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REVISED EUROPEAN SOCIAL CHARTER

3rd National Report on the implementation of
the European Social Charter (revised)

submitted by

THE GOVERNMENT OF THE NETHERLANDS

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

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CYCLE 2010

THE EUROPEAN SOCIAL CHARTER

The Netherlands' Twenty-second Report

for the period 1 January 2004 - 31 December 2008

on Articles 2, 4, 5, 6, 21 and 22

and a first report on Articles 26, 28 and 29

Report

For the period 1 January 2004 to 31 December 2008 (Article 2, 4, 5, 6, 21 and 22) and a first report on Articles 26, 28 and 29, made by the Government of the Netherlands in accordance with Article C of the Revised European Social Charter, on the measures taken to give effect to the accepted provisions of the European Social Charter.

This report does not cover the application of such provisions in the non-metropolitan territories to which, in conformity with Article L they have been declared applicable.

In accordance with Article C of the revised European Social Charter, copies of this report have been communicated to:

- Netherlands Trade Union Confederation FNV
- National Federation of Christian Trade Unions in the Netherlands CNV
- Trade Union Federation for middle classes and higher level employees MHP
- Netherlands Council of Employers' Federations RCO

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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.

Article 2§1

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

The rules are set out in the Working Hours Act. The maximum length of working day is 12 hours, except in the case of night work (in which case the maximum is 10 hours). The maximum working week is 60 hours. Over a four-week period the maximum number of working hours per week is 55 on average, unless otherwise agreed in a collective agreement, or maximum 48 hours on average over a 16-week period, except in the case of night work (in which case the maximum is 40 hours).

Reforms. This particular aspect of the Act was amended on 1 April 2007. Before then the maxima of 12, 48 and 60 hours were possible, but only if it was agreed through collective bargaining that overtime working made this necessary. The amendment amounted to deregulation of the Act in the sense that the intention was to rely less on laying down rules and more on encouraging consultation between employers and employees within companies. This is conducive to more tailored solutions, which would benefit both employer (more flexible use of personnel) and employee (better work-life balance). An evaluation of the legislative amendment to determine the extent to which the objective has been achieved began recently.

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

The introduction of the amended Working Hours Act coincided with the spring 2007 launch of an information campaign using various media, including specifically targeted information in specialist publications.

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.

Sector	Average no. hours per week (part-time + full-time)	
	Under employment contract	Actual
Agriculture & fisheries	30.8	36.7
Manufacturing	35.7	40.5
Construction	37.9	44.3
Wholesale/retail	30.3	35.8
Hotel & catering	25.7	31.8
Transport and communication	34.1	44.1
Financial services	33.5	39.6
Business services	33.2	39.8
Public administration	34	38.6
Education	30	35.4
Health care and social services	25.6	29.8
Culture and other services	30	36

(NEA - Netherlands Working Conditions Survey/TNO, May 2009)

Derogations. There are occasions when the statutory maxima for daily and weekly working hours do not apply, for example in the event of a major accident or serious crisis or when a grave risk needs to be averted. Some categories of workers are also excluded, such as voluntary workers, sports professionals, scientists, performing artists and military personnel, the latter during both normal deployment and manoeuvres. Those responsible for maintaining public order, such as the police, do not always need to adhere to the norms either, particularly when this would prevent them from doing their job properly.

Article 2§2

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

No new developments; see previous report.

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

No new developments; see previous report.

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

Dutch law makes no provision for monetary compensation or additional rest periods for working on public holidays. Any compensatory measures are usually mutually agreed between employer(s) and employee(s) or employees' associations.

Article 2§3

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

No new developments in the regulations.

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

No new developments in the regulations.

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

Not applicable.

Article 2§4

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

Statutory entitlement to paid holidays is set out in the Dutch Civil Code and is equal to four times the agreed weekly working hours. There are no statutory provisions for giving additional paid holidays to workers engaged in inherently dangerous or unhealthy occupations. Dutch legislation (in the form of either the Civil Code or the Working Hours Act) offers a framework within which the social partners work out the details together. There is a relationship, albeit one not laid down by law, between the type of occupation and the work roster, the length of annual leave and retirement age. These agreements are reached in collective bargaining talks between the social partners.

Reforms. The deregulation of the Working Hours Act on 1 April 2007 did not address this issue.

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

Statutory entitlement to paid holidays is set out in the Civil Code.

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

On average employees in the Netherlands have five weeks' (25.6 days) holiday per year.

Article 2§5

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

The traditional day of rest in the Netherlands is Sunday. The rules concerning Sunday rest are laid down in the Working Hours Act.

- Work on Sundays is not permitted, in principle.
- Work on Sundays is allowed only if it stems from the nature of the work and if Sunday working is a contractual requirement. This might include healthcare workers, fire-fighters and catering personnel, for example.
- Work on Sundays is also allowed if the company's circumstances necessitate it, in which case it must be agreed with the employee participation body (works council or employee representative body) and, in addition, the individual employee must agree to it on each separate occasion.
- Employees are normally entitled to 13 free Sundays per year.
- Fewer than 13 is also allowed, but this requires the agreement of both the employee participation body and the individual employee (even if Sunday working stems from the nature of the work).

Reforms. This aspect of the Act was amended on 1 April 2007. The previous version already provided for at least 13 free Sundays per year. In response to recommendations by the Social and Economic Council of the Netherlands (SER), an advisory body to the government, in which industry, trade unions and the government are represented, it was rendered possible to derogate from this rule by collective agreement. The personal approval requirement was subsequently added to provide additional protection for individual employees.

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

The introduction of the amended Working Hours Act coincided with the spring 2007 launch of a multimedia information campaign, which included specifically targeted information in trade and professional journals.

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.

No precise data is available on Sunday working. Generally speaking, the Netherlands is a country where the vast majority of work (85% or more) is performed on weekdays between 9 and 5, a pattern that has changed little since the 1950s. Even in 24/7 organisations, such as hospitals, most operations and daily procedures take place outside the weekend wherever possible (Baaijens et al. (ed.) De toekomst van de arbeidstijden. Dutch University Press, 2005).

Article 2§6

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

Dutch law requires employers, within one month of the date of commencement of an employee's employment, to provide a written record of the principal aspects of the employment relationship, such as name and address of the parties, place(s) where the work is to be performed, duties of the employee, date of commencement of employment, term of the contract and working hours (Civil Code, art. 7:655).

In the case of contracts for personnel who usually work fewer than three days a week providing exclusively (or nearly exclusively) domestic or personal services to a natural person, the employer need only provide this information if the employee requests it (Civil Code, art. 7:655, para. 4).

Any employer who refuses to provide such a written record, or issues incorrect information, is liable for any resulting harm caused to the employee (Civil Code, art. 7:655, para. 5).

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

No new developments; see previous report.

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

No new developments; see previous report.

Article 2§7

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

The rules concerning night work are laid down in the Working Hours Act.

- The option of night work is not limited to specific sectors or bound by collective or individual agreement.
- However, if a health assessment reveals that an employee's health problems are connected with working at night, the employer must ensure that the employee in question is relieved of night duty.
- Only employees aged 18 or over may undertake night work.
- If night work is performed regularly, the working time per shift is 10 hours.
- In the case of occasional night work (22 times a year and no more than five times every two weeks), 12 hours.
- If night work is performed regularly (≥ 16 times in 16 weeks), the average working time per week is 40 hours.
- In the case of occasional night work (< 16 times in 16 weeks), 48 hours.
- The rest period after a night shift (ending after 2 am) is 14 hours.
- The rest period after ≥ 3 night shifts is 46 hours.
- If a series of successive shifts includes one or more night shifts, the maximum length of the series is seven shifts (or eight by collective agreement).
- Over a 16-week period an employee may work a maximum of 36 night shifts ending after 2 am (117 night shifts per year).
- A maximum of 140 night shifts ending after 2 am (or 38 hours worked between midnight and 6 am) per year may be agreed through collective bargaining.

Reforms. This aspect of the Act was amended on 1 April 2007. The rules on night work have been eased and made more flexible, and protection now centres more on employees who regularly work all night or a considerable part of the night.

- A reduced average working week of 40 hours and 10 hours per shift applies for employees who regularly work nights.
- Employees who have night duty only occasionally may work a 12-hour night shift a maximum of five times in two weeks and no more than 22 times a year. This option may be used to solve problems caused by an unexpected shortage of shift workers; it may also be used to cover maintenance work that needs to be carried out within a short time and requires a '12 hours on/12 hours off' schedule.
- The previous restriction on the number of 'early' night shifts (ending before 2 am) has been lifted.
- A shift is now less likely to be classified as a night shift as a result of a redefinition of terms. A night shift is now defined as a shift in which an employee works for at least one hour between midnight and 6 am. This prevents many of the practical application problems resulting from the old definition (all work between midnight and 6 am).
- In accordance with the recommendations of the SER, the limit for the number of night shifts ending after 2 am has been fixed at 36 in every 16-week period (117 per year). At the same time the SER argued that it should be possible to deviate from this primary norm by collective agreement when deemed necessary on business, organisational or social grounds. In this case a maximum of 140 times in 52 weeks applies. Instead of curtailing the number of night shifts, an alternative option is to limit the number of hours' work between midnight and 6 am: in each 2-week period, no more than 38 hours' work may be performed during this particular time slot. This norm was already included in the Working Hours Decree for a number of sectors, including security and bakeries, but has become universal with the amendment of the Working Hours Act.

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

The introduction of the amended Working Hours Act coincided with the spring 2007 launch of a multimedia information campaign, which included specifically targeted information in trade and professional journals.

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

No precise data is available on night work. About 10% of the working population do shift work (Smulders, G.W. (ed.) Worklife in the Netherlands. TNO, 2006). A night shift is now defined as a shift in which an employee works for at least one hour between midnight and 6 am.

Questions from the European Committee of Social Rights arising from the Netherlands' previous report (19th)

Paragraph 2 – Public holidays with pay

a. The Committee notes from the Netherlands' report that there have been no changes to the situation which it has previously found to be in conformity.
It nonetheless asks the next report to provide updated information on the increased remuneration paid and/or compensatory rest periods granted in respect of work done on a public holiday.

On 6 April 2006 the European Court of Justice ruled in the case of the Federation of Dutch Trade Unions (FNV) v. the Netherlands (C-124/05) that article 7 of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, as amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000, is to be interpreted as precluding a national provision which, during a contract of employment, permits days of annual leave, within the meaning of article 7(1) of the directive, which are not taken in the course of a given year, to be replaced by an allowance in lieu in the course of a subsequent year. In response to the Court's judgment, an information brochure clarifying the legislation on leave (Civil Code, art. 7:640) explains that any statutory leave entitlement not used in the current year may not be cashed in, but may be carried over to the next calendar year; nor may any statutory 'old' leave entitlement carried over be cashed in in the course of a subsequent year (except where the employment relationship is terminated). Employees cannot therefore waive their statutory entitlement to leave in return for compensation even at a later stage (within the limitation period of five years).

Paragraph 3 – Annual holiday with pay

b. The Committee considers that under Article 2§3 of the Charter annual holidays exceeding two weeks may be postponed in particular circumstances defined by domestic law, the nature of which should justify the postponement.
The Committee therefore seeks information as to what proportion of the minimum statutory leave may be postponed to a subsequent year, or whether all of it so may be postponed.

There are no statutory rules for employees concerning the number of statutory days that may or can be carried over to the next leave year or calendar year if the leave days are not taken in the current year. Employees may not, however, cash in their entitlement to statutory leave. This prohibition extends to any leave entitlement saved from previous years. The primary rule (Civil Code, art. 7:638, para. 1) is that employers must allow their employees to take the statutory leave to which they are entitled each year. It is the employee's responsibility, in view of the restorative effects of a holiday, to actually take leave.

To encourage civil servants, the police and the judiciary to take leave, at least a specified minimum number of hours of leave (108 hours per calendar year or the pro rata equivalent for part-time employees) must be taken in the current year. For defence personnel the figure is 120 hours (or the pro rata equivalent for part-time employees).

Paragraph 4 – Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations

c. In light of its most recent interpretation of Article 2§4 of the Charter referred to above (see below), the Committee requests up to date detailed information on measures taken to reduce exposure to risks in all occupations where it has not been possible to eliminate all risks.

> *Statement on Article 2§4 of the 1961 Charter:*
> *Article 2§4 mentions two forms of compensation, namely reduced daily working hours and additional paid holidays. In its examination of reports under the revised Charter, the Committee has stated that other means of reducing the length of exposure to risks may be considered acceptable (Conclusions 2003, Bulgaria, Article 2§4 of the revised Charter, pp. 24-27). It states that under no circumstances can financial compensation be considered an appropriate response under Article 2§4. Apart from this particular situation, the Committee will rule on the suitability of other approaches not in the abstract but case by case. For example, in a situation where a measure of this type was contemplated as a general solution, making no distinction according to the type and nature of the risk involved, it ruled that a reduction in the number of years of exposure was not an appropriate measure in all cases (ibid)."*
>
> *The Committee points out that this interpretation of Article 2§4 of the 1961 Charter applies thereon to all states bound by the 1961 Charter as reflected in the current volume of Conclusions XVIII-2.*

Dutch legislation is primarily intended to make work itself as safe and healthy as possible. The Netherlands has comprehensive rules governing health and safety at work and the Labour Inspectorate closely monitors compliance. Work is bound by strict rules in this country and, provided employers and employees abide by them, work is not intrinsically dangerous or unhealthy. Should there ever be any evidence to the contrary, supplementary legislation on health and safety at work will be introduced.

The strict legislation on health and safety at work does not alter the fact that there may still be differences in the kind of work people do. Some work is more strenuous and, in that sense, may pose a greater risk to the health of individual employees and sometimes to others, too. With many physically strenuous occupations, it has been found, however, that people tend to work shorter shifts, take more holidays or retire at a younger age. Sometimes these requirements are stipulated in the working hours regulations; for example, in the case of people working in the offshore industry, every 24-hour period spent on the platform is offset by 24 hours' rest on the mainland. In most cases, however, the rotas, length of holiday or time of retirement is not enforced by law. There are a number of reasons for this.

First, the strenuousness of a particular occupation depends on a combination of factors. For example, it cannot be sweepingly argued that the profession of doctor is strenuous and hence risky. It is certainly responsible work, but whether it is physically strenuous and hence risky depends on many factors, such as the size of practice, the number of colleagues with whom the workload is shared, the work roster, whether there is an opportunity to rest while on call, etc. It would therefore be inappropriate to legislate that a doctor may never work more than, for example, 8 hours in one day or must have at least 10 weeks' holiday.

Another and even more important reason not to make any standard legal provisions to compensate for the 'strenuousness' of particular occupations and to reduce risks is that it is unnecessary. In the Netherlands there is already a clear relationship between the strenuousness of an occupation and the work roster, the length of annual leave and retirement age. For example, paramedics and defence personnel commonly take early retirement on account of the strenuousness of their work. In these and all other cases this is a tailored solution that cannot be achieved by general measures, but solely through consultation between employers' and employees' representatives in the sector in question. The parties involved know the specific demands of the job and where the limits for safe and healthy work

lie. We can be sure that health and safety will always play an important part in consultations on labour matters because both employers and employees have an interest in having work rosters in place that are not detrimental to employee health. Employers gain no benefit from worker absences, not least because of their obligation to continue paying wages to employees on long-term sick leave.

Article 2, para. 4 of the Charter requires Member States, where their legislation on health and safety at work does not fully compensate for the risks of a particular type of work, to provide for either reduced working hours or additional paid leave. The Netherlands is already making such provision, not by legislative means, but by establishing a social dialogue. A balanced interplay of forces exists in this country and only where this fails is recourse taken to statutory measures. With regard to reduced working hours or additional paid leave for people doing hazardous work, this option has not yet proved necessary.

To sum up, there are no statutory provisions in the Netherlands obliging workers in dangerous or unhealthy occupations to work shorter hours or giving them additional paid leave. There is nevertheless a clear relationship between the type of occupation and work rosters, the length of annual leave and retirement age. Dutch legislation (in the form of either the Working Hours Act or the Civil Code) offers a framework within which the social partners work out the details together. Though not laid down by law, these agreements are reached in collective bargaining talks between the social partners.

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.

The exercise of this right shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

Appendix to Article 4§4
This provision shall be so understood as not to prohibit immediate dismissal for any serious offence.

Appendix to Article 4§5
It is understood that a Contracting Party may give the undertaking required in this paragraph if the great majority of workers are not permitted to suffer deductions from wages either by law or through collective agreements or arbitration awards, the exception being those persons not so covered.]

Article 4§1

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

No new developments; see previous report.

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

No new developments; see previous report.

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

[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.

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.

Statistics Netherlands (CBS) does not publish any data on personal net incomes. According to the Ministry of Social Affairs and Employment's own calculations, the estimated net average wage for workers is €29,700 per annum, and the estimated net median wage is €26,260 (all data for 2009).

This is based on a random sample of full-time workers (> 35 hours/week). The net wage is calculated by deducting taxes, social security contributions (unemployment, incapacity, health care and old-age pension) and pension contributions from the gross wage. If only single full-time workers are selected, the net average wage is significantly lower: approx. €25,540 (median: €23,460).

The amount of the statutory minimum wage is laid down in the Minimum Wage and Minimum Holiday Allowance Act and is adjusted twice a year (on 1 January and 1 July) in line with the average increase in wages in collective bargaining agreements. All workers aged between 23 and 65 are entitled to the statutory minimum wage. The gross minimum wage for a full-time worker is €1,398.60 per month as of 1 July 2009 (the weekly and daily amounts are €322.75 and €64.55 respectively). A sliding percentage scale applies for young people between the ages of 15 and 22. The applicable percentage (with respect to the adult minimum wage) ranges from 30% for 15-year-olds to 85% for 22-year-olds. The main purpose of this sliding scale in the youth minimum wage is to prevent young people dropping out of full-time education to find a job, particularly without having any basic qualifications, as this also has an adverse effect on their future labour market status. The Netherlands has a good track record in this area compared with other countries: a high participation rate in education and a low level of youth unemployment.

The net minimum wage is not prescribed by law, because it can vary by sector or company due to differences in statutory wage deductions (income tax and social security contributions). The indicator used is the net minimum wage for a single worker with no children who was born in 1950, or thereafter, about 85% of the gross minimum wage. Only deductions applicable to all workers are taken into account (pension contributions and health insurance premiums are not considered).

About 3% of full-time workers are paid the minimum wage. The remainder receive at least the lowest wage agreed in collective bargaining, which in many cases is at least a few percentage points above the statutory minimum wage.

The government pays an allowance to benefit claimants and workers on a low income to help cover their living, care and family expenses.

Article 4§2

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

No new developments; see previous report.

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

No new developments; see previous report.

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.

No new developments; see previous report.

Article 4§3[2]

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

No new developments; see previous report.

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

The annual Equal Pay Day took place on 31 March 2008 and 31 March 2009. The Ministry of Social Affairs and Employment organised a meeting with other organisations (including the social partners, the Equal Treatment Commission, the Wage Indicator Foundation, the Dutch Association for Personnel Management and Organisation Development (NVP), the Ministry of Education, Culture and Science and the Ministry of the Interior and Kingdom Affairs) to draw attention to the legislation in this area and how it works in practice.

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.

The uncorrected pay differential between men and women (the difference between the average pay of men and women, expressed as a percentage of men's pay), to be corrected for background factors such as age, job level and sector, were 23% on average in the private sector in 2006 (see appendix 1, table III.1.b from report "The labour market position of employees in 2006" by the Netherlands' Labour Inspectorate, November 2008). This differential can largely be explained by differences in background factors between men and women. In this context the Labour Inspectorate points out that, compared with male workers, female workers:
- are usually younger;
- usually have a lower level of education;
- are more likely to work part-time;
- are more likely to work in a clerical or care occupation;

[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.

- are more likely to have a lower-level job;
- are more likely to have a flexible contract of employment;
- are more likely to work in the health and social services sector; and
- are less likely to work in manufacturing and construction.

After correcting for these background factors, there is still an unexplained element. This is known as the corrected pay differential between men and women. According to the Labour Inspectorate's report, the corrected pay differential between men and women was 6.5% in the private sector in 2006 (see appendix 2, table III.6.b from report "The labour market position of employees in 2006" by the Netherlands' Labour Inspectorate, November 2008). This means that if men and women are in equal positions (i.e. if training, job level and number of years' service, etc. are the same for both), women in the private sector in 2006 earned 6.5% less than their male colleagues. By way of comparison, in 2004 the corrected pay differential between men and women in the private sector was 7.4%, so there has been a drop of nearly one percentage point.

As regards the public sector, the report reveals that in central government, education, the judiciary and defence, the uncorrected pay differential was 12% in 2006 (see appendix 3, table III.1.0 from report "The labour market position of employees in 2006" by the Netherlands' Labour Inspectorate, November 2008). After correcting for differences in background factors, a pay differential of 2.6% remained, which is slightly down on the 2004 level (2.9%) (see appendix 4, table III.6.0 from report "The labour market position of employees in 2006" by the Netherlands' Labour Inspectorate, November 2008).[3]

Article 4§4

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

No new developments; see previous report.

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

No new developments; see previous report.

Article 4§5

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

No new developments; see previous report.

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

No new developments; see previous report.

[3] The pay differential between men and women in the public sector was recalculated in 2004, omitting employees with an unknown job level.

Negative conclusions of the European Committee of Social Rights

Paragraph 1 – Adequate remuneration

The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§1 of the Charter as the statutory minimum wage of workers aged between 18 and 21 years falls below the requirements of this provision.

Young workers with children normally receive both child benefit and means-tested child allowance. The amount of child benefit depends on the age of the child and is not based on the parent's income. For a child under 5, the annual benefit in 2009 is €780 per child. The maximum annual means-tested child allowance in 2009 is €1,011 for parents with one child under the age of 18, €1,322 for those with two children and €1,505 for those with three children. The allowance decreases progressively for parents earning over €30,000.

In addition, single parents benefit from tax relief. Several tax credits are available for working single parents, specifically in 2009:
- the single parent's tax credit: €902;
- the supplementary single parent's tax credit for working single parents: 4.3% of earned income, up to a maximum of €1,484:
- income-related combination tax credit: €770 if earned income is at least €4,619, and 3.8% of any additional income up to a ceiling of €1,765.

Young people with a child under the age of 6 and a partner with no income (or with only a modest income) are allowed to transfer their partner's general tax credit (€2,007 in 2009), thereby reducing their tax bill.

Young people are also eligible for care benefit and housing benefit, where appropriate. The maximum care benefit in 2009 is €692 for single people (18+) and €1,461 for couples (18+). Broadly speaking, no comment can be made about the amount of housing benefit available to individuals or different household categories, since it depends on the amount of rent paid.

Paragraph 4 – Reasonable notice of termination of employment

The Committee concludes that the situation in the Netherlands is not in conformity with Article 4§4 of the Charter because:
– its legislation does not require any period of notice during probationary periods;
– one month's notice is insufficient for workers with a service of five years or more.

The Dutch government disagrees with the Committee on both counts. In the Charter there is no rule stipulating that the length of the required period of notice should be commensurate with an employee's length of service. Under Dutch legislation, reducing the period of notice to at least one month (which is generally considered to be reasonable and in accordance with the Charter) by collective agreement is therefore authorised, as the Committee already rightly surmises.

As far as the probationary period is concerned, the Dutch government is of the opinion that, given the brevity of this period, it is not appropriate to require a period of notice. The probationary period is short (not exceeding 2 months), during which time either of the parties involved may terminate their agreement without having to comply with the rules that normally have to be taken into account before giving notice. The obligation to observe a period of notice during the probationary period would not be in accordance with the nature

and duration of the probationary period. In the Dutch government's view, article 4, paragraph 4, should be interpreted accordingly.

Questions from the European Committee of Social Rights arising from the Netherlands' previous report (19th)

Paragraph 3 – Equal pay

> *On the question of equality of pay between men and women, the Committee has in the past come to a conclusion of non-conformity both under Article 4§3 and Article 1 of the Additional Protocol on the grounds that the notion of remuneration used for the application of the principle of equal pay was not sufficiently large as it excluded benefits or rights linked to a pension scheme (Conclusions XVI-2, Article 4§3, and Conclusions XVII-2, Article 1 of the Additional Protocol). The Committee acknowledges that this assessment was made on a misunderstanding on the legal framework on equal pay. It notes from the report that the civil code and Equal Treatment Act (which both contain the equal pay principle) were amended in 1998 following Directive 96/97/CE of 20 December 1996 on the implementation of the principle of equal treatment for men and women in occupational social security schemes. Noting therefore that the principle of equal treatment also applies to benefits or rights linked with a pension scheme, the Committee considers that the definition of pay is sufficiently wide, and in conformity with the requirements of the Revised Charter. The Committee nevertheless asks if legislation permits, in equal litigation cases, to make comparisons of pay and jobs outside the company directly concerned."*

Section 7 of the Equal Treatment (Men and Women) Act indicates how comparison should be made: the basis for comparing pay is the pay normally received by a worker of the other sex for work of equal value or, in the absence of such work, for work of approximately equal value, in the company where the worker on whose behalf the comparison is made is employed. In equal pay cases, a comparison can be made with a typical worker in another company, provided the differences in pay can be attributed to a single source. This stems from European Court of Justice case law (ECJ, 17 September 2002, Case C-320/00 (Lawrence) and ECJ, 13 January 2004, C-256/01 (Allonby).

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.

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

No new developments.

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

No new developments.

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

Not applicable.

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;

and recognise

4. 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.

Appendix to Article 6§4
It is understood that each Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G.

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.

No new developments; see previous report.

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

No new developments; see previous report.

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

No new developments; see previous report.

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.

No new developments; see previous report.

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

No new developments; see previous report.

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.

No new developments; see previous report.

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.

No new developments; see previous report.

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

No new developments; see previous report.

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.

No new developments; see previous report.

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.

No new developments; see previous report.

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

No new developments; see previous report.

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.

No new developments; see previous report.

Negative conclusions of the European Committee of Social Rights

Paragraph 4 – Collective action

A. The Committee concludes that the situation in the Netherlands is not in conformity with Article 6§4 of the Charter on the grounds that the fact that Dutch judges may determine whether recourse to a strike is premature constitutes an impingement on the very substance of the right to strike as this allows the judge to exercise the trade unions' prerogative of deciding whether and when a strike is necessary.

As stated previously, on 18 September 2002 the Minister of Justice drew the attention of the Supreme Court of the Netherlands to the Committee's negative conclusion, in response to the 14th report, on article 6, para. 4 of the European Social Charter (ESC). He also alerted the Council for the Judiciary, for the information of all other judicial bodies in the Netherlands. The Committee's negative conclusion regarding this subject in relation to the 16th report was also sent to the bodies concerned, to inform the judiciary once again of the Committee's objections to court rulings on the exercise of the right to collective action in practice. In a judgment of the Supreme Court of 8 June 2007 published in a Dutch-language employment law case law journal, Rechtspraak Arbeidsrecht 2007, 110, the advisory opinion of the Supreme Court's Advocate General explicitly addresses the 'conclusions' of the Committee in 2006 (Annexe 5).

In the Netherlands the right to take collective industrial action (right to strike) is generally recognised and the limits placed on this right (formerly by article 31 (old ESC) and now by article G part V (revised ESC)) are reviewed by the courts. The conditions for exercising the right to strike are not laid down in legislation, but enshrined in the case law of the highest judicial authority, i.e. the Supreme Court. The Dutch government does not deem it necessary to codify these 'criteria' developed by the Supreme Court, for example to determine whether a strike would disproportionately harm any interests (including those of third parties), because this case law has force of law in the Netherlands.

The case law that has built up regarding the right to strike gives proper substance to the normative framework of the ESC, making it possible – more so than would be the case for the legislature – to take into account the special circumstances of any collective action.

With regard to public servants, and in particular military personnel on active service and Ministry of Defence civilian personnel, for whom a reservation was entered in relation to the application of article 6, para. 4 of the Charter, there have been some important new developments since the last report.

Public servants

The right of public servants to take collective action was also recognised on the basis of case law when the revised ESC was approved and ratified (Act of 1 December 2005, Bulletin of Acts and Decrees, 694). Several considerations were taken into account in deciding to drop the reservation that had previously applied to public servants. Initially it was deemed appropriate to first recognise the right to collective action of public-sector employees after putting a statutory regulation in place. Over the years, however, various unsuccessful attempts have been made to put a bill through Parliament. During that time, public-sector employees have in fact taken collective action on a number of occasions, and their right to do so is not denied either in practice or in case law. The reservation relating to article 6, para. 4 therefore no longer has any significance in the Dutch context.

The lack of a statutory regulation in the Netherlands means that the only recourse against collective action by public-sector employees – as is also the case in the private sector – is to petition the courts in interim injunction proceedings to declare proposed or already initiated action unlawful and prohibit it under article 6:162 of the Civil Code. The court then decides whether the action is permissible in the light of article 6 in conjunction with article G part V of the revised Charter, and assesses whether the requested injunction is necessary in a democratic society for the protection of the rights and freedoms of others, public interest, national security, public health or public morals. The court thus addresses a specific application of the right to strike, focusing on a tangible situation, and the scope it has for restricting this right.

The fear underlying the reservation, i.e. that public-sector employees exercising their right to strike would have unacceptable consequences for society, has in retrospect not been borne out in the Dutch situation – partly because of relevant case law. In view of this, inclusion of such a reservation covering all employees in public service was not proposed in the revised ESC. The government also assumes that there will be no change in the way the courts deal with collective action by different groups of public-sector employees.

Military personnel and Ministry of Defence civilian personnel

In the Act approving the revised ESC, the government recognised civil servants' right to strike but added a reservation concerning defence personnel, in view of the specific status of the defence organisation. The revised version of the Military Personnel Act 1931 (Bulletin of Acts and Decrees, 2007, 480) came into effect on 1 January 2008 and gave defence personnel (military personnel on active service and civil servants employed in the Ministry of Defence) the right to collective action (section 12i of the Act). The amended legislation stipulates the restrictions on the right to collective action, taking into account the special demands and obligations that are placed on the armed forces because of the nature of their task and that are less common, or non-existent, in other organisations. Participation in strikes or collective action is not permitted where this might disrupt or hinder the operational deployment of the armed forces.

The reason for this restriction lies in the fact that the need to protect the public interest and national security means that the tasks of the armed forces and the corresponding demands placed on their operational deployability and preparedness are not compatible with giving military personnel the right to participate in a strike or in collective action that disrupts or hinders the operational deployment of the armed forces. It should be remembered that armed forces units are deployed all over the world in peacekeeping and peace-enforcement operations, or in crisis management operations, often as part of an allied campaign. So not only is there a risk of actually disrupting or hindering operations; the international reliability and credibility of the Dutch defence effort is also at stake. There can therefore be no shadow of doubt concerning the operational readiness of the armed forces as an instrument for protecting the interests of the State whatever the circumstances.

Statistics on strike action during the period 2004-2008	annexes 5a, b and c
Summary of case law 2004-2008	annexe 6

Statistics on strike action in the Netherlands are kept by Statistics Netherlands (CBS) and can be viewed online at http://statline.cbs.nl/statweb/?LA=nl

Annexe 5 contains three summaries: the number of disputes, the number of working days lost and the number of workers involved (per sector over the period 2004-2008); the type of

dispute that prompted strike action; and the duration and method of settlement of the strikes. Summaries of other characteristics can also be produced using the CBS website.

Questions from the European Committee of Social Rights arising from the Netherlands' previous report (18th)

Paragraph 2 – Negotiation procedures

a. The Committee asks the next report to provide further information on what are the criteria for refusal of an exemption in this respect.
(exemptions from extension of sectoral collective agreements applying to employers already bound by another company or sub-sectoral level collective agreement).

Since 2003 there have been a few situations involving discussion about the independence of trade unions party to collective agreements. Under national and international legislation, both employers' and employees' associations must be independent of each other in the establishment, activities and management of an organisation. In situations where independence is called into question, the Ministry of Social Affairs and Employment can conduct an investigation and use its findings to reach a decision on extension orders concerning sectoral collective agreements and exemption (dispensation) from such orders.

Following a decision by the Council of State on 27 October 2004 (200400672/1), more or less automatic dispensation from an extension order (exemption where a company has its own collective agreement) had to be abandoned. The Council of State ruled that such a dispensation decision is open to objection and review. There must therefore be a clear set of procedural rules for submitting a request and reaching any decision.

In response, the government amended the regulations on exemption from extension orders as of 1 January 2007. The draft regulations of the Toetsingskader AVV (framework for assessing whether collective agreement provisions can be declared binding on an entire industry) were first presented to the Labour Foundation and to other relevant parties not represented in the Labour Foundation. The Labour Foundation, in which both the Federation of Dutch Trade Unions (FNV) and the National Federation of Christian Trade Unions (CNV) are represented, suggested minor changes, which the government incorporated in full in the final version.

The Toetsingskader (page 16) identifies several indicators of independence and specifies a number of elements – such as the history, structure and finances of the organisation, the number of members, the facilities offered by employers and the history of the negotiations – which can be taken into account when assessing the situation.

The Toetsingskader AVV can be found at:
http://cao.szw.nl/index.cfm?fuseaction=dsp_document&link_id=108372

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.

Appendix to Articles 21 and 22

1. For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.
2. The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.
3. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

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

No new developments.

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

No new developments.

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.

No new developments.

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.

Appendix to Articles 21 and 22

1. For the purpose of the application of these articles, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.
2. The terms "national legislation and practice" embrace as the case may be, in addition to laws and regulations, collective agreements, other agreements between employers and workers' representatives, customs as well as relevant case law.
3. For the purpose of the application of these articles, the term "undertaking" is understood as referring to a set of tangible and intangible components, with or without legal personality, formed to produce goods or provide services for financial gain and with power to determine its own market policy.
4. It is understood that religious communities and their institutions may be excluded from the application of these articles, even if these institutions are "undertakings" within the meaning of paragraph 3. Establishments pursuing activities which are inspired by certain ideals or guided by certain moral concepts, ideals and concepts which are protected by national legislation, may be excluded from the application of these articles to such an extent as is necessary to protect the orientation of the undertaking.
5. It is understood that where in a state the rights set out in these articles are exercised in the various establishments of the undertaking, the Party concerned is to be considered as fulfilling the obligations deriving from these provisions.
6. The Parties may exclude from the field of application of these articles, those undertakings employing less than a certain number of workers, to be determined by national legislation or practice.

Appendix to Article 22

1. This provision affects neither the powers and obligations of states as regards the adoption of health and safety regulations for workplaces, nor the powers and responsibilities of the bodies in charge of monitoring their application.
2. The terms "social and socio-cultural services and facilities" are understood as referring to the social and/or cultural facilities for workers provided by some undertakings such as welfare assistance, sports fields, rooms for nursing mothers, libraries, children's holiday camps, etc.

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.

The rights, powers and protection enjoyed by the works councils and the occupational safety & health committees (and employee representatives) are laid down in the Works Councils Act (Wet op de ondernemingsraden).

The members of the SHW committees or works councils and employee representatives have a right to information and the right of consultation and co-decision in relation to the health and safety policy of employers. They are also protected from dismissal and other measures prejudicial to them while exercising their functions in the field of occupational safety and health. Their right to contact and accompany labour inspectors is described in the Working Conditions Act (section 12) (Arbeidsomstandighedenwet).

Section 11 of the Working Conditions Act requires employees to take the utmost care with respect to their own health and safety and that of other individuals in the workplace, in accordance with their training and the instructions given to them by the employer.

Under section 14 of the Working Conditions Act, employers have to enlist the services of one or more experts to review the risk assessment of their company. In this way the employer can obtain relevant advice and assistance in helping employees who are unable to perform their duties as a result of illness. The Netherlands as a whole is covered by SHW services and SHW experts. Briefly put, the availability of SHW expertise is secured.

Employees are entitled to stop working if they have reason to believe there is a serious threat to health and safety and the threat is so imminent that a supervisor cannot arrive on site in time. Employees are also entitled to continue receiving their normal hourly wages for the time they are not working in these circumstances. They may not be disadvantaged in their position in the company or establishment as a result of a work stoppage due to a threat of this kind.

They are, however, obliged to observe certain procedures. Employees who stop working without the knowledge of their employer or supervisor due to imminent, serious danger, must notify their employer/supervisor without delay. The fact that an employee has stopped working should be brought to the attention of the Labour Inspectorate (Arbeidsinspectie) as soon as possible.

Employees are entitled to file complaints about what they consider to be breaches of statutory requirements or grossly inadequate SHW measures taken by the employer. Complaints may also be submitted by members of the Works Council or employee representatives, trade unions, family members of employees, or third parties. The Labour Inspectorate may only disclose the names of individuals submitting a complaint or reporting a contravention of the Working Conditions Act and the provisions based on it to their superiors if the individual in question has submitted a written statement that he/she has no objection to general disclosure.

Finally, all workers, in whatever field of employment, are covered by the Working Conditions Act, under which article 22 applies to all categories of workers. Self-employed persons, employers of voluntary workers and voluntary workers themselves are subject to the rules of the Working Conditions Decree insofar as they are exposed to serious work-related risks, such as the risk of falling or working with hazardous substances.

Questions from the European Committee of Social Rights arising from the Netherlands' previous report (19th)

a. However, the Committee also notes from another source that in July 2005, i.e. outside the reference period, the tripartite Social and Economic Council submitted a recommendation on an amendment of the Working Conditions Act to the Government. The reform aims at giving the social partners greater responsibility in the determination of the methods guaranteeing health and safety at work and their implementation. The Committee wishes to be informed on any development in this respect.

The main national law covering occupational safety and health in the Netherlands is the Working Conditions Act. It has been amended several times, most recently on 1 January 2008. And indeed, the Social and Economic Council was consulted about the proposed changes.

The present Working Conditions Act is aimed at improving working conditions on the shop floor, providing greater support for safety, health and welfare policy within companies and creating greater scope for individual arrangements. Employers and employees will be given more responsibility for their own SHW. The Act sets targets for the level of protection that companies should provide to their employees, in order to enable them to work in a safe and healthy manner. These targets are described in the greatest possible detail in the Working Conditions Decree and the Working Conditions Order (Arboregeling).

Additional relevant documentation concerning legislation and information on working conditions can be found at http://SHWa.europa.eu/fop/netherlands/en/legislation. With the amendment of the Working Conditions Act, the responsibilities of government and the 'social partners' (i.e. trade unions and employers' organisations) were redefined.

In the public domain, the government provides for a clear-cut legal system, with a minimum of redundant rules and administrative burdens. The government enforces the law, supplies information and issues financial incentives, such as grants.

In the legislation on working conditions there are clear and enforceable targets to which limit values can be attached, whenever possible. These targets indicate the level of protection that employers must provide in order to make sure that workers can do their job in a safe and healthy way.

In the private domain, social partners at sector or central level make arrangements to reach public targets in certain industries or sectors. These arrangements can be formulated in an SHW catalogue (arbocatalogus). The social partners are responsible for the creation, organisation and content of the catalogue. The present policy instructions on working conditions, newsletters (AI-bladen), NEN (Nederlands Normalisatie Instituut) standards, state-of-the-art SHW/SHW expertise and voluntary agreements on working conditions can all play an important part in creating and developing the SHW catalogue.

The catalogue can be submitted to the Labour Inspectorate for approval. After approval, the measures it contains will be considered feasible, unless specific circumstances at a particular company indicate otherwise. The Labour Inspectorate will take into account the existence and the substance of the catalogue during its inspections.

Strictly speaking, employers are not obliged to use the catalogue. However, if they decide to use an alternative, it must offer a similar level of SHW protection to workers.

At company level, employers and employees may agree on ways of working, using the approach of the obligatory working conditions risk assessment, in accordance with section 5 of the Working Conditions Act.

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.

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.
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.

Introduction and notes
Since early 2007 policy on sexual harassment has been part of a wider and more integrated approach to psychosocial problems at work, thereby contributing to protecting workers' right to dignity in the workplace. The process that led up to this, starting back in 1994, is described here. Statistics on the incidence of sexual harassment and other forms of inappropriate behaviour, as well as actions and initiatives to combat such conduct, are also presented. Under the Working Conditions Act 2007, primary responsibility for occupational health and safety policy in the Netherlands now lies with the social partners. It is up to them to make agreements on how to tackle psychosocial problems at work and record any agreements reached in 'health and safety catalogues' of best practices (tailor-made solutions). The new Act will be evaluated in 2011. Against this background it was virtually impossible to answer the questions in sequential order, though all the points raised in the questions have been addressed.

Sexual harassment policy obligation since 1994
Since October 1994 employers in the Netherlands have been required to formulate policy to prevent sexual harassment (and also aggression and violence) at work. The relevant legislation has been evaluated three times to determine the nature and extent of sexual harassment (and also aggression and violence) and whether employers have a proper policy in place. The evaluation reports have all been submitted to Parliament.

Evaluation of inappropriate behaviour: nature and extent
A baseline measurement conducted in 1995 showed that employers were actively engaged in putting their policy in place and represented the first step towards a legislative evaluation in 2000, which found that 10% of workers encountered sexual harassment, 36% aggression and violence, and 16% bullying at work. The rate of sick leave among victims of sexual harassment and of aggression and violence is 7% and 9% respectively, but is higher among victims of bullying (22%). The investigation also revealed that employers had provided information on their policy on sexual harassment and on aggression and violence and had implemented more measures (e.g. introduction of confidential advisors).

A second evaluation followed in 2004, which found that 27% of workers experienced harassment by the general public, 15% harassment by bosses/co-workers (bullying), 9% physical violence by the public, 9% sexual harassment by the public; 1-5% were bullied, 1-3% suffered discrimination and 15% had to cope with work-related conflicts. Harassment in-house was regarded as worse than harassment by unknown individuals. Policy-wise there are further signs of improvement: there is more likely to be an action plan in place (74%, previously 57%), there are more confidential advisors (53%, compared with 34% in 2000) and the safety, health and welfare services are providing much better support (80%, previously 58%). In a covering letter to Parliament it was concluded that, despite all the measures taken, there has been no discernible decline in inappropriate behaviour, and that there are even signs of the situation worsening. The policy has obviously not yet been really hammered home to those concerned. Employers are being called on to communicate their strategy on inappropriate behaviour more effectively.

Awareness-raising activities and programmes
A practical booklet was published in 2006 on the current state of knowledge and good practices relating to policy on inappropriate behaviour in the workplace. To ensure the widest possible readership, the booklet was launched during three major conferences on this topic held in three cities in the autumn of 2006. The fact that these events were organised in conjunction with the Ministry of the Interior and Kingdom Relations served to heighten the impact. (This ministry is currently running a programme (2007–2011) designed to combat loutish behaviour and/or aggression against workers dealing with the public, with a view to restoring their dignity in the workplace. The Ministry of Social Affairs and Employment is closely involved in this programme, and also in several studies.)

It emerged clearly from the legislative evaluations that inappropriate behaviour involves more than sexual harassment or aggression and violence (e.g. very high rate of sick leave as a result of bullying; see above). Over the years employees' associations, various pressure groups (including anti-discrimination agencies, the Art.1 association (national association against discrimination) and COC Netherlands (federation of sexual minority associations-) and Members of Parliament have also repeatedly highlighted problems relating to bullying and discrimination at work.

Extent of reforms: new legal framework on psychosocial burden/psychosocial risks

All of this led to the inclusion in the new Working Conditions Act 2007 of a section on psychosocial burden (1.3e), which is defined as follows: all factors that cause stress at work, including sexual harassment, aggression and violence, bullying and pressure of work. Section 1.3f defines stress as a condition that has physical, psychological or social effects that are perceived as negative.

The definition of sexual harassment is based on Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 269). As is known, this definition focuses on preventing a hostile or intimidating and offensive environment that violates the dignity of the worker concerned.

Under section 3.2 of the Act, employers are obliged to pursue a policy designed to prevent psychosocial burden, or limiting it if prevention is not possible. Since mid-July 2009 they are also required to combat discrimination in the workplace. Discrimination was also recently added to the section on psychosocial burden, thus bringing together all manifestations of inappropriate behaviour, distinct yet interrelated, in a single section of the Act.

Measures taken to implement the legal framework on psychosocial burden
With the introduction of the new Working Conditions Act 2007, the Dutch government takes the view that the social partners can implement policy on working conditions more effectively. The standard of assessment could be improved to ensure an appropriate strategy at industry or sector level. The social partners are currently putting together 'health and safety catalogues' for their industry or sector, describing how government targets are to be met. They decide for themselves which topics are to be covered in these catalogues, but it is worth noting that by far the majority of industries or sectors have included, or plan to include, psychosocial burden. Employers often use the services of professional agencies when it comes to matters relating to policy on sexual harassment (and increasingly psychosocial burden), and most large companies have already opted for this solution. At organisational level each employer is obliged to investigate the specific sources and causes of psychosocial burden, using the results of the risk identification and assessment as the starting point. Appropriate measures can then be sought. The explanatory memorandum to the Working Conditions Decree (article 2.15 on psychosocial burden) stipulates the kind of measures employers may take within their organisation. This is based on the current state of knowledge and includes the following: confidential advisor, code of conduct, complaints procedure, staff training, incident reporting, and support following incidents involving aggression and violence.

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"

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.

In the Netherlands the status of workers' representatives in the employee representative body or the works council, as regulated in the Works Councils Act, needs to be considered. Workers involved in either of these enjoy protection against acts prejudicial to their position within the company, including unfair dismissal.

Works Councils Act
In the Netherlands the status of workers' representatives in the employee representative body or the works council, as regulated in the Works Councils Act, first needs to be considered. To guarantee that members of the works council can act independently of the company management, the aforementioned Act offers protection against acts prejudicial to their position within the company. Under Section 21 of the Act, employers are required to ensure that anyone whose name appears or has appeared on a list of candidates or who is or has been a member of the works council or one of its committees is not placed at any disadvantage with respect to his or her position in the company on the grounds of his or her candidature or membership. The same applies to anyone holding the post of secretary to the works council and to anyone who takes or took the initiative to establish a works council. The limited jurisdiction sectors of the district court can be requested to rule that an employer must comply with these provisions. The above applies, mutatis mutandis, to central works councils and group works councils (section 34 of the Works Council Act), and to employee representative bodies (sections 35c and 35d of the Act).

Protection against dismissal in the Civil Code
Protection against dismissal is guaranteed in article 7:670, para. 4 of the Civil Code, under which an employer may not terminate the employment contract of an employee who is a member of a central works council, group works council, standing committee of these councils or divisional committee of a works council or employee representative body. Reference is also made to article 7:670a of the Civil Code, which stipulates that an employee who has been placed on the candidate list for a works council, central works council, group works council or employee representative body, or who is employed as an expert employee, as referred to in section 14, subsection 1 of the Working Conditions Act 1998, or as a data

protection officer may not have his or her contract terminated without the prior consent of the limited jurisdiction sector of the district court.

The above does not apply to contract terminations during a probationary period or for a compelling reason (Civil Code, art. 7:670b, para. 1). Articles 670, para. 4, and 670a do not apply, however, if the employee approves the termination of the contract in writing or if the termination occurs due to termination of the activities of the company or the part of the company in which the employee exclusively or mainly works (Civil Code, art. 7:670b, para. 2).

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

Not applicable.

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

Not applicable.

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.

Appendix to Articles 28 and 29
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.

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

Informing and consulting workers' representatives about proposed collective redundancies
Under section 3 of the Collective Redundancy (Notification) Act, an employer must inform the appropriate workplace representatives in writing of its intention to make 20 or more employees redundant at one place of work, at any time within a three-month period, with a view to starting consultation in good time. The employer must also notify the competent authority (Employee Insurance Agency - UWV Werkbedrijf) in writing at the same time; in the case of bankruptcy, this is done only at the competent authority's request. This Act does not apply to termination of employment exclusively for reasons that relate to an individual employee.

If collective redundancies ensue from a decision on which the works council is entitled to render advice under section 25 of the Works Councils Act, the works council must first be consulted before any requests for dismissal are considered.

Consultation must always consider ways of avoiding or reducing the number of redundancies and minimising their effect by providing redundancy counselling and support, specifically by helping to relocate or retrain employees who have been made redundant (section 3, subsection 3, of the Collective Redundancy (Notification) Act).

Calculating number of workers
Five or more requests submitted to the civil court to dissolve a contract of employment may be used as the basis for calculating the number of workers concerned ('20 or more').

Definition of workers' representatives
Interested employee associations are defined as follows: an association of employees whose members are employed in the company, whose purpose under its constitution is to protect the employment interests of its members, which operates in such capacity in the company or sector in question, which has been a legal entity for at least two years and is recognised as such by the employer. This recognition is assumed if the association has notified the employer in writing that it wishes to be informed of any proposed collective redundancies (section 4, para. 4 of the Collective Redundancy (Notification) Act).

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

Not applicable.

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

Not applicable.

LIST OF ANNEXES

1. Table: the difference between the average pay of men and women, expressed as a percentage of men's pay (table III.1.b from report "The labour market position of employees in 2006" by the Netherlands' Labour Inspectorate, November 2008
2. Table: corrected pay differential between men and women (table III.6.b from report "The labour market position of employees in 2006" by the Netherlands' Labour Inspectorate, November 2008)
3. Table: uncorrected pay differential (table III.1.0 from report "The labour market position of employees in 2006" by the Netherlands' Labour Inspectorate, November 2008).
4. Table: pay differential (table III.6.0 from report "The labour market position of employees in 2006" by the Netherlands' Labour Inspectorate, November 2008).
5. Judgment of the Supreme Court of 8 June 2007 published in a Dutch-language employment law case law journal, Rechtspraak Arbeidsrecht 2007, 110, the advisory opinion of the Supreme Court's Advocate General
6. Statistics on strike action during the period 2004-2008:
   a. the number of disputes, the number of working days lost and the number of workers involved (per sector over the period 2004-2008);
   b. the type of dispute that prompted strike action;
   c. the duration and method of settlement of the strikes.
7. Summary of case law 2004-2008