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REVISED EUROPEAN SOCIAL CHARTER

9th National Report on the implementation of
the Revised European Social Charter

submitted by

THE GOVERNMENT OF SLOVENIA

(Articles 2, 4, 5, 6, 21, 22, 26, 28 and 29
for the period 01/01/2005 – 31/12/2008)

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REPUBLIC OF SLOVENIA

Ninth Report of the Republic of Slovenia

on the implementation of the European Social Charter

(revised)

Reference period:

1 January 2005 to 31 December 2008

Articles 2, 4, 5, 6, 21, 22, 26, 28, 29
(labour rights)

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2/1: Reasonable daily and weekly working hours

1) Regarding the Committee's question it should be noted that since the last report the Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 42/02) has been amended among other in the chapter dealing with working hours and overtime work.

The Act Amending Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 103/07) thus stipulates that overtime work may not exceed 8 hours per week, 20 hours per month and 170 hours per year. It should be stressed that the working day may not last longer than 10 hours.

The Act also provides for the possibility to regard the daily, weekly and monthly time limitation as an average limitation during the period stipulated by the law or a collective agreement which may not exceed six months. However, account should be taken of the limitations related to the requirement for daily and weekly rest laid down in Articles 155 and 156 of the Employment Relationships Act. A worker is entitled to a rest of at least 12 uninterrupted hours within a period of 24 hours (or 11 hours if he/she works in uneven distribution or temporarily redistributed working time), as well as to a rest of at least 24 uninterrupted hours within a period of seven successive days. In this relation it should be taken into account that overtime work may not exceed 170 hours in a calendar year.

The Act Amending Employment Relationships Act added the possibility of ordering overtime work in excess of 170 hours a year in agreement with the worker, but in a maximum total of 230 hours a year. In each case of overtime work ordered in excess of 170 hours a year, the employer must obtain the worker's written consent. Should the worker refuse to provide the written consent he/she may not be exposed to unfavourable consequences in the employment relationship.

2) The Employment Relationships Act does not cover the readiness time. The latter is regulated in individual acts regulating labour relations in the public sector (for example General Practitioner Services Act, Official Gazette of the Republic of Slovenia Nos. 72/06 and 58/08, Health Services Act, Official Gazette of the Republic of Slovenia No. 23/95, Judicial Service Act, Official Gazette of the Republic of Slovenia No. 94/07, Fire Service Act, Official Gazette of the Republic of Slovenia No. 91/05, Defence Act, Official Gazette of the Republic of Slovenia No. 103/04) which regard readiness time at workplace or standby duty as work obligations, as well as in the collective agreement for the public sector (Collective Agreement for Public Sector, Official Gazette of the Republic of Slovenia Nos. 57/08 and 23/09) which stipulates explicitly that standby duty is included in the working time. It should be noted that certain collective agreements for the economic sector provide for the additional allowance for standby duty performed during the time which is less favourable for the worker.

3) In the Republic of Slovenia, full-time employment equals 40 hours per week; it should be noted, however, that a worker under an employment contract actually works 37.5 hours per week. The difference of 2.5 hours (130 hours per year) is attributed to the paid lunch break included in the working hours.

2/2: Public holidays with pay

With the aim to encourage agreements between the social partners in the field of labour law regulation, the Employment Relationships Act leaves the amount of additional allowance for work under special working conditions due to distribution of working hours to be determined by the social partners . The amount of additional allowance is determined independently and voluntarily by both parties – the employers and the workers or their authorised representatives. The agreements on additional allowances for public holidays and statutory work-free days concluded by the social partners for individual sectors are included in branch collective agreements. Many collective agreements in addition to the regular wages provide for additional allowances for working on public holidays and work-free days in the amount of 100% or more. Some of those collective agreements lay down the employer's primary obligation to ensure another work-free day within the same month (or even the same week) and a smaller additional allowance. If that is not possible the worker is entitled to 100% (or even 130 or 150%) additional allowance for working on a public holiday.

The Republic of Slovenia encourages agreements between the social partners and respects the agreements concluded by them regarding the amount of additional allowance for working on a public holiday. It should be stressed once more that the diverse circumstances of different sectoral activities (frequency of the need to work on public holidays, complexity of work etc.) can be more appropriately dealt with at the level of individual sectors.

2/3: Annual holiday with pay

Pursuant to the Employment Relationships Act annual leave may be taken in several parts, whereby one part must consist of at least two weeks. Moreover, the employer has to ensure that the worker can take the whole annual leave allocated for the current calendar year by the end of the current calendar year and the worker has the possibility to take at least two weeks of his/her annual leave by the end of the current calendar year and the remaining part during the following calendar year. The worker has to agree by 30 June with the employer on the time when the annual leave is to be taken. Of course, the employer and the worker may always conclude a more favourable agreement.

The Employment Relationships Act also enables the worker who could not use the annual leave due to absence related to disease or injury, maternity leave or childcare leave, to take the annual leave fixed for the calendar year during which he/she was absent by 30 June of the following year provided that he/she has worked at least six months during the calendar year for which the annual leave was fixed. A worker working abroad may take his/her entire annual leave by the end of the following calendar year if so provided by the employer's collective agreement.

2/4: To eliminate risks in inherently dangerous or unhealthy occupations

Article 5 of the Occupational Health and Safety Act (Official Gazette of the Republic of Slovenia, Nos. 56/99 and 64/01) lays down that the employer is obliged to ensure the safety and health of workers in every aspect related to the work. To that end the employer must take the measures necessary to ensure the safety and health of workers, including the prevention of

risks at work, information and training of workers, appropriate organisation and the necessary material resources.

The employer must take such preventive measures and select such working and production methods that ensure a higher level of safety and health at work and incorporate them in all the activities and at all organisational levels.

Article 14 of the Occupational Health and Safety Act stipulates that the employer has to prepare and adopt a written safety statement which lays down the manner of and the methods for ensuring safety and health at work and update it whenever a new risk and a change in the risk level arise.

The safety statement is based on the determination of potential risks and dangers at workplace and in the working environment and on the assessment of risks for injuries and health impairment.

In the field of safety and health at work Slovenia has not defined in advance certain occupations as dangerous or unhealthy. It is the duty of the concrete employer to determine in the safety statement those workplaces which represent greater risks for injuries, health impairment, occupational diseases and work-related diseases. Moreover, the employer is obliged to ensure safety and health of workers working at such workplaces as well as to prescribe and implement preventive and other measures.

The Rules on the preparation of safety statement with risk assessment (Official Gazette of the Republic of Slovenia, No. 30/2000) defines cases of risks and lays down possible methods for risk assessment and appropriate safety measures:

Those measures encompass especially:

– changes in the production through replacing the risky work processes with the less risky work processes,

– shortening the duration of workers' exposure to physical, chemical and biological hazards,

– replacement of dangerous substances with less dangerous substances,

– isolation of work processes or individual phases of work processes or machines,

– installation of isolated compartments,

– remote control of processes,

– limiting the work process phases and their harmful effects on the working environment by installing partition walls, barriers etc.,

– mechanisation and robotisation in order to replace the physical presence of workers necessary for carrying out certain operations,

– determination of areas which have to be specially marked or limited or where entrance is prohibited,

– combination of safety systems and appliances,

– recruitment of qualified workers,

– determination of workplaces for which periodical control of physical, chemical and biological hazards has to be carried out,

– determination of workplaces for which periodical tests of theoretical and practical knowledge in safety at work have to be carried out,

– determination of workplaces for which preventive medical examinations have to be carried out,

– determination of work equipment for which periodical checks and tests have to be carried out,
– fire protection plan, the plan of fire routes and explosion areas,
– monitoring the health status of employees,
– ergonomic changes,
– changes in the work organisation,
– humanisation measures.

In case of measures which can not be implemented immediately, the deadlines and responsible persons for their implementation have to be determined.

Article 35 of the Occupational Health and Safety Act stipulates that a worker may work at a workplace or in the circumstances which represent increased risks of injury or health impairment under the conditions laid down in special rules and on the basis of the professional assessment of the authorised medical practitioner stating that the worker is capable of carrying out such work.

If the worker believes that the safety measures have not been implemented, he/she may demand the intervention of the labour inspectorate and notify accordingly the workers' representative responsible for health and safety at work (Article 37 of the Occupational Health and Safety Act).

According to the provisions of Article 142 of the Employment Relationships Act the law or a collective agreement may stipulate a full working time shorter than 40 hours a week, but not shorter than 36 hours a week. The law or other regulation in accordance with the law or a collective agreement may provide for a full working time of less than 36 hours per week for jobs where there is a grater risk of injury or damage to health.

According to the data at our disposal it is stipulated in the collective agreement for the health care and social services that the full working time of employees working at workplaces where work is constantly carried out in a controlled area of ionising radiation, autopsy department staff and staff working in special laboratories for which special measures are prescribed for the protection from the mutagen, teratogen and carcinogen agents and materials as well as organic solvents and formalin compounds is 36 hours per week. For the workers who are pursuant to the law entitled to a shorter working time due to special working conditions, the shorter working time is regarded as full working time. The collective agreement for the rail transport stipulates that the workers who carry out especially difficult and strenuous work that is harmful to health have a full working time of 38 hours per week. The workplaces where such work is carried out are laid down in a general legal act. The collective agreement for the metal and foundry industry stipulates that a working time shorter than 40 hours per week may be laid down in the company collective agreement or the employer's general legal act.

According to our information practically all collective agreements define special working conditions (which may be referred to as extreme working conditions, difficult or strenuous working conditions, unfavourable influences from the environment or risks at work) as the criterion for granting additional days of annual leave (either by setting the days of annual leave or stating that those days are to be defined in the employer's general legal act or the company collective agreement).

Moreover, Article 127 of the Employment Relationships Act stipulates that extra payments for special working conditions related to special burdens at work, unfavourable environmental influences and risks at work which are not included in the defined level of difficulty of work can be laid down by a collective agreement. According to our information almost all collective agreements either define the amount of extra payments or state that extra payments are to be defined in the company collective agreement or the employer's general legal act.

2/7: Night work

The Act Amending Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 103/07) does not change any provisions on night work in the Employment Relationships Act which entered into force on 1 January 2003. It complements the regulation of night work by adding a safety provision stating that on the request of the labour inspectorate the employer must provide information on night work performed by workers, especially the number of workers performing work at night for more than a third of their working time, on the number of workers who work at night in a position where risk assessment indicates a greater danger of injury or health impairment, on the number of workers who work at night divided by sex and on the time definition of night shifts. This ensures additional control of night work performed by both men and women.

The periodical medical examinations of night workers are covered by the Rules concerning preventive medical examinations of workers (Official Gazette of the Republic of Slovenia, Nos. 87/02 and 124/06). The annex to the Rules concerning preventive medical examinations of workers (hereinafter: Rules) stipulates that in addition to prior preventive medical examinations night workers have to be subjected to targeted periodical and other preventive medical examinations. According to that annex targeted periodical examinations have to be carried out every 12 to 36 months. The exact deadline is laid down by the employer, however the authorised medical practitioner may lay down a shorter period if the safety and health of workers are at risk (Articles 8 and 9 of the Rules).

After the preventive medical examination the authorised medical practitioner issues a medical certificate in which he/she states whether the worker fulfils special medical requirements for carrying certain work in the working environment and proposes eventual measures to improve the health of workers at work (Article 12 of the Rules). If the authorised medical practitioner estimates that the worker’s health status might deteriorate due to night work, he/she requires the employer to find an appropriate day-time workplace for the worker.

If the employer fails to ensure the statutory medical examination, the worker has the right to reject night work. The worker also has the right to reject night work if the employer ignores the medical indications of the harmful effects of night work for the worker. Moreover, if the employer fails to act in accordance with the authorised medical practitioner's opinion, the worker may demand the intervention of the labour inspectorate and notify accordingly the works council or the workers’ representative.

Article 4 THE RIGHT TO A FAIR REMUNERATION

4/1: Appropriate remuneration

Data on the ratio between the minimum and average wages:

Value in	Year	Minimum wage	Gross wage private sector	
Slovenian tolars	1995	45,627	105,543	43.2
	1996	52,485	120,419	43.6
	1997	57,992	133,274	43.5
	1998	63,285	146,954	43.1
	1999	70,187	160,976	43.6
	2000	77,208	177,495	43.5
	2001	87,655	196,911	44.5
	2002	97,734	215,350	45.4
	2003	106,542	232,129	45.9
	2004	113,991	245,498	46.4
	2005	119,625	258,714	46.2
	2006	123,622	272,709	45.3
EUR	2007	529	1,217	43.5
	2008	571	1,315	43.4

SOURCE: IMAD

4/2: Increased rate of remuneration for overtime work

In relation to remuneration for overtime work the Employment Relationships Act lays down the obligation to pay the extra payment for overtime work in addition to regular wage, but it leaves the determination of the amount of extra payment to branch collective agreements. Most branch collective agreements determine the amount of extra payment for overtime work at the increased rate of 30%, and some also at 50 or 60%. The collective agreement which applies to employers in the economic sector who are not covered by any branch collective agreement i.e. the Collective Agreement on the Wage Adjustment Method, Reimbursement of Work-related Expenses, and Holiday Bonus, lays down the extra payment for overtime work at the increased rate of 30%. The collective agreement which applies to employers in the public sector, i.e. the Collective Agreement for Public Sector (Official Gazette of the Republic of Slovenia Nos. 57/08 and 23/09) lays down the extra payment for overtime work at 30% of the hourly rate of the civil servant’s basic salary.

4/4: The right to a reasonable period of notice

1) It should be noted that minor changes related to period of notice have been introduced with the Act Amending Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 103/07), although they have not entered into force yet. Those changes comprise the equalisation of periods of notice in cases of termination of the employment contract by the

employer due to business reasons and in cases of termination of the employment contract by the employer due to incapacity.

The amended Act also allows a different regime of periods of notice to be laid down in collective agreements for small employers in order to facilitate their position on the labour market in accordance with the commitments Slovenia made as an EU member state. However, it should be stressed that out of 30 collective agreements only 4 used this possibility and even they still set a reasonable period of notice for small employers which is not shorter than 30 days.

Pursuant to the Employment Relationships Act small employers are employers employing ten or less workers.

2) As far as the possibility of monetary compensation instead of notice period is concerned, is should be stressed that such possibility has to be agreed upon by the worker and the employer and must reflect the worker's free will. The monetary compensation may not be decided upon solely by the employer and in case of any forced solution the worker may challenge its validity before the court. In order to additionally safeguard a just agreement on monetary compensation the Employment Relationships Act lays down that such agreement has to be made in writing. The monetary compensation instead of notice period has to be adequate, therefore the Act aims to prevent putting the worker in a worse position due to such solution and to ensure that the compensation equals the same amount he/she would receive during period of notice. From the diction of the legal provisions it is evident that the worker and the employer may not agree on shortening the period of notice without the adequate monetary compensation. Any such agreement would be void.

4/5: Limiting deductions from wages

The Employment Relationships Act allows the employer to withhold the payment of wage to the worker only in cases laid down by law. All provisions of the employment contract providing for other ways of withholding the payment are regarded as null and void. The employer may not set off his claim towards the worker with his obligation of payment without the worker's written consent and the worker may not give such consent before the occurrence of the employer's claim.
In addition to the provisions of the Execution of Judgments in Civil Matters and Insurance of Claims Act (Official Gazette of the Republic of Slovenia, No. 3/07 – official consolidated text UPB-4 and subsequent amendments) tax foreclosure pursuant to the Tax Procedure Act (Official Gazette of the Republic of Slovenia, No. 125/08) may also be applied to wages, but subject to certain limitations. In line with Article 160 of the Tax Procedure Act the tax foreclosure on the debtor's monetary income which is regarded as income derived from employment relationship pursuant to the act regulating income may not exceed two thirds of the income, whereby the amount left to the debtor must represent at least 70% of the minimum wage pursuant to the act regulating minimum wages. Notwithstanding the first paragraph of the above Article the tax foreclosure may not be executed on monetary income referred to in the first paragraph unless it exceeds the basic amount of the minimum income pursuant to the act regulating social security.

Article 5 THE RIGHT TO ORGANISE

Regarding the Committee's request for further explanation on the protection of workers without the status of a trade union representative it should be noted that trade union representatives enjoy special protection from dismissal and that other workers who are trade union members and activists are covered by the same legal provisions as the workers who are not trade union members. Moreover the Employment Relationships Act specifically lays down unfounded reasons for termination of the employment contract, which among other include:

- trade union membership,
- participation in trade union activities outside the working time,
- participation in trade union activities during the working time in agreement with the employer.

It should be stressed that in the Republic of Slovenia no cases of pre-entry closed shop have been noticed.

Article 6 THE RIGHT TO BARGAIN COLLECTIVELY

6/1 and 6/2: Joint consultation, negotiation procedures

Concerning the Committee's additional questions related to Article 6 of the European Social Charter it should be noted that in public institutes joint consultation is carried out in the institute's councils and in accordance with individual branch collective agreements for the public sector which among other regulate consultation and information of workers and which we have already sent you as part of our previous reports.

Regarding Article 6 of the European Social Charter we would especially like to stress that in 2006 the new Collective Agreements Act (Official Gazette of the Republic of Slovenia, No. 42/06 – ZKolP) was adopted. It is available also in English at the web site of the Ministry of Labour, Family and Social Affairs:
http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/zkolp_en.pdf

During the long-lasting process of coordination between the social partners the Act reached a high level of harmonisation. The goals of the proposal for the Act included a comprehensive and systematic regulation of the collective bargaining system, consistent implementation of the voluntariness principle and harmonisation with international documents, notably with the ratified conventions of the International Labour Organisation and the European Social Charter.

The Collective Agreements Act, which is based on the fundamental principle that collective agreements should be concluded on a free and voluntary basis, regulates the parties to, content of and hierarchy of collective agreements, the procedure for concluding the collective agreement and for subsequent approach to it, its form, validity (also general and extended validity) and termination as well as the peaceful settlement of collective labour disputes and the register and publication of collective agreements. The Act does not provide for compulsory conclusion of collective agreements nor does it lay down the compulsory contents

or types of collective agreements and the levels at which they are to be concluded. That would namely interfere in the free will of the parties and prevent the collective agreements to be concluded at any time or place and when both parties express their will and interest. The autonomy of parties is one of the basic guidelines of the new legal regulation in this field. In line with the voluntariness principle the Act states that only voluntary associations which do not have compulsory membership may be parties to collective agreements, whereby the Act provided for a three-year transitional period during which collective agreements may also be concluded by associations with obligatory membership. It should be noted that the new Chambers of Commerce and Industry Act (Official Gazette of the Republic of Slovenia, No. 43/06) which entered into force on 24 June 2006 provided for a change in the legal status of membership with the transition from compulsory to voluntary membership during the next five months.

The Collective Agreements Act introduced several novelties in comparison with the previous system regulating the field of collective bargaining:
– concerning the parties to collective agreements (trade unions – employers) the Act stressed the implementation of voluntariness principle in concluding collective agreements;
– concerning the hierarchy of collective agreements the Act introduced an exemption from the general principle that a collective agreement at a narrower level must lay down more favourable rights for workers than a collective agreement at a broader level. It lays down the possibility that a collective agreement at a broader level determines the conditions under which the rights and working conditions which are different or less favourable to employees may be determined by collective agreement at a narrower level, with the aim to enable flexibility in resolving crisis situations;
– the Act regulates the possibility for subsequent approach to concluded collective agreements;
– the main novelty is a completely new regulation of validity for collective agreements. In general a collective agreement is valid for the parties to the collective agreement or its members, whereby under certain conditions general and extended validity of concluded collective agreements is also provided for.
The term general validity of collective agreement means that the collective agreement is valid for all workers employed by an employer to whom the collective agreement applies, regardless of their trade union membership. General validity applies when the collective agreement is signed by one or more representative trade unions The principle is applicable to all collective agreements regardless of their type or level and also to individual employers. When an individual employer is bound by several collective agreements of the same type at the same level, the Act states that the collective agreement which is more favourable to employees is applied.
In case of an extended validity the collective agreement concluded for one or more activities applies to all the employers in certain activity and their employees regardless of the workers' membership in trade unions or the employers' membership in employer associations. The minister competent for labour recognises extended validity at the proposal of one of the parties to the collective agreement if certain statutory conditions are met. The minister recognises extended validity of the whole or a part of collective agreement for one or more activities if the collective agreement has been concluded between one or more representative trade unions and one or more representative associations of employers, the members of which employ more than half of all employees of employers for whom an extension of the collective agreement has been proposed.

If a member of the association who signed the collective agreement withdraws from that association, the collective agreement remains binding on the parties to the agreement or their members for not longer than one year.

The Collective Agreements Act applies to the whole private and public sector. The only exemption is allowed for the public sector, whereby the Act states that salaries in the public sector are subject to the collective agreement system as determined in the Salary System in the Public Sector Act. The latter contains a special chapter on concluding collective agreements in which it specifically lays down the employer's competence for their conclusion, the signing of collective agreements and the deadline for their implementation as well as subsequent approach to concluded collective agreements in the public sector.

In the field of settlement of collective labour disputes the Act comprehensively and precisely regulates the issue of peaceful settlement of collective labour disputes, which encompasses negotiation, mediation and arbitration. Moreover, in line with the basic principle of the freedom of collective negotiation the Act enables the parties to the collective agreement to agree on another way for resolving the dispute. The Act distinguishes between two types of collective labour disputes: the interest dispute which occurs when the parties fail to agree on individual questions regarding the conclusion, amendment or supplementation of a collective agreement, and the dispute over rights which arises when the parties do not agree on the manner of implementing the provisions of a collective agreement in force or when one party finds out that it has been violated. Of course, collective labour disputes may also be resolved before the competent labour court in accordance with the Labour and Social Courts Act.

Collective bargaining is therefore ensured for all workers, which is in practice reflected by numerous collective agreements concluded at the national level. According to the records of concluded collective agreements, 26 collective agreements or amended collective agreements at the national level have been concluded in the private sector and 18 have been concluded in the public sector since the Collective Agreements Act entered into force, whereby it should be noted that in practice individual branch collective agreements comprehensively regulate the issues and that at the moment no branch collective agreements are being concluded for individual institutions.

6/3: Conciliation and arbitration

Regarding your further question about the regulation of subject matter jurisdiction of the labour court in collective labour disputes it should be noted that in addition to the above mentioned new regulation of peaceful resolution of collective labour disputes in the Collective Agreements Act (Articles 18 to 24), Article 6 of the Labour and Social Courts Act (Official Gazette of the Republic of Slovenia, No. 2/2004) stipulates that the labour court is competent for decision making in collective labour disputes concerning:

a) the validity of collective agreement and its enforcement between the parties to the collective agreement or between the parties to the collective agreement and other persons;
b) the competence for collective bargaining;
c) the compliance of collective agreements with the law, mutual compliance between collective agreements and compliance of the employer's general legal acts with the law and with collective agreements;
d) the legality of strikes and other industrial actions;

e) workers' participation in management;
f) the competences of trade unions in the field of labour relations;
g) the determination of trade union representativeness;
h) other disputes laid down by law.

6/4: Collective action

Limitations and consequences of collective action

Concerning the Committee's questions related to strikes and concrete statistical data on strikes it should be stressed that we have no concrete data on cases of strikes in sectors where limitations have been implemented. However, it should be noted that in 2006 the Labour and Social Security Registers Act (Official Gazette of the Republic of Slovenia, No. 40/2006) was adopted according to which each employer who has been subject to a strike or arbitration in a labour dispute has to submit data on a prescribed form to the Statistical Office of the Republic of Slovenia (SURS) within 7 days after the collective labour dispute was concluded. SURS collects and processes data on strikes and arbitrations in labour disputes at the national level. The employers have to report the data in accordance with the instructions for filling in Form 1 (Declaration of data on strike) and Form 2 (Declaration of data on arbitration in a labour dispute) prepared by the Ministry of Labour, Family and Social Affairs (annexes 1 and 2). The two forms are the integral part of the Rules on the forms for notifying data about resolving collective labour disputes with the employer published in the Official Gazette of the Republic of Slovenia, No. 125/2007. The material is also available at the web site of SURS: http://www.stat.si/tema_demografsko_trg_stavke.asp.
The content of the questionnaire is harmonised with the EUROSTAT and ILO international standards (ILO and Eurostat joint questionnaire). On the basis of collected data SURS prepares official statistical data on strikes and labour disputes in Slovenia. The first data is to be collected for the year 2008.

In its Information on statistical research of strikes in 2008 SURS established that despite the general obligation to report the response of employers (reporters) was extremely low. Only five companies (business entities) reported data in accordance with the law. Employers' associations claim to have called their members to report, but there was no response. The high rate of unresponsiveness endangered the goal of collecting data for 2008. SURS therefore tried to find out where the strikes were carried out in various other ways (through media, trade unions and other). It subsequently received another 9 reports on strikes from individual business entities and adopted the opinion that the collected data does not sufficiently reflect the actual situation.
However, since the requirement for the employers to report on strikes to SURS was introduced in 2008 for the first time, we believe that in the following years the collected data will gradually become more reliable and accurate.

Regarding workers' rights in cases of illegal termination of the employment contract we would like to point to Article 118 of the Employment Relationships Act which regulates termination of the employment contract on the basis of a court judgement. Where the court determines that the employer's termination is illegal but that the worker does not wish to continue the employment relationship, the court shall upon the worker's proposal establish the duration of the employment relationship, but not beyond a ruling of the court of first instance,

it shall recognise the worker's period of service and other rights arising from the employment relationship, and grant the worker adequate monetary compensation in the maximum amount of 18 months of the worker’s wage paid in the last three months prior to termination of the employment contract. If, taking into account the circumstances and the interest of both contractual parties, the court establishes that the continuation of the employment relationship would no longer be possible, it may decide in the same way as in the previous paragraph, even regardless the worker's proposal

Article 21 THE RIGHT TO INFORMATION AND CONSULTATION

Regarding eventual conditions for the nationality or citizenship of employees in relation to the right to participate in works councils with both the active and passive voting rights we can confirm the statements in the previous report and add that the Worker Participation in Management Act (42/07 – official consolidated text) – which regulates among other the workers' active and passive voting rights – does not lay down any nationality conditions for workers but only stipulates years of service in individual companies.

Articles 12, 13 and 14 of the Worker Participation in Management Act explicitly state that all the workers who have worked at a company uninterruptedly for at least six months, except for the management staff and their family members, have the right to vote the representatives to the works council (active voting right). All the workers who are entitled to the active voting right pursuant to the above Act and who have been employed in a company uninterruptedly for at least 12 months have the right to be elected to the works council (passive voting right). The Act also stipulates that in a newly established company all the above stated workers have the active and passive voting rights regardless of their years of service in that company.

Article 22 THE RIGHT TO TAKE PART IN THE DETERMINATION AND IMPROVEMENT OF THE WORKING CONDITIONS AND WORKING ENVIRONMENT

The General Collective Agreement for Economic Activities was terminated on 30 September 2005 and it ceased to apply on 31 December 2005, although its procedural part applied until 30 June 2006.

The General Collective Agreement for Economic Activities was to some extent replaced by the Collective Agreement on the Wage Adjustment Method, Reimbursement of Work-related Expenses and Holiday Bonus (Ur. l. RS (Official Gazette of the Republic of Slovenia), nos 76/2006 and 62/2008), from which it is evident that it applies to private sector employers engaged in gainful activities for which no adequate Collective Agreements for Activities have been concluded.

In view of the fact that, in compliance with the Collective Agreements Act (Ur. l. RS (Official Gazette of the Republic of Slovenia), no 43/06) concluding collective agreements is voluntary and free, a decision on the conclusion of an agreement, as well as on its contents, depends on

the parties. In the private sector, collective agreements are concluded between trade unions or trade union associations on the part of workers, and employers or employer associations on the part of employers.

In addition to the mentioned Collective Agreement on the Wage Adjustment Method, Reimbursement of Work-related Expenses and Holiday Bonus, numerous collective agreements have been concluded for the private sector for a single or several activities within the state territory, which are also accessible via our website: http://www.mddsz.gov.si/si/delovna_podrocja/delovna_razmerja_in_pravice_iz_dela/socialno_partnerstvo/evidenca_kolektivnih_pogodb/ .

Article 26 THE RIGHT TO DIGNITY AT WORK

As far as the right to dignity at work is concerned it should be stressed that the Act Amending Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 103/07) supplemented the regulation of the employer's obligations to protect the worker's dignity at work and to prohibit harassment at work. The new Article 6a and Article 45 of the Act extend the prohibition of harassment to other forms (in addition to sexual harassment) and introduce a prohibition of bullying at workplace.

Article 6a of the Act thus states:

"Sexual and other harassment is prohibited. Sexual harassment is any form of undesired verbal, non-verbal or physical action or behaviour of a sexual nature with the effect or intent of adversely affecting the dignity of a person, especially where this involves the creation of an intimidating, hateful, degrading, shaming or insulting environment. Harassment is any undesired behaviour associated with any personal circumstance with the effect or intent of adversely affecting the dignity of a person or of creating an intimidating, hateful, degrading, shaming or insulting environment.

Sexual and other harassment referred to in the preceding paragraph shall be deemed to be discrimination pursuant to the provisions of this Act.

Rejection of action and behaviour referred to in the first paragraph of this article on the part of an affected candidate or worker may not serve as grounds for discrimination in employment and work.

Bullying at workplace is prohibited. Bullying at workplace is any repetitive or systematic, reprehensible or clearly negative and insulting action or behaviour aimed at individual workers in the workplace or in connection with work."

Since the sexual and other harassment is regarded as discrimination in the Employment Relationships Act, the provisions of Article 6 concerning the consequences of discriminatory treatment on the part of the employer should be applied mutatis mutandis. If in the event of a dispute a worker cites facts giving grounds for the suspicion that the prohibition of discrimination has been violated, the employer must demonstrate that in the case in question the principle of equal treatment and the prohibition of discrimination have not been violated.

In the event of a violation of the prohibition of discrimination, the employer shall be liable to provide compensation to the candidate or worker under the general rules of civil law. Discriminated persons and persons who help the victims of discrimination may not be exposed to unfavourable consequences owing to actions aimed at fulfilling the prohibition of discrimination.

In order to avoid sexual and other harassment and bullying at work Article 45 of the Employment Relationships Act stipulates:

"The employer shall be bound to provide such a working environment in which none of the workers is subjected to sexual and other harassment or bullying on the part of the employer, a superior or co-workers. To this end the employer must take appropriate steps to protect workers from sexual and other harassment or from bullying at workplace.
If in the event of a dispute a worker cites facts giving grounds for the suspicion that the employer has acted counter to the preceding paragraph, the burden of proof shall be on the side of the employer.
In the event of a failure to ensure protection from sexual and other harassment or bullying pursuant to the first paragraph of this article, the employer shall be liable to provide compensation to the worker pursuant to the general rules of civil law."

The employer who violates the provisions of Article 6 and Article 45 of the Employment Relationships Act (i.e. either by discriminating against the worker, which includes sexual and other harassment pursuant to Article 6a of the Employment Relationships Act, or by failing to ensure protection from harassment and bullying) is penalised as follows: a fine of 3,000 to 20,000 EUR is imposed on the employer who is a legal person, sole trader or individual performing independent business activity, a fine of 1,500 to 8,000 EUR is imposed on the smaller employer who is a legal person, sole trader or individual performing independent business activity, a fine of 450 to 1,200 EUR is imposed on employer who is an individual and a fine of 450 to 2,000 EUR is imposed on the responsible person of the employer who is a legal person and on the responsible person in a state body or self-governing local community.

In accordance with Article 112 of the Employment Relationships Act the worker may within eight days after having previously reminded the employer of the fulfilment of obligations and informed the labour inspector about the violations in writing, extraordinarily terminate the employment contract without the notice period whereby the worker shall be entitled to the severance pay stipulated for the case of ordinary termination of the employment contract for business reasons, and to the compensation amounting to no less than the level of the lost remuneration during the notice period, if the employer failed to assure the worker equal treatment in accordance with Article 6 of the Employment Relationships Act (including sexual and other harassment pursuant to Article 6a of the Employment Relationships Act) or if the employer failed to assure the worker protection against sexual and other harassment or bullying at workplace in accordance with Article 45 of the Employment Relationships Act. Furthermore the employer shall be liable for damages caused to the worker by violating the prohibition of sexual and other harassment or by failure to assure protection against sexual and other harassment or bullying.

26/1: Sexual harassment

Employer's liability and the manner of compensation

1) The Employment Relationships Act primarily regulates employment relations and the rights of workers and employers, and, in relation to the prohibition of discrimination, the rights of candidates seeking employment. Indeed, the workers represent the most vulnerable group since they are in a dependant relationship with the employer.

Nevertheless, the Employment Relationships Act also assures protection for the following categories of persons who are not in an employment relationship:

– For apprentices, secondary-school and university students who have reached 14 years of age and perform practical education in the framework of educational programmes, and for children who may carry out work (in very limited cases and under limited conditions laid down by law) the provisions on the prohibition of discrimination are applied. In cases of occasional or temporary work of secondary-school and university students and in cases of voluntary traineeship which does not represent employment relationship, the provisions on the prohibition of discrimination are also applied. As stated above discrimination includes also sexual and other harassment.

– In case of the worker who is employed with the employer whose activity is to provide work to another employer (the user employer), and who has been posted to work for the user employer, the provisions of the Employment Relationships Act, collective agreements applicable to the user and the user's general legal acts are applied in relation to the rights directly related to work. This includes the rights arising from Article 6a of the Employment Relationships Act, for the provision of which the user employer is responsible. If the user employer violates those obligations, the worker has the right to reject the work.

– Other persons who are not in an employment relationship are covered by the Implementation of the Principle of Equal Treatment Act (Official Gazette of the Republic of Slovenia, No. 93/07) which generally prohibits harassment (undesired behaviour associated with any personal circumstance which creates an intimidating, hateful, degrading, shaming or insulting environment and adversely affects the dignity of a person) and regards it as discrimination with all of its consequences.

– It should be noted that the Penal Code (Official Gazette of the Republic of Slovenia, No. 55/08) criminalised mobbing at workplace. Pursuant to Article 197 of the Penal Code (KZ-1) a prison sentence of up to two years is imposed on the person who causes humiliation or intimidation to another employee through sexual harassment, psychological violence, bullying or unequal treatment at workplace or in relation to work. If the action referred to in the previous paragraph results in a psychological, psychosomatic or physical illness or reduction work productivity on the part of the employee, the perpetrator is punished with the prison sentence of up to three years.

2) Regarding the employer's liability for sexual harassment against its workers committed by the persons who are not employed with the employer it should be noted again that the provisions of the Implementation of the Principle of Equal Treatment Act (Official Gazette of

the Republic of Slovenia, No. 93/07) generally prohibit harassment and regard it as discrimination with all of its consequences.

Moreover Article 15 of the Civil Servants Act (Official Gazette of the Republic of Slovenia, Nos. 63/07 and 56/08) stipulates that the employer has to protect the civil servant from mobbing, intimidation and similar actions which jeopardise the realisation of his/her work.

Finally, a general provision on the employer's liability for damages is included in Article 184 of the Employment Relationships Act which stipulates that the employer is liable to compensate the damage suffered by the worker at work or in relation to work according to the general civil law rules.

3) From the above mentioned provisions of Article 45 of the Employment Relationships Act it may be concluded that the employer has to provide such a working environment in which none of the workers is subjected to sexual and other harassment or bullying on the part of the employer, a superior or co-workers. In case of harassment committed by a superior or a co-worker against a worker, the employer is liable for damages suffered by the worker according to the general civil law rules, because the employer failed to assure protection against sexual and other harassment or from bullying.

4) The employer is liable for damages suffered by the worker in cases of violation of prohibition of sexual or other harassment or failure to assure worker protection against sexual and other harassment or bullying at workplace on the part of the employer, a superior or co-workers. The worker who due to the above reasons terminates the employment contract in accordance with Article 115 of the Employment Relationships Act without the notice period, is also entitled to the severance pay for the termination of the employment contract and to the compensation for the lost remuneration he/she would receive during the notice period which he/she did not receive due to the extraordinary nature of termination.

The compensation laid down in Articles 6 (applicable to the violation of prohibition of sexual and other harassment pursuant to Article 6a) and 45 of the Employment Relationships Act is determined by referring to the provisions of civil law regulating liability for damages. On the above basis the court decides on a just compensation after having examined all the relevant circumstances and taking into account all the elements of the liability for damages. The just compensation has to compensate for the damage caused. The same applies to compensation which the employer is liable to provide to the worker on the basis of Article 45 of the Employment Relationships Act. Since the circumstances in concrete cases are very different the Act explicitly prohibits to set a flat-rate compensation for the liability for damage caused by discrimination as well as by sexual and other harassment, therefore it should be left to the court to decide on the just compensation on a case by case basis.

The Employment Relationships Act provides for the sanctions in the form of above mentioned penalties for violations of Articles 6 and 45 of the Act, the aim of which is to dissuade employers from committing sexual and other harassment and to encourage them to provide a working environment in which the workers are not exposed to sexual and other harassment or bullying. The above violations are regarded as the most severe violations on the part of employers in the Employment Relationships Act.

Article 24 of the Principle of Equal Treatment Act defines violations and penalties, designating an act or an omission committed in the implementation of laws and other regulations, collective contracts and general acts regulating a specific sphere of social life regulated by law, and having all the characteristics of discrimination, as a violation punishable by the following fines issued to the offender: for natural persons, a fine of € 250 to € 1 200, for legal entities and individual private entrepreneurs by which the violation was committed, a fine of € 2 500 to € 40 000, for responsible persons of a state body or a self-governing local community by which the violation was committed, a fine of € 250 to € 2 500.

Case law of the Higher Labour and Social Court

- **Two cases relating to payment of damages for sexual harassment:**

1.) Four plaintiffs (of both sexes) filed a claim against the employer for the payment of damages for mental violence to which they were exposed at the workplace. They stated that two of the defendant's workers addressed them by inappropriate names and sent them electronic mails with pornographic content. The court of first instance rejected the claims, but the appellate court set aside the judgement of the court of first instance and the case was returned for retrial, stating in the explanation that that the mere fact that the plaintiffs had not sought medical help does not mean they had not suffered mentally. The case has not yet been returned from retrial at the court of first instance.

2.) Five plaintiffs filed a claim against the employer for the payment of damages for sexual harassment from their superior to which they were exposed. They stated that he physically touched and kissed them and made indecent remarks, because of which they felt uncomfortable, tried to avoid him and also sought medical help. The court of first instance awarded the plaintiffs damages amounting to EUR 2,000.00 to EUR 7,000.00. The appellate court confirmed the decision.

Burden of proof

Reversal of the burden of proof on the part of the employer is laid down for liability for damage pursuant to both Article 6 and Article 45 of the Employment Relationships Act.

If in the event of a dispute a worker cites facts giving grounds for the suspicion that the prohibition of discrimination (including the prohibition of sexual and other harassment) has been violated, the employer has to prove that in the case concerned he/she did not violate the principle of equal treatment or the prohibition of discrimination.

Moreover, if in the event of a dispute a worker cites facts giving grounds for the suspicion that the employer failed to provide such a working environment in which none of the workers is exposed to sexual and other harassment or bullying on the part of the employer, a superior or co-workers or that he/she failed to take appropriate steps to protect workers from sexual and other harassment or from bullying at workplace, the burden of proof is on the part of the employer.

Compensation

In the Employment Relationships Act compensation is determined by referring to the provisions of civil law regulating liability for damages. On the above basis the court decides on a just compensation after having examined all the relevant circumstances and taking into account all the elements of the liability for damages. The just compensation has to compensate for the damage caused. The same applies to compensation which the employer is liable to provide to the worker on the basis of Article 45 of the Employment Relationships Act. Since the circumstances in concrete cases are very different the Act explicitly prohibits to set a flat-rate compensation for the liability for damage caused by discrimination as well as by sexual and other harassment, therefore it should be left to the court to decide on the just compensation on a case by case basis.

The Employment Relationships Act provides for the sanctions in the form of above mentioned penalties for violations of Articles 6 and 45 of the Act, the aim of which is to dissuade employers from committing sexual and other harassment and to encourage them to provide a working environment in which the workers are not exposed to sexual and other harassment or bullying. The above violations are regarded as the most severe violations on the part of employers in the Employment Relationships Act.

26/2: Moral harassment (mobbing)

As presented above in relation to sexual harassment, Article 6 of the Employment Relationships Act also prohibits other harassment and mobbing at workplace. Harassment is any undesired behaviour associated with any personal circumstance with the effect or intent of adversely affecting the dignity of a person or of creating an intimidating, hateful, degrading, shaming or insulting environment. Bullying at workplace is pursuant to the Employment Relationships Act any repetitive or systematic, reprehensible or clearly negative and insulting action or behaviour aimed at individual workers at workplace or in connection with work.

In accordance with Article 45 of the Employment Relationships Act the employer has to provide such a working environment in which none of the workers is exposed to harassment or bullying on the part of the employer, a superior or co-workers, and to this end the employer has to take appropriate steps to protect workers from bullying at workplace. If in the event of a dispute a worker cites facts giving grounds for the suspicion that the employer has acted counter to the Act, the burden of proof is on the part of the employer. In the event of a failure to ensure protection from bullying the employer is liable to provide compensation to the worker pursuant to the general rules of civil law.

Moreover Article 15 of the Civil Servants Act stipulates that the employer has to protect the civil servant from mobbing, intimidation and similar actions which jeopardise the realisation of his/her work.

Again it should be stressed that the Penal Code (KZ-1) criminalised mobbing at workplace. Pursuant to Article 197 of the Penal Code a prison sentence of up to two years is imposed on the person who causes humiliation or intimidation to another employee through sexual harassment, psychological violence, bullying or unequal treatment at workplace or in relation to work. If the action referred to in the previous paragraph results in a psychological,

psychosomatic or physical illness or reduction work productivity on the part of the employee, the perpetrator is punished with the prison sentence of up to three years.

Case law of the Higher Labour and Social Court

- **Three cases relating to payment of damages for bullying and/or harassment at the workplace:**

1.) The plaintiff claimed payment of damages from the employer, in the amount of EUR 5,918.23, for workplace harassment to which she was exposed from her superior who addressed her by inappropriate names, systematically mocked her and made insulting comments. The court of first instance awarded the plaintiff damages amounting to EUR 1,877.00. The appellate court increased the damages and awarded the plaintiff the total amount claimed.

2.) The plaintiff claimed payment of damages from the employer, in the amount of SIT 250,000.00 (EUR 1,043.23) for the workplace harassment to which she was exposed from the director in front of a workers' assembly when he expelled her from the production hall with the words “Be off with you!”. The court of first instance awarded her damages amounting to SIT 120,000.00 (EUR 500.75) and the appellate court confirmed the judgement of the court of first instance.

3.) The plaintiff claimed payment of damages from her employer, in the amount of EUR 1,500.00 for physical pressure to which she was exposed from a person who carried out individual tasks for the employer. The subject matter of the case was a written communication which exceeded normal bounds. On the door of her flat he stuck a written document from the employer (in connection with termination of an employment contract), which was not in a sealed envelope but in such a way that it was exposed to the passers by who could easily read the content. This conduct, together with other conduct – frequent home visits, inquiries with her personal physician, reproaches with disciplinary offences, unusual requirements for carrying out work tasks – the court considered to be conduct that, despite having the appearance of being legal, represented mental violence against the employee. The court of first instance awarded the plaintiff damages amounting to EUR 1,500.00 and the appellate court confirmed the decision.

Employer’s liability and the manner of compensation

The chapter “Sexual harassment” contains the appropriate explanation regarding this question, since the same regulation applies to mobbing as any undesired behaviour associated with any personal circumstance with the effect or intent of adversely affecting the dignity of a person or of creating an intimidating, hateful, degrading, shaming or insulting environment. It also presents the appropriate regulation concerning the prohibition of mobbing at workplace.

Case law of the Higher Labour and Social Court

- **A case relating to extraordinary termination of an employment contract due to sexual harassment at the workplace:**

1.) The employer terminated the employment contract with the plaintiff, a university teacher, for allegedly harassing students. The court of first instance rejected his motion for a finding of the illegality of the extraordinary termination of the employment contract and the appellate court confirmed the decision.

Damage (compensation)

The chapter "Sexual harassment" contains the appropriate explanation regarding this question, since the same regulation applies to mobbing as any undesired behaviour associated with any personal circumstance with the effect or intent of adversely affecting the dignity of a person or of creating an intimidating, hateful, degrading, shaming or insulting environment. It also presents the appropriate regulation concerning the prohibition of mobbing at workplace.

Burden of proof

The chapter "Sexual harassment" contains the appropriate explanation regarding this question (reversal of the burden of proof), since the same regulation applies to mobbing as any undesired behaviour associated with any personal circumstance with the effect or intent of adversely affecting the dignity of a person or of creating an intimidating, hateful, degrading, shaming or insulting environment. It also presents the appropriate regulation concerning the prohibition of mobbing at workplace.

Article 28 THE RIGHT OF WORKERS' REPRESENTATIVES TO PROTECTION IN THE UNDERTAKING AND FACILITIES TO BE ACCORDED TO THEM

Pursuant to Article 113 of the Employment Relationships Act the employer may not terminate the employment contract to a member of a works council, a workers' representative, a member of a supervisory board representing workers, a workers' representative in the council of an institution and to an appointed or elected trade union representative, without the consent of the body whose member he/she is or without the consent of the trade union, if this person acts in accordance with the law, the collective agreement and the employment contract, except in the case of termination due to business reason if he/she rejects the offered appropriate employment or in the case of termination due to the procedure of the employer's termination. The above protection lasts for the entire period of their term of office and another year after its expiry. Moreover, Article 89 of the Act as unfounded reasons for ordinary termination of the employment contract states trade union membership, participation in trade union activities outside the working time, participation in trade union activities during the working time in agreement with the employer as well as the candidacy for the function of a workers' representative and the current or past performance of this.

Where the court determines that the employer's termination is illegal it orders the employer to enable the worker to continue the employment relationship. If the worker does not wish to continue the employment relationship, the court shall in accordance with Article 118 of the Act and upon the worker's proposal establish the duration of the employment relationship, but not beyond a ruling of the court of first instance, it shall recognise the worker's period of service and other rights arising from the employment relationship, and grant the worker adequate monetary compensation in the maximum amount of 18 months of the worker's wage paid in the last three months prior to termination of the employment contract.

If the employment contract is terminated by the employer, Article 82 of the Act states that the burden of proof rests on the employer.

Article 29 THE RIGHT TO INFORMATION AND CONSULTATION IN COLLECTIVE REDUNDANCY PROCEDURES

It should be noted that pursuant to the first paragraph of Article 98 of the Employment Relationships Act in the collective redundancy procedure the employer must inform the Employment Service in writing about the performed consultation with the trade unions . At the request of the Employment Service the employer may not terminate the employment contracts to redundant workers prior to the expiration of 60 days as from the fulfilment of the obligation referred to in the first paragraph of Article 98 of the Act. A fine is imposed on the employer who does not inform and consult the trade union in accordance with the provisions of the Act (offence proceedings), whereby the violation is regarded as one of the most severe violations on the part of employers and is penalised as follows: a fine of 3,000 to 20,000 EUR is imposed on the employer who is a legal person, sole trader or individual performing independent business activity, a fine of 1,500 to 8,000 EUR is imposed on the smaller employer who is a legal person, sole trader or individual performing independent business activity, a fine of 450 to 1,200 EUR is imposed on the employer who is an individual and a fine of 450 to 2,000 EUR is imposed on the responsible person of the employer who is a legal person and on the responsible person in a state body or self-governing local community. Since

the legal provisions regulating the termination procedure are not respected such terminations of the employment contracts are regarded as illegal and may be brought before the court.

Moreover, pursuant to the Labour and Social Courts Act (Official Gazette of the Republic of Slovenia, No. 2/2004) the trade union may file a proposal to initiate the court proceedings on its competences in respect of labour relations.