativeness in terms of this law, trade unions or associations of employers may enter into association agreement to meet the requirements of representativeness in terms of this law and participation in the collective agreement

Also, under Article 13 of the LC, Under Article 13 of the Labour Code employees shall be entitled, directly or via their representatives, to association, participation in bargaining process for collective agreement, amicable settlement of collective and individual labour disputes, consultation, information and expression of their position on important labour issues.

Under Article 16, paragraph 5 of the LC, an employer shall ask for advice of trade union in cases stipulated under the law; in case the trade union has not been set at the level of the company, of a representative designated by employees.

Article 6§2

1) Please describe the general legal framework applicable to the private as well as the public sector. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on collective agreements concluded in the private and public sector at national and regional or sectoral level, as appropriate.

Reply

Key form of workers' consultation is surely achieved in the procedure of collective bargaining, or agreeing and conclusion of collective agreements at all the levels as stipulated under the Labour Code.

Under the Labour Code, types of collective agreement and parties to it are laid out (Articles 241-248 of the LC). Under Article 244, a general collective agreement may be concluded by a representative association of employers and representative trade union set up for the territory of the Republic of Serbia.

A sectoral collective agreement for a branch, group, subgroup or line of business may be concluded between the representative association of employers and representative trade union set up for the branch, group, subgroup or line of business. A sectoral collective agreement for a territory of a unit of territorial autonomy and local self-government may be concluded between the representative association of employers and representative trade union set up for the territorial unit for which the collective agreement is concluded.

Under Article 246 of the LC, a sectoral collective agreement for public enterprises and public services is concluded between the founder or body authorized by the founder and the representative trade union. A sectoral collective agreement for the territory of the Republic for public enterprises and public services established by an autonomous province or local government unit may be concluded by the Government and a representative trade union if there is reasonable interest and with view to ensuring the equal conditions of work. A sectoral collective agreement for public enterprises and stock holding companies incorporated by the public enterprise shall be concluded between the public enterprise which is the incorporating party or an authority authorized by it and the recognized trade union. A sectoral collective agreement for persons pursuing free lance activity in the field of arts and culture (self-employed artists) shall be concluded between the representative association of employers and representative trade union.

A company-level collective agreement for public enterprises, stock holding companies incorporated by the public enterprise, and for public services, shall be concluded between the incorporating party and/or the authority authorized by it, the company-level trade union and the company/employer. On behalf of the employer, the collective agreement shall be signed by a person with powers to represent the employer as provided for under Article 247 of the

LC.

A company-level collective agreement shall be signed by the employer and the recognized company-level trade union. On behalf of the employer, the CA shall be signed by a person with powers to represent the employer (Article 248 of the Labour Code).

Also, information and consultation are integral to collective bargaining. In the period after the entry into force of the amendments to the Labour Code in July 2014, the following collective agreements are entered into the Register maintained with the Ministry:

Registered sectoral collective agreements to which the Government is a party:

1. Sectoral Collective Agreement (SCA) for health care facilities established by the Republic of Serbia, an autonomous province or a local government unit "Official Gazette of RS, 1 of 6 January 2015,term of applicability 14.01.2015 - 14.01.2018;

2. SCA for cultural institutions established by the Republic of Serbia, an autonomous province, and a local government Official Gazette of RS, 10 of 29 January 2015, term of applicability 30.01.2015 - 30.01.2018;

3. SCA for social protection in the Republic of Serbia, Official Gazette of RS, 11 of 30 January, term of applicability 31.01.2015 - 31.01.2018;

4. SCA for primary and secondary school staff, and staff in student accommodation „Official Gazette of RS, 21 of 25 February, term of applicability 2015, 5.03.2015 - 5.03.2018;

5. SCA for police officers, Official Gazette of RS, 22 of 27 February 2015, term of applicability 7. 03.2015 - 7.03.2018;

6. SCA for public authorities Official Gazette of RS, 25/15 of 13 March 2015 as of 13 march 2015;

7. SCA for public enterprises in public utility sector in the territory of RS, Official Gazette of RS, 27/2015 of 18 March 2015, term of applicability д 26.03.2015 – 26.03.2018;

8. SCA amending the SCA for Public Authorities, Official Gazette of RS 50/2015 of 9 June 2015;

9. Annex to the SCA for Police Officers, Official Gazette of RS 70/2015 of 12 August 2015;

10. SCA for student accommodation institution staff, Official Gazette of RS, 100/15 of 4 December 2015, term of applicability 12.12.2015. – 12.12.2018;

11. Annex I to the SCA for Public Enterprises in Public Utility Sector in the Territory of RS;

12. SCAs for the staff in the pre-school education institutions established by the Republic of Serbia, autonomous province and local government unit, Official Gazette of RS, 43/2017 of 5 May 2017. Term of applicability 13.5.2017 – 13.5.2020;

Registered SCAs to which the Government is not a party:

1. SCA for Public Enterprises in Public Utility and Housing Sector of the City of Belgrade, Official Gazette of RS, 11 of 30 January 2015, term of applicability 07.02.2015 - 07.02.2018;

3. SCA for pre-school institutions established by the City of Belgrade, Official Gazette of RS, 47/15 of 29 May 2015, term of applicability 06.06.2015 - 06.06.2018;

4. SCA of Public utility Pancevo, Official Gazette of RS, SCA for public and public utilities of the City of Pancevo, Official Gazette of RS, no. 59 of 2 July 2015, term of applicability 03.07.2015 - 03.07.2018.;

5. SCA for public utilities established by the City of Cacak, Official Gazette of RS, 62/15 of 8 September 2015;

6. SCA for public utilities of the City of Pozarevac, Official Gazette of RS 69/15 of 7 August 2015;

7. SCA for public and public utility enterprises of the City of Subotica, Official Gazette of RS 83/15 of 3 October 2015.;

8. SCA for road transport economic activity of the Republic of Serbia, Official Gazette of Rs, 3 of 4 January 2015, in application between 22.01.2015 - 22.01.2018;

9. SCA for work engagement and contracting of art performers in HORECA sector, Official Gazette of RS, 23 of 2 march 2015, in effect as of 10.03.2015 to 10.03.2018;

10. SCA for chemistry and non-metals of Serbia, Official Gazette of RS, 77/16 of 14 September 2016;

11. SCA for agriculture, food processing, and tobacco industry and water management of Serbia, Official Gazette of RS, 76/16 of 9 September 2016, in effect as of 17.9.2016 to 17.9.2019;

12. SCA for construction and building material industry of Serbia, Official Gazette of RS, 77/16 of 14 September 2016;

Company-level CA which the Government is the party to:

1. SCA for Electro-power Industry of Serbia (EPS) Official Gazette of RS, 15, of 6 February 2015, in effect as of 07.02.2015 to 07.02.2018;

2. CA for Public Enterprise „Post Services of Serbia “Official Gazette of RS, 14, of 4 February 2015, in effect as of 05.02.2015 to 05.02.2018;

3. CA for PE „Srbijagas“signed on 3.02.2015. In effect before 3.02.2018;

4. CA for PE „Transnafta“, signed on 3.02.2015 in effect before 02.02.2018;

5. CA for PE „Elektromreza Srbije" 02.02.2015

6. CA amedning CA for PE „Elektromreza Srbije“Belgrade, Government Conclusion 05 Number 11-6362/2016-1 of 15.07.2016

7. CA for „Airport Nikola Tesla stock company“ 12.02.2015

8. CA for „Relways of Serbia“, signed on 24.03.2015

9. CA for PE „Official Gazette“signed on 24.03.2015

10. CA for PE „Institute for Schoolbooks “signed on 16.07.2015;

11. CA for PE „Serbiawaters“, Government Conclusion 05 Number 11-2878 of 15 March 2016

12. CA of the Republic Pension and Disability Insurance Fund concluded on 14 March 2016

13. CA for PE „Skitracks of Serbia “Government Conclusion 05 Number: 11-4401/2016 of 17.05.2016

14. CA for „Jat-technics“ LTD, aircraft maintenance and repair company Belgrade, Government Conclusion 05 Number: 11-1102/2016 of 06.02.2016

15. CA for PE for underground coal mining Resavica, Government Conclusion 05 Number: 11-3361/2015-1 of 26.03.2015

16. CA for PE Shelters, Government Conclusion 05 Number: 11-4109/2016 of 27.04.2016

17. Company-level CA at *Agricultural Counselling and Technical Service Kraljevo LTD,* Government Conclusion 05 Number: 11-14234/2015 of 08.01.2016.

18. CA for PE „Broadcasting Technical Service and Links», Belgrade – Government Conclusion 05 Number: 11-5518/2016 of 17.06.2016

19. CA of the National Employment Service – Government Conclusion 05 Number: 11-12827/2016 of 13.1.2017

Reply to ECSR

The amended Labour Code entered into effect in July 2014, under which collective agreement provisions which used to be in effect as of the date of entry into force of the Law shall cease to be in effect as of 29 January 2015. Therefore, the Ministry launched an initiative for the beginning of collective bargaining to conclude collective agreements an all levels.

The law encourages collective bargaining given that the under the Law employers are bound to regulate employment relations under a collective agreement while under a rulebook only in exceptional cases where there is no trade union at company level in place or no trade union meets the criteria for recognition or no agreement on association has been concluded under law, if none of the parties to the collective agreement initiates bargaining or if the parties to the CA fail to reach compromise to conclude the CA within 60 days from the initiation of the bargaining and if the trade union within 15 days from the date of invitation to the bargaining rejects the employer’s initiative.

Under the Law, the Government and recognized trade unions may conclude a sectoral collective agreement for the territory of the Republic of Serbia for public enterprises and public services established by a autonomous province or local government unit with view to ensuring equal working conditions, Also, under the Law, sectoral collective agreements for public enterprises and stock holding companies incorporated by a public enterprise may be signed.

The amendments allow for accession to a collective agreement by an employer association which is not a party to the CA, i.e. which is not affiliated to an employers’ association.

The requirements for the extended effect of the CA are stricter. The decision is made by the Government if a CA to be extended shall bind the employers employing more than 50% of employees in a branch, group, subgroup or line of economic activity. Prior to entering the amendments to the Labour Code into force, the Government made the decision on the extended effect of the Sectoral Collective Agreement for road transport.

Under Article 263 of the LC, Collective agreement shall be concluded for a three-year term. Upon expiry of the term, collective agreement becomes invalid unless the parties to the collective agreement agree otherwise 30 days before expiry of such collective agreement at the latest

Under Article 264 of the Labour Code, validity of collective agreement before expiry of the term referred to in Article 263 of this law may be cancelled by agreement of the parties or cancellation in the manner stipulated in this agreement. In case of cancellation, collective agreement shall be applied six months after the cancellation at the latest, where the parties shall initiate the bargaining process 15 days after the cancellation at the latest.

The original Article 222 of the Labour Code has not been amended, and thus a representative association of employers, in terms of this law, shall be an association of employers into which no less than 10% of employers of the total number of employers in a certain branch, group, subgroup or line of business, or territory of a certain territorial unit under the condition that such employers employ no less than 15% of the total number of employees in that branch, group, subgroup or line of business, or territory of a certain territorial unit.

Also, we point out that Article 249 of the LC proscribing should neither of trade unions, or neither of associations of employers, meet the requirements of representativeness in terms of this law, trade unions or associations of employers may enter into association agreement to meet the requirements of representativeness in terms of this law and participation in the collective agreement is applicable to to all the level of trade union organising and than company-level trade unions, as it has been referred to in the conclusion, based on the opinion of the Confederation of Free Trade Unions of Serbia.

Under Article 239 of the LC, A trade union, or association of employers, for which representativeness has been established pursuant to this Law, shall be entitled to:

1) right to collective bargaining and collective agreement on the respective level;

2) right to participation in collective legal disputes;

3) right to participation in tripartite and multipartite bodies on the pertinent level;

4) other rights, pursuant to the law.

Representativeness criteria are spelled out under Article 218 of the LC. A trade union shall be considered representative: if it has been set up and active on the basis of principles of freedom of trade union organization and activity; if it is independent from public bodies and employers; if it is funded mostly from membership fee and own sources; if it has the

sufficient number of members on the basis of registration forms in terms of Articles 219 and 220 of this law; if it is entered into the register pursuant to the law and other regulations. Under Article 219 of the Labour Code, Under Article 219 of the Labour Code, a representative company-level trade union shall be one that meets the requirements set in Article 218 of this law and whose membership comprise no less than 15% of the total number of employees of the company concerned.

A representative company-level trade union shall also be the trade union in the branch, group, subgroup or line of business comprising no less than 15% of the total number of employees at the company concerned.

Therefore, size of membership is not the only requirement for representativeness; rather all the cumulative requirements under Article 2018 of the Labour Code need to be met.

Article 257 of the Labour Code foresees competences and conditions on which the decision on extension of a collective agreement or its individual clauses is reached, and not its renewal, as referred to in the conclusion.

Also, the provision has been amended under the Law Amending the Labour Code which entered into effect on 29 July 2014 and reads as follows:

The Government may decide that a collective agreement or some of its provisions apply to employers who are not members of employers' association – parties to a collective agreement. The Government may adopt the decision referred to in paragraph 1 of this article, with a view to achieving the economic and social policy in the Republic of Serbia, and in order to ensure equal working conditions which represent a minimum workers' rights, or to narrow the wage gap in a certain branch, group, subgroup or line of business that substantially affect the social and economic position of employees resulting in unfair competition, under the condition that the collective agreement the effect of which is extended is binding for employer that employ more than 50% of employees in that branch, group, subgroup or line of business. Upon reasoned proposal of a ministry responsible for the activity for which the collective agreement has been concluded, the Government may pass the decision referred to in paragraph 2 thereof upon request of one of parties to the collective agreement the effect of which is extended, upon advice of the Social-Economic Council. With the request for extension of the effect of a collective agreement, the claimant shall submit evidence of fulfilment of conditions referred to in paragraph 2 thereof. Employers who are to be bound by a collective agreement whose effect is extended and the number of employees shall be determined on the basis of the data available with an authority maintaining the register of collective agreements or another competent body in accordance with the law.

As of the entry into force of the Labour Code as amended, the Government decided on the extension of one collective agreement – Sectoral Collective Agreement for Road Transport. The line ministry undertook analysis jointly with the parties to the SCA which were required to inform the decision on extension. The data available with the Republic Statistical Office were used and of the Employers Association and their affiliated members active in road transport sector.

Article 6§3

1) Please describe the general legal framework as regards conciliation and arbitration procedures in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on the nature and duration of Parliament, Government or court interventions in collective bargaining and conflict resolution by means of, *inter alia*, compulsory arbitration.

Reply

I ARBITRAGE

The Labour Code sets out arbitrage as a method of resolving an issue, in the case when consensus fails to be reached for a conclusion of a collective bargaining agreement 45 days from the outset of the bargaining.

According to Article 254, paragraph 2 of the Labour Code, parties to collective agreement shall participate in the bargaining process. If, during the bargaining process consensus for collective agreement has not been reached after 45 days from the day of the outset of the bargaining process, the parties may set up an arbitrage to resolve the disputed issues. Under Article 255 of the LC composition, rules of procedure and effects of the arbitrage decision shall be agreed upon by parties to the collective agreement. The final decision shall be reached 15 days after the arbitrage has been set up at the latest. The decision of the arbitrage shall become an integral to the collective bargaining agreement and is bounding for the parties.
The arbitrage in case of issues regarding the execution of collective bargaining agreement is provided for under Article 256 of the LC according to which the parties may settle specified issues regarding the application of a collective agreement by an arbitrage set up the parties to the collective agreement. The arbitrage may be set up within 15 days after the issue has risen. The arbitrage decision is binding for the parties. Composition and rules of procedure shall be regulated by the collective agreement.

II CONCILIATION

Further, under the Amicable Settlement of Labour Disputes Law (Official Gazette of RS 125/04 and 104/09), Article 1, the Law shall regulate procedure and rules of amicable settlement of collective and individual labour disputes, selection, rights and obligations of conciliators and arbitrators and other issues of relevance for amicable settlement of labour disputes. The procedure of amicable settlement of labour disputes shall be launched and run in compliance with the law, unless the same dispute has been settled in compliance with labour law.

III REDRESS

Under Article 265, paragraph 4 of the LC, the parties to a collective agreement may, before competent court seek redress for violation of the rights accorded to them under the collective agreement. According to the Labour Code, employees are entitled to redress before the

competent court against the decision that has injured the employee's entitlement or when the employee has became aware of the violation, the employee or a representative of the affiliating trade union who is empowered by the employee to represent his/her interests, may imitate the proceedings before competent court. The statutory period for action is 90 days from the delivery of the decision or from the moment the injured party has become aware of the violation.

IV INSPECTION

Compliance with the Labour Code and other labour regulations, company policy, and employment contract regulating employees' rights, obligations and responsibilities is supervised and controlled by labour inspection as provided for under Article 268 of the LC. Collective agreements and labour regulations which under Article 8 of the LC are regarded of as company policy may not include any clauses which accord to employees less favourable entitlements and working conditions than under law. Specified clauses of an employment contract under which less favourable conditions of employment are accorded than under law or company policy, and/or which are based on inaccurate information that the employer has provided on the employee's rights, obligations and responsibilities shall be null and void. A sectoral collective agreement may not spell out fewer rights or less favourable conditions of work for the employee than those under general collective agreement binding employers affiliated with the employers' association which is a party to the sectoral collective agreement being concluded. A company-level collective agreement may not spell out fewer rights or less favourable conditions of work than set out under a general or sectoral collective agreement biding the employer in question.

Under Article 257 the government may decide to have a collective agreement or individual clauses extended to those employers who are not affiliated members of the employers' association which is a party to the collective agreement so extended under the decision on extended effect of the collective agreement.

Such a decision may be made by the government if there is justifiable interest for it, and in particular: 1) for the purpose of implementation of economic and social policy across Republic of Serbia, with an aim to ensure equal conditions of work which represent minimum labour rights employees are entitled to based on their employment; 2) to mitigate wage gap in a branch, group, subgroup or line of economic activity which critically impact social and economic situation of employees resulting in unfair competition, under condition that the so extended collective agreement shall bind employers/companies employing 50 per cent of all employees in a branch, group, subgroup or line of economic activity.

The decision on extended effect shall be made by the government on the request of either party to the so extended collective agreement, upon the obtained position of the National Social and Economic Council. The Decision on the Extended Effect shall be published in the "Official Gazette of the Republic of Serbia".

When inspecting, the labour inspection is empowered to order the employer by issuing a decision to correct situation regarding the established violation of the law, company policy and employment contract, and the employer shall notify labour inspection on the enforcement of the decision not later than 15 days from the date of expiry of the period left for the correction.

Article 6§4

1) Please describe the general legal framework as regards collective action in the private as well as the public sector, including where relevant decisions by courts and other judicial bodies, if possible. Please also indicate any restrictions on the right to strike. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular: statistics on strikes and lockouts as well as information on the nature and duration of Parliament, Government or court interventions prohibiting or terminating strikes and what is the basis and reasons for such restrictions.

Reply

Under Article 61 of the Constitution of the Republic of Serbia, The employed shall have the right to strike in accordance with the law and collective agreement. The right to strike may be restricted only by the law in accordance with nature or type of business activity.

Under the Strike Law (Official Gazette of RS 29/96 of 26.6.1996.), a strike is a cease of work organized by workers for the purpose of protecting their occupational and economic interests based on labour. Workers decide freely on their participation in a strike.

A strike may be organized within an undertaking or other legal person, and/or its section or within a natural person undertaking economic or other activity or providing a service (hereinafter referred to as: „ an employer“), or within a branch of economic activity, or as a general strike. A strike may be organized as a warning strike which may not exceed one hour. The workers shall decide freely on their participation in the strike.

Decision on launching a strike is a formal undertaking/act, spelling out workers' requests; time of the onset of the strike; gathering place for strikers if it is manifested as a gathering of workers; the strike committee shall represent the workers' interests and shall run the strike on their behalf. The strike shall cease after the parties at dispute have reach an agreement or by the decision on the termination of the strake which shall be made by the trade union, and/or majority of the workers. For every new strike, the participants in the strike shall decide again on the strike.

Under the Strike Law, the right to strike shall be restricted in the economic activites as identified under Article 9 of the Law, i.e. in the economic activities of general interest or in such an economic activity in which due to its nature the cease of work could jeopardize life and health of people or inflict large scale damage. The right to strike may be exercised if also special conditions are met under the law.

The activity of general interest within the meaning of this law is an activity undertaken by an employer in the area of: electric power energy sector, water management, transport, media (radio and television broadcasting), postal services, public utility services, processing of staple food, human and animal health care, education, child care and social security.

Also, under the Strike Law such activities include activities of special relevance for national defence and security as identified by a competent authority under law, and the activites necessary to be undertaken for the purpose of honouring the assumed international

obligations.

The activities the cease of which due to the nature of the activites, within the meaning of the Law, would result in jeopardizing life and health of people or inflicting large scale damage include: chemical industry, steel industry and non-ferrous and ferrous metallurgy.

The workers who pursue the economic activites of general interest tor are involved in the activity the cease of which could jeopardize life and health of people or inflict a large-scale damage due to the nature of the activity may launch a strike if minimum essential services are ensured providing security to people and property or which represents irreplaceable condition of life and work of citizens or other undertaking, and/or a legal or natural person pursuing economic or other activity or providing a service (Article 9 of the Strike Law).

The activities of general interest in which minimum essential services are the condition *sine qua non* include: power energy industry, water management, transport, media (radio and television broadcasting), postal service, public utility services, processing of staple food, human and animal health care, education, child care, and social security.

The activities of general interest include also national defence and internationally assumed obligations, etc.

Minimum essential services, within the meaning of paragraph 1, Article 10 of the Strike Law, for public services and public enterprises shall be identified by their founder, and in case of other employers – director, taking into account the nature of the activity, level of threat to life and health of population and other circumstances of relevance for meeting the needs of the citizens, undertakings, and other entities (season of the year, tourist season, school year, etc.). When defining minimum essential services the founder or director shall take into account the opinion, observations and recommendations of the trade union. How the established minimum essential services will be ensured shall be determined under company policy as provided for under the collective agreement.

The strike committee and representatives of the authority, who have been duly notified of the strike, shall make every effort to settle the dispute amicably upon such a notification and in the course of the strike.

The rules of procedure for amicable settlement of labour disputes arising in connection to a strike are laid out under the Amicable Settlement of Labour Disputes Law (Official Gazette of RS, 125/04 and 104/09).

Under Article 61 of the Constitution of the Republic of Serbia, The employed shall have the right to strike in accordance with the law and collective agreement. The right to strike may be restricted only by the law in accordance with nature or type of business activity.

Strike and the matters related to the strike are regulated by the Strike Law (Official Gazette of RS 29/96)

Under the Strike Law, a strike is a cease of work organized by workers for the purpose of protecting their occupational and economic interests based in labour. Workers decide freely on their participation in a strike.

Under Article 2 of the Strike Law, a strike may be organized within an undertaking or any other legal person, and/or its section, or within a natural person pursuing an economic or any other activity or providing services, or it may be organized as a general strike. A strike may be organized as a warning strike which shall not exceed one hour.

Under Article 3 of the Strike Law, at company-level, it is a trade union body that has been designated under the decision issued by the trade union or majority of workers who shall decide on the onset of the strike. If a strike is organized at the level of a branch of economic sector, whether the strike will be launched shall be decided by the competent trade union body. If a strike is a general in its scope, the decision on the onset shall be made by the highest-level trade union body.

Under Article 4 of the Strike Law, the decision on launching a strike shall include in particular the workers' requests, time when the strike shall begin, place where strikers will be gathering, if their protest is manifested as a gathering of workers. The decision shall spell out the strike committee representing the interests of the workers which shall run the strike on their behalf.

Further, under Article 166 of the Criminal Code, the violation of the right to strike is criminalized, and therefore whoever by force, threat or in other unlawful manner prevents or obstructs employees to, in accordance with the law, organise a strike, participate in a strike or otherwise exercise their right to strike, shall be punished with a fine or imprisonment of up to two years. The penalty referred to in paragraph 1 thereof shall be imposed on an employer or responsible officer who terminates the employment of one or more employees due to their participation in a strike organised in accordance with law, or institutes other measures violating their labour rights.

No restrictions are provided for under the Strike Law regarding undertaking a strike action by civil servants, or under the Civil Servants Law.

Under Article 9 of the Strike Law, the activites of general interest the interruption of which may due to the nature of the activity endanger the life and health of people or inflict a large-scale damage; the right to strike may be exercised when additional conditions under the Law are fulfilled. The activites of general interest, within the meaning of the Law, shall be the activities undertaken in the following areas: power energy sector, water management, transport, media (radio and television broadcasting), postal services, public utility services, processing of staple food, human and animal health care, education, child care and social welfare. Also, within the meaning of the Law, the activites of general interest include those of relevance for national defence and security as identified by a competent authority under law, and the activities necessary for fulfilment of internationally assumed obligations. An activity the interruption of which by its nature, within the meaning of the Law, could endanger the life and health of people and inflict a large-scale damage include: chemical industry, steel industry, and ferrous and non-ferrous metallurgy.

Under Article 10 of the Strike Law, the workers pursuing the activities referred to in Article 9 of the Law, may start their strike action if minimum essential services are provided ensuring safety of people and property or represent an irreplaceable condition of life and work of citizens or other undertaking, and/or legal or natural person pursuing other economic or any other activity or providing services.

Also, one should bear in mind that in Serbia, primary education is mandatory, but that however, it is possible to undertake a strike action in the sector under condition minimum essential services are ensured.

Under Article 9 of the Strike Law, the activites of general interest the interruption of which may due to the nature of the activity endanger the life and health of people or inflict a large-scale damage; the right to strike may be exercised when additional conditions under the Law are fulfilled. The activites of general interest, within the meaning of the Law, shall be the activities undertaken in the following areas: power energy sector, water management, transport, media (radio and television broadcasting), postal services, public utility services, processing of staple food, human and animal health care, education, child care and social welfare. Also, within the meaning of the Law, the activites of general interest include those of relevance for national defence and security as identified by a competent authority under law, and the activities necessary for fulfilment of internationally assumed obligations. An activity the interruption of which by its nature, within the meaning of the Law, could endanger the life and health of people and inflict a large-scale damage include: chemical industry, steel industry, and ferrous and non-ferrous metallurgy.

Under Article 10 of the Strike Law, the workers pursuing the activities referred to in Article 9 of the Law, may start their strike action if minimum essential services are provided ensuring safety of people and property or representing an irreplaceable condition of citizens' lives and their work or of an undertaking, or legal or a natural person pursuing economic or any other activity or providing services. Such minimum essential services for public services and public enterprises shall be defined by its founder, and in case the strike is organized in an undertaking or company which is not public enterprise or a public service – director. When identifying minimum essential services they shall take into account the nature of the activity, degree of threat to life and health of people, and other circumstances relevant for satisfying the needs of citizens, undertakings or other entities (i.e. they will take into account the season of the year, whether it is tourist season in course, school year, etc.). **When defining minimum essential services within the meaning of paragraph 2 thereof, the founder, and/or director shall take into account the opinion, observation and proposal of a trade union; how minimum essential services will be ensured shall be decided in the company policy, as provided for under collective agreement.** Upon the obtained opinion passed by the strike committee, director shall identify the workers who are bound to work during a strike so that minimum essential services are ensured, not later than five days prior to the onset of the strike. If, five days prior to the onset of the strike at the latest the referred to conditions are not fulfilled, a competent state authority, and/or competent local government authority,

shall set the measures for the fulfilment of such conditions by the date set for the beginning of the strike

Under Article 12 of the Strike Law, when a strike action is organized in the activities of general interest, in addition to the obligation under Article 6 of the Law to make effort to resolve the issue amicably, the strike committee, management, and representatives of a competent national/ local government authority, shall, within the period from the date of notification of the strike to the date set for the beginning of the strike, table the proposal for settling the issue and inform the workers who announced the strike action and public.

Under Article 13 of the Strike Law, in the course of a strike, the strike committee shall cooperate with the management to ensure minimum essential services under Article 10 thereof.

The statement that in Serbia "strike action cannot be undertaken if parties to a collective agreement do not reach an agreement."[3], unless the translation is inaccurate, is not correct. It is so because the Strike Law spells out the conditions for undertaking a strike in the activities of general interest. It is only correct that in case such conditions are not met, a strike in such activites cannot start. The other statement that "the dispute is then subject to compulsory arbitration"[4] unless the translation is inaccurate, is incorrect. It is so because under Article 18 of the Amicable Settlement of Labour Disputes, it is conciliation and not mandatory arbitrage that shall be obligatory in case of a strike organized in the activites of general interest. The rules of procedure of conciliation are laid down in Articles 18-30 thereof.

Under Article 7 of the Strike Law, the strike committee and workers on strike shall organize and run the strike action in such a manner so as not to put under threat safety of persons and property and health of people, so as to prevent inflicting of direct damage to property, and facilitate resumption of activity upon the completion of the strike. The strike committee and workers on strike may not prevent management to use means and manage means used in the pursuit of the economic activity. The strike committee and workers on strike may not prevent workers who are not on strike from working.

Under Article 14 of the Strike Law, organizing a strike, and/or participation in a strike under conditions as set under the Law shall not represent misconduct, and may not be the grounds for instituting any proceedings for the establishment of the workers' liability for misconduct or property damage and may not result in the termination of employment. **The worker on strike shall exercise all the core labour rights, except for the right to wages, and shall exercise social insurance rights under social insurance legislation.** The strike organizers, and/or participants in a strike organized contrary to law may not enjoy protection contained herein.

[3] Translation is accurate, true to the original: "Furthermore, the Committee notes that in the ITUC's 2009 Annual Survey of Violations of Trade Union Rights is stated that in Serbia, "strike action cannot be undertaken if parties to a collective agreement do not reach an agreement."

[4] Also, true to the original – tr.note

Under Article 15 of the Strike Law, in the course of a strike organized under terms and conditions of the Law, the employment of new workers to replace the workers on strike shall be forbidden, unless there is a threat to the safety of persons and property, preservation of minimum essential services ensuring safety of property and persons within the meaning of Article 7, paragraph 1 thereof, and to fulfilment of internationally assumed obligations within the meaning of Articles 9 and 10 thereof. Management may not prevent a worker to participate in a strike or exert any compulsory measures to bring the strike to end, or, on the basis of non-involvement in the strike, to decide on more favourable wages or other more favourable conditions of work for the workers who are not on strike.

Article 21 – The right of workers to be informed and consulted within the undertaking

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and
b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

Information to be submitted

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on the percentage of workers out of the total workforce which are not covered by the provisions granting a right to information and consultation either by legislation, collective agreements or other measures.

Reply

The right to be informed is regulated under Article 209 of the Labour Code – A trade union shall be informed by the employer on economic and occupational-social issues relevant for the position of employees, or trade union members.

Under Article 13 of the Labour Code employees shall be entitled, directly or via their representatives, to association, participation in bargaining process for collective agreement, amicable settlement of collective and individual labour disputes, consultation, information and expression of their position on important labour issues. Employees or their representative may not, due to their activities referred to in para. 1 of this Article be called to account or put

into less favourable position, when the working conditions are concerned, if complying with the law and collective agreement.

Exercising the right to be informed touches upon several areas of relevance for trade union activity. Therefore, a recognized company-level trade union established to represent the interest of workers in a specified branch, group, subgroup or line of economic activity, and/or at specified territory are entitled to all the relevant information on collective bargaining process when agreeing and concluding a collective bargaining agreement at the company level or for the branch, group, line of economic activity upon launching the collective bargaining procedure.

Also, representatives of recognized trade unions are entitled to participate in the resolution of collective labour disputes, when they may obtain all the relevant information related to the subject matter of the dispute, to the venues and options for its resolution, to consider all the proposals for its settlement and to get all other information of relevance for the representative of workers.

Furthermore, regarding exercising the right to be informed it is important to underline that the representatives of recognized trade unions are entitled to take part in the work of tripartite and multipartite working parties at various levels accordingly.

1. Exercising of this entitlement to participation in tripartite bodies accorded to trade union representatives is particularly essential for:

1.1 The work of the National Social Economic Council of Serbia, as regulated under the Social and Economic Council Law (Official Gazette of RS, 125/04). Also, for the work of permanent working parties of the National Social Economic Council (NSEC), including:

- Permanent Working Party on Legislation
- Permanent Working Party on Economic Issues
- Permanent Working Parties for Collective Bargaining and Amicable Settlement of Labour Disputes
- Permanent Working Party for Safety and Health at Work, and

2.1 The work of working groups tasked with amending applicable and developing new legislative proposals, by-laws, strategy papers and action plans, of relevance for economic, labour-related and social status of workers. Also, the representatives of recognized trade unions are members of the Ministry of Labour, Employment, Veterans and Social Affairs Working Group tasked with drafting the Law Amending the Amicable Settlement of Labour Disputes Law and the Strike Law.

The right to information and consultation of workers as provided for under the Labour Code according to individual legal concepts

A) When enacting/adopting/passing a redundancy programme (a programme to address/manage the issue of redundant workers)

Regarding exercising the right of workers to be informed by management/employer, the Labour Code sets out the obligation for the management/employer to inform workers' representatives when redundancy issue is being addressed and in particular, when redundancy programme is being passed by the company. In the course of the procedure itself and before the redundancy programme is adopted, the management/employer must comply with Article 154 of the LC and thus involve representatives of recognized trade unions in undertaking the measures for redeployment of redundant workers. The recognized trade union shall pass its opinion or position on the proposed redundancy programme within 15 days from the date of delivery of the proposed redundancy programme, in accordance with Article 156, paragraph 1 of the Labour Code.

In compliance with Article 156, paragraph 3 of the LC, the management shall consider and take into account recommendations of the national employment agency and the trade union's opinion, and notify its position within eight days.

B) Consulting in case of termination of employment

Furthermore, under the LC, in case of termination of employment contract, when a warning is delivered to the employee concerned that there are reasons for the termination (as regulated under Article 180 of the LC), the employer shall, when delivering such a warning notice to the worker, in compliance with Article 181 of the LC, deliver one copy of the warning notice to the trade union of the warned employee's affiliation. Management is also bound by law to submit the warning notice as provided for in Article 180 of the law to the trade union of the warned employee affiliation for its opinion.

The trade union shall pass its opinion within five business days from the delivery of the warning notice.

Reply to ECSR

There are no constrictions or limitation regarding the enforcement and application of the right of workers to be informed and consulted which include a "threshold" to apply exception on the undertakings employing fewer than the specified number of workers, as indicated by the European Committee for Social Rights in its report.

In particular, under Article 5 of the Labour Code, a natural person, within the meaning of the Law, is a national or international legal (corporate) or natural entity employing and/or hiring one or more persons.

The Department of Labour does not maintain any records on whether these principles are implemented in practice. It is thus likely that such information may be obtained from labour inspection, if available.

We would like to note it is set out under Article 13 of the Labour Code that employees directly, or indirectly, via their representatives, are entitled to association, participation in collective bargaining, amicable settlement of individual and collective labour disputes, information and expressing own positions on essential labour issues. The employee, or their representatives, may

not be called to account due to their activities referred to in paragraph 1 thereof, nor may they be placed in less favourable position regarding working conditions, if complying with the law and collective agreement.

Under Article 16 of the LC, the employer shall inform the employee on working conditions, rules under Article 15, point 2) thereof, and rights and obligations arising from labour regulations and safety and health at work regulations. The employer shall seek the opinion of the company-level trade union in the cases as provided for under law, and when there is no company-level trade union in place, the opinion shall be sought from a representative delegated by the employees.

Under Article 275 of the LC, an employer with the capacity of a corporate person shall be fined in the amount from RSD 400,000 to 1,000,000 if calling to account the workers' representative who abides by law and collective bargaining agreement (Article 13). A sole proprietor shall be fined in the amount between RSD 100.000 and 300.000, and responsible person of a corporate entity in the amount between RSD 20.000 and 40.000 in case of the referred to offence.

Under Article 268 of the LC, labour inspection is in charge of supervision and control of compliance with this law, and other employment regulations, company policy and employment contracts setting out employees' rights, obligations and responsibilities.

Under Article 268, the employer, responsible person, and employee shall enable a labour inspector to conduct inspection, peruse documentation and work unhindered and seamlessly, and to ensure all the data required for inspection, under law.

Article 22 – The right to take part in the determination and improvement of the working conditions and working environment

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a. to the determination and the improvement of the working conditions, work organisation and working environment;
b. to the protection of health and safety within the undertaking;
c. to the organisation of social and socio-cultural services and facilities within the undertaking;
d. to the supervision of the observance of regulations on these matters.

Information to be submitted

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information on employees who are not covered by Article 22, the proportion of the workforce who is excluded and the thresholds below which employers are exempt from these obligations.

Reply

REPLY TO ECSR

Under Article 3 of the Labour Code, company-level collective bargaining agreements regulate employment rights, obligations and responsibilities and mutual relations of the parties to the collective bargaining agreement, under law

Under Article 8 of the LC, the collective bargaining agreement and company policy, and contract of employment may not include the provisions providing the employee less favourable conditions of work or establishing unfavourable conditions of work than the entitlements and conditions under law. The company policy and contract of employment may provide for more favourable conditions of work than the right and conditions under law, and other rights not provided for under law, unless otherwise provided for by law.

If under the individual clauses of company policy more favourable conditions of work are accorded than the ones by law, the law shall prevail.

Individual clauses of a contract of employment providing for the conditions of work which are less favourable than the ones under law and company policy, and/or such that are based on untrue information on the employee's individual rights, obligations and responsibilities provided by the employer shall be null and void.

Also, under Article 275 of the Labour Code, an employer with the capacity of a corporate person shall be fined in the amount from RSD 400,000 to 1,000,000 if calling to account the workers' representative who abides by law and collective bargaining agreement (Article 13).

Article 26 – The right to dignity at work

With a view to ensuring the effective exercise of the right of all workers to protection of their dignity at work, the Parties undertake, in consultation with employers' and workers' organisations:

1. to promote awareness, information and prevention of sexual harassment in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct;
2. to promote awareness, information and prevention of recurrent reprehensible or distinctly negative and offensive actions directed against individual workers in the workplace or in relation to work and to take all appropriate measures to protect workers from such conduct.

Appendix to Article 26
It is understood that this article does not require that legislation be enacted by the Parties.
It is understood that paragraph 2 does not cover sexual harassment.

Information to be submitted

Article 26§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please supply any relevant statistics or other information on awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

Article 26§2

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

1) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

2) Please supply any relevant statistics or other information on awareness-raising activities and programmes and on the number of complaints received by ombudsmen or mediators, where such institutions exist.

Reply

REPLY TO ECSR

The Labour Code does not provide for the manner and methods of the provision and dissemination of information on preventive measures undertaken with view to awareness raising about the issues of workplace sexual harassment.

However, as noted in our previous report, the incidents of sexual harassment fall under the scope of the Anti Workplace Bullying Law, which, inter alia, provides for the anti-bullying measures and actions to be undertaken to advance workplace relations. Thus, the employer

has an obligation to inform the employee in writing before the employee has undertaken the employment on the prohibition of bullying and on the employee's and employer's rights, obligations and responsibilities regarding the anti-bullying and prohibition of sexual harassment, under the law

Also, to enable identification and prevention of and deter bullying and sexual harassment, the employer is bound to undertake measures to inform and train employees and their representatives to identify causes, forms and consequences of workplace bullying. What are the venues for an employer to disseminate information and to have employees trained is not detailed under the law, but it has been left to employers to undertake the obligations as the possibilities allow.

To prevent and identify bullying and sexual harassment, the employer may designate an anti-bullying officer to whom an employee suspecting of being exposed to bullying may approach for advice and support. When designating such an officer, the employer may seek the opinion from the trade union. The anti-bullying officer task is to hear the complainant employee out, give advice and guidance, information and support with view to addressing the point so raised.

In terms of application and enforcement of the Labour Code, the employer is bound to ensure protection for employees and job-seekers. If they are not provided with adequate and appropriate protection, the employer shall have to account for it before court. In particular, under the Labour Code, a job-seeker and employees who consider that they have been exposed to sexual harassment may claim redress from the employer before court, under law. No particular employer's liability is established under law for sexual harassment by persons who are not hired by the employer, such as independent contractors, self-employed persons, visitors, customers, clients, etc.

As indicated in the previous report, the provisions of the Anti Workplace Bullying Law are applicable to cases of sexual harassment under the law governing labour. The law provides for prevention and protection from bullying and sexual harassment not only for employees but also for the persons hired or contracted under non-standard employment patterns such as casual and temporary workers, persons working on service contract, etc. or persons pursuing additional work, apprentices and trainees, volunteers, and any other person involved on any basis whatsoever in the work on-going at the company. Such a definition enables the protection from sexual harassment also to independent contractors and non-salaried workers taking part in the company's activity, but not to visitors, customers, clients, etc.

Regarding the application and enforcement of the Labour Code, under Article 23 thereof, in cases of discrimination within the meaning of Articles 18-21 of the law, a job-seeker or a wage-earner may claim indemnity under the procedure instituted before court of law. If in the course of the lawsuit the plaintiff has made likely that there was discrimination as provided for under the law, the burden of proof to the contrary lies with the defendant.

Regarding the application and enforcement of the Anti Workplace Bullying Law, in the lawsuit, the burden of proof is provided for under Article 31 according to which if the plaintiff

has made probable that the bullying under Article 6 thereof has occurred, the burden of proof to the contrary shall lie with the company.

The legal effect of a wrongful dismissal is provided for under Article 191 of the Labour Code. Where, in the course of the proceedings the court establishes that there are no legal grounds for the terminated employment it will decide to reinstate the wronged employee upon his/her request, and to have the indemnity and unpaid social insurance contributions paid by the employer. The Labour Code does not particularly regulate a wrongful dismissal related to sexual harassment. If, in the course of the proceedings court establishes that there are no legal grounds for the termination of employment, and the wronged employee does not request reinstatement, the court shall, on the employee's request, order the employer to indemnify the employee to the amount of 18 wages at maximum, which shall depend on the period of employment with the company in question, as well as the employee's age and number of dependent family members.

The court decision that the dismissal is wrongful, regardless of the reasons for the wrongfulness of dismissal, the decision on termination of employment is made null and void and the wronged employee is reinstated to the previous job is if no decision on termination of employment had every been issued with the right to indemnity.

Article 28 – Right of worker representatives to protection in the undertaking and facilities to be afforded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a. they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;
b. they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.

Appendix to Article 28
For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice"

Information to be submitted

1) Please describe the general legal framework, including decisions by courts and other judicial bodies, if possible. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Reply

Trade union representatives enjoy protection under Article 188 of the Labour Code. An employer may not terminate the employment contract, or put in less favourable position the workers' representative due to their status or activity as the workers' representative, trade union membership or activity. The burden of proof that the termination of employment contract or placing in less favourable position has not resulted from such activites shall lies with the employer.

Also, under Article 13 of the Labour Code employees shall be entitled, directly or via their representatives, to association, participation in bargaining process for collective agreement, amicable settlement of collective and individual labour disputes, consultation, information and expression of their position on important labour issues.
Employees or their representative may not, due to their activities referred to in para. 1 of this Article be called to account or put into less favourable position, when the working conditions are concerned, if complying with the law and collective agreement.
Further, under the LC the employer shall, in line with his spatial and financial abilities provide the company-level trade union with technical conditions and office space as well as access to the data and information necessary for pursuing trade union activity.
Technical conditions and office space shall be set in the collective agreement or agreement between the trade union and employer.

Under Article 211, the company-level trade union representative may be entitled to paid leave in order to pursue the office of the trade union representative and trade union activities which shall be duly regulated under either the company-level collective bargaining agreement or agreement concluded between the employer and the company-level trade union, commensurately with the number of trade union members. If such a collective bargaining agreement or agreement referred to in paragraph 1 thereof is not concluded, a duly authorized representative of the company-level trade union shall be entitled to the following:

- 40 paid hours of work per month if the trade union is at least 200-strong and one hour per month for every 100 newly affiliated membership;
- Commensurately fewer paid hours of work if the trade union membership is below 200.

In case the collective bargaining agreement referred to in paragraph 1 thereof is not in place, the branch trade union president or member of the trade union body shall be entitled to 50 per cent of paid working hours referred to in paragraph 2 thereof.

Under Article 212 of the LC, a trade union representative authorized for collective bargaining or appointed member of the collective bargaining committee shall be entitled to paid leave during the bargaining process.

Under Article 213 of the LC, a trade union representative authorized to represent an employee in a labour dispute against the company before an arbiter or court shall be entitled to paid leave during the representation process. A trade union representative absent from work pursuant to Articles 211 - 213 thereof shall be entitled to a wage compensation which shall not exceed 12-month average wages payable to him/her as provided for under the company

policy and contract of employment. The wage compensation referred to in para.1 thereof shall be payable by the employer.

Reply to the ECSR

The Labour Code (including the LC as amended in 2014, which entered into force on 29 July 2014) amended the provisions of Article 188 governing protection accorded to trade union representatives, which therefore currently reads as follows: "**An employer may not terminate the employment contract, or put in less favourable position the workers' representative due to their status or activity as the workers' representative, trade union membership or activity. The burden of proof that the termination of employment contract or placing in less favourable position has not resulted from such activites shall lie with the employer."**

Also, under Article 195 of the LC, an employee or trade union duly authorized by the employee may initiate legal proceedings before a competent court against a decision violating the employee's right or upon becoming aware of violation of such a right. This provision applies to all the employees and therefore to the workers' representative whose employment entitlements have been infringed upon.

The statutory period for initiating the dispute is 60 days from the date of the delivery of the decision, and/or from becoming aware of the violation.

When following up on Article 188 of the LC, the data from the Inspection are to be obtained.

The Labour Code (including the LC as amended in 2014, which entered into force on 29 July 2014) amended the provisions of Article 211 governing the entitlement of trade union representatives to paid leave from work which currently reads as follows: "**An authorized representative of trade union may be entitled to paid leave of absence for his/her trade union activity, pursuant to collective agreement or agreement between the trade union and employer, proportionally to the number of trade union members.** If the collective agreement or agreement referred to in para. 1 thereof have not been reached, **the authorized representative of the recognized company-level trade union shall, for the purpose of pursuing the office of trade union representative, be entitled to:**

1) 40 paid hours of work per month if the trade union is at least 200-strong and one hour per month for every 100 newly affiliated membership;
2) Commensurately fewer paid hours of work if the trade union membership is below 200.

In case the collective bargaining agreement referred to in paragraph 1 thereof is not in place, the branch trade union president or member of the trade union body shall be entitled to 50 per cent of paid working hours referred to in paragraph 2 thereof.

Thus, previously provided for paragraph 3 which allowed for an authorized trade union representative to be, under a collective bargaining agreement or agreement, fully free from performance of the tasks of employment has been deleted.

Also, please note that no records on exercising the company-level rights as provided for under the Labour Code under Articles 210-214 is available with the Department of Labour.

Under Article 13 of the Labour Code employees shall be entitled, directly or via their representatives, to association, participation in bargaining process for collective agreement, amicable settlement of collective and individual labour disputes, consultation, information and expression of their position on important labour issues. Employees or their representative may not, due to their activities referred to in para. 1 of this Article be called to account or put into less favourable position, when the working conditions are concerned, if complying with the law and collective agreement.

Under Article 188 of the Labour Code, an employer may not terminate the employment contract, or put in less favourable position the workers' representative due to their status or activity as the workers' representative, trade union membership or activity. The burden of proof that the termination of employment contract or placing in less favourable position has not resulted from such activites shall lie with the employer.

Under Article 211 of the LC, a representative of trade union may be entitled to paid leave of absence for his/her trade union activity, pursuant to collective agreement or agreement between the trade union and employer, proportionally to the number of trade union members.

If the collective agreement or agreement referred to in para. 1 thereof have not been reached, the authorized representative of the recognized company-level trade union shall, for the purpose of pursuing the office of trade union representative, be entitled to:

1) 40 paid hours of work per month if the trade union is at least 200-strong and one hour per month for every 100 newly affiliated membership;
2) Commensurately fewer paid hours of work if the trade union membership is below 200.

In addition, a trade union representative authorized for collective bargaining or appointed member of the collective bargaining committee shall be entitled to paid leave during the bargaining process (Article 212).

A trade union representative authorized to represent an employee in the labour dispute against the employer before an arbiter or court shall be entitled to paid leave during the representation process (Article 213).

A trade union representative absent from work pursuant to Articles 211 - 213 thereof shall be entitled to a wage compensation which shall not exceed 12-month average wages payable to him/her as provided for under company policy and contract of employment. The wage compensation referred to in para.1 thereof shall be payable by the employer.

Also, collective bargaining agreements that government is a party to contain various provisions on facilities for representatives of recognized trade unions as is the case for example in the Branch Collective Bargaining Agreement on Health Care Institutions in which under Article 126:

(1) The employer shall ensure to a recognized trade union free of charge and via the institution's administrative and technical department/service the following:

1) undertaking of administrative and technical activites, use of telephone, telefax, PC, copier and copying, and other conditions for pursuing the activites associated to the essential trade union activity;
2) adequate office space equipped with required office furniture, depending upon the size of the trade union;
3) a meeting hall;
4) notice board easily accessible for overall staff to be used for making information publicly available;
5) production of final financial statement;
6) to enable a trade union to disseminate and deliver information, bulletins, publications, leaflets and other trade union documents and papers for the purpose of information on and pursuing of trade union activities

(2) The employer shall undertake the following for a trade union free of charge and via the institution's administrative and technical department/service:

1) subtract the amount of the trade union membership fee from the employee's salary and pay the so subtracted amount to a designated account of the trade union, as provided for under the trade union's statute;
2) process the data on membership payment and submit it to inspection to an authorized trade union officer.

(3) The employer may ensure for a recognized trade union free of charge and via the institution's administrative and technical department/service a car or other appropriate vehicle to be used for official purposes by the trade union, and paid costs of transport to and from the meetings, seminars, etc. if the sufficient number of official cars are available with the health care institution.

Article 29 – The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Information to be submitted

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Reply

Under Article 13 of the Labour Code employees shall be entitled, directly or via their representatives, to association, participation in bargaining process for collective agreement, amicable settlement of collective and individual labour disputes, consultation, information and expression of their position on important labour issues. Employees or their representative may not, due to their activities referred to in para. 1 of this Article be called to account or put into less favourable position, when the working conditions are concerned, if complying with the law and collective agreement.

Also, under Article 16, paragraph 1, point 5 any employer shall ask for advice of trade union in cases stipulated under the law; in case where there is no a company level trade union in place, of a representative designated by employees.

Particularly important issues when the employer must consult and inform the workers' representative is that regarding the adoption of a programme addressing redundancies, and in cases of termination of employment contract of a person who is a trade union member when notification of dismissal of the employment contract is required as provided for under Article 180, and/or Article 181 of the Labour Code. Special protection from termination of employment contract is accorded to the workers' representative on account of the right to information, consultation and expression of own position on important labour issues.

Under Article 154 of the Labour Code, employer shall, before enacting such a program, in collaboration with the company-level representative trade union and national employment agency undertake relevant measures for redeployment of the redundant employees. Also, the redundancy programme proposal shall be submitted to the national employment agency, not later than eight days from the completion of the proposal. Under Article 156, paragraph 3 the employer shall consider and take into account proposals of the national employment agency and trade union and provide the with the opinion within eight days.

Further, trade union representatives enjoy protection under Article 188 of the Labour Code. An employer may not terminate the employment contract, or put in less favourable position the workers' representative due to their status or activity as the workers' representative, trade union membership or activity. The burden of proof that the termination of employment contract or placing in less favourable position has not resulted from such activities shall lie with the employer.

Reply to the ECSR

Under Article 273 of the Labour Code for failing to pass a redundancy management programme (Article 153): an employer in the capacity of legal entity shall be fined in the amount of RSD 800,000 to 2,000,000, the entrepreneur with RSD 300.000 to 500.000 and a responsible person and/or a representative of a corporate entity with RSD 50.000 to 150.000.

When addressing redundancies, the employer shall inform the workers' representatives on the redundancy management plan before the redundancy management programme is adopted. Employer shall submit the proposal of the redundancy management programme to the recognized trade union for its opinion eight days after finalizing the proposal at the latest. The trade union's opinion must reach the employer 15 days from the receipt at the latest, and the

employer is bound to take the opinion so passed into account and to provide his feedback within eight days (Articles 155 and 156 of the LC).

Also, Article 163 of the Criminal Code of the Republic of Serbia criminalizes the violation of labour and social insurance rights. In particular, everyone who in full awareness fails to abide by the law and comply with collective bargaining agreements and other company policy governing labour rights and entitlements and particularly regulating labour of the youth, women and disabled persons or social insurance entitlements and thus deprive or limit the person from due rights and entitlements, shall be fined or sentenced to prison for up to two year term.