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EUROPEAN SOCIAL CHARTER

5tht National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF LATVIA

(Articles 5 and 6
for the period 01/01/2005 – 31/12/2008)

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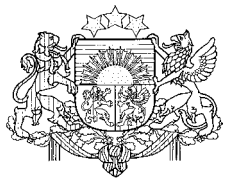
CYCLE XX-1 (2010)

MINISTRY OF WELFARE
OF THE REPUBLIC OF LATVIA



Fifth Report
on the implementation
of the European Social Charter
(Article 5 and Article 6)

Riga

October 2009

For the period from 1 January 2005 to 31 December 2008 made by the Government of the Republic of Latvia in accordance with Article 21 of the European Social Charter, on the measures taken to give effect to the accepted provisions of the European Social Charter, the instrument of ratification of which was deposited on 31 March 2001.

Article 5 – The right to organize

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.

There has been no substantial change.

Article 108 of the Constitution of the Republic of Latvia (hereafter – Constitution) includes special protection for trade unions determining that the State shall protect the freedom of trade unions. Thus, the freedom of association and freedom of forming trade unions at the constitutional level is recognized as one of the fundamental human rights and democratic society values. However, Article 116 of the Constitution provides the possibility to restrict freedom of association in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals.

The first Paragraph of Article 8 of the Labour law is expressed in the following way: employees, as well as employers have the right to freely, without any direct or indirect discrimination, unite in organisations and to join them in order to defend their social, economic and occupational rights and interests.

There have not been made any amendments to the Law on Employers' Organisations and the Associations thereof. Article 2 of this law envisages that an employers' organisation is a public organisation established by at least five employers which represents and protects the economic, social and professional interests of its members, as well as other interests that conform to the objectives and functions of the employers' organisation. Members of an employers' organisation may be natural or legal persons who on the basis of a contract of employment employ at least one employee.

Last amendment in the Trade Union Act has been made on 9 June 2005. The supplement to first Paragraph of Article 3 of the Trade Union Act envisage the state fee payable for the trade union registration, registration of amendments to the Statute and registration of other changes, exclusion from the register of trade unions and the issuance of duplicate of registration certificate. The Cabinet of Ministers determines the national scale of fees as well as its pay arrangements and facilitations.

Corresponding to the Regulation No 849 of the Cabinet of Ministers adopted on 8 November 2005 on „The Regulation of the national scale of fees for the trade union registration, its pay arrangements and facilitations" the state fee payable for the trade union registration is 8 LVL; the registration of amendments to the Statute is 6 LVL; the registration of other changes is 4 LVL; the exclusion from the register of trade unions is 4 LVL; the issuance of duplicate of registration certificate is 2 LVL.

Right to join or not to join a trade union

There have been no applications in the State Labour Inspection of trade union membership being a prior condition of employment.

According to the Law on State Security Offices (Article 20, Paragraph one) it is prohibited for State Security Offices officials and workers to carry out political activities, to organise strikes, demonstrations, pickets and to take part in such events, to form trade unions and to participate in trade union activities.

Article 11 states that State Security Offices are:

1) Constitutional Security Office;

2) Military Reconnaissance and Security Office;

3) Security Police.

According to the Law on Military Service (Article 15) a soldier is prohibited to carry out political activities, join trade unions, organize strikes and participate in them.

In accordance with the Border Guard Law (Article 49) a border guard is prohibited from joining in trade unions, organising strikes and participating in them.

Representativeness

There are no statutory criteria of representativeness and the practice is the recognition of a *de facto* representativeness. There are several trade union federations considered as being representatives of employees. There are no criteria for determining trade union representativeness, either in law or in agreements. All existing and active trade unions have the same prerogatives, but at the same time also they have specific prerogatives, according to their nature. Trade unions are founded in different sectors, for example, electricity, medicine, security, municipality, transport, police, telecommunication industry, etc.

According to the statistics of *Lursoft*[1] from 1991 until 2009 in the Enterprise Registry of the Republic of Latvia 161 trade union were registered. Free Trade Union Confederation of Latvia unites 21 different branch trade unions or professional trade union organisations.

In relation to the grounds of non-conformity with Article 5 of the European Social Charter that have been assessed by the European Committee of Social Rights in its last conclusions, we would like to draw attention of the Committee to the following.

First of all, we would like to draw your attention that the registration terms of trade union included in Article 3, part two of the Trade Union Act (minimum of 50 members or at least one quarter of the employees of an undertaking are required to form a trade union) do not have cumulative character, therefore employees of the companies which employ less than 50 persons have the right to establish a trade union, provided that one fourth of the employees join the trade union. In such case the requirement on the necessary 50 persons in order to establish a trade union is not applied.

Nevertheless, we would like to inform you that the Ministry of Welfare starts work on elaboration of amendments to the Trade Union Act in this regards.

Secondly, concerning the right to organise of the retired persons and unemployed persons, we would like to inform the Committee that this right is ensured in accordance with the Associations and Foundations Law. In correspondence with Article 2 of the Associations and Foundations Law an association is a voluntary union of persons founded to achieve the goal specified in the articles of association, which shall not have a profit-making nature. Natural persons and legal persons may be founders of an association, as well as partnerships with legal capacity. The number of founders may not be less than two (Article 23 of the Associations and Foundations Law).

[1] www.lursoft.lv

Furthermore, in spite of Article 2 of the Trade Union Act, which provides that only Latvian residents who work or study have the right to form trade unions, regulations of the trade unions envisage that this or that trade union unites not only workers of the enterprise (or industry) but also those who used to work there, including pensioners. For instance: Statute of the Latvian Education and Science Workers' Trade Union (LIZDA) provides that LIZDA unites workers, students who work in the industry of education and science as well as pensioners and self-employed, who worked in the industry of education and science; Independent Police Trade Unions members can be: Latvian internal affairs system workers and, if so decided by the Board of the Trade Union, ex-workers of the internal affairs system; Statute of the Latvian Trade Unions of Pharmaceutics states that for a union member can become any of pharmaceutical company worker, pharmacy student or not working pensioner, who have an interest in the Trade Union's successful activity and recognizes the Statute of the Trade Union.

Finally, according to the amendments being made by the Parliament on 14 July 2005 to the Law on Police, starting from 1 January 2006 police staff is entitled to establish and associate in trade unions. Thus police personnel is no longer denied fundamental trade union prerogatives.

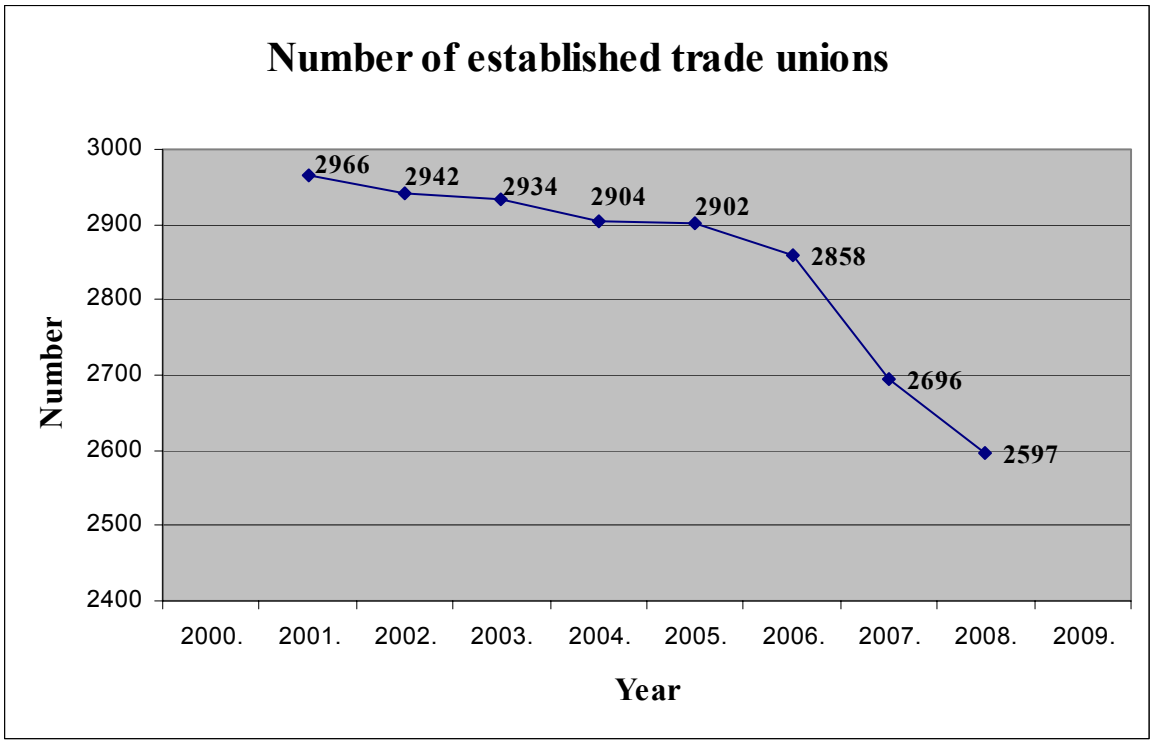
2. Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Since year 2005 there is no change.

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

Number of established trade unions (despite the fact that number of trade unions are decreasing, new trade unions also are developing):

In 2006 – 2858 trade unions (not known number of newly created trade unions);
In 2007 – 2696 trade unions (newly created 27 trade unions);
In 2008 – 2597 trade unions (newly created 30 trade unions).



Number of employees (within one enterprise) who are members of trade union:

Free Trade Union Confederation of Latvia (LBAS) is aggregated information of number of employees in enterprises, where are trade unions, and this information is compared with number of members of trade unions.

In 2006 number of members of the LABAS was **163058,** number of employees in enterprises, where was a trade union, was **242 559 (trade union unifies 67,2 %);**

In 2007 number of members of the LBAS was **151 222;**

In 2008 number of members of the LBAS was **138 696,** number of employees in enterprises, where was a trade union, was **199 938 (trade union unifies 69,4 %).**

Responses to the Queries raised by the European Committee of Social Rights in its Conclusions XVIII-2 (Latvia) in relation to Article 5 (the Right to Organize)

Query: *Who holds the register of non-governmental organisations and what are the rules governing registration?*

Response: The rules governing the registration are provided in the Law on the Enterprise Registry of the Republic of Latvia, the Trade Union Act, the Law on Employers' Organisations and the Associations thereof and the Associations and Foundations Law.

The Enterprise Registry is subordinated to the Ministry of Justice of the Republic of Latvia and keeps a Register of Trade Unions and a Register of Associations and Foundations (Article 2^9 and 2^{10} of the Law on the Enterprise Registry of the Republic of Latvia).

The registration terms of trade union included in mentioned Article 3 of the Trade Union Act. The state notary of the Register of Enterprises of the Republic of Latvia reviews the application on registration of a trade union under procedure prescribed by the laws and regulations after application and statutes are received.

Procedure for incorporation, registration and operation of the employers' organisations and associations thereof is regulated by the Associations and Foundations Law.

In compliance with Article 13 of the Associations and Foundations Law information regarding associations and foundations shall be entered into the Register of Associations and Foundations.

According to the Article 14 of the Associations and Foundations Law everyone has the right to familiarise themselves with the entries in the Register and the documents submitted to the Register authority.

Everyone has the right to receive a statement of the entries in the Register, as well as an extract or copy of the document present in the Register file, upon submission of an appropriate request in writing and upon payment of the State fee. The accuracy of the extract or copy shall be attested by the signature and stamp of an official of the Register authority, indicating the date of the issuance thereof, upon a request of the recipient. The Register shall provide information regarding the personal identity numbers of the members of the executive board, the liquidator and the administrator only if a person proves the justification of his or her interest.

An official of the Register authority shall issue a statement upon the request of a recipient that a certain entry of the Register has not been amended or that a certain entry has not been made in the Register.

The following information shall be entered in the Register:

1) the name of the association or foundation;

2) the legal address of the association or foundation;

3) the goals of the association or foundation;
4) the date when the decision regarding founding was taken and the articles of association were signed;
5) given name, surname, personal identity number of the members of the executive board, indicating whether they have the right to represent the association or foundation individually or collectively;
6) the term of duration of an association or foundation if the association or foundation has been established on a temporary basis;
7) information regarding the prohibition of the public activity or other activity of the association or foundation, the termination, continuation of activities, insolvency, liquidation or reorganisation of an association or foundation;
8) information regarding the appointment of a liquidator, indicating his or her given name, surname and personal identity number;
9) information regarding the appointment of an administrator in an insolvency case, indicating given name, surname and personal identity number of the administrator;
10) date of the making of the entry; and
11) other information if it is directly provided for by law (Article 15 of the Associations and Foundations Law).

Article 16 of the Associations and Foundations Law states that documents justifying the making of an entry in the Register and any amendments thereto (Article 15), as well as other documents specified in the Law (Article 52, Paragraph three (the annual accounts); Article 95, Paragraph four (appointment of a member of the executive board or the termination of his or her authority shall be submitted for entering into the Register) and Article 102 (the annual accounts of a foundation) shall be submitted to the Register authority. The original of the document or a duly attested copy thereof shall be submitted to the Register authority. Public documents issued in foreign states shall be validated in accordance with the procedures provided for in international agreements and they shall be accompanied by a certified translation (by a notary) into Latvian.

An association shall provide information in writing regarding the number of members thereof upon the request of the Register authority.

The documents submitted to the Register authority shall be stored in a registration file of the respective association or foundation if an entry has been made on the basis thereof.

Article 17 of the Associations and Foundations Law provides that an entry in the Register shall be made on the basis of an application or the adjudication of a court. The Cabinet of Ministers shall approve application forms.

An application regarding the entering of an association in the Register shall be signed by all of the founders or at least by two persons authorised at the founding meeting, for the entering of a foundation (fund) – by all of the founders, but in respect of a testamentary foundation – the executor, heir or a trustee of the will.

Officials of the Register authority shall take a decision regarding the making of an entry, a refusal to make an entry or the postponing of the making of an entry in the Register within seven days of the receipt of an application. A Register authority official shall take a decision within the same time limit regarding the making of an entry in the Register on the basis of the adjudication of a court.

A Register authority official shall take a decision regarding the postponing of the making of an entry if:
1) the requirements of the Associations and Foundations Law or other laws have not been observed in the drawing up of the articles of association or the selecting of a name; or
2) all of the documents specified in the Law have not been submitted.

An official of the Register authority shall take a decision regarding the refusal to make an entry if:

1) the goal laid down in the articles of association is in contradiction with the Constitution, laws or international agreements binding on Latvia;

2) the procedures for the founding of an association or a foundation specified in this Law have been violated; or

3) after the adoption of a decision regarding the postponing of the making of the entry the deficiencies in the articles of association or the name of the association or the foundation have not been rectified.

A decision regarding the refusal to make an entry in the Register or the postponing of the making of an entry must be motivated. A time limit for the rectification of deficiencies shall be indicated in a decision regarding the postponing of the making of an entry.

An official of the Register authority shall send the decision referred to in this Section, Paragraph three to the applicant within three days of the taking of the decision.

An applicant has the right to dispute and appeal the decision of an official of the Register authority in accordance with the procedures specified in regulatory enactments.

An entry in the Register shall be made on the same day when the decision regarding the making of the entry is taken.

Pursuant to the Article 18 of the Associations and Foundations Law after the entering of an association or foundation in the Register, a registration certificate shall be issued thereto, which shall be signed and stamped by an official of the Register authority.

The following information shall be indicated in the registration certificate of an association or a foundation:

1) the name;
2) the registration number;
3) the place of registration; and
4) the date of registration.

An association or a foundation shall be excluded from the Register on the basis of:

1) an application by the liquidator of an association or foundation;
2) an application by the administrator of an insolvent association or foundation;
3) an application by the association or foundation for the making of a reorganisation entry; or
4) the adjudication of a court (Article 19 of the Associations and Foundations Law).

In compliance with Article 20 of the Associations and Foundations Law the amount of the State fee to be paid for the making of an entry in the Register shall be determined by the Cabinet of Ministers.

The State fee for an extract from the Register and an extract or a copy of a document in a register file, as well as for the issuance of a statement shall be paid in the amount provided for in regulatory enactments.

The State fee for the making of an entry in the Register, for the issuance of an extract or copy, as well as for a statement may not exceed the administrative expenses related to the taking of a decision regarding registration and the making of the respective entry, as well as with the searching, processing and reproduction of documents or information.

Corresponding to the Regulation No 308 of the Cabinet of Ministers adopted on 15 April 2004 on „Procedures regarding the State Fee for the Making of an Entry in the Register of Associations and Foundations" the rates of the State fee are as follows:

1. registration of an association or foundation (including the making of entry of a re-organised non-profit organisation undertaking (company) in the Register) – LVL 8;
2. registration of amendments to the articles of association – LVL 6;
3. an entry regarding the reorganisation of an association or foundation:

3.1. if after the reorganisation a new association or foundation is established, a State fee shall be paid for each newly established association or foundation in the amount according to Sub-paragraph 1; and
3.2. in other cases for each association or foundation involved in the reorganisation – LVL 6;
4. making of other entries and alterations to entries in the Register regarding an association or foundation – LVL 4; and,
5. issuance of a duplicate registration certificate – LVL 2.

Article 21 of the Associations and Foundations Law envisages that information on the basis of which new entries shall be made in the Register, as well as the documents specified in the Law shall be submitted to the Register authority within 14 days of the taking of the respective decision if it is not otherwise provided for in the Associations and Foundations Law.

The respective persons shall be held liable, in accordance with the law, for the provision of false information to the Register authority (Article 22 of the Associations and Foundations Law).

Query: *Please provide more detailed information on the available remedies and the nature and scale of the penalties to which employers are liable.*

Response: In accordance with the first paragraph of Article 41 of the Latvian Administrative Violations Code "in the case of a violation of regulatory enactments regulating employment legal relations relating, a warning shall be issued or a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 25 up to LVL 250, and for a legal person – from LVL 50 up to LVL 750.

In the case of not entering into a written form of the contract of employment –
a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 100 up to LVL 350, and for a legal person – from LVL 750 up to LVL 5000.

In the case of not ensuring the State specified minimal monthly wage, if the person is employed for a normal working time, or not ensuring the minimal hourly tariff rates –
a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 300 up to LVL 400, and for a legal person – from LVL 600 up to LVL 5000.

In the cases of the violations provided for in Paragraph one of this Article, if they have been recommitted within a year after the imposition of administrative sanction –
a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 250 up to LVL 500, and for a legal person – from LVL 750 up to LVL 2000.

In the cases of the violations provided for in Paragraphs two and three of this Article, if they have been recommitted within a year after the imposition of administrative sanction –
a fine shall be imposed on the employer – for a natural person or an official in an amount from LVL 400 up to LVL 500, and for a legal person – from LVL 5000 up to LVL 10 000."

Amendment to the Article 41^2 of the Latvian Administrative Violations Code was adopted on 17 April 2008. Currently the Article 41^2 of the Latvian Administrative Violations Code provides that "in the case of an employee, who does not participate in a strike, who is compelled to perform the work of striking employees, as well as the recruitment of employees in place of the striking employees, in order to prevent or stop the strike or delay the implementation of the striking workers' claims – a fine shall be imposed to the employer – for a natural person or an official in the amount from LVL 100 up to LVL 250, and for a legal person from LVL 250 up to LVL 500.

Besides the prohibition against differential treatment and the prohibition of causing adverse consequences, an employee, in addition to other rights specified in the Labour law, has the right to request compensation for losses and compensation for moral harm. In case of dispute, a court

at its own discretion shall determine the compensation for moral harm (Paragraph 8 of Article 29 of the Labour law).

According to the Paragraph one of Article 3 of the State Labour Inspectorate Law the function of the Labour Inspectorate is the implementation of the State supervision and control in the field of employment legal relationships and labour protection. Officials of the Labour Inspectorate have the right e.g. to take decisions regarding matters of employment legal relationships and labour protection, as well as to issue warnings and orders to employers in order to ensure the observance of the requirements of the regulatory enactments regulating employment legal relationships and labour protection; completely or partially suspend the activities of persons or objects subject to their supervision and control; impose administrative fines on employers, as well as on other persons for the examination of administrative violations in accordance with the procedures prescribed; in accordance with the procedures specified in regulatory enactments, issue to law enforcement institutions materials regarding the violations of regulatory enactments in respect of employment legal relationships and labour protection.

In 2006 the State Labour Inspectorate found 4287 violations (*inter alia* e.g. 1582 of employment contracts' provisions, 703 of wages' provisions, 1 of equal work's provisions) and in 850 cases fine was imposed, but in the rest cases - a warning.

In 2007 the State Labour Inspectorate found 5483 violations (*inter alia* e.g. 3256 of employment contracts' provisions, 814 of wages' provisions, 1181 of working and rest time's provisions) and in 1485 cases fine was imposed, but in the rest cases - a warning.

In 2008 the State Labour Inspectorate found 3386 violations and in 1571 cases (268 569 LVL) fine was imposed.

In 2009 e.g. the State Labour Inspectorate impose a fine in 111 cases of violations of employment contracts' provisions (44500 LVL), in 1 case of violation of prohibition of differential treatment (100 LVL), in 1 case of violation of minimum wage's provisions (600 LVL), in 95 cases of violations of provisions of dismissal (4355 LVL).

In the above mentioned cases were also situations, when employee, who was a trade union member, was dismissed before the consent of trade union and situations, when an employer did not conclude a collective agreement and did not come up with solution to suggestion to sign a collective agreement.

Query: *Whether there is a shift of the burden of proof in favour of workers alleging discrimination based on trade union membership?*

Response: Article 9 of the Labour law provides that it is prohibited to apply sanctions to an employee or to otherwise directly or indirectly cause adverse consequences for him or her because the employee, within the scope of employment legal relationships, exercises his or her rights in a permissible manner, as well as when if he or she informs competent institutions or officials regarding suspicions with respect to the committing of criminal offences or administrative violations in the workplace.

If in the case of a dispute, an employee indicates conditions, which could be a basis for the adverse consequences caused by the employer, **the employer has a duty to prove** that the employee has not been punished or adverse consequences have been directly or indirectly caused for him or her because the employee, within the scope of employment legal relationships, exercises his or her rights in a permissible manner (Paragraph two of Article 9 of the Labour law).

According to Paragraph three of Article 29 of the Labour law if in case of a dispute an employee indicates conditions which may serve as a basis for his or her direct or indirect discrimination based on gender, **the employer has a duty to prove** that the differential treatment

is based on objective circumstances not related to the gender of the employee, or also that belonging to a particular gender is an objective and substantiated precondition for performance of the relevant work or the relevant employment. Under Paragraph nine of Article 29 of the Labour law the provisions of this Article insofar as they are not in conflict with the essence of the relevant right, shall also apply to the prohibition of differential treatment based on race, skin colour, age, disability, religious, political or other conviction, national or social origin, property or marital status, sexual orientation or other circumstances of an employee.

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.

The Paragraph four of Article 18 of the Labour law is specified (21.09.2006) and now it envisages that if members of an organisation of employers or an association of organisations of employers employ more than 50 per cent of the employees in a sector, a general agreement entered into between the organisation of employers or association of organisations of employers and an employee trade union or an association (union) of employee trade unions shall be binding on all employers of the relevant sector and shall apply to all employees employed by the employers.

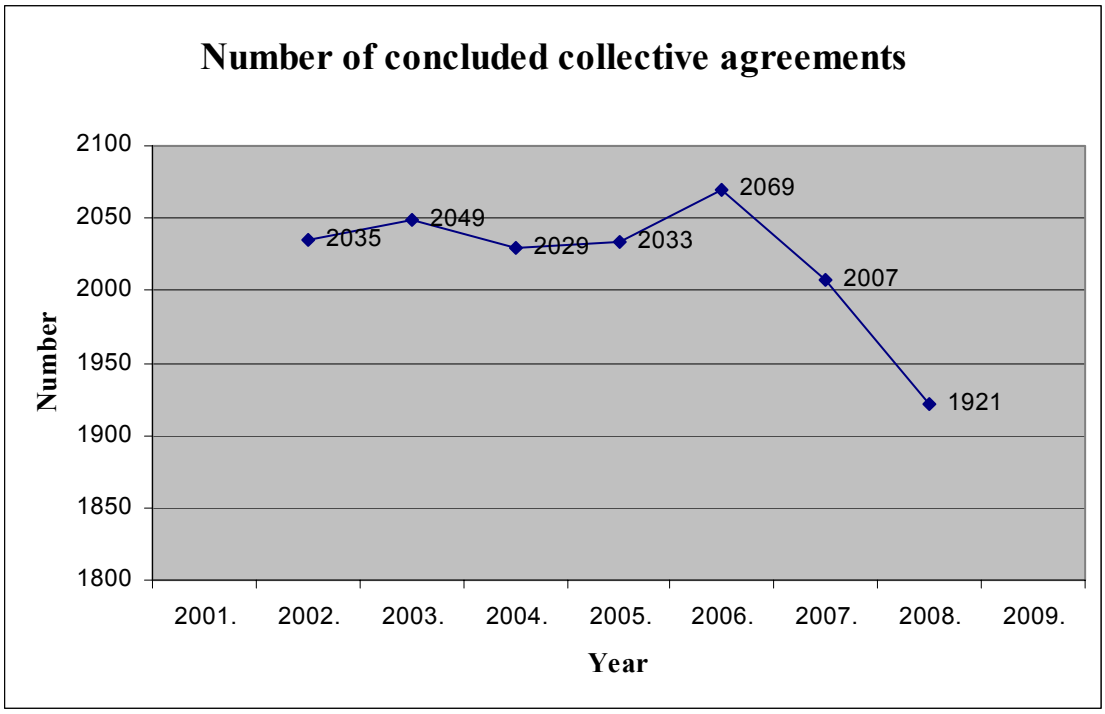
2. Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

On 1 January 2009 the Free Trade Union Confederation of Latvia (LBAS) has begun European Social Fund project „Strengthening of administrative capacity of the Latvian Trade Union Confederation" implementation. The main tasks of this project are: to sustain capacity and social dialogue in regions, performing informative activities (appropriate materials will be printed and published, namely, materials regarding enforcement of the European Union's directives in work places; development of social dialogue in regions etc.); to strengthen capacity, educating employees about indispensableness and possibilities of social dialogue, about importance and development of human resources, about current events of socio-economic activities in regions and role of trade unions in circumstances of regional reforms and branches restructuring.

The Employers' Confederation of Latvia (LDDK) performs similar project – "LDDK strengthening of administrative capacity in the regions". In the result of the project 5 regional structures of the LDDK will be functioning in Riga, Liepaja, Rezekne, Cesis and Jekabpils. This will ensure employers interests representation in the regions, employers education, social dialogue strengthening.

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

Number of concluded collective agreements:
In 2005 – 2033;
In 2006 – 2069;
In 2007 – 2007;
In 2008– 1921.



Responses to the Queries raised by the European Committee of Social Rights in its Conclusions XVIII-2 (Latvia) in relation to Article 6§1

Query: *Provide information regarding amendments of the regulations governing composition and rules of procedure of the National Tripartite Council as well as further information on the development of joint consultation at the national level.*

Response: The amendments of 20 September 2005 in the Regulation of the National Tripartite Cooperation Council (hereafter – NTCC) provided that the Council is composed by equal number of representatives of participating parties. Each participating party nominates nine representatives, *inter alia* a chairman or a chairwoman of each participating party and its substitute in the Council.

The provision that the Ministry of Welfare of the Republic of Latvia is responsible to activity of the Council is taken off the Regulation of the NTCC. The Prime Minister convenes the meeting of the Council. In absence of the Prime Minister the Minister of Welfare convenes the meeting of the Council.

Each of chairmen/chairwomen are authorized to initiate the convocation of the Council. The secretary of the Council insures technical activity of the Council. The secretary of the Council institutionally is subordinated to the director of the Chancellery and functionally – to the Prime Minister. Meeting of the Council is valid with nothing less than seven representatives of each participating party.

The institutional system of the NTCC comprises 7 sub-councils in accordance with the scope of issues considered by them. Four sub-councils have been established on the following issues: social insurance, professional education and employment, health care. From 2006 three new sub-councils of the NTCC started their work – Sub-council of Environmental Protection, Tripartite Cooperation Sub-council of Regional Development and Tripartite Cooperation Sub-council of Transport, Communications and Information Technologies.

The main contract establishing the framework of social dialogue at national level is the tripartite agreement from 1 October 2004, signed by the Free Trade Union Confederation of Latvia, the Employers' Confederation of Latvia and the Government. With this agreement the Free Trade Union Confederation has been recognized as one of the social partners at national level. By taking this stand, the Free Trade Union Confederation has always wanted and tried to work together with the Government and employers' organizations when adopting new laws, policies and other regulations. The Free Trade Union Confederation at national level works in the NTCC, where all the most important regulations and policies are discussed before reviewing and final adoption. Representatives of the Free Trade Union Confederation also always participate in different work groups and other types of meetings in the ministries. This form of social dialogue is even better, since there is a possibility to participate in decision making process from the very beginning. Thus there is the greater possibility to escape from the sharp disagreements later on. All eventual decisions are discussed among social partners at the stage of idea, which allows trade unions to explain the situation to employees in good time and it promotes the social peace in the society.

The next step of social dialogue is in the Cabinet of Ministers. If trade unions have not managed to convince the social partners at the level of the ministries, then the representative of trade unions participate in the meeting of the Cabinet of Ministers and expresses trade unions' opinion there. If trade unions' voice is not heard there, the next step is the Parliament, which finally adopts the laws. Representative of trade unions works in the commissions of the Parliament to ensure that deputies hear and listen to trade unions. This is generally the way how

trade unions and the Free Trade Union Confederation of Latvia is working in social dialogue. This process ensures that all decisions directly or indirectly concerning employees are adopted taking into account also the opinion of trade unions. The Employers' Confederation of Latvia is involved in decision making process in the same way as representatives of the Free Trade Union Confederation.

At the beginning of 2007 a new General Agreement has been signed with a purpose to serve as a basis for future cooperation, strengthening social dialogue on the national level between employers and employees and in the negotiations with the Saeima (Latvian Parliament), the Cabinet of Ministers and municipalities. The new General Agreement meets the present-day challenges – promotion of quality of education and employment, settlement of migration issues, optimization of tax burden and decrease of public management costs.

Over the years social partners' cooperation in the framework of the NTCC has been efficient. Since 2004, after joining of the European Union, intensive work in the framework of the NTCC has brought positive results for the society – both employers and employees. For example, in 2006 an important decision was made for allocation of budgetary resources in order to increase minimal wage from 90 to 120 Ls and allowance for dependant to 35 Ls, beginning with 2007, without lowering income tax rate, what would reduce illegal employment and promote growth of welfare level.

Current model of national level social and economical negotiations between trade unions, employers' organizations and the Government is well structured, with already rooted traditions and is appropriate model for Latvia.

The Employers' Confederation of Latvia regularly organizes meetings with its member organizations and member companies, where they are informed about the role of social dialogue at the sectoral and company level.

The Employers' Confederation of Latvia considers that in order to reach objectives of the Lisbon Strategy and goals of the National Development plan, within the framework of social dialogue there has been dialogue between the Employers' Confederation of Latvia and the Free Trade Union Confederation of Latvia about following objectives:

- rise competitiveness and innovations based free market economy and knowledge-based society;
- improve social partners' capacities to develop autonomous social dialogue at national, regional, branch and company level;
- increase the capacity of the government and communication with society on social dialogue issues;
- develop policy document on bipartite social dialogue;
- improve the mechanism of peaceful settlement of labour disputes;
- activate participation in social-economical activities and social dialogue on the European Union and international level, keeping string relations with the BUSINESSEUROPE, the European Economic and Social Committee, the Business and Industry Advisory Committee (BIAC) and the International Organization of Employers (IOE).

In addition on 12 April 2006 the Employers' Confederation of Latvia and the Free Trade Union Confederation of Latvia signed the agreement on the European Social partners' framework implementation about telecommuting and prevention of stress in work place.

On 11 February 2007 the Employers' Confederation of Latvia and the Free Trade Union Confederation of Latvia signed the agreement on the European Social partners' framework implementation about prevention of harassment and violence in work place.

Query: *The Committee asks for information on any development of social dialogue at sectoral or regional level and in particular on the implementation of the national plan for strengthening social dialogue at sectoral or regional level.*

Response: We would like to inform that Latvian National Development Plan is a medium-term strategic planning document for 2007-2013, approved by the Cabinet of Ministers of the Republic of Latvia on 4 July 2006 by adopting Regulations No 564.

It is a compass for politicians, public servants and all citizens of Latvia, determines Latvia's main development directions and shows the most important national aims on the way to the higher objective – a gradual increase in the quality of life.

A significant requirement for successful and democratic development of the country is cooperation between the public sector – state, local governments, non-governmental organisations (hereafter – NGOs) and social partners –and the private sector. A continuous dialogue between both groups, as well as their ability and desire to respect each other, to complement not conflict with each other, facilitates the formation, maintenance and security of a civil and united society, its stability and security. One of the task is to strengthen the role of trade unions and employers' organisations and their unions by assigning them more functions, e.g., forecasting market needs in a given sector and involving them in drafting long-term national economy plans; to promote delegation of public administrative tasks to the NGOs, to develop co-operation among the public and private sector, to ensure that the partnership becomes an important mechanism for the provision of public services and infrastructure.

Social partners and NGOs are a significant component and driving force in a civil society. Active involvement in problem solving, maintaining social dialogue and participation in local activities are only some of the possibilities characterising the ways in which these partners can help to implement the National Development Plan and involve the wider community.

An information about the National Tripartite Co-operation Council and social dialogue promotion also within the framework of the Latvian National Development Plan is mentioned above.

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.

Employment legal relationships are regulated by the Constitution, the norms of international law which are binding on the Republic of Latvia, Labour Law and other regulatory enactments, as well as by collective agreements and working procedure regulations.

According to the Labour Law (Article 17, Paragraph one) parties to a collective agreement shall reach agreement on the provisions regulating the content of employment legal relationships, in particular the organisation of work remuneration and labour protection, establishment and termination of employment legal relationships, raising of qualifications, work procedures, social security of employees and other issues related to employment legal relationships, and shall determine mutual rights and duties.

Concerning the wage system, bonuses and compensations for officials, employees and civil servants of the State Governance Offices, the Cabinet of Ministers has adopted on 20 December 2005 a special Regulation No 995 „Regulations On the System of Work Remuneration and Qualification Levels of Civil Servants, Employees and Officials of Institutions of Direct Administration and Employees of the Central Electoral Commission and the Central Land Commission, as well as Allowances and Compensation for Civil Servants".

These regulations state the maximum acceptable amount of allowances and bonuses for civil servants and state officials. Wherewith the norms of the Labour Law concerning additional payment for additional work, work in special conditions, night work, overtime work or work in holidays cannot be fully applied to the mentioned categories of workers as the law says that the amount of such kind of additional payment is provided by collective bargaining agreement.

Concerning the workers whose salaries come from the state budget the provisions of collective agreements cannot exceed the amount provided by regulations of the Cabinet of Ministers. Thus for these workers collective agreements cannot be viewed as completely voluntary agreement between the employer and workers representatives.

Although there is no necessity to receive an approval of collective agreement from the Government or any other special public authority, in practice the allocated budget for these institutions is taken into account when signing a collective agreement.

On 12 December 2008 was adopted and on 1 January 2009 came into force the Law "On Remuneration of State and Local Government Institutions' Officials and Employees in 2009". This law apply not only to the state and local government institutions, but also to the state and local government enterprises. Purpose of this law is to diminish all expenses to remuneration of state and local government institutions' officials and employees in 2009.

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

No change.

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.

Statistics on number of collective agreements are indicated above.

Responses to the Queries raised by the European Committee of Social Rights in its Conclusions XVIII-2 (Latvia) in relation to Article 6§2

Query: *Please confirm that the only authorisation required for the signing of the general agreement is the one provided for in the associations' statute.*

Response: We confirm that in fact the only authorisation required is the one provided for in the associations' statutes. The Paragraph two of Article 18 of the Labour law provides that to conclude a collective agreement parties need relevant authorisation or authorisation provided for in the associations' statutes.

Query: *The Committee understands that if general agreements are generally applicable, they shall be binding on all employers of the relevant sector and shall apply to all employees employed by the employers (Section 18§4 of the Labour law) also includes employers in the sector not being members of the relevant employer's organisation and asks to confirm that this interpretation of Article 18§4 of the Labour law is correct.*

Response: We confirm that this interpretation of Article 18§4 of the Labour law is correct.

Query: *Provide further details on what are the measures taken by the Government to promote collective negotiations.*

Response: We would like to inform about activities of competent institutions to promote collective negotiations. For example, in 2009 the State Labour Inspectorate has participated in 5 social dialogues. Until then, the social dialogue has not been a pressing method of labour relations adjustment.

In all cases the initiative came from sectoral trade unions by letter or by application describing the situation.

Inspection activities in promoting social dialogue in all cases have been as following:

1) listening to parties' arguments;
2) identifying problems;
3) commenting arguments on compliance with the Labour law;
4) striving/reaching for a compromise in negotiations;
5) providing a neutral environment for the negotiations.

In framework of project (the European Social Fund) of the Free Trade Union Confederation is planned to develop a data base for collective agreements and it is planned a social dialogue training to the representatives of the Free Trade Union Confederation. In projects of capacity of the Free Trade Union Confederation and the Employers' Confederation of Latvia is provided to create 5 consultants (from each party), who will inform people (enterprises and employees) of importance, use and benefit of social dialogue.

Query: *The Committee asks whether the same rules as in the private sector apply as regards collective negotiation procedures in the civil service or what other rules are applicable.*

Response: In compliance with the Paragraph four of Article 2 of the State Civil Service Law the norms of regulatory enactments regulating legal employment relations that prescribe the principle of equal rights, the prohibition of differential treatment principle, prohibition to cause adverse consequences, working hours and rest time, remuneration, the financial liability of employees and terms shall apply to the legal relations of the State civil service insofar as such are not prescribed by this Law. Consequently requirements of the Labour law as in the private sector apply as regards collective negotiation procedures also in the civil service.

However according to the Law on the Career Course of Service of Officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prisons Administration – norms of regulatory enactments regulating employment legal relationships shall not be applicable to officials (Article 3).

There is no direct regulation on signing the collective agreement for officials with Special Service Ranks Working in Institutions of the System of the Ministry of the Interior and the Prisons Administration. The only such a procedure of signing a collective agreement is mentioned in the Labour Law.

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 change.

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

No change.

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

There is not other appropriate information.

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.

Article 4 of the Strike Law provides certain restrictions to the right to strike. Judges, prosecutors, members of the police, fire-protection, fire-fighting and rescue service employees, border-guards, members of the State security service, warders and persons who serve in the National Armed Forces are prohibited to strike.

The amendment of 10 November 2005 in the Strike Law envisage new wording for Article 11 and 12. The Article 11 of the Strike Law provides that a trade union shall take a decision regarding the declaration of a strike at a general meeting of the members thereof convened in accordance with the procedures prescribed by the articles of association of the relevant trade union and in which more than half of the number of members of such trade union participate. A decision shall be taken if a simple majority of the members of the relevant trade union who are present have voted for it. The process and the results of the voting shall be recorded in the minutes.

If it is impossible to convene a general meeting of the relevant trade union due to the large number of the members or due to the specific nature of the work organisation, the decision regarding the declaration of a strike shall be taken at a meeting of authorised representatives of members of the trade union convened in accordance with the procedures prescribed by the

articles of association of the relevant trade union. A decision shall be taken if simple majority of the authorised representatives of the members of the relevant trade union who are present have voted for it. The process and the results of the voting shall be recorded in the minutes.

A trade union or authorised representatives of the members of a trade union, mentioned above, may take a decision regarding the declaration of a strike also on behalf those employees who are not members of the relevant trade union, if such employees have authorised the trade union or the authorised representatives of the members of the trade union.

Under Article 12 of the Strike Law employees shall take a decision regarding the declaration of a strike at a general meeting of employees of the relevant undertaking in which at least half of the number of the employees of this undertaking participate. The decision shall be taken when a simple majority of the employees of the relevant undertaking who are present have voted for it. The process and results of the voting shall be recorded in the minutes.

Under Article 23 of the Strike Law a strike or an declaration of a strike shall be regarded as illegal if:

1) the Strike Law has been violated;

2) the strike has been declared during the term of validity of a collective agreement which has already been entered into in order to change the conditions of this collective agreement, thus violating the procedures for amending a collective agreement referred to therein;

3) it is a strike of solidarity which is not related to the fact that the general agreement (regarding tariffs, labour and other social protection guarantees) has not been entered into or fulfilled; or

4) the strike is initiated in order to express political requirements, political support or political protest.

A strike shall be considered to be unlawful, if it pertains to the issues upon which the parties have already agreed during strike negotiations.

Amendments to the Strike Law were adopted on 10 November 2005 decreasing the notice period for the strike declaration to seven days (Article 28 of the Strike Law).

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

No change.

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.

There is not other appropriate information.

Responses to the Queries raised by the European Committee of Social Rights in its Conclusions XVIII-2 (Latvia) in relation to Article 6§4

Query: *The Committee asks to provide further examples of minimum services established during strike action in the aforementioned sectors (e.g. the health care sectors), if any.*

Response: Article 17 of the Strike Law provides that the employer and the strike committee shall ensure that during a strike, the minimum amount of the work is continued in the services, undertakings (companies), organisations and institutions necessary to public, the discontinuation of which would cause a threat to national security or the safety, health or life of the entire population, certain groups of inhabitants or particular individuals. Services necessary to public within the meaning of this Law shall be also public transport services.

For example, according to the Paragraph four of Article 6 of the Law on Public Transportation Services – a network of routes shall be established to satisfy public demand for public transportation services and to ensure that a network of routes can be used to visit educational institutions, health care institutions, workplaces and state and local government institutions during their normal (generally accepted) working hours.

In the same manner, forming a rout network out of cities, at first the possibility for pupils to visit educational institutions should be provided (Paragraph five of Article 6 of the Law on Public Transportation Services).

Taking into account beforehand mentioned reference contained in the Article 17 of the Strike Law, the minimum volume of services that public transport services should ensure, are:

- a network of routes can be used by pupils to visit educational institutions;
- a network of routes can be used to visit health care institutions;
- a network of routes can be used to visit state and local government institutions during their normal (generally accepted) working hours.

Query: *The refusal of an employee to perform minimum services would be regarded as a violation of his contractual obligations (Section 17(4) of the Strike Law). The Committee asks what are the liabilities an employee may incur in this context.*

Response: The Chapter 23 of the Labour law envisages the liabilities of employees. The Article 86 of the Labour law provides if an employee does not perform work without justified cause or performs it improperly, or due to other illegal or culpable action has caused losses to the employer, the employee has a duty to compensate the losses caused to the employer.

The employee shall be liable only for the reduction of the present property of the employer, but not for reduction in expected profit.

If losses to an employer have been caused with malicious intent of the employee or due to his or her illegal, culpable action not related to performance of the contracted work, the employee shall be liable for all losses to the employer.

An employee whose work is related to an increased risk of losses shall be liable only if losses to the employer have been caused as a result of malicious intent or gross negligence.

According to Article 87 of the Labour law an employee shall be fully or partially released from civil liability for losses caused to an employer if the employer himself or herself – by his or her orders or by failure to ensure appropriate working conditions – is also to blame for the losses. The extent of civil liability of the employee shall be determined depending on the circumstances,

especially taking into account the extent to which the balance of the fault has been that of the employee or of the employer.

Previously mentioned shall also apply when the employer has not warned the employee of the risk of causing such losses which the employee has not foreseen and he or she did not have to foresee, as well as when the employer has not taken appropriate care to prevent or reduce losses.

Depending on the circumstances, a court may reduce the extent of civil liability of an employee in conformity with his or her financial status.

If losses to an employer have resulted from illegal, culpable action of employees, the liability of each employee shall be determined in conformity with his or her participation in causing the losses and with the degree of his or her fault. Employees who in an employment contract have undertaken the performance of work as joint debtors shall be jointly liable for losses caused to the employer (the Article 88 of the Labour law).

Under Article 89 of the Labour law an employee may, wholly or in part, voluntarily compensate for losses caused to an employer. With the consent of the employer the employee, in order to compensate for losses, may transfer an item of equivalent value or repair the damage.

Article 90 of the Labour law envisages that an employer may give a written reproof or issue a reprimand in writing to an employee for violation of specified working procedures or an employment contract, referring to the circumstances that indicate the violation committed.

Prior to expressing a reproof or a reprimand, the employer shall familiarise the employee in writing with the essence of the violation he or she has committed and then request from him or her an explanation in writing regarding the violation committed.

A reproof or a reprimand may be issued not later than within a one-month period from the date of detecting the violation, excluding the period of temporary incapacity of the employee as well as the period when the employee is on leave or does not perform work due to other justified cause, but not later than within a six-month period from the date the violation was committed. Only one reproof or reprimand may be issued for each violation.

If the circumstances referred to in the reproof or reprimand do not conform to fact or also the circumstances are not such as to suggest violation of working procedures or the employment contract, the employee has the right to request that such reproof or reprimand be revoked in accordance with the procedures specified in the Labour law.

If a new reproof or reprimand has not been issued to the employee within a one-year period from the date of issuing a reproof or reprimand to the employee, the employee shall be regarded as not having been disciplined.

Query: *Whether an agreement between the parties on minimum services is a precondition for a strike to be lawful and whether the strike may only start after a final decision on the minimum services to be provided has been reached.*

Response: According to Paragraph three of Article 17 of the Strike law if necessary, not later than three days prior to the commencement of a strike, the employer and the strike committee shall agree in writing and designate from those employees who will participate in the strike a certain number of employees who will perform the minimum services (referred to in Paragraph one of Article 17) during the strike, as well as specify the amount of practical work of the employees referred to and give specific orders.

The refusal of an employee to perform the work agreed in the mentioned agreement, the aim of which is to ensure the functioning of the relevant service necessary to the public or the minimum necessary work to be performed during strike provided for by the contract of employment or collective agreement, shall be regarded as a violation of the work procedures, and the employee shall be held liable in accordance with the procedures prescribed by law.

Query: *What are the legal consequences of non-payment of social security contributions.*

Response: A mandatory insurance contributions gives the right to a socially insured person to receive social insurance services prescribed by law.

The object of mandatory contributions of an employer and employee is all calculated employment income. If the object of mandatory contributions is reduced mandatory insurance contributions decrease also. Consequently a socially insured person receive lower amount of social insurance services.

According to Section 159 of the Latvian Administrative Violations Code on evasion of taxes and payments imposed together therewith, as well as the concealment (reduction) of income, profit or other taxable objects – a fine shall be imposed on natural persons in the amount from LVL 100 to LVL 250, on legal persons – from LVL 500 to LVL 1500.

If an employer has not paid mandatory contributions of State social insurance (hereinafter – mandatory contributions) to the budget in the full amount, provisions of Section 32 of the Law on Taxes and Fees shall be applied.

Paragraphs one, two, three, four and seven of Section 32 of the Law on Taxes and Fees determine that if a taxpayer in violating requirements of tax laws reduces the tax amount to be paid into the budget, the tax administration through shall assess in the tax audit and recover from a taxpayer for the benefit of the budget the reduced tax amount, late interest payment and a fine which is set according to this law, unless specific tax laws provide for a different fine amount.

If the amount a taxpayer shall pay into the budget for the period for which the tax audit has been carried out is reduced by not more than 15 % of the declared amount, the fine shall be set in the amount of 30% of the undeclared tax amount to be paid into the budget.

If the amount a taxpayer shall pay into the budget for the period for which the tax audit has been carried out is reduced by more than 15% of the declared amount, the fine shall be set in the amount of 50% of the undeclared tax amount to be paid into the budget.

If the tax administration in the tax audit determines that a taxpayer has reduced the tax amount to be paid into the budget for the period for which the tax audit has been carried out, and thus committed a repeated violation, the fine shall be set in the amount of 70% of the respective undeclared tax amount.

If a taxpayer who has already committed a repeated violation within three years commits one or several more tax violations of the same kind, the fine shall be set in the amount of 100% of the tax amount which has not been declared by committing this violation.

In cases when an employer has missed a deadline for paying the mandatory contributions, Section 16 (2) of the Law on State Social Insurance shall be applied which determines that for missing the deadline for paying the mandatory contributions late interest payments shall be recovered from the timely unpaid amount of mandatory contributions (principle debt) for each day delayed according to the Law on Taxes and Fees.

If an employer employs an employee without entering into agreement, or pays an employee a salary which exceeds the amount indicated in official documents, that is, the so called 'envelope salary', Section 16.[1] of the Law on State Social Insurance shall be applied.

According to Paragraph 1 of Section 16.[1] of the above-mentioned law, if an employer has employed or employs a person without entering into employment, work-performance or carriage agreement, and an employer has assessed or paid, or had to assess and pay an employee an income from which mandatory contributions had to be assessed but this income is not presented in accounting records and in the report on mandatory state social insurance contributions from employees' labour income, personal income tax and the entrepreneur risk state fee in the reporting month submitted to the SRS and from which no mandatory

contributions were assessed, the tax administration shall recover from an employer mandatory contributions and fines in the amount of three times the mandatory contributions from the amount which corresponds to amount paid to a person, if it is possible to determine and if it exceeds the minimum salary set by the Cabinet of Ministers, or to the minimum salary set by the Cabinet of Ministers if the actual amount equals or is less than it, or if the actual amount is impossible to determine.

According to Paragraph $1.^{1}$ of Section $16.^{1}$ of the Law on State Social Insurance if an employer has employed or employs a person entering into employment, work-performance or carriage agreement but the income paid to them from which mandatory contributions had to be assessed, is not presented in the accounting records, in the report on mandatory state social insurance contributions from employees' labour income, personal income tax and the entrepreneur risk state fee in the reporting month submitted to the SRS and from which no mandatory contributions were assessed, the SRS shall recover from an employer mandatory contributions from the amount which corresponds to actual amount paid to a person and a fine in the amount of three times the mandatory contributions.

Paragraph 2 of Section $16.^{1}$ of the Law on State Social Insurance prescribes that if it is not possible to determine a period in which an employer employed a person without entering into employment, work-performance or carriage agreement, the tax administration shall recover from an employer mandatory contributions which are set from the amount referred to in Paragraph 1 of this Section for the whole calendar month when the violation was detected.

According to Paragraph 3 of Section $16.^{1}$ of the above-mentioned law if it is determined that an employer employed a person without entering into employment, work-performance or carriage agreement but it is impossible for the tax administration to identify the person employed, mandatory contributions shall be recovered in the procedure provided for in Paragraphs one and two of this Section without naming particular persons.

According to Paragraph 5 of Section $16.^{1}$ of the Law on State Social Insurance if for the persons referred to in Section 1 (2) (a) of this law an employer assessed mandatory contributions from salary which is lower than the minimum salary set by the Cabinet of Ministers and there are no justification documents confirming it, the tax administration shall recover from an employer mandatory contributions and a fine in the amount of three times the mandatory contributions from the amount corresponding to the amount of minimum salary set by the Cabinet of Ministers.