07/01/2014 RAP/RCha/EST/11(2014)

EUROPEAN SOCIAL CHARTER

11th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF ESTONIA

(Articles 2, 4, 5, 6, 21, 22, 28 and 29)

for the period 01/01/2009 – 31/12/2012)

Report registered by the Secretariat on 7 January 2014

CYCLE 2014

EUROPEAN SOCIAL CHARTER (REVISED)

11th Report of

the Republic of Estonia

On the accepted provisions

For the reference period 2009 – 2012

Articles 2, 4, 5, 6, 21, 22, 28 and 29

For the reference period 1/9/2012-31/12/2012

Article 26

For the period 1/9/2012-31/12/2012, report on articles 2, 4, 5, 6, 21, 22, 28 and 29, made by the Government of Estonia in accordance with Article C of the Revised European Social Charter, on the measures taken to give effect to the accepted provisions of the Revised European Social Charter, the instrument of ratification or approval of which was deposited on 11 September 2000.

For the period 2009–2012, report on article 26, made by the Government of Estonia in accordance with Articles A(3) and C of the Revised European Social Charter, on the measures taken to give effect to the accepted provisions of the Revised European Social Charter, the instrument of ratification or approval of which was deposited on 27 June 2012.

In accordance with Article C of the Revised European Social Charter and Article 23 of the European Social Charter, copies of this report have been communicated to the Estonian Central Federation of Trade Unions (EAKL), the Estonian Employees Unions Confederation (TALO) and the Estonian Confederation of Employers (ETK).

All Estonian legal acts that have been translated to English are available on the Internet at http://www.legaltext.ee/indexen.htm.

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ARTICLE 2 – THE RIGHT TO JUST CONDITIONS OF WORK

Article 2 paragraph 1 - Working hours

The General Legal Framework

01.07.2009 a new **Employment Contracts Act**[1] entered into force (hereinafter referred to as ECA), which section 3 of chapter 3 governs the work and rest periods for employees. Relevant information on working time and rest period was submitted to the Committee in 2009. No further changes have occurred in working time and rest period during the reporting period (2009-2012).

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 2§1 of the Revised Charter on the following grounds:

- shifts of up to twenty-four hours may be authorized for employee categories such as security guards, health care professionals, welfare workers, fire and rescue workers etc.;

- the authorized working hours of crew members on vessels engaged in short sea shipping may go up to 72 hours in any seven-day period.

As of 1 July 2009, when the new ECA entered into force, it is no longer permissible for surveillance and security staff, health and welfare workers, rescue workers and workers, whose collective agreement prescribes it, to perform up to 24-hour shifts with the consent of a labour inspector.

ECA (51§ (1)) provides a daily minimum rest period rule, which requires an employee to rest for at least 11 consecutive hours within a 24-hour period, i.e. as a rule, the working time should be no more than 13 hours.

[1] Employment Contracts Act is available in English:

http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=XXXX060K2&keel=en&pg=1&ptyyp=RT&tyyp=X&query=t%F6%F6lepingu+s .

Nevertheless, ECA does not preclude over 13-hour shifts, but those are only permitted in very limited circumstances. Over 13-hours long work days can only be performed under a collective agreement in the cases specified in Article 17(3) of Council Directive 2003/88/EC, and provided working does not harm the employee's health and safety (ECA § 51). Specifications require risk assessment of working environment, evaluating, whether failure to follow rest time limitation could impair the employee's health and safety. The occupational hazards of working environment and the nature of the work should be assessed in conjunction with the effects and dangers of longer working periods.

Specifications can be made by collective agreements in such cases, where the employee's workplace and residence are located far from each other, or that require service/production continuity, also for gas, water and electricity production, for security and surveillance staff, port and airport staff and passenger transport workers, etc. If an employee works more than 13 hours over a period of 24 hours they are required to receive additional time off, immediately after the end of the working day, equal to the number of hours by which the 13 working hours were exceeded (ECA § (51) 5)). Money reimbursement of additional rest time is not allowed. This work-rest time regulation is in accordance with Directive 2003/88/EC concerning certain aspects of the organisation of working time.

The maximum allowed working hours for crew members working on SSS (short sea shipment) vessels is 72 hours per seven day period. Since 2010, the Ministry of Social Affairs has been negotiating with social partners to take ILO Maritime Labour Convention and Work in Fishing Convention into Estonian law. Transposition of conventions changes the working and rest time regulation significantly. For example, the crew members working time will be changed so that the weekly maximum working time of crew members shall be replaced with weekly minimum rest time regulation. As of now, the Seafarers Act draft has passed two formal coordination rounds and the Ministry of Social Affairs has received feedback from other ministries and social partners. The draft will go into effect on 1 July 2014.

The Measures Taken to Implement the Legal Framework

In addition to above information, we would like to announce that a national work life web page[2], was created as a joint cooperation between the Ministry of Social Affairs, Labour

[2] Work Life Portal is available here: www.tööelu.ee and www.tooelu.ee .

Inspectorate, Health Board and The National Institute for Health Development in 2012, bringing together a variety of work life information on work relationships, work environment, health and safety, and other related topics. Portal includes all information materials, which the above mentioned state agencies prepare and it is used to spread that information. Currently the information in the portal is in Estonian, but before the end of 2013, a large amount of that information will be available in Russian and partly in English. Information in the portal will be supplemented on an on-going basis.

Upon ECA's entry into force, the Ministry of Social Affairs prepared explanations on the Employment Contracts Act, which were available at the Ministry website and in the Work Life Portal. In 2013, we supplemented the previous version and issued explanations in book form. The book contains in-depth and detailed explanations on each ECA provision. The book explaining the Employment Contracts Act was distributed through social partner's organizations (trade unions and employers' umbrella organizations, professional organizations, etc.); electronic version is available on the Ministry of Social Affairs website and on Work Life Portal. The web version of explanations to Employment Contracts Act is updated on an on-going basis.

In addition to the above, the Ministry of Social Affairs issued a booklet on working and rest time. Booklet is in Estonian, Russian and English and it is available at the Ministry's website and Work Life Portal[3].

Pertinent Figures, Statistics and other Relevant Information

Table 1. The employees' average weekly working time, 2009-2012, in hours

	2009	2010	2011	2012
Employees in total	38,7	38,7	38,7	38,8
Part-time employees	21,6	21,3	21,0	20,6
Full-time employees	40,6	40,7	40,6	40,7

Source: Statistical Office, Estonian Labour Force Survey

There is no detailed statistical data on these jobs.

[3] www.tööelu.ee and www.tooelu.ee

Table 2. Employment supervision and violations, 2009-2012

	2009	2010	2011	2012
Number of inspected enterprises	318	689	557	539
Number of violations	609	1566	1691	1626
Number of Employment Contracts Act violations	269	1193	1404	1400
...incl. informing of working conditions	9	855	1152	1101
...incl. work and rest time	137	157	167	243

Source: the Labour Inspectorate

Table 3. Work and rest time violations, 2009-2012

	2009	2010	2011	2012
§ 43 (1), (2): work time exceeds allowed norm		5	11	5
§ 43 § (4): minor's work time exceeds allowed norm		1	5	2
§ 46 (1): average work time exceeds 48 hours per 7 days		15	5	10
§ 46 (2): extending the accounting period without a collective agreement or more than 12 months		1	5	2
§ 46 (3): average work time exceeds 52 hours per 7 days		3	3	4
§ 46 (5): failure to maintain records on employees	2	3	8	8
§ 47 (2): break less than 30 minutes over 6 hours of work		19	20	37
§ 47 (3): minor's break is less than 30 minutes over 4.5 hours of work				1
§ 48 (1): on-call time less than 1/10 of agreed salary		1	1	
§ 48 (2): on-call agreement does not guarantee rest time		1		1
§ 49: violation of restriction on requiring minor to work			6	1
§ 51 (1): violation of daily rest time requirements	3	47	45	71
§ 51 (2): violation of daily rest time requirements of a minor		1	2	3
§ 52 (1): less than 48 hours of consecutive rest time		4	6	13
§ 52 (2): less than 36 hours of consecutive rest time	3	13	17	41

Source: the Labour Inspectorate

During 2009-2012, the Labour Inspectorate has imposed a total of eight fines to legal persons for failing to follow work time restrictions (2009-1; 2010-1; 2011-3; 2012-3). 1 fine for failure to provide daily rest time (2012) and 7 fines for failure provide weekly rest time (2012).

Article 2 paragraph 2 - The right to public holidays with pay

The General Legal Framework

A new ECA entered into force on 1 July, 2009, which § 45 regulates compensation for work done on public holiday. Relevant information was submitted to the Committee on 2009. There have been no further changes in the regulation governing compensation for work done on public holiday during the reporting period (2009-2012).

The Measures Taken to Implement the Legal Framework

Please see answers to Article 2 paragraph 1.

Pertinent Figures, Statistics and Other Relevant Information

There is no statistical data on work done on public holiday.

Violations statistics on uncompensated work done on public holiday has been presented together with uncompensated night work.

Table 4. Number of violations, 2009-2012

	2009	2010	2011	2012
Uncompensated night work and/or work done on public holiday	-	24	16	12

Source: the Labour Inspectorate

Article 2 paragraph 3 - The right to a annual holiday with pay

The General Legal Framework

New ECA entered into force on 1 July 2009, which division 4 of chapter 3 regulates holiday. Relevant information on holiday was submitted to the Committee on 2009, and there have been no further changes in the regulation governing holiday reporting period (2009-2012).

The Measures Taken to Implement the Legal Framework

Please see answer to Article 2 paragraph 1.

Pertinent Figures, Statistics and Other Relevant Information

According to a study on the implementation of the Employment Contracts Act[4], 85% to 89% have taken 28 or more calendar days of rest, 11% to 15% employees have rested for less than 28 calendar days. According to the study, last two years (2011-2012), the base holiday of some employees in 35%-44% of enterprises and establishments has been less than 28 calendar days and unused holiday days were transfered to the next calendar year. Reasons why employees took less than 28 calendar days for holiday were following:

a) did not want a longer holiday (24-40% of employees with shorter rest time);
b) work load did not allow for longer holiday (21-37%);
c) employer did not allow for longer holiday (3-14%);
d) had not worked for the employer long enough to get 28 calendar days of holiday (19-25%).

According to the survey, 7% to 11% of employees have not used their holiday in last two years and the holiday days have expired.

Employers have asked 11-15% of employees for the postponement or interruption of holiday and continue performance of duties. In employees' estimation, employers wanted the postponement or interruption of holiday to ensure a better organization of work (65-80% of cases); to prevent damage to an enterprise or establishment (17-31% of cases).

[4] Source: Praxis Center for Policy Studies (2013). Employment Contracts Act Study

8-13% of enterprises, establishments have postponed or interrupted employees' annual holiday to prevent damage due to unforeseen emergency.

Question

In its previous conclusion (Conclusions 2007), the Committee wished to receive further information on the circumstances under which leave maybe postponed, whether any leave so postponed must be taken within a set time frame and whether all a years leave may be postponed or whether a proportion must be taken the year it falls. The report does not provide any information on this subject. The Committee therefore repeats its requests.

According to ECA § 69 (2) an employer draws up a holiday schedule for each calendar year and communicates it to the employee within the first quarter of the calendar year. As a rule, an employer cannot unilaterally change holidays in holiday schedule. Holiday schedule can be changed only by agreement of the parties, with exception of annual holiday amendments, which are due to:

1. employer's unforeseeable work organization emergency. Employer-sided interruption or postponement of a holiday is regulated by ECA § 69 (5), which provides that an employer has the right to interrupt or postpone a holiday due to an unforeseen substantial work organization-related emergency, in particular for prevention of damage. These are exceptional situations that cannot be resolved otherwise than by an employer calling an employee to work and changing the work schedule. In above cases, the employer shall compensate the employee for expenses arising from the interruption or postponement of the holiday. If the holiday was interrupted or postponed, the employer shall be obligated to grant the employee the unused portion of the holiday immediately after the circumstance interrupting or postponing the holiday ceases to exist or, by agreement of the parties, at another time;
2. an employee has the right to interrupt, postpone or terminate prematurely a holiday due to significant reasons arising from the person of the employee. Employee-sided holiday interruption or postponement is regulated by ECA § 69 (6), which provides that an employee has the right to interrupt, postpone or terminate prematurely a holiday due to significant reasons arising from the person of the employee, in particular due to temporary incapacity for work, pregnancy and maternity leave or participation in a strike. These are, for example, situations, where an employee gets sick before going on or during a holiday, goes on pregnancy and maternity leave, or

has a certificate for care leave for a sick child. In such cases, the employee has the right to demand the unused part of the holiday immediately after the impediment to using the holiday ceases to exist or, by agreement of the parties, at another time. The employee shall be obligated to notify the employer of an impediment to using the holiday at first opportunity.

According to ECA § 68 (5), the unused part of the holiday should be transferred to the next calendar year. Unused part of the holiday means a holiday, which use was impeded by, for example, enterprise emergency, reasons or circumstances arising from the person of the employee, and which, for objective reasons, could not be used during the same calendar year.

Article 2 paragraph 5 - The right to a weekly rest period

The General Legal Framework

A new ECA entered into force on 1 July, 2009, which § 52 regulates weekly rest time, relevant information on weekly rest time was submitted to the Committee on 2009, and there have been no further changes in the regulation governing the weekly rest time during the reporting period (2009-2012).

The Measures Taken to Implement the Legal Framework

Please see answer to Article 2 paragraph 1.

Pertinent Figures, Statistics and Other Relevant Information

There is no statistical data on the postponement of weekly rest time.

Statistics on violations provided below.

Table 5. The Labour Inspectorate statistics on employment supervision and violations, 2009-2012

	2009	2010	2011	2012
Number of inspected enterprises	318	689	557	539
Number of violations	609	1566	1691	1626
Number of Employment Contracts Act violations	269	1193	1404	1400
...incl. work and rest time	137	157	167	243

Source: The Labour Inspectorate

Table 6. Weekly rest time related violations, 2009-2012

	2009	2010	2011	2012
§ 52 (1): less than 48 hours of consecutive rest time		4	6	13
§ 52 (2): less than 36 hours of consecutive rest time	3	13	17	41

Source: the Labour Inspectorate

Question

The Committee points out that weekly rest periods may not be replaced by financial compensation and that employees may not forfeit their rest. Although the rest period must be weekly, it may be deferred until the following week provided that no-one is made to work more than twelve days in succession before being granted a two-day rest period. The Committee asks for information in the next report on exceptions to the rules on weekly rest periods.

Estonian law does not allow employee's weekly rest time to be transferred over to the next week. An employee must be allowed to use the weekly rest time on each week.

Article 2 paragraph 6 - The right to written information upon commencement

The General Legal Framework

A new ECA entered into force on 1 July, 2009, which § 5 and 6 provide a list of employment contract conditions, of which the employee should be notified, and a procedure for notifying employees of working conditions. Relevant information on notifying of employees of working conditions was submitted to the Committee on 2009 and no further changes in the regulation have occurred during the reporting period (2009-2012).

The Measures Taken to Implement the Legal Framework

Please see answer to Article 2 paragraph 1.

Pertinent Figures, Statistics and Other Relevant Information

According to the study on the implementation of ECA[5] 2.6-4.8% of employees said that their employment contract was concluded verbally and 1-2.7% of enterprises, establishments said that the employment contracts are concluded verbally. Written employment contract is concluded before the first working day for 56-62%, in first two weeks for 28-33%, and 3.9-6.5% of employees said that that the written contract was concluded after two weeks.

[5] Source: Praxis Center for Policy Studies (2013). Employment Contracts Act Study

Table 7. Notification of working conditions, employees' and employers' assessments

	Employees' assessment	Employer's assessment
All working conditions provided in written employment contract	57-63%	47-53%
Most of working conditions provided in written employment contract, employer notified of some working conditions verbally.	29-35%	42-48%
Verbal notification of most of working conditions, some conditions provided in written employment contract.	2.8-5%	3.3-6%
Verbal notification of all working conditions	1.5-3.2%	0-0.7%

Source: Employment Contracts Act Study 2013, Employee and Employer Surveys

Table 8. Employment supervision and violations, 2009-2012

	2009	2010	2011	2012
Number of inspected enterprises	318	689	557	539
Number of violations	609	1566	1691	1626
Number of Employment Contracts Act violations	269	1193	1404	1400
...incl. informing of working conditions	9	855	1152	1101
...incl. work and rest time	137	157	167	243
...incl. wages	62	34	10	11
...incl. fulfilling notification and consultation obligation	0	0	2	5
...incl. other	61	147	73	40

Source: the Labour Inspectorate

Question

The labour inspectorate monitors compliance with these obligations and brings proceedings against employers who are in breach of them. According to the report, the labour inspectorate carried out 1 727 inspections in 2005 and 1 244 in 2008. However there is no information on offences recorded concerning employment contracts. The Committee asks for information in the next report on the labour inspectorate's activities regarding compliance with the legislation on employment contracts.

This information is provided in Table 8. Pertinent Figures, Statistics and Other Relevant Information of this Article.

Article 2 paragraph 7 - Night work

The General Legal Framework

A new ECA entered into force on 1 July, 2009, which § 50 provides limitations on night work. Night work is also regulated by **Occupational Health and Safety Act**[6] ((hereinafter TTOS). Relevant information was submitted to the Committee on 2009 and no additional changes have occurred in night work regulation during the reporting period (2009 - 2012).

The Measures Taken to Implement the Legal Framework

Please see answer to Article 2 paragraph 1.

Pertinent Figures, Statistics and Other Relevant Information

Table 9. The proportion of evening and night workers, 2009-2012 (%)

	2009	2010	2011	2012
Evening workers (at 18:00-24:00)	36.0	39.2	38.8	38.5
Night workers (24:00-06:00)	13.7	13.4	13.5	12.5

Note: According to Estonian Labour Force Survey night work is between hours 24.00 - 06.00. According to ECA § 45, in Estonia, night work is work between hours 22.00 - 06.00.

Source: Statistical Office, Estonian Labour Force Survey

According to Estonian Labour Force Survey 2009, 9.6% of employees of enterprises and establishments, which employed more than five employees, worked at night (between 10 PM and 6 AM).

[6] Occupational Health and Safety Act is available in English at:

http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=X30078K8&keel=en&pg=1&ptyyp=RT&tyyp=X&query=t%F6%F6tervishoiu

According to ECA Implementation Study[7] 23-28% of enterprises/agencies have used night work (i.e. from 22:00 to 06:00) in last three years (2010-2012).

Table 10. Number of night work related violations, 2009-2012

	2009	2010	2011	2012
Not compensating for night work and/or work done on public holiday	-	24	16	12
Violating night work limitation		10	5	12

Source: the Labour Inspectorate

Question

Under section 13§1 of the occupational health and safety legislation, night workers must undergo a medical examination prior to starting night work and receive regular examinations in the course of their employment. Employees are entitled to ask to be reassigned to daytime duties for reasons of health. In the absence of information in the report, the Committee asks again whether there are any circumstances besides health grounds that the employer is obliged to consider and explore possibilities of transfer to daytime work.

According to TTOS § 13 (1) 7)[1] an employer is required to organize provision of medical examinations for employees who work during night-time, before they start night work as well as with regular intervals during work, and bear the costs related thereto. According to TTOS § 13 (1) 3), an employer is required to organize risk assessment of the working environment to ascertain working environment hazards, and assess the risks to the health and safety of an employee. An employer shall submit employee related risk assessment data (their potential contact with hazards, contact level and duration) to an occupational health doctor. An occupational health doctor conducting a medical inspection shall assess night work risks on the employee's health. Taking account of the health status the employee and contraindications for night work, the doctor can make recommendations to the employer to improve the employee's working conditions, to change their duties or organization of working time, e.g. shortening of the working day, allowing a suitable break or transferring the employee to another, incl. daily work time either on temporary or permanent basis. There is no legal basis for transferring an employee to day work other than employee's health status.

[7] Source: Praxis Center for Policy Studies (2013). Employment Contracts Act Study

ARTICLE 4 – THE RIGHT TO A FAIR REMUNERATION

Article 4 paragraph 2 - The right to an increased remuneration rate for overtime work

The General Legal Framework

A new ECA entered into force on 1 July, 2009, which § 44 regulates overtime work, relevant information on overtime work was submitted to the Committee on 2009. There have been no further changes in the regulation on overtime work payment during the reporting period (2009-2012).

The Measures Taken to Implement the Legal Framework

Please see answer to Article 2 paragraph 1.

Pertinent Figures, Statistics and Other Relevant Information

Table 11. Proportion of employees working overtime, 2009–2012 (%)

	2009	2010	2011	2012
TOTAL	3,1	3,4	3,8	3,5
The proportion of employees financially compensated for overtime	1,9	1,8	2,3	2,0
The proportion of employees financially uncompensated for overtime	1,2	1,6	1,5	1,5

Source: Pertinent Figures, Statistics and Other Relevant Information, Estonian Labour Force Survey

ECA implementation survey[8] revealed that 53-60% of enterprises/establishments have done overtime work in the last three years (2009-2012. 33-40% enterprises/establishments said that overtime work is compensated by granting time off, 28-36% enterprises, agencies compensated overtime work financially, and 27-34% enterprises, establishments

[8] Source: Praxis Center for Policy Studies (2013). Employment Contracts Act Study

compensated overtime by both time off and additional remuneration. 0-2% of enterprises, establishments do not compensate for overtime work.

Table 12. Number of violations by not compensating for overtime work or for compensating to a lesser extent than prescribed, 2009-2012

	2009	2010	2011	2012
Number of violations	-	8	12	18

Source: the Labour Inspectorate

Question

In its previous conclusion (Conclusions 2007) the Committee noted that employees who had decision-making powers were not subject to standard limits on overtime. It asked some questions in respect of this category of workers and deferred its conclusion. The report provides no information on this matter. The Committee asks the next report to indicate whether there are any safeguards to protect senior managers who fall under this exception from working excessively long hours.

ECA overtime regulation applies to all employees, including employees' capability to take decisions. The employer must comply with all the legal limits on overtime work for all persons with whom they have concluded an employment contract. In a situation, where an employment contract is concluded with an employee who has the capability to take decisions, the employer cannot depart from legal work time limits when assigning overtime work to such employee.

Question

The Committee asks the next report to provide information on whether the Labor Inspection has identified any breaches related to the failure to pay overtime wages.

Answer is provided in table 12.

Article 4 paragraph 3 - The right to equal pay without discrimination on grounds of sex

Question

Following the decision taken by the Committee of Ministers in 2006 regarding a new system of presentation of reports and the setting up of four thematic groups, as well as taking into account the importance of matters related to equality between women and men with respect to remuneration, the Committee decided to change the above mentioned rule. This change will lead to the examination of the right to equal pay, both under Article 4§3 and Article 20, thus every two years (under the thematic group 1 "Employment, training and equal opportunities", as well as thematic group 3 "Labour rights"). Henceforth, the Committee invites Estonia to include all information on equal pay every time it reports on Thematic Group 1 and every time it reports on Thematic Group 3.

The General Legal Framework

On 1st of July 2009 the new **Employment Contracts Act** (ECA) entered into force. The ECA § 5 subsection 1 clause 5 foresees that a written document of an employment contract has to contain also information about the agreed remuneration payable for the work (wages), including remuneration payable based on the economic performance and transactions, and the manner of calculation, the procedure for payment and the time of falling due of wages (pay day), also taxes and payments payable and withheld by the employer. The information about remuneration has to be communicated in good faith, clearly and unambiguously. State supervision over communicating this data is exercised by the Labour Inspectorate who has a right, in case the data is not presented, to start a misdemeanor procedure and obligate the employer to pay a fine.

The ECA also obligates employer, at the request of an employee, to provide the employee with information about the wages calculated and paid or payable to the employee, and provide other notices characterizing the employee or the employment relationship.

After coming into force of the new ECA the only specific regulation concerning equal treatment of men and women (including pay equality etc.) in employment contracts remains in the **Gender Equality Act** (GEA). There is though a general provision in the Employment

Contracts Act obliging employers to ensure the protection of employees against discrimination, to follow the principle of equal treatment and to promote equality in accordance with the **Equal Treatment Act** (ETA) and the GEA.

Regarding equal pay some changes were made into the new redaction of GEA that was enforced on 23rd October 2009. Thus, according to the new regulation (§ 6) the activities of an employer are also deemed to be discriminating if the employer:

1) upon making a decision listed in § 6, overlooks a person or treats the person less favorably in any other way due to pregnancy, child-birth, parenting, performance of family obligations or other circumstances related to gender. In order to support this regulation, another additional subsection (§ 6 subsection 4) was added prohibiting employers and legal persons in private law or sole proprietors entered in the register of economic activities as labour market service providers to request information concerning these circumstances from the persons wishing to find employment;
2) upon hiring, establishes conditions which put persons of one sex at a particular disadvantage compared with persons of the other sex. Also an obligation of an employer concerning promoting equality of men and women (§ 11) was specified concerning the aspect of recruitment. § 11 subsection 1 clause 1 now states that an employer should act in such a way that his or her activity would support the application of both, men and women for vacant positions and that persons of both sexes are employed to fill vacant positions;
3) establishes conditions for remuneration or conditions for the provision and receipt of benefits related to employment relationship which are less favorable regarding an employee or employees of one sex compared with an employee or employees of the other sex doing the same work or work to which equal value is attributed.

The regulation in the GEA concerning the right of an employee to demand explanations from the employer (§ 7) has remained same since described in the previous report on Article 20.

According to the GEA discrimination disputes are resolved by a court or a labour dispute committee. Discrimination disputes are resolved by the Chancellor of Justice by way of conciliation proceedings. Also, the Gender Equality and Equal Treatment Commissioner can give an opinion on discrimination having/not having taken place. In order to raise the efficiency of the Gender Equality and Equal Treatment Commissioner in equal pay cases, the Equal Treatment Act provides from October 2009 specifically that the Commissioners` right to obtain information includes also information concerning the remuneration calculated, paid

or payable to an employee, the conditions for remuneration and other benefits. It must be noted though, that the opinions of the Gender Equality and Equal Treatment Commissioner are not legally binding.

The Measures Taken to Implement the Legal Framework

In order to promote gender equality in working life, the Estonian European Social Fund programme "Promotion of Gender Equality in 2008 – 2010" was implemented. Under this programme a gender pay gap study was conducted. It demonstrated that there is no one specific reason behind the gender pay gap in Estonia but its causes are diverse. Based on this result policy recommendations were prepared by researchers.

In spring 2011 several initiatives were taken by the representatives of civil society addressing the gender pay gap in Estonia. One example of these is Estonian Association of Business and Professional Women who organized an equal pay day campaign on April 12, 2012. A number of restaurants offered a discount to women on meals and drinks equal to the gender pay gap (30.9%).

1) In September 2011, the Parliament adopted a decision with a proposal to the Government to prepare an action plan to reduce gender pay gap in Estonia. The action plan was prepared by the Ministry of Social Affairs and the plan and the topic of gender pay gap was discussed at the cabinet meeting of the Government in July 2012. The action plan was approved and in autumn 2012 introduced to the Parliament. There are five objectives set in the action plan:
2) improving the implementation of the existing Gender Equality Act (e.g. improvement of the collection of statistics, awareness raising, supporting the work of the Gender Equality and Equal Treatment Commissioner etc.);
3) improving the possibilities of reconciling work, family and private life (e.g. activities targeting employers);
4) gender mainstreaming, especially in the field of education;
5) reducing the gender segregation;
6) analyzing the organizational practices and pay systems in the public sector, improving the situation where necessary. The activities are mostly planned to be implemented with the financial support from the Estonian European Social Fund programme "Promoting Gender Equality 2011-2013" and the gender equality and work-life balance programme financed from the Norwegian Financial Mechanism, executed in 2012-2015.

The Ministry of Social Affairs is currently implementing the Estonian European Social Fund programme “Promoting Gender Equality 2011-2013”. In the framework of this programme several activities related to pay gap were conducted including:

- A conference “Let’s Talk about the Pay Gap” was held in May 2011 to analyze and discuss the findings of the extensive study on gender pay gap conducted in 2010.
- A debate with Estonian Parliament politicians also took place where the policy recommendations formulated by the researchers were discussed.

- Additionally, 4 regional seminars were held in different parts of Estonia in April 2012 to continue to raise awareness of relevant stakeholders and target groups about the existence and causes of the gender pay gap in Estonia.

In autumn 2012 the programme for gender equality and work-life balance, to be executed in 2013-2015 with the funding by the Norwegian Financing Mechanism was approved. In the framework of the programme two pre-defined projects are being implemented – one with an aim of promoting gender equality through empowerment and mainstreaming by the Gender Equality and Equal Treatment Commissioner and other for developing a new concept for gathering and analyzing gender pay gap statistics by the Statistics Estonia. Latter project is very important for being able to provide data on gender pay gap more often than it has been possible up to now. Additionally, open calls are being held in 2013 to promote gender equality through the formation and/or implementation of systemic structures that raise awareness of gender equality among various target groups and stakeholders and to promote balance between work, private, and family life.

It must also be noted that “the employers' regulation” is currently under active development in the Ministry of Social Affairs. Namely, GEA § 11 (2) prescribes that an employer shall collect sex-disaggregated statistical data concerning employment that allow, if necessary, the relevant institutions to monitor and assess whether the principle of equal treatment is complied with in employment relationships. The procedure for the collection of data and a list of data shall be established by the Government of the Republic by a regulation. Thus, this regulation makes an important contribution to identifying whether the pay for equal work is the same for male and female workers.

Pertinent Figures, Statistics and other Relevant Information

When comparing the hourly earnings of women and men taking into account the fields of economic activity, in 2011, the gender pay gap was 22,9%, in 2012 slightly larger again – 24,65%. Among economic activities the gender pay gap continued to differ considerably. The gap was the largest in wholesale and retail trade (31,8% in 2011, 33,79% in 2012), mining and quarrying (32,3% in 2011, 33,93% in 2012) and financial and insurance activities (37,2% in 2011, 43,34% in 2012), and the smallest in public administration and defense; compulsory social security (10,2% in 2011, 9,76% in 2012), administrative and support service activities (9% in 2011, but 16,74% in 2012), water supply, sewerage, waste management and remediation activities (11,8% in 2011, 8.17% in 2012) and transportation and storage (5,6% in 2011, 2,42% in 2012).

Table 13. Average gross hourly earnings of male and female employees in Estonia in 2012 by economic activity

2012	Men EUR	Women EUR	Wages and salaries gap %
Economic activities total	5.68	4.28	24.6
Agriculture, forestry and fishing	4.15	3.86	7.0
Mining and quarrying	6.66	4.40	33.9
Manufacturing	5.75	3.97	31.0
Electricity, gas, steam and air conditioning supply	6.90	5.63	18.4
Water supply; sewerage, waste management and remediation activities	5.02	4.61	8.2
Construction	5.63	4.39	22.0
Wholesale and retail trade	5.86	3.88	33.8
Transportation and storage	4.54	4.43	2.4
Accommodation and food service activities	3.87	3.16	18.3
Information and communication	8.82	6.19	29.8
Financial and insurance activities	11.49	6.51	43.3
Real estate activities	3.83	3.23	15.7
Professional, scientific and technical activities	6.87	5.67	17.5
Administrative and support service activities	4.78	3.98	16.7
Public administration and defense; compulsory social	5.84	5.27	9.8

security			
Education	5.24	3.91	25.4
Human health and social work activities	6.37	4.63	27.3
Arts, entertainment and recreation	5.16	3.71	28.1
Other service activities	3.35	2.93	12.5

Source: Statistics Estonia

With the regard to the gender pay gap by occupation, then in 2010, Estonian women in all occupations earned less by work hour than their male colleagues. The average gender pay gap across occupations is 21.88% in favour of men. Percentage-wise, the highest gender pay gaps are among plant and machine operators and assemblers and professionals; the lowest pay gap for female workers compared to their male colleagues was among skilled agricultural, forestry and fishery workers. The gender pay gap among male and female managers is also relatively small, compared to many other occupations. Additional information needs to be collected to explain the wage gap.

Table 14. Average gross hourly earnings of male and female employees in Estonia in 2010 by group of occupation

2010	Men EUR	Women EUR	Gender Pay Gap EUR	Gender Pay Gap %
Managers	8,50728	7,08652	1,42076	16,70052003
Professionals	7,92441	5,95337	1,97104	24,87301894
Technicians and associate professionals	6,02751	4,57927	1,44824	24,02716876
Clerical support workers	4,74544	3,70304	1,0424	21,96635085
Service and sales workers	3,43461	2,74309	0,69152	20,13387255
Skilled agricultural, forestry and fishery workers	3,61932	3,34833	0,27099	7,48731806
Craft and related trades workers	4,47062	3,07415	1,39647	31,236607
Plant and machine operators, and assemblers	4,28016	3,17321	1,10695	25,86235094
Elementary occupations	3,08438	2,32894	0,75544	24,49244257
AVERAGE	5,121525556	3,99888	1,122645556	21,86440552

Source: Statistics Estonia

Earnings of women and men also differ by age group. Women's earnings have been lower in the period of 2005-2010 in every age group. The biggest gender differences in gross hourly earnings appeared in the age group of 30-39 year olds (28,4% in 2005, 27,6% in 2008, 26,8% in 2010), that is when women participate in the labour market and can further their professional careers most likely rather sporadically due to parenting. However, the gap was over 20% also in the age groups of 40-49 and 50-59. The differences in earnings were however the smallest among the youngest age group (persons less than 30 years old), increasing from 17,9% in 2005 to 19,4% in 2008 and decreasing to 16,3% in 2010.

Average gross hourly earnings also have a correlation with the level of education. Despite of the same educational level, women still earn less than men. For example in 2010 women with the level of upper secondary vocational education earned 70.06%, and women with a

doctor's degree 85.72% of the salaries of their male counterparts. Unfortunately this data shows that although higher education has a role to play in both men's as well as women's higher earnings, it is more advantageous for men.

According to the Gender Equality Monitory that was carried out in 2009, compared to Estonian men, women sense more often that women's work is less valued than men's. 63% of women and 44% of men that participated in the study agreed with that. 92% of people (91% of rural habitants) agree that the wage paid for equal work should not be dependent on the worker's sex. Compared to men, women expressed slightly more often that men and women should be paid equally for the same work.

An exhausting gender segregated statistical overview of the labour market situation in Estonia for the period 2007 to 2010 was provided by Estonian Government in the framework on 9th National Report on the implementation on the European Charter (including the Article 20).

Case Law

In the reported period the Gender Equality and Equal Treatment Commissioner has given one opinion regarding a specific complaint on wage discrimination by a female public servant whose basic salary was lower than that of her male colleagues in the same position. The employer argued that in their system only the total wage is taken into consideration and that the total wage of the complainant was higher than that of her male colleagues (as she was the only one entitled to a bonus pay for length of service, which is foreseen by the law). However, Commissioner decided that the principle of equal pay has to be guaranteed also for each wage component separately and that the employer had no lawful arguments to justify the lower basic salary and thus sex discrimination had taken place.

In one of the cases the complaint concerned a situation where a woman returning to her previous place of employment after childcare leave was considered by her employer as a new employee which influenced both her tasks and salary which was therefore lower than the salary of colleagues who were doing the work of equal value but had not recently been on childcare leave. According to the opinion of the

Commissioner given in February 2012, the employer had discriminated the complainant based on gender.

Several complaints were made to the Commissioner concerning situations where a woman returning from a childcare leave was either offered a lower salary than her colleagues for the same work or work of equal value or was offered a new post with lower salary than the one she had before the leave. In one of these cases the Commissioner assisted the person in filing a complaint to a labour dispute committee where the dispute was decided in favor of the complainant. In another case the Commissioner sent to the employer a notification letter. This, together with a pressure from the public caused the employer, a public service organization, to stop its discriminating behavior towards the complainant and other women in a similar situation and pay the damages.

We are not aware of court decisions made in cases of discrimination based on sex regarding remuneration where the issue of equal pay for the same work or for the work of equal value would have been substantially discussed.

It is not possible to give an exhaustive overview of the number of cases or issues considered regarding cases concerning (un)equal treatment of women and men that have been discussed in the labour dispute committees during the reported period as the available information is not specific enough.

Article 4 paragraph 4 - The right of all workers to a reasonable period of notice for termination of employment

The General Legal Framework

A new ECA entered into force on 1 July, 2009, which § 97 provides terms for advance notice of cancellation by employer, which have to be followed upon cancellation of an employment contract, relevant information on was submitted to the Committee on 2009. There have been no further changes in the regulation governing work and rest time during the reporting period (2009-2012).

Conclusion

The Committee concludes that the situation in Estonia is not in conformity with Article 4§4 of the revised Charter on the grounds that:

- one month is not reasonable notice for employees dismissed because of unsuitability for the post who had five or more years' service;

- two weeks is not reasonable notice for employees dismissed because of long-term incapacity who had one or more year's service.

ECA, which entered into force 1 July 2009, changed terms for giving advance notice of cancellation. According to ECA § 97 (2), an employer shall give an employee advance notice of extraordinary cancellation if the employee's employment relationship with the employer has lasted:

1) less than one work year – no less than 15 calendar days;
2) one to five work years – no less than 30 calendar days;
3) five to ten work years – no less than 60 calendar days;
4) ten and more work years – no less than 90 calendar days.

The Measures Taken to Implement the Legal Framework

Please see answer to Article 2 paragraph 1.

Article 4 paragraph 5 - Wage deductions

The General Legal Framework

A new ECA entered into force on 1 July, 2009, which § 78 specifications for an employer set off its claims against an employee's wage claim, relevant information on specifications for set-off was submitted to the Committee on 2009. There have been no further changes in this regulation during the reporting period (2009-2012).

The Measures Taken to Implement the Legal Framework

Please see answer to Article 2 paragraph 1.

Question

The Committee would also point out that under Article 4§5, domestic law must contain guarantees to the effect that workers may not waive their right to limited deductions from wages (Conclusions 2005, Norway). It asks for further information in the next report on the measures preventing workers from waiving this right.

Working life web page provides information on wage set-off.[9]

[9] http://www.tooelu.ee/et/teemad/tootasu/tootasu-tasaarvestamine

ARTICLE 5 – THE RIGHT TO ORGANISE

The General Legal Framework

Between 1 January 2009 and 31 December 2012, there have been no changes in acquis which governs the application of freedom of association. As stated earlier, the freedom of association is one of the basic rights and fundamental freedoms according to the **Constitution of the Republic of Estonia** (§ 29):

„... Everyone may freely belong to associations and unions of employees and employers. Associations and unions of employees and employers may uphold their rights and lawful interests by means which are not prohibited by law. The conditions and procedure for the exercise of the right to strike shall be provided by law."

According to the **Trade Unions Act** (entry into force on 2000) (§ 4), persons have the right to freely, without prior permission, found trade unions, join or not to join them. Members of the Defense Forces who are in active service in the Defense Forces are prohibited from founding and joining a trade union. Trade unions have the right to form federations and confederations and to join them in order to represent the rights and interests of employees. Trade unions have the right to join international organizations of employees.

Legislation has no restrictions on the establishment and membership of trade unions, as well as the election of trade union leaders by age, sex, social status, citizenship, skin color, etc. except for people who are in active service in the Defense Forces, who cannot form and belong to trade unions.

The Measures Taken to Implement the Legal Framework

The practical implementation issues of the Trade Unions Act have been the area of activity for two confederations of trade unions (Estonian Trade Union Confederation and Estonian Employees' Unions' Confederation), which includes the training of their members in knowledge of the Law through seminars, and also clarification of the provisions of the Act on the internet website (www.eakl.ee). Additionally, the social partners (both employees' and employers' representative organizations) have, with the support of the European Social Fund, conducted a number of collective employment-related projects (including the trustee's

web training, creation of an information portal on individual and industrial relations, notification of its possibilities; information materials and outreach to employers).

The annotated Employees' Trustee Act issued by the Ministry of Social Affairs has covered some of the issues regarding the implementation of the Trade Unions Act. The relevant information on industrial relations can be found on the website of the Ministry of Social Affairs at www.sm.ee and in database maintained by the Ministry of Social Affairs at www.tööelu.ee. The Labour Inspectorate conducts state inspection over the lawful application of the Trade Unions Act.

Pertinent Figures, Statistics and Other Relevant Information

Question

The Committee notes from another source[10] that despite the prohibition of discrimination based on trade union membership there are regular reports of pressure on workers not to establish or join trade unions. It therefore asks that the next report indicate how the implementation of the legislation providing for this prohibition is ensured, for instance by providing examples of domestic case law in this field.

Based on the court statistics and information provided by the Estonian Trade Union Confederation (EAKL) and Estonian Employees' Unions' Confederation (TALO), as well as by the Labour Inspectorate (regarding issues and complaints discussed in labour dispute committees), there have been no registered violations in relation to the application of freedom of association in years 2009-2012.

Essentially the same situation is also revealed in the study on industrial relations in state and local government agencies, conducted by Praxis Center for Policy Studies and Centre for Applied Social Sciences (RAKE/CASS) in the University of Tartu (2011, pg. 50, pg. 58).

[10] International Trade Unions Confederation (ITUC) 2009 Survey on Violations of Trade Union Rights: http://survey09.ituc-csi.org/survey.php?IDContinent=4&IDCountry=EST&Lang=EN

Table 15. Trade union membership among salaried workers, 2009-2012

	2009	2010	2011	2012
Proportion of trade union members among salaried workers	7.6%	8.2%	7.0%	6.0%
Proportion of salaried workers in enterprises/agencies, which have trade unions	19.6%	19.1%	18.0%	17.6%

Source: Estonian Labour Force Survey

ARTICLE 6 – THE RIGHT TO BARGAIN COLLECTIVELY

Article 6 paragraph 1 - Promotion of joint consultation between employees and employers or the organizations that represent them

The General Legal Framework

There have been no changes to the acquis, which regulates joint consultations between employers and employees during the reporting period.

The Measures Taken to Implement the Legal Framework

Question

The report informs that regulation concerning joint consultations between employees and employers has not been amended during the reporting period. The Committee recalls that in its previous conclusion (Conclusions 2006), it held the situation in Estonia to be in conformity with Article 6§1 of the Revised Charter. It however asked for further information as to the matters covered by consultations. It also requested that the next report clarify what are the consultative bodies providing for a forum of social dialogue in the public sector.

Question

Matters for joint consultation

The Committee thus understands that joint consultation between employers and employees or the organizations that represent them may take place on all matters of mutual interest, particularly productivity, efficiency, industrial health, safety and welfare, working conditions, etc. It wishes the next report to provide further information showing that all these matters are indeed covered by the consultations.

A list of ways used to promote these joint consultations:

1. Continued consultations on the ILO related issues are held twice a year by tripartite Estonian ILO Council, which was established in 1992;

2. tripartite consultations in various areas by *ad hoc* committees;

Such consultations are, for example, a series of joint consultations (total of 10), organized the Ministry of Social Affairs in 2010 for development of Seefarers Act draft and for preparation for the ratification of the ILO's Maritime Labor Convention (MLC) and the ILO's Work in Fishing Convention (No. 188).

Four tripartite consultations took place in 2012 on the subject of currently pending development of the Collective Bargaining and Collective Labor Dispute Act (draft) by the Ministry of Social Affairs, and they will continue in 2013.

Employers' and employees' federations and confederations have fully accepted organization of joint consultations with the ad hoc committees, because in many cases their work organization turns out to be more flexible then in permanent consultative bodies, allowing the involvement of employers, employees and experts in consultations in the most effective and efficient manner.

3. written consultations with employers' and employees' confederations, primarily to obtain opinions on draft Acts;

4. joint consultations between trade unions and employers' unions, and also trade union confederations and relevant ministries regarding collective bargaining;

5. joint consultations between the employer and employees at the enterprise level, according to the procedure established in the Collective Agreements Act (1993) and Employees' Trustee Act (2006).

Question

Public sector

In reply to the Committee's question as to what bodies provide for a forum of social dialogue in the public sector, the report states that bilateral negotiations and consultations with appointed delegations which were more frequent in the past are being replaced with ad hoc meetings aimed at more specific subjects. The Committee refers to its questions above as to the acceptance of these flexible structures by all parties concerned.

All of the above mentioned consultation methods have also been used to hold a social dialogue in the public sector.

In addition to above, employee notification and consultation will take place under the Community-scale Involvement of Employees Act employee notification and consultation by Community-scale entrepreneurs, in European company and European Cooperative Society.

The Ministry of Social Affairs has accepted the Foundation Estonian Co-operation Assembly's proposal to take over the organization of the Estonian Social and Economic Council, incl. relevant joint consultations between employers and employees from the Ministry of Social Affairs.

Pertinent Figures, Statistics and other Relevant Information

Please see answers to the Measures Taken to Implement the Legal Framework.

Question

In regard of the new Employment Contracts Act, the Committee has noted from a source[11] other than the national report that when the above mentioned Act was presented to the public on 9 January 2008, the social partners criticized it maintaining they had not been involved in the discussions leading to its drafting. The Committee therefore asks the Government to comment and to provide information to show that the informal flexible structures for consultation it has referred to are indeed accepted by the social partners.

Such criticism cannot in any way be accepted. The preparation team for the Employment Contracts Act draft involved representatives from both trade unions and representatives of employers, and they participated in the preparation of this draft (several joint meetings were held, which in addition to social partners, also included representatives from various ministries and other experts). Additionally, written consultations were conducted with social partners regarding the contents of the draft.

[11] See the country profile on Estonia on the European industrial relations observatory on-line (eironline) website.

Article 6 paragraph 2 - Promotion of the right to collective bargaining and conclusion of collective agreements

The General Legal Framework

Conclusion of collective agreements is governed by the **Collective Agreements Act,** adopted in 1993.

There have been no fundamental changes regarding the right to hold collective bargaining, except for amendment to § 11 (5) of the Collective Agreements Act, adopted in 2012. Collective Agreements Act § 11 (5) now provides as follows: upon expiry of the term of a collective agreement, the collective agreement shall be deemed to become indefinite, unless either party notifies the other at least three months before the expiry of the term of the collective agreement that they do not want to extend the agreement. When the collective agreement becomes indefinite, the parties are required to comply with the terms and conditions of the collective agreement until a new agreement is entered into or the collective agreement is terminated. Either party can terminate an indefinite collective agreement by informing the other party at least six months in advance. The contractual prohibition against disruption of work ends upon the notification of termination of a collective agreement.

The Measures Taken to Implement the Legal Framework

Work has been done to review and renew industrial relations legislation from 2009 to 2012 (continued in 2013). To this end, the Ministry of Social Affairs commissioned a number of relevant studies:

1. Finnish labour law experts Kerstin Ahlberg and Niklas Bruun *„The future of extension of collective agreements in Estonia“* (2009)[12];

[12] https://docs.google.com/viewer?a=v&q=cache:5ewYgnK0-bkJ:www.sm.ee/fileadmin/meedia/Dokumendid/Toovaldkond/Extension_of_collective_agreements.Bruun_Ahlberg_2009.pdf+The+future+of+extension+of+collective&hl=et&gl=ee&pid=bl&srcid=ADGEESgGbr6eTF-JD52YLKG6cMWWbHSewS-_IEQZoT2YrNxNw_9jXRWmodK2tvD46AVcaCXK_rlSJrnZ5vBbrBwy_39ts-

2. Italian labour law experts Michele Tiraboschi and Paolo Tomassetti *„A legal analysis on proceedings of conflict of interests in Estonia“* (2011)[13];

3. Belgian labour law experts Roger Blanpain. Michele Colucci and Frank Hendrickx *„Legal analysis of certain aspects of collective labour law: strike“* (2011)[14];

4. Praxis Center for Policy Studies, Centre for Applied Social Sciences (RAKE/CASS) *„Study on industrial relations in state and local government agencies“* (2011)[15];

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5. Centar Estonian Center for Applied Research *„Collective Employment Relationships“(*2011)[16].

Based on above-mentioned research findings and suggestions, the Ministry of Social Affairs is currently preparing a draft, which regulates collective bargaining and industrial dispute resolution. Currently pending draft Act provides clear principles for voluntary and bona fide collective bargaining complements the extension of the legal mechanism for collective agreements and introduces clear representativeness criteria for extending collective agreements. We hope that the tripartite preparation of the new draft will result in completion and adoption of a law, which would contribute to the rise of collective bargaining.

Pertinent Figures, Statistics and Other Relevant Information

Collective agreements' coverage

According to the Estonian Labour Force Survey (2009) by the Statistical Office, up to 33% of employees of enterprises, agencies with up to five employees, that their working conditions are regulated by a collective agreement. According to the Estonian Labour Force Survey, about 6% of organizations with over five employees have collective agreements. The number of collective agreements is significantly higher in organizations with more than 250 employees - collective agreements have been concluded in nearly 40% of organizations.

According to a collective agreements' database maintained by the Ministry of Social Affairs, by estimate, under a quarter of salaried workers were covered by collective agreements as of the end of 2011. The collective agreements' coverage is above average in health and social

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care, where, according to the collective agreement database, where about 3/4 of salaried employees should be covered. The above-average coverage by collective agreements is also in the public administration and national defense, statutory social insurance (nearly 43%), electricity, gas, steam and air conditioning supply (nearly 39%) and in transportation and inventory management (nearly 30%). It is possible, that the collective agreement database does not include all the collective agreements, which is why the above data on collective agreement coverage is shown as estimated.

The studies distinguished between societal and organizational level causes for the relatively low number of collective agreements. On societal level, the studies noted a general attitude towards collective agreements and industrial relations, as well as general attitudes regarding trade unions, which have their roots in history. On organizational level, the studies noted the awareness of the parties to employment relationship regarding the industrial relations (the problem is characterized by the fact that, depending on the subject, 23-45% of the surveyed employers did not know what to think of the advantages or weaknesses of collective agreement.

Studies[17] also revealed that a majority of Estonian employers were neutral towards collective agreement, whereas the attitudes of employees' representatives towards collective agreement were significantly more positive than expected.

[17] Praxis Center for Policy Studies, Tartu University. Study on industrial relations in state and local government agencies, 2011; Estonian Center for Applied Research. Collective Employment Relationships, 2011

Article 6 paragraph 3 - Promotion of conciliation, mediation and arbitration procedures

The General Legal Framework

No changes have occurred in the legal regulation of conciliation and mediation process for labour disputes during 2009-2012.

The Measures Taken to Implement the Legal Framework

Draft on collective bargaining and industrial dispute settlement currently pending development, shall specify the whole industrial dispute process to a degree, by introducing a new institution - arbitration - and thus applying generally voluntary arbitration procedures. According to the draft, compulsory arbitration procedures shall only be applied as an exception for labour disputes in relation to the strike ban on certain categories of employees. The draft also includes some changes to the Public Conciliator appointment procedure and work functions. The plan includes a new institution – deputy- adviser to the Public Conciliator, in order to sustain conciliator's work functions when the Public Conciliator is unable to perform their duties due to, for example, an illness or vacation.

The need for reviewing and making some amendments to dispute settlement process was also noted by Praxis Center for Policy Studies and Centre for Applied Social Sciences (RAKE/CASS) in the University of Tartu in their "Study on Industrial relations in state and local government agencies“ (2011).

Pertinent Figures, Statistics and Other Relevant Information

2010 Analysis of the Public Conciliator's documentation by Centar Estonian Center for Applied Research revealed that 102 inquiries for conciliation were submitted to the Public Conciliator during the period 1995-2009. The number of settlement applications varies yearly from 2 to 12, in 2009, for example, there were 3 applications. The majority of applicants turning to the Public Conciliator were employees (91% of cases). The analysis showed that the average duration of conciliation was 90 days.

Table 16. Reasons for appealing to the Public Conciliator

	Salary	Working conditions	Procedures	Total
Conclusion of a collective agreement	38	9	26	73
Performance of a collective agreement	13	3	4	20
Other	5		2	7
Total	56	12	32	100

Note: two labour disputes left out of the above table and analysis were related to combined performance of a collective agreement and conclusion of a new agreement. In one case, the subject of both agreements was the pay, in other case, the issue with the conclusion of an agreement was related to procedures and the issue with the performance was related to work conditions.

Source: Centar Estonian Center for Applied Research (2010 Review of the activities of a conciliator on the basis of the documents of the Public Conciliator.

Article 6 paragraph 4 - The right to call and participate in a strike

The General Legal Framework

Conclusion

The Committee held the situation in Estonia not to be in conformity with Article 6§4 of the Revised Charter on the ground that the law denies almost all civil servants the right to strike (Conclusions 2006). The Committee notes that during the reference period the situation remained unchanged and therefore reiterates its finding of non-conformity. The Committee notes however that new legislation has been drafted and is currently before Parliament.

The new Public Service Act, adopted in June 2012 and entered into force on 1 April 2013, eliminates all the shortcomings in the public servants right to strike, which has drawn the attention of both the European Committee of Social Rights and the ILO.

Under § 3 "Application of the laws governing the employment" of the Public Service Act, the Employment Contracts Act shall not be applied to officials, except for cases provided in this Act (paragraph 1). The employment relationships of employees working for authorities are governed by the Employment Contracts Act and other laws governing labour relations (paragraph 2).

§ 7 "Official and employee" of the Act defines an official as a person, who is in public service relationship and fiduciary relationship with the state or local government entity (paragraph 1). Pursuant to paragraph 2, an official is appointed by an administrative agency, which exercises official authority to an office, where official authority is exercised. Paragraph 3 defines duties, the performance of which is an exercise of official authority (management of an administrative agency, proceeding of offenses, diplomatic representation in foreign relations, etc.).

Under § 59 "The strike prohibition for officials" of the Act, the officials are prohibited from participating in the public service strike alone. Strike prohibition shall not be applied to public service employees. According to subsection 2 of the same paragraph, an official shall also not participate in other collective service-related pressure activities, which interfere with the performance of duties of administrative authority that hired the official or other duties

resulting from the Administrative Authority Act. Pressure activities are deemed to be collective, if more than half of administrative authority officials are involved.

The Measures Taken to Implement the Legal Framework

Draft Act on collective bargaining and industrial dispute settlement currently pending development, provides restriction on the right to strike for employees who are engaged in the essential services. The Act establishes a list of principles for the services that are deemed essential and determines the procedure for ensuring minimal level of service provision for essential services.

It is worth emphasizing that the draft Act clearly distinguishes between the resolution modes for conflicts of rights and conflicts of interests, whereas a strike relates only to conflicts of interest.

Pertinent Figures, Statistics and Other Relevant Information

There were two strikes in 2012:

1) Education workers strike involving 12,093 workers. The average loss of working hours per employee was 1.82 days.

2) Health workers strike involving 1,209 workers. The average loss of working hours per employee was 2.49 days.

ARTICLE 21 – THE RIGHT TO INFORMATION AND CONSULTATION

The General Legal Framework

No legislative changes occurred in employees' right to information and consultation from 2009 to 2012.

The Measures Taken to Implement the Legal Framework

European Parliament and Council Directive 2002/14/EC for informing and consulting employees shall be transposed by **The Employees' Trustee Act** (2006) chapter 5, Informing and Consulting. This law sets the threshold number of employees (30 employees), upon which an employer is required to organize employee informing and consulting procedures in accordance with the objectives of the directive, which is much lower than that provided by the Directive (50 employees). Moreover, the Act does not lay down a lack of general informing and consulting obligations even for an employer that employs fewer than 30 employees. § 9, clause 2 of this Act provides that a trustee has the right to "receive from the employer the information necessary for the performance of his or her duties and consult the employer on the basis of such information". § 10, clauses 1 and 2 of the Act require that a trustee should participate in informing and consulting and communicate information to the employer and to employees, regardless of the number of employees.

According to the collective agreement database, in most cases, the party to the collective agreement, other than employer, is trade union) - in nearly 75% of the cases, and in significantly fewer cases it is the employees' trustee (13% of cases).

The above-mentioned draft Act is not intended to change the definition of the collective agreement, however, it will specify the parties of collective bargaining, providing that these can only be employees' trustee, if there is no trade union or trade union members, trade union, trade union federation or trade union confederation and an employer, employers' union or employers' confederation. Specification of the procedure for notifying and consulting via collective agreements is fairly common, whereas most common subjects of specification are time and reason for informing-consulting as well as topics thereof. According to the Estonian Working Life Survey (2009), about 33% of employees working in organizations with more than five employees, and public servants are covered by collective agreements.

According to the Employees' Trustee Act § 24, failure to perform the obligation to inform or consult or provision of false information by the employer is punishable by a fine of up to 200 fine units (the size of one fine unit is 4 euros). The same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros.

According to § 9, clause 2 of abovementioned Act, a trustee has the right to receive from the employer the information necessary for the performance of his or her duties and consult the employer on the basis of such information. Pursuant to clause 6 of the same paragraph, a trustee has the right to notify the interested trade union and federation or confederation of employers and trade unions of violation of working conditions by the employer. Pursuant to clause 7 of the same paragraph, a trustee has the right to have recourse to a labour dispute resolution body for resolution of a dispute arising from the confidentiality of the information obtained or refusal to provide information (labour dispute committee, court). Employee information and consultation procedure on the level of a community-scale employer or a community-scale group of employers is also regulated by § 22, 33, 34 and 35 of the Community-scale Involvement of Employees Act as well as § 45 and § 70-74 (on the scale of Societas Europaea and Societas Cooperativa Europaea).

According to **the Community-scale Involvement of Employees Act** (2005) § 87, failure to perform the obligation of annual informing and consulting, or informing and consulting under exceptional circumstances, provision of incomplete or false information is punishable by a fine of up to 200 fine units (the size of one fine unit is 4 euros). The same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros. Pursuant to the § 85 of this Act, hindering international informing and consulting or involvement of employees is punishable by a fine of up to 200 fine units, and the same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros.

Pertinent Figures, Statistics and Other Relevant Information

According to the 2009 Estonian Working Life Survey by the Statistical Office, employees are informed of organization's activities, work organization and working conditions in almost all organizations with more than five employees (98%), in 87% of organizations, such subjects are discussed with non-manager employees and in 61% of organizations, non-manager personnel are involved in the decision-making process. Almost all employees say that they are informed of the organization's activities, work organization and working conditions (99%) and that they participate in related discussions (92%). 37% of employees say that they have

the right to participate in making decisions regarding organization's activities, work organization and working conditions.

87% of employees say that they are informed by a manager, 10% of employees are informed by an employees' representative (employees' trustee and/or working environment representative) and 2% of employees are informed by a co-worker. 78% of employees are able to express their opinions on work organization and work conditions to a manager, 16% to an employees' representative and 6% are not able to express their opinions.

Table 17. Informing and consulting employees (% of employers)

	Informing		Consulting	
	Yes	No/do not know	Yes	No/do not know
Organizational structure and composition of the staff	89%	11%	60%	40%
Annual report	43	57	-	-
Changes in work organization or contractual relations	97%	3%	74%	26%

Source: Estonian Center for Applied Research „Collective Employment Relationships, 2011

According to the collective agreements database, at the end of 2011, 51% of valid collective agreements include regulated conditions for informing and consulting.

Question

Personal scope

In Conclusions 2005, the Committee noted that employees' right to information and consultation within undertakings was mainly exercised through trade union representatives and, in the case of non-union members, employee representatives. However, the new legislation has changed the arrangements for electing employee representatives. Henceforth all employees, whether or not union members, can elect one of their number to represent them, at the employees' general meeting.

The Committee reiterates its above-mentioned question concerning the legislation as regards the calculation of the minimum thresholds.

European Parliament and Council Directive 2002/14/EC for informing and consulting employees shall be transposed by the **Employees' Trustee Act** (2006) chapter 5, Informing and Consulting. This law sets the threshold number of employees (30 employees), upon which an employer is required to organize employee informing and consulting procedures in accordance with the objectives of the directive, which is much lower than that provided by the Directive (50 employees). Moreover, the Act does not lay down a lack of general informing and consulting obligations even for an employer that employs fewer than 30 employees. § 9, clause 2 of this Act provides that a trustee has the right to "receive from the employer the information necessary for the performance of his or her duties and consult the employer on the basis of such information". § 10, clauses 1 and 2 of the Act require that a trustee should participate in informing and consulting and communicate information to the employer and to employees, regardless of the number of employees.

Question

Material scope

In answer to the Committee's question on the nature of the rules on information laid down in general collective agreements, such as the parties to these agreements and the information and consultation procedures, and the proportion of employees covered by these collective agreements, the report states that no detailed information is available.

Related and complete information is still missing. Nevertheless, there is a reason to believe that general collective agreements regulate informing and consulting issues rarely, as such agreements are rare, and there is appropriate and accepted legal framework in the form of Employees' Trustee Act. As a rule, information and consultation issues are covered by enterprise-level collective agreements.

Question

Remedies

The Committee asks for up-to-date information on employee representatives' possibility of appeal where their right to information and consultation under Article 21 of the revised Charter has been infringed, particularly with regard to the new legislation of 13 December 2006.

According to the Employees' Trustee Act § 9 (7), a trustee has the right to have recourse to a labour dispute resolution body for resolution of a dispute arising from the confidentiality of the information obtained or refusal to provide information (a labour dispute committee, court). An employee trustee may, in fact, (provided for in § 9) appeal to a labour dispute settlement authority upon a breach of any of their rights.

According to the Employees' Trustee Act § 24 (1), failure to perform the obligation to inform or consult or provision of false information by the employer is punishable by a fine of up to 200 fine units (i.e. currently up to 800 euros). Subsection 2 of this paragraph provides that the same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros.

Question

The Committee has previously noted, in Conclusions 2005 and 2007, that the labour inspectorate is responsible for enforcing employees' right to information and consultation. Employers who violate this right may be sanctioned with administrative fines ranging from 100 to 6 000 Estonian Kroons (EEK) (€ 6.5 to € 384.5). The Committee again asks whether the Act of 13 December 2006 has made any changes in this regard.

The Employees' Trustee Act's entry into force resulted in twice the increase of fine imposed on employers, in comparison to that provided by the Trade Unions Act, and an additional provision of a fine limit for a legal person for violating the obligation to inform or consult (up to 3,200 euros).

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

The General Legal Framework

Legislation which provides for the right of employees to participate in the determination of working conditions and working environment conditions has not changed in 2009-2012, relevant rights arise primarily out of five different instruments: the Collective Agreements Act (1993), Occupational Health and Safety Act (1999), Trade Unions Act (2000), Community-scale Involvement of Employees Act (2005) and the Employees' Trustee Act (2006).

Regarding employees and their representatives right to participate in the determination and improvement of their organization's working conditions and working environment conditions, our supplementary information is as follows: according to the **Collective Agreements Act** (§ 6), a legally binding collective agreement entered into by the parties may determine whichever working conditions and work organization-related issues (including working environment conditions), also the provision of social and cultural services; one of the parties to a collective agreement is a trade union, which represents all the employees, or, in the absence of a trade union, an employees' trustee; employees have unlimited options in matters related to (although it is true, that they are not always realized) working conditions and working environment conditions for reaching an agreement, which would satisfy the parties;

According to the **Occupational Health and Safety Act** § 14 an employee is required (not entitled) to contribute to the creation of a safe working environment by observing the occupational health and safety requirements, also promptly notify the employer or the employer’s representative and a working environment representative of an accident or a risk thereof, of an occupational accident and any shortcomings in the protection arrangements; they have the right demand that the employer provide working conditions conforming to the occupational health and safety requirements, receive information on working environment hazards, the measures implemented to prevent damage to health, also to refuse to carry out work or to stop work the performance of which endangers his or her health or that of other persons, promptly notifying the employer or the employer’s representative and a working

environment representative thereof; they have the right to contact a working environment representative, members of the working environment council, an employees' trustee and a labour inspector of the location of the enterprise if, in his or her opinion, the measures implemented by the employer do not ensure the safety of the working environment;

Pursuant to § 17 of the same Act, a working environment representative as a representative elected by employees in occupational health and safety issues, is obligated to monitor that occupational health and safety measures are implemented at the workplace, notify the employees and the employer or the employer's representative promptly of a dangerous situation or deficiencies discovered in the working environment, and demand that the employer eliminate the deficiencies within the shortest period of time possible, also to monitor that the employees receive necessary knowledge, instructions and training in the field of occupational health and safety; a working environment representative has the right to demand that the employer implement prescribed occupational health and safety measures, and make proposals to remove the source of danger and improve the working environment, also to receive relevant information on the working environment from the employer; a working environment representative has the right to contact a labour inspector of the location of the enterprise or submit his or her observations to the labour inspector during inspection visits by the inspector, also to temporarily stop work in a dangerous stage of work or prohibit the use of dangerous work equipment;

Pursuant to § 18 of the same Act, a working environment council, a body for co-operation between an employer and the employees' representatives, make proposals to the employer for the resolution of working environment related issues and monitor the implementation of adopted resolutions; participate in the preparation of an occupational health and safety development plan of the enterprise;

Pursuant to the **Trade Unions Act** (§ 17), trade unions have the right to participate in informing and consulting employees and making decisions, also, (under § 21) elected representative of trade union is required to co-operate with the working environment representative and working environment council;

Pursuant to the **Community-scale Involvement of Employees Act** (§ 13 and 35), formed European Works Council, or its steering committee is obligated to inform and consult employees of a Community-scale undertaking and a Community-scale group of undertakings, thus effecting the taking of potential decisions;

Pursuant to the Employees' Trustee Act § 4 provides an obligation of co-operation between trustee and employer, § 9 provides the rights of trustee to freely examine the working conditions, including the work organization, to stop the collective cancellation of an employment agreement, to notify the interested trade union and federation or confederation of employers and trade unions of violation of working conditions by the employer. § 10 of the same Act requires the trustee to communicate information to the employer and to employees, monitor compliance with working conditions and notify the employer and, if necessary, the labour inspector of the place of business of the employer, of violation, co-operate with a shop steward, the working environment representative and working environment council.

Fines for hindering the determination and improvement of the working conditions and working environment conditions (which also covers the breach of specific trade union rights and obstruction of the activities of elected trade union representative), are according to **the Trade Unions Act** as follows:

§ 26^1. Failure to perform obligations of employer in relations with trade union

Failure by an employer to enter into negotiations over entry into or amendment of a collective agreement or other contract, or failure to provide an employee with the opportunity to participate in the work of or training organized by a trade union body, or restricting of the rights of an employee due to his or her membership in a trade union or acting as an elected representative of a trade union is punishable by a fine of up to 100 fine units.

§ 26^2. Hindering of activities of elected representative of trade union

Hindering, by an employer, of an elected representative of a trade union from examining the work organization or the working conditions of employees at a place where a member of the trade union works is punishable by a fine of up to 100 fine units.

§ 26^5. Obstruction of lawful activities of trade union

Obstruction of the lawful activities of a trade union is punishable by a fine of up to 200 fine units.

Also punishable according to the **Employees' Trustee Act** (previous fine limits have significantly changed):

§ 24. Violation of obligation to inform and consult

(1) Failure to perform the obligation to inform or consult or provision of false information by the employer is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros.

Also punishable according to the **Community-scale Involvement of Employees Act**:

§ 85. Violation of prohibition on hindering international informing and consulting and involvement of employees

(1) Hindering international informing and consulting or involvement of employees is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros.

§ 87. Violation of obligation of annual and extraordinary informing and consulting

(1) Failure to perform the obligation of annual informing and consulting, or informing and consulting under exceptional circumstances, provision of incomplete or false information is punishable by a fine of up to 200 fine units.

(2) The same act, if committed by a legal person, is punishable by a fine of up to 3,200 euros.

According to the Employees' Trustee Act § 9, a trustee has the right to receive from the employer the information necessary for the performance of his or her duties and consult the employer on the basis of such information, also to notify the interested trade union and federation or confederation of employers and trade unions of violation of working conditions by the employer. Hence, no restrictions apply to the trustee on the submission of complaints regarding the obstruction of the realization of their rights and obligations by an employer.

The Measures Taken to Implement the Legal Framework

Question

Working conditions, work organization and working environment

In view of the low percentage of workers covered by collective agreements and the lack of information as to whether these agreements cover participation in the determination and improvement of working conditions, the Committee reiterates its question on whether workers or their representatives enjoy an effective right to take part in such matters within the undertaking. Should the next report not provide detailed information on the matter, there will be nothing to establish that the situation is in conformity with Article 22 on this aspect.

Please see answers to the General Legal Framework.

Pertinent Figures, Statistics and Other Relevant Information

Table 18. Employees' assessment of whether they have been allowed to participate in discussions on various topics to a sufficient degree (% employees)

	Yes, I can participate sufficiently	No, I have not been able to participate sufficiently
Working time and holidays	71%	29%
Work organization	68%	32%
Occupational safety	67%	33%
In-service training	51%	49%
Earnings	37%	63%
Action plans	29%	71%
Hiring	29%	71%

Source: Statistical Office, Estonian Working Life Survey 2009

Question

Organization of social and socio-cultural services and

Having regard to the proportion of employees covered by such agreements (see above), the Committee asks whether the right to take part in determining and improving working conditions outside the collective bargaining system also covers, in an effective manner, employee participation in the organization of social and socio-cultural services.

According to the Collective Agreements Act (§ 6), a legally binding collective agreement entered into by the parties may determine whichever working conditions and working organization related issues, also the provision of social and cultural services.

Question

Enforcement

The Committee notes that the Labour Inspectorate's supervision appears to be restricted to health and safety issues and does include supervising the observance of the right of workers to participate in the determination of working conditions and the working environment insofar as other aspect covered by Article 22 are concerned. Having regard to the range of questions covered by Article 22, it asks for confirmation of its understanding of the scope of supervision of the Labour Inspectorate.

Employee participation in the organization of and consumption of social and cultural services occurs largely through the application of the relevant terms of the collective agreement. Another main channel for this is corresponding initiative by the trade union operating at the employer's organization or also by trustee (together with a smaller circle of organizers) and co-operation with the employer. Depending on the specific situation, such activities conducted by the trade union or trustee have yielded even better results than the organization and consumption of the social and cultural services under the collective agreement.

However, with regard to monitoring the activities of the Labour Inspectorate in the context of this article, we would like to emphasize that the Labour Inspectorate is not only a health and safety compliance inspection body. Inspectorate cooperates with the working environment council and the representative in supervising the compliance with the legal provisions

(whether a meeting has been organized to elect a representative, whether they have been provided training, whether they have been afforded free time to meet their obligations, whether they participate in the investigation of accidents at work, etc.). The Labour Inspectorate provides a permanent helpline for employee counseling.

Question

The Committee asks again whether employees' representatives themselves may bring alleged violations of the right to take part in the determination and improvement of working conditions and the work environment before the relevant courts. Given the persistent lack of information on this question, the Committee concludes that it has not been established that the situation is in conformity with Article 22 as far as appeals in case of breach of the right of workers to take part in the determination and improvement of the working condition and work environment is concerned.

Estonian labour law lacks provisions that restrict or exclude the employee representative's (working environment representative, trustee) right to appeal if there is an infringement of their rights (including the right to participate in the improvement of working conditions and working environment) to a labour dispute committee, and/or the courts.

Question

The Committee also asks for information on penalties imposed on employers who do not respect the right of employees to take part in the determination and improvement of all matters covered by Article 22.

Please see answers to the General Legal Framework.

ARTICLE 26 – THE RIGHT TO DIGNITY AT WORK

Article 26 paragraph 1 – Prevention of sexual harassment

The General Legal Framework

Sexual harassment is defined and prohibited in the **Gender Equality Act** (GEA, § 3 subsection 1 clause 5). According to the amended definition which entered into force on 23rd of October 2009, sexual harassment takes place where any form of unwanted verbal, non-verbal or physical conduct or activity of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment.

Sexual harassment is considered to be a form of direct discrimination based on sex. Direct discrimination based on sex also means less favorable treatment of a person caused by rejection or submission to harassment (§ 3 subsection 1 clause 3).

The Measures Taken to Implement the Legal Framework

The Ministry of Social Affairs will soon update the harassment (including sexual harassment) related section of the Work Life Portal. The Ministry of Social Affairs will soon also offer material to the employer to prevent harassment in the same portal. The Ministry of Social Affairs has prepared a declaration of "Anti-sexual harassment and bullying policies", by signing of which, the employers will indicate to their employees that such companies value caring and respectful attitude towards the employer and employees and between the employees themselves.

In 2012, the Ministry of Social Affairs organized a procurement for a study on gender-based and sexual harassment in the labour market. The winner, Praxis - Center for Policy Studies conducted a complex study with multiple substudies, and objectives, including:

- To provide a comprehensive overview of the nature and prevalence of gender-based and sexual harassment on the basis of academic literature and court decisions;
- To conduct a qualitative study, aimed at providing in-depth overview of gender-based and sexual harassment cases in Estonia;

- Prepare a questionnaire that would make it possible tocollect information on gender-based and sexual harassment from the population.
- Testing the questionnaire as a new submodule of a more general survey under the framework of Gender Equality Monitory 2013.

Later, the Ministry of Social Affairs shall, on the basis of the recommendations from Praxis, prepare informational material on gender-based and sexual harassment at work. This material is targeted at employers and employees as well as professionals working to resolve harassment cases.

Pertinent Figures, Statistics and other Relevant Information

According to the Gender Equality Monitory 2009, 9% of responders (10% of women and 7% of men) had, in the last 12 months, been exposed to uncomfortable or unwanted hints, remarks or suggestions regarding their gender, made by members of opposite gender. The majority of such experiences were noted by under-25-years-olds of both genders. 16% of 15-24-year-old men had experienced verbal gender-based harassment from members of opposite gender, for women of same age, that number was 20%. Next the study examined sexual harassment experiences in more detail. In general consciousness, sexual harassment is considered to be a work life phenomenon: according to stereotype, it is mostly an unwanted sexual attention by a male boss directed at a female subordinate. Yet, theMonitory revealed that although a relatively small proportion of people perceives sexual harassment (a quarter of the respondents have been exposed to one or more ways of sexual harassment), both men and women have been exposed to it to a rather similar extent. A fifth of women and 15% of men have heard a member of the opposite sex speaking jokes with double-entendres or obscenities, which were uncomfortable for the listener.

Case law

From 01.09.-31.12.2012, there were no cases were a person would contact Gender Equality and Equal Treatment Commissioner or labour inspector-jurisconsult of the Labour Inspectorate regarding sexual harassment at the workplace.

Please see also Second Report provided within the framework of Article 22 of the Social Charter by the Republic of Estonia.

Article 26 paragraph 2 – Prevention of other forms of harassment

The General Legal Framework

After the amendment of the **Gender Equality Act** from 2009 § 3 subsection 1 clause 6 of the act defines in addition to sexual harassment also harassment related to the sex of a person which, by definition, occurs where unwanted conduct or activity related to the sex of a person takes place with the purpose or effect of violating the dignity of a person and of creating a disturbing, intimidating, hostile, degrading, humiliating or offensive environment. GEA § 6 (2) 5) defines that gender-based and sexual harassment in work life is discrimination.

Amendments from 2009 also concerned shared burden of proof which was concretized. In October 2009 an amendment entered into force which specifically states that the principle of shared burden of proof is also applied in the cases where a person asks an opinion from the Gender Equality and Equal Treatment Commissioner. Such regulation should influence the respondents to be active in the process which in turn will enable the Commissioner to prepare more adequate opinions. According to § 4 of the GEA, an application of a person addressing a court, a labour dispute committee or the Gender Equality and Equal Treatment Commissioner has to set out the facts on the basis of which it can be presumed that discrimination based on sex has occurred. In the course of proceedings, it is the respondent who has to prove that there has been no breach of the principle of equal treatment. If the person refuses to provide proof, such refusal is deemed to be equal to acknowledgement of discrimination by the person. The shared burden of proof does not apply in administrative or criminal proceedings.

In addition, the Equal Treatment Act (ETA), the purpose of which is to ensure the protection of persons against discrimination on the grounds of nationality (ethnic origin), race, colour, religion or other beliefs, age, disability or sexual orientation, also defines harassment based on these grounds (§ 3 subsection 3). Harassment occurs when unwanted conduct related to any of these attributes takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment is deemed to be a form of direct discrimination.

The ETA foresees different scope of application for different grounds (§ 2). Discrimination of persons on the grounds of nationality (ethnic origin), race or colour is prohibited in relation to 1) conditions for access to employment, to self-employment or to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels

of the professional hierarchy, including promotion; 2) entry into employment contracts or contracts for the provision of services, appointment or election to office, establishment of working conditions, giving instructions, remuneration, termination of employment contracts or contracts for the provision of services, release from office; 3) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience; 4) membership of, and involvement in, an organization of employees or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such determination of the amount of compensation, a court shall take into organizations; 5) social protection, including social security and healthcare, and social advantages; 6) education; 7) access to and supply of goods and services which are available to the public, including housing. Discrimination of persons on the grounds of religion or other beliefs, age, disability or sexual orientation is prohibited in relation to the first four categories. This different scope of application also concerns the issue of harassment.

As to the more general rules, the **Law of Obligations Act** can be pointed out. General part of the Law of Obligations Act applies to employment relationship. The mentioned part states two important principles in contractual relationship. Paragraph 6 states the principle of good faith. According to the mentioned principle the employers and employees shall act in good faith in their relations with one another. Paragraph 7 states the principle of reasonableness. With regard to an obligation, reasonableness is to be judged by what persons acting in good faith would ordinarily consider to be reasonable in the same situation. Violence or harassment in employment relationship is contrary to these principles and therefore forbidden.

The Measures Taken to Implement the Legal Framework

The Ministry of Social Affairs will soon update the harassment (including sexual harassment) related section of the Work Life Portal. The Ministry of Social Affairs will soon also offer material to the employer to prevent harassment in the same portal. The Ministry of Social Affairs has prepared a declaration of "Anti-sexual harassment and bullying policies", by signing of which, the employers will indicate to their employees that such companies value caring and respectful attitude between the employer and employees as well as between the employees themselves.

In 2012, the Ministry of Social Affairs organized a procurement for a study on gender-based and sexual harassment in the labour market. The winner, Praxis - Center for Policy Studies conducted a complex study with multiple substudies, and objectives, including:

- To provide a comprehensive overview of the nature and prevalence of gender-based and sexual harassment on the basis of academic literature and court decisions;
- To conduct a qualitative study, aimed at providing in-depth overview of gender-based and sexual harassment cases in Estonia;
- Prepare a questionnaire that would make it possible tocollect information on gender-based and sexual harassment from the population.
- Testing the questionnaire as a new submodule of a more general survey under the framework of Gender Equality Monitory 2013.

Later, the Ministry of Social Affairs shall, on the basis of the recommendations from Praxis, prepare informational material on gender-based and sexual harassment at work. This material is targeted at employers and employees as well as professionals working to resolve harassment cases.

Pertinent Figures, Statistics and other Relevant Information

According to the "Gender Equality Monitory 2009", 9% of responders (10% of women and 7% of men) had, in the last 12 months, been exposed to uncomfortable or unwanted hints, remarks or suggestions regarding their gender, made by members of opposite gender. The majority of such experiences were noted by under-25-years-olds of both genders. 16% of 15-24-year-old men had experienced verbal gender-based harassment from members of opposite gender, for women of same age, that number was 20%.

Case Law

From 1 September - 31 December 2012, there were eight cases of contacting the labour inspector-jurisconsult of the Labour Inspectorate regarding workplace harassment and psychological pressurization. In all cases, the petitioners said it was a situation where a

conflict arose between the parties and the employer tried to find a reasons to get rid of the employee. For example, the employer gave duties, which did not fall within the employee's job responsibilities, talked about the employee behind their back, insulted, yelled at the employee in front of other employees and otherwise behaved in unsuitable manner to influence the employee to leave. The employees also said that they were constantly threatened with extraordinary cancellation of employment contract due to reasons arising from their person. No cases involving sexual harassment were described during that period.

Labour dispute committee processed three pressurization and harassment cases during the reviewed period. In one of the cases, where the labour dispute committee took a decision that the harassment took place and the victim should be compensated concerns the situation where male masseuse was dismissed due to his gender, as the employer argued that customers do not want to use the services of a male masseuse. The employee also argued that the employer harassed him during their work relationship. In the course of the proceedings, the committee ascertained gender-based discrimination of the employee (the judgment does not provide an assessment of sexual harassment) and ordered to pay compensatory damages of EUR 500.

The other case, which first reached the Gender Equality and Equal Treatment Commissioner and then the labour dispute settlement committee, resulting in conviction of the employer and monetary compensation for the employee, concerns ethnicity. In this case, the employee cancelled their employment contract on extraordinary grounds, due to the fact, that in the course of five years, the employer allowed the co-workers to treat the employee in an undignified manner in relation to the employee's ethnicity.The employer was sentenced under Employment Contract Act § 109 (1) to pay to the petitioner 1 (one) month's average salary of the employee in the gross amount of EUR 1,004.88.

Gender Equality and Equal Treatment Commissioner reviewed two more harassment-related complaints, one of which concerned ethnicity and the other work-place harassment due to advanced aged. In the first case, the petitioner found that (s)he had been treated unfairly in work relations because of their ethnicity. According to the petitioner, the employer had harassed him/her for years examining hie/her work more thoroughly than co-workers work, petitioner's remarks received disproportionate negative attention, the management did not support the petitioner in problem solving situations, etc. The Commissioner opened proceedings and issued an opinion, which did not find that the petitioner was discriminated against because of their ethnicity. The opinion does not address the issue of harassment

explicitly, although the petitioner claimed to have been "bullied". The application focuses on the issue of identification of direct discrimination.

Due to insufficient evidence the Commissioner was unable to identify age-related harassment in one other case. . The petitioner found it offensive and infringing the rights of the elderly, that the employer sought a younger employee for the petitioner's post, referring to their age; the employer also informed another co-worker that they too should find a younger successor. The Commissioner sent a letter of formal notice to the employer, which explained that excluding an employee from work collective, or underestimating their performance due to their age, may be degrading to the subject and the person may feel that they have been discriminated against due to their age. The letter of notice referred to the Equal Treatment Act § 3 (2) (direct discrimination), not to the harassment regulation. However, the information by the petitioner suggested the possibility that they have been harassed because of their age. Due to the lack of evidence, proceedings were not started. The representative of the employer replied that the dispute between the employer and the employee is not due to the age of the employee.

Please see also Second Report provided within the framework of Article 22 of the Social Charter by the Republic of Estonia.

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

The General Legal Framework

Legal basis, which provides the employees' representatives the right to operate in the enterprise, to get necessary protection and stipulated benefits, has not changed in years 2009-2012.

The Employees' Trustee Act (§ 9) provides that, in order to fulfill their duties, a trustee has the right to, upon agreement with the employer, use the premises and other resources of the employer necessary for the performance of the duties of a trustee; also to involve experts in the performance of his or her duties and receive training for the performance of his or her duties. § 14 of the same Act provides that the parties may agree that the expenses relating to training shall be borne by the employer (including training fees, travel expenses to training location, overnight costs, etc.).

The Trade Unions Act (§ 20) covers trade union members (including trade union trustee's) training-related issues significantly differently from the Employees' Trustee Act's provisions on the employee's trustee. The Trade Union's Act provides that An employer is required to allow a member of a trade union at least five days free from work in order for him or her to participate in training organized by the trade union or in the work of trade union bodies on the basis of written invitations submitted by the trade union, provided it does not bring about significant impediments to the economic activities of the employer. On the days free from work granted pursuant to this clause, the employee shall continue to receive his or her average wages for two days a year.

The Measures Taken to Implement the Legal Framework

The Ministry of Social Affairs has issued a relevant annotated version of „The Employees' Trustee Act", which covers its application and is available both on paper and on the internet on the Ministry of Social Affairs website (www.som.ee). Upon the Act's entry into force, the Ministry of Social Affairs organized training seminars introducing the Act in various locations in the country. Additionally, the social partners (both employees' and employers'

representative organizations) have, with the support of the European Social Fund, conducted a number of collective employment-related projects (including the trustee's web training, creation of an information portal on individual and industrial relations, notification of its possibilities; information materials and outreach to employers).

Information on collective employee relationships can be found on the website of the Ministry of Social Affairs at www.sm.ee and in database maintained by the Ministry of Social Affairs at www.tööelu.ee. The Labour Inspectorate conducts state supervision over the lawful application of the Trade Union Act.

Pertinent Figures, Statistics and Other Relevant Information

According to the Collective Employment Relationships' Study[18] (2011) 69% of private sector employers with employees' representative, said that the employees' representatives can attend training at the expense of the employer. 49% trade union representatives and 37% fiduciaries mention participation in training as an additional benefit of an employee's representative. 51% of employers give extra time for performing representative tasks, this additional guarantee is mentioned by 54% of trade union representatives and 58% of trustees. According to 17% of employers, there are no additional guarantees designated for employee's representatives, 25% of trade union representatives and 29% of trustees were of the same opinion.

Question

General Questions from the Committee

When worker representatives are required to travel in order to perform their functions what arrangements are made for covering the cost of their expenses.

According to the Employees' Trustee Act § 9, a trustee has the right to, upon agreement with the employer, use "the premises and other resources of the employer necessary for the performance of the duties of a trustee". This means that upon agreement with the employer, the transportation costs under question, shall be paid by an employer.

[18] Source: Centar Estonian Center for Applied Research (2011) Collective employment relationships.

ARTICLE 29 – THE RIGHT TO INFORMATION AND CONSULTATION IN COLLECTIVE REDUNDANCY PROCEDURES

The General Legal Framework

Collective cancellation is regulated by **The Employment Contracts Act**, entry into force 1 July, 2009. However, no significant changes were made to the regulation, which provides the right to receive information and consultation upon collective redundancy.

Collective cancellation, i.e. depending on the number of employees, the simultaneous cancellation of 5-30 employees within 30 calendar days, is regulated by the Employment Contracts Act § 90. Collective cancellation of employment contracts, informing and consulting of employees is regulated by the Employment Contracts Act § 101. Information and consultation of employees upon collective cancellation of employment contracts, whereby:

(1) Before an employer decides on collective cancellation he or she shall consult in good time the trustee / shop steward or, in his or her absence, employees with the goal of reaching an agreement on prevention of the planned cancellations or reduction of the number thereof and mitigation of the consequences of the cancellations, including contribution to the seeking of employment by or re-training of the employees to be laid off.

(2) For the trustee / shop steward to be able to make proposals in consultations, the employer shall in good time provide the trustee / shop steward or, in his or her absence, employees with all necessary information about the planned collective cancellation. The employer shall submit, in a format which can be reproduced in writing, at least the following information:

1) the reasons for the collective cancellation;
2) the number and official titles of the employees of the employer;
3) the number and official titles of those employees and the selection criteria determining the persons whose employment contracts are to be cancelled;
4) the period of time during which the employment contracts are to be cancelled;

5) the method of calculation of the compensation to be paid to the employees in addition to the benefits prescribed by law or the collective agreement.

(3) The employer shall send a transcript of the information specified in subsection (2) of this section to the Estonian Unemployment Insurance Fund concurrently with the submission of the information to the trustee / shop steward or, in his or her absence, the employees. (4) Upon consultation, the trustee / shop steward or, in his or her absence, the employees have the right to meet with the representatives of the employer and make proposals pursuant to the procedure and within the term prescribed in subsection 113(3) of this Act.

After the passing of the aforementioned deadline, and taking into account the results of the consultation, the employer shall make a final decision on the number of redundancies and the date of termination of employment. Then the verified data shall be submitted to the Estonian Unemployment Insurance Fund and a copy of the data to the trustee or the staff.

The employer can send the cancellation notice to the employment agreement only after they have received the decision from the Unemployment Insurance Fund that the collective termination of employment contracts is possible.

The collective cancellation of employment agreements shall enter into force with the passing of the advance notice period, but no sooner than 30 calendar days from the time, when the Unemployment Insurance Fund received the final confirmation on the number of redundancies and the date of termination of employment from the employer.

The Labour Inspectorate carries out the state supervision over compliance with the obligation to inform and consult upon the collective termination of employment contracts. The Labour Inspectorate may punish a natural or legal person for failure to fulfill legal obligation by a fine of up to 1,300 euros.

The Measures Taken to Implement the Legal Framework

The Ministry of Social Affairs has issued a relevant annotated version of „The Employees' Trustee Act", which covers its application (available both on paper and on the internet). Upon the Act's entry into force, the Ministry of Social Affairs organized a series of training seminars introducing the Act in various locations in the country. Information on collective employee relationships can be found on the website of the Ministry of Social Affairs at www.sm.ee and

in database maintained by the Ministry of Social Affairs at www.tööelu.ee. The Labour Inspectorate conducts state supervision over the lawful application of the Trade Union Act.

Pertinent Figures, Statistics and other Relevant Information

Table 19. Number of collective cancellations, 2010-2012

	2010	2011	2012
Number of collective cancellations	127	99	96

Source: Estonian Unemployment Insurance Fund